
Thursday
April 18, 1991

Federal Register

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

CHICAGO, IL

WHEN: April 25, at 9:00 am
WHERE: 219 S. Dearborn Street
 Conference Room 1220
 Chicago, IL
RESERVATIONS: 1-800-366-2998

WASHINGTON, DC

WHEN: May 2, at 9:00 am
WHERE: Office of the Federal Register
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 1100 L Street, NW, Washington, DC
RESERVATIONS: 202-523-5240

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WHEN: May 23, at 9:00 am
WHERE: Office of the Federal Register
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 1100 L Street, NW, Washington, DC
RESERVATIONS: 202-523-5240 (voice); 202-523-5229 (TDD)

NOTE: There will be a sign language interpreter for hearing impaired persons at the May 23, Washington, DC briefing.

Contents

Federal Register

Vol. 56, No. 75

Thursday, April 18, 1991

Agricultural Marketing Service

RULES

Filberts/hazelnuts grown in Oregon and Washington, 15805

Grapes grown in California, 15804

Grapes, table (European or Vinifera); grade standards, 15801

Soybean promotion, research, and consumer information, 15809

Watermelon research and promotion plan, 15807

PROPOSED RULES

Cranberries grown in Massachusetts et al., 15845

Tobacco inspection:

Inspection and grading for import; fees and charges, 15845

Agriculture Department

See Agricultural Marketing Service; Commodity Credit Corporation; Farmers Home Administration; Federal Grain Inspection Service

Army Department

See Engineers Corps

NOTICES

Meetings:

ROTC Affairs Advisory Panel, 15865

Military traffic management:

Commercial freight carriers; performance levels, 15865

CONUS automated rate system (CARTS), 15866

Arts and Humanities, National Foundation

See National Foundation on the Arts and the Humanities

Centers for Disease Control

NOTICES

Meetings:

Injury Prevention and Control Advisory Committee, 15924

Children, National Commission

See National Commission on Children

Civil Rights Commission

NOTICES

Meetings; State advisory committees:

Arizona, 15853

Idaho, 15853

Nevada, 15853

(2 documents)

New Mexico, 15853

Texas, 15856

Commerce Department

See also Export Administration Bureau; International Trade Administration; National Oceanic and Atmospheric Administration

NOTICES

Agency information collection activities under OMB review, 15856, 15857

(5 documents)

Commodity Credit Corporation

RULES

Food, Agriculture, Conservation, and Trade Act; implementation, 15964

Loan and purchase programs:

Grains and similarly handled commodities; farmer owned reserve program; 1990 crop wheat as collateral, 15812

Defense Department

See also Army Department; Engineers Corps; Uniformed Services University of the Health Sciences

NOTICES

Meetings:

Defense Base Closure and Realignment Commission, 15864

Delaware River Basin Commission

PROPOSED RULES

Comprehensive plan, water code; and administrative manual, practice and procedure rules; amendments:

Water and wastewater transfers, 15850

Education Department

NOTICES

Privacy Act:

Systems of records, 15866

Energy Department

See also Energy Information Administration; Energy Research Office; Federal Energy Regulatory Commission

NOTICES

Grant and cooperative agreement awards:

University of—

Washington, 15869

Natural gas exportation and importation:

Northern Natural Gas Co., 15872

Energy Information Administration

NOTICES

Forms; availability, etc.:

Nuclear and uranium data program package, 15869

Energy Research Office

NOTICES

Grants and cooperative agreements; availability, etc.:

Ocean margins program, 15870

Engineers Corps

NOTICES

Environmental statements; availability, etc.:

Gulf Intracoastal waterways, Sargent Beach, TX, 15864

Environmental Protection Agency

NOTICES

Toxic and hazardous substances control:

Confidential business information and data transfer to contractors, 15879

Executive Office of the President

See Presidential Documents

Export Administration Bureau**NOTICES**

Meetings:

Telecommunications Equipment Technical Advisory
Committee, 15855

Farmers Home Administration**RULES**

Program regulations:

Agricultural Credit Act; implementation, 15813

Federal Aviation Administration**PROPOSED RULES**

Airworthiness standards:

Special conditions—

British Aerospace Model 4100 airplane, 15847

NOTICES

Meetings:

Aviation Security Advisory Committee, 15955

Federal Communications Commission**RULES**

Radio services, special:

Personal radio services—

Radio Control (R/C) Radio Service; remote control
transmitters in 72-76 MHz Band; technical
standards, 15836

Federal Election Commission**NOTICES**

Meetings; Sunshine Act, 15959

Federal Energy Regulatory Commission**NOTICES**

Electric rate, small power production, and interlocking
directorates filings, etc.:

Iowa Southern Utilities Co. et al., 15873

Environmental statements; availability, etc.:

Southern California Edison Co. et al., 15875

Meetings:

Electric utility industry; public conference, 15875

Natural gas companies (Natural Gas Act):

Natural gas data collection system—

Electronic purchased gas adjustment (PGA) filings;
acceptance criteria, 15876

Applications, hearings, determinations, etc.:

Chevron U.S.A. Inc. et al., 15878

Northwest Iowa Power Cooperative et al., 15878

Texas Gas Transmission Corp., 15878

Federal Grain Inspection Service**RULES**

Fees:

Official inspection and weighing services, 15803

Federal Highway Administration**NOTICES**

Environmental statements; notice of intent:

Baltimore City, MD, 15956

Federal Maritime Commission**NOTICES**

Agreements; additional information requests:

Asia/North America Eastbound Rate Agreement, 15880

Meetings; Sunshine Act, 15959

Federal Mine Safety and Health Review Commission**NOTICES**

Meetings; Sunshine Act, 15959

Federal Reserve System**NOTICES**

Meetings; Sunshine Act, 15959

Federal Trade Commission**NOTICES**

Prohibited trade practices:

Campbell Soup Co., 15880

Nintendo of America Inc., 15883

Fish and Wildlife Service**NOTICES**

Agency information collection activities under OMB review,
15929

Marine mammal permit applications, 15929

Food and Drug Administration**NOTICES**

Food for human consumption:

Identity standards deviation; market testing permits—

Tuna, canned, 15925

Human drugs:

Patent extension; regulatory review period
determinations—

Cutivate, 15926

Floxin, 15927

ProSom, 15925

Health and Human Services Department

See also Centers for Disease Control; Food and Drug

Administration; Health Care Financing Administration;

Health Resources and Services Administration

NOTICES

Organization, functions, and authority delegations:

Children and Families Administration, 15885

Social Security Administration, 15886

Health Care Financing Administration**NOTICES**

Meetings:

Social Security Advisory Council, 15928

Health Resources and Services Administration**NOTICES**

Meetings; advisory committees:

June, 15928

Housing and Urban Development Department**NOTICES**

Agency information collection activities under OMB review,
15928

Indian Affairs Bureau**NOTICES**

Indian-owned lands under jurisdiction of Sacramento area
office; land records custody transfer, 15962

Interior Department

See also Fish and Wildlife Service; Indian Affairs Bureau;

Land Management Bureau; Minerals Management

Service; National Park Service

RULES

Acquisition regulation system; revision, 15837

International Trade Administration**NOTICES**

Antidumping:

Chrome-plated lug nuts from—

China, 15857

Taiwan, 15860

Antidumping and countervailing duties:

Administrative review requests, 15856

Countervailing duties:

Round shaped agricultural tillage tools from Brazil, 15862

Short supply determinations:

Stainless steel wire rod, 15863

Interstate Commerce Commission

NOTICES

Railroad services abandonment:

Central Michigan Railway Co., 15931

Justice Department

NOTICES

Pollution control; consent judgments:

A.B. Hirshfeld Press, Inc., 15932

Allworth, Inc. et al., 15932

Husmann Corp., 15932

Labor Department

See Occupational Safety and Health Administration;

Pension and Welfare Benefits Administration

Land Management Bureau

NOTICES

Coal leases, exploration licenses, etc.:

Montana, 15930

Oil and gas leases:

California, 15930

Realty actions; sales, leases, etc.:

Alaska, 15930

Wyoming, 15930

Legal Services Corporation

NOTICES

Meetings; Sunshine Act, 15959

Minerals Management Service

NOTICES

Meetings:

Outer Continental Shelf Advisory Board, 15931

Mine Safety and Health Federal Review Commission

See Federal Mine Safety and Health Review Commission

National Commission on Children

NOTICES

Hearings, 15950

National Foundation on the Arts and the Humanities

NOTICES

Agency information collection activities under OMB review, 15950

National Highway Traffic Safety Administration

RULES

Fuel economy standards:

Light trucks, model year 1992, 15839

NOTICES

Motor vehicle safety standards; exemption petitions, etc.:

Mosler Auto Care Center, Inc., 15956

National Institute for Occupational Safety and Health

See Centers for Disease Control

National Oceanic and Atmospheric Administration

RULES

Fishery conservation and management:

Western Pacific pelagic fisheries, 15842

National Park Service

NOTICES

Environmental statements; availability, etc.:

Denali National Park and Preserve, AK, 15931

National Science Foundation

NOTICES

Meetings:

Design and Manufacturing Systems Special Emphasis

Panel, 15951

Nuclear Regulatory Commission

NOTICES

Environmental statements; availability, etc.:

Yankee Atomic Electric Co., 15951

Applications, hearings, determinations, etc.:

Connecticut Yankee Atomic Power Co., 15952

GPU Nuclear Corp., 15952

Occupational Safety and Health Administration

RULES

Safety and health standards:

Hazardous waste operations and emergency response; correction, 15832

Pennsylvania Avenue Development Corporation

NOTICES

Agency information collection activities under OMB review, 15953

Pension and Welfare Benefits Administration

NOTICES

Employee benefit plans; prohibited transaction exemptions:

UBS Securities, Inc., et al., 15933

Veterans Affairs Department et al., 15939

Postal Service

NOTICES

Meetings; Sunshine Act, 15959

Presidential Documents

PROCLAMATIONS

Special observances:

Farm Safety Week, National (Proc. 6270), 15799

Public Health Service

See Centers for Disease Control; Food and Drug

Administration; Health Resources and Services

Administration

Railroad Retirement Board

NOTICES

Privacy Act:

Systems of records, 15953

Securities and Exchange Commission

NOTICES

Meetings; Sunshine Act, 15960

(2 documents)

Applications, hearings, determinations, etc.:

Designatronics Inc., 15954

Penril Corp., 15954

Ronson Corp., 15954

Tennessee Valley Authority**NOTICES**

Environmental statements; availability, etc.:

Union City-New Madrid transmission line; wetlands impact, 15955

Thrift Supervision Office**NOTICES**

Conservator appointments:

Security Federal Savings & Loan Association, 15957

Receiver appointments:

Security Savings & Loan Association, 15957

Applications, hearings, determinations, etc.:

First Federal Savings Bank of West Texas, 15958

Transportation Department

See Federal Aviation Administration; Federal Highway Administration; National Highway Traffic Safety Administration

Treasury Department

See also Thrift Supervision Office

NOTICES

Notes, Treasury:

F-1998 series, 15957

Senior Executive Service:

Combined Performance Review Board; membership, 15957

Uniformed Services University of the Health Sciences**NOTICES**

Meetings; Sunshine Act, 15960

Veterans Affairs Department**RULES**

Release of information from claimant records; judicial proceedings, 15833

Vocational rehabilitation and education:

Basic entitlement to vocational rehabilitation services, 15835

Separate Parts In This Issue**Part II**

Department of the Interior, Bureau of Indian Affairs, 15962

Part III

Department of Agriculture, Commodity Credit Corporation, 15964

Reader Aids

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

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR**Proclamations:**

6270..... 15799

7 CFR

51..... 15801

800..... 15803

925..... 15804

982..... 15805

1210..... 15807

1220..... 15809

1421..... 15812

1497..... 15964

1498..... 15964

1924..... 15813

1955..... 15813

1962..... 15813

1965..... 15813

Proposed Rules:

29..... 15845

929..... 15845

14 CFR**Proposed Rules:**

21..... 15847

25..... 15847

18 CFR**Proposed Rules:**

401..... 15850

29 CFR

1910..... 15832

38 CFR

1..... 15833

21..... 15835

47 CFR

95..... 15836

48 CFR

1401..... 15837

49 CFR

533..... 15839

50 CFR

685..... 15842

Presidential Documents

Title 3—

Proclamation 6270 of April 15, 1991

The President

National Farm Safety Week, 1991

By the President of the United States of America

A Proclamation

The men and women who work in America's agricultural sector make a vital contribution to our Nation's well-being. By providing consumers with a variety of high-quality food and fiber at reasonable costs, they help to keep our work force strong and healthy and, in so doing, help to maintain the Nation's economic productivity and competitiveness. Because we count on farmers and ranchers for so much, both as individuals and as a Nation, it is fitting that we observe National Farm Safety Week—a concerted public awareness campaign aimed at promoting their health and safety.

Over the years much has been done to improve the safety of agricultural production. Advances in science and technology and increased attention to avoiding safety risks have made farms and ranches safer places to work. Moreover, dedicated professionals and volunteers have been working together to promote health and safety in rural communities. These efforts are reflected by a welcome downturn in farm accident rates.

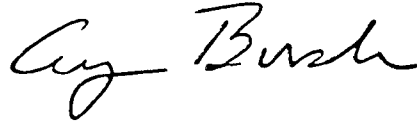
Unfortunately, however, while important strides have been made in reducing the risks of farming and ranching, agricultural production remains one of our most hazardous industries, with an accident death rate that is more than four times the average of all industries. More must be done to reduce the toll of farm-related accidents.

Most accidents on the Nation's farms and ranches can be prevented by sensible measures that involve little extra time, effort, or expense. For example, farmers and ranchers can reduce their risk of serious injury and illness by following manufacturers' instructions on the use of chemicals and machinery and by utilizing protective apparel and safety equipment when the job calls for it. Children should be kept away from hazardous machinery, and all family members and employees should be trained in safety procedures and first aid.

For generations, the men and women who work on our Nation's farms and ranches have endured long hours of tough, physical labor. However, they have continually met the challenges of their vocation with determination and pride—and with unparalleled success. During National Farm Safety Week, let us resolve to make excellence in health and safety another one of America's great farming traditions.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim the week of September 15 through September 21, 1991, as National Farm Safety Week. I urge all who live and work on our Nation's farms and ranches to make the preservation of personal health and safety an integral part of their daily activities. I also urge them to protect their children, not only by instruction in safety habits, but also by setting an example of carefulness and by avoiding needless risks. I also call upon organizations that serve agricultural producers to strengthen their support for rural health and safety programs, and I encourage all Americans to observe this week with appropriate activities as we express our appreciation for the many contributions that men and women in agriculture make to our Nation.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of April, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and fifteenth.

A handwritten signature in black ink, appearing to read "Geo Bush", is positioned to the right of the witness text.

[FR Doc. 91-9250

Filed 4-16-91; 12:32 pm]

Billing code 3195-01-M

Rules and Regulations

Federal Register

Vol. 56, No. 75

Thursday, April 18, 1991

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

[Docket No. FV-89-213]

Table Grapes (European or Vinifera Type); Grade Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule revises the United States Standards for Grades of Table Grapes (European or Vinifera Type) by establishing a new grade, U.S. No. 1 Institutional. The revised standards will provide a grade for small bunch, institutional pack type grapes without sacrificing quality of the pack. The California Grape and Tree Fruit League, a trade association representing major table grape growers and packers, has requested the United States Department of Agriculture (USDA) make the change to bring the standards in line with current marketing trends. This change will improve marketing information and communication between shippers and receivers of table grapes. The Agricultural Marketing Service (AMS) develops and improves standards of quality, condition, quantity, grade, and packaging which enhance the marketing of agricultural commodities by fostering consistency in commercial practices.

EFFECTIVE DATE: April 18, 1991.

FOR FURTHER INFORMATION CONTACT: Thomas G. Gambill, Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Washington, DC 20090-8456, (202) 447-5024.

SUPPLEMENTARY INFORMATION: This rule has been reviewed by the Department in accordance with Departmental

Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "nonmajor" rule.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.), the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities. The revision of the U.S. Standards for Grades of Table Grapes (European or Vinifera Type), will not impose substantial direct economic cost, recordkeeping, or personnel workload changes on small entities, and will not alter the market share or competitive position of these entities relative to large businesses. In addition, under the Agricultural Marketing Act of 1946, the application of these standards is voluntary.

The proposed rule, United States Standards for Grades of Table Grapes (European or Vinifera Type) (7 CFR 51.880-51.913), was published in the *Federal Register* on November 30, 1990 (55 FR 49629-49630). The proposal was developed at the request of the California Grape and Tree Fruit League, a trade association representing growers and shippers of California table grapes.

In recent years, new marketing and packaging techniques have developed small, consumer size servings of grapes. Under the present grade requirements these grapes cannot meet any U.S. grade due to bunch size requirements.

The California Grape and Tree Fruit League formally asked the USDA to revise U.S. Standards for Grades of Table Grapes (European or Vinifera Type) by adding the U.S. No. 1 Institutional grade. Institutional type packs of table grapes have been effectively prohibited from being exported to Canada because Canadian law requires imported grapes to be certified to a U.S. grade. With their small bunch weight, grapes sought by some Canadian receivers fell outside the minimum specified in the existing U.S. grades. This new grade makes a provision for small bunches, 2 to 5 ounces, while applying all the other requirements of the U.S. No. 1 Table grade. The U.S. No. 1 Institutional grade also requires 95 percent of the containers in a lot be legibly marked "Institutional Pack."

The 60-day comment period ended January 29, 1991 and a total of eight

comments were received concerning the proposal. Six of these comments were from the U.S. table grape industry and were in favor of the proposal.

The seventh comment, from the Mexican Table Grape Association, asserts that there will be "more boxes of table grapes of less quality in the market which will affect the buying public and this larger volume of boxes will make the commercialization of the table grape crop more difficult causing economic loss to the growers."

AMS disagrees and believes the opposite effect is actually the case. The institutional grade sacrifices no quality requirements. It requires that grapes in this grade meet the requirements of a U.S. No. 1 Table grade. Most importantly, the new grade will allow U.S. shippers to export grapes to Canadian markets where there is a demand for smaller bunches.

The eighth comment was from an AMS Federal Supervisor who pointed out that certifying to the new grade will require delicate equipment and more time. It appears, however, that these factors do not outweigh the benefits of the new grade.

The Agricultural Marketing Service (AMS) develops and improves standards of quality, condition, grade, and packaging to enhance the marketing of agricultural commodities by fostering consistency in commercial practices. The Agency has determined this final rule will enhance the marketing of table grapes. The provisions of this final rule are the same as those in the proposed rule except for the editorial changes made for clarity. In addition, the authority citation for part 51 has been changed to be consistent with the citation that appears in the Code of Federal Regulations.

It is hereby found that good cause exists for not postponing the effective date of this revision beyond the date of publication hereof in the *Federal Register*, in that: (1) The packing season for table grapes is soon to begin and it is in the interest of the industry that this revision be placed in effect at the earliest date; and (2) no special preparation is required for compliance with this revision on the part of members of the table grape industry or others.

Accordingly this revision shall become effective upon publication in the *Federal Register*.

List of Subjects in 7 CFR Part 51

Agricultural commodities, Food grades and standards, Fruits, Nuts, Reporting and recordkeeping requirements, Vegetables.

PART 51—(AMENDED)

For reasons set forth in the preamble, 7 CFR part 51 is amended as follows:

1. The authority citation for 7 CFR part 51 continues to read as follows:

Authority: Secs. 203, 205, 60 Stat. 1087, as amended, 1090 as amended; 7 U.S.C. 1622, 1624, unless otherwise noted.

§§ 51.885–51.912 [Redesignated as §§ 51.886–51.913]

2. In Subpart—United States Standards for Grades of Table Grapes

(European or Vinifera Type), §§ 51.885 through 51.912 are redesignated §§ 51.886 through 51.913 and the appropriate cross references within the part are changed as shown in the following chart.

Previous Section No.	Previous Cross-reference No.	Section Number of New Standard	New Cross-reference No.
51.880(j).....	51.885	51.880(j) (unchanged).....	51.886.
51.882(j).....	51.885	51.882(j) (unchanged).....	51.886.
51.883.....	51.911	51.883 (unchanged).....	51.912.
51.884(j).....	51.885	51.884(j) (unchanged).....	51.886.
51.885.....	51.887	51.886.....	51.888.

3. The table of contents is revised to read as follows:

Sec.	Grades
51.880	U.S. Extra Fancy Table.
51.881	U.S. Extra Fancy Export.
51.882	U.S. Fancy Table.
51.883	U.S. Fancy Export.
51.884	U.S. No. 1 Table.
51.885	U.S. No. 1 Institutional.

Tolerances

51.886 Tolerances.

Application of Tolerances

51.887 Application of Tolerances.

Maturity Requirements

51.888 Maturity Requirements.

Definitions

51.889	Well developed grapes.
51.890	One variety.
51.891	Uniform in appearance.
51.892	Color terms.
51.893	Firm.
51.894	Weak.
51.895	Shriveled at capstem.
51.896	Shattered.
51.897	Wet.
51.898	Decay.
51.899	Waterberry.
51.900	Sunburn.
51.901	Damage.
51.902	Fairly well filled.
51.903	Excessively tight.
51.904	Shot berries.
51.905	Dried berries.
51.906	Well developed and strong.
51.907	Diameter.
51.908	Serious damage.
51.909	Materially shriveled at capstem.
51.910	Straggly.

51.911 Container.

51.912 Export.

Metric Conversion Table

51.913 Metric conversion table.

4. A new § 51.885 is added to read as follows:

§ 51.885 U.S. No. 1 Institutional.

The requirements for this grade are the same as for "U.S. No. 1 Table" except for bunch size. In this grade bunch size shall not be less than two ounces and not greater than five ounces. Additionally, not less than 95% of the containers in the lot must be legibly marked "Institutional Pack."

5. In the newly redesignated § 51.886 Table I is changed to read as follows:

§ 51.886 Tolerances.

* * * * *

TABLE I—TOLERANCES AT SHIPPING POINT ¹

[Percent]

Factor	U.S. Extra fancy table	U.S. Fancy table	U.S. No. 1 table
(A) For bunches failing to meet color requirements.....	10	10	10
(B) For bunches failing to meet requirements for minimum diameter of berries.....	10	10	10
(C) For bunches failing to meet stem color requirements.....	10		
(D) For offsize bunches and for bunches and berries failing to meet the remaining requirements for the grade.....	8	8	8
Including in (D):			
(a) For serious damage.....	2	2	2
And, including in (a):			
(i) For decay.....	½ of 1	½ of 1	½ of 1

¹ Shipping Point, as used in these standards, means the point of origin of the shipment in the producing area or at port of loading for ship stores or overseas shipment, or, in the case of shipments from outside the continental United States, the port of entry into the United States.

TABLE II—TOLERANCES EN ROUTE OR AT DESTINATION

(A) For bunches failing to meet color requirements.....	10	10	10
(B) For bunches failing to meet requirements for minimum diameter of berries.....	10	10	10
(C) For bunches failing to meet stem color requirements.....	10		
(D) For offsize bunches and for bunches and berries failing to meet the remaining requirements for the grade.....	12	12	12
Including in (D):			
(a) For permanent defects.....	8	8	8

TABLE II—TOLERANCES EN ROUTE OR AT DESTINATION—Continued

(b) For serious damage	4	4	4
And, including in (b):			
(i) For serious damage by permanent defects	2	2	2
(ii) For decay	1	1	1

Dated: April 12, 1991.

Kenneth C. Clayton,
Acting Administrator.

[FR Doc. 91-9134 Filed 4-17-91; 8:45 am]

BILLING CODE 3410-01-M

Federal Grain Inspection Service

7 CFR Part 800

Fees for Official Inspection and Official Weighing Services

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Federal Grain Inspection Service (FGIS) is increasing its fees by approximately 8 percent for official inspection and weighing services performed in the United States under the United States Grain Standards Act (USGSA), as amended. This change is intended to cover, as nearly as practicable, the FGIS operating costs, including related supervisory and administrative costs.

EFFECTIVE DATE: May 20, 1991.

FOR FURTHER INFORMATION CONTACT: Allen Atwood, Federal Grain Inspection Service, USDA, Room 0628 South Building, Box 96454, Washington, DC 20090-6454; telephone (202) 475-3328.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This final rule is issued in conformance with Executive Order 12291 and Departmental Regulation 1512-1. This action has been classified as nonmajor because it does not meet the criteria for a major regulation established in the Order.

Regulatory Flexibility Act Certification

John C. Foltz, Administrator, FGIS has determined that this final rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because most users of the official inspection and weighing services do not meet the requirements for small entities. FGIS is required by statute to make services available and to recover costs of providing such services as nearly as practicable.

Background

The USGSA, as amended (7 U.S.C. 71 *et seq.*), provides that FGIS shall charge and collect reasonable fees that cover its estimated cost for performing official inspection, weighing, reinspection, and appeal inspection services. The fees are to cover, as nearly as practicable, and taking into consideration any proceeds from the sale of samples, the FGIS costs for performance of these official services, including related administrative and supervisory costs. FGIS costs include personnel compensation, personnel benefits, travel, rent, communications, utilities, contractual services, supplies, and equipment. The current USGSA fees became effective on January 5, 1987 (51 FR 43723). The fees were designed to cover, as nearly as practicable, the level of operating costs as projected for fiscal year 1988. They presently appear in § 800.71 on Schedule A of the regulations, Fees for Official Inspection, Weighing, and Appeal Inspection Services, Performed in the United States (7 CFR 800.71 (Schedule A)).

Comments

In the October 1, 1990, *Federal Register* (55 FR 40136) FGIS proposed to increase fees for official inspection and official weighing services, as performed in the United States under the USGSA, as amended, by 13.5 percent. The proposal requested interested persons to submit written comments by October 30, 1990. Additionally, on October 30, 1990, in *Federal Register* (55 FR 45611) FGIS extended the comment period by 30 days until November 30, 1990.

Thirty-six comments were received regarding the proposal. The commenters represent both association and operational interests of grain handlers and processors providing export and domestic services in the grain industry. Additionally, one Congressional comment was received.

The commenters oppose any fee increase and suggest cost cutting measures be implemented without affecting the level of service provided. FGIS disagrees with the view opposing any fee increase but does believe that cost cutting measures should be implemented to the extent practicable to lessen the amount of the proposed increase as much as possible.

Final Action

FGIS continually monitors its cost, revenue, and operating reserve levels to assure that there are sufficient resources for operations. During the fiscal years 1988 and 1989 FGIS continued to implement cost-saving measures in an effort to provide cost-effective quality services. As a result, the revenue of \$23,396,548 covered the operating costs of \$19,778,546 for fiscal year 1988. However, the fiscal year 1989 revenue of \$22,488,972 did not cover operating costs of \$22,566,180 resulting in a negative margin of \$77,208. The increase in costs can be attributable mainly to increases in personnel compensation and benefits.

Fiscal year 1990 costs provide the most adequate data available to assess FGIS's inspection and weighing operating costs and revenue structure. This data was used to project fiscal year 1991 inspection and weighing costs and revenue levels. During the period October 1, 1989 to September 30, 1990, the actual operating cost was \$21,962,736 and the revenue was \$19,410,005, resulting in a loss of \$2,552,731. This trend requires the implementation of cost saving measures and an increase in fees to recover projected operating costs and maintain a 3 month operating reserve.

While the quantity of inspection and weighing services may fluctuate, certain FGIS costs remain constant. FGIS anticipates cutting costs for fiscal year 1991 by approximately 16.72 percent or from \$22,431,100 to \$18,680,000, thereby realizing a potential savings of \$3,751,100 in the inspection and weighing program. The reduction in costs will be achieved through furloughs, reductions in force, and reducing other costs including travel costs. Additionally, FGIS will continue efforts to reduce costs in fiscal year 1992.

Accordingly, FGIS is increasing fees for inspection, weighing, reinspection, and appeal inspection services by approximately 8 percent rather than by the 13.5 percent as proposed. The fee increases both the contract hourly rates and noncontract hourly rates for original inspection and official weighing. The official inspection and weighing services hourly rates include, but are not limited to grading, weighing, sampling, stowage examination, equipment testing, test weight reverification, evaluation of

inspection and weighing equipment, demonstrating official inspection and weighing functions, furnishing standard illustrations, certifying inspection and weighing results, and other services requested by the applicant when performed at the point of service.

The railroad track scale test services fees of \$44.00 for regular workday (Monday to Saturday), and \$59.90 for nonregular workday (Sunday and Holiday) published final at 56 FR 12335, March 25, 1991, are not changed by this action.

List of Subjects in 7 CFR Part 800

Administrative practice and procedure; Grains.

For the reasons set out in the preamble, 7 CFR part 800 is amended as follows:

PART 800—GENERAL REGULATIONS

1. The authority citation for part 800 continues to read as follows:

Authority: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

2. In § 800.71 (a), Schedule A is revised to read as follows:

§ 800.71 Fees assessed by the Service.

(a) * * *

SCHEDULE A.—FEES FOR OFFICIAL INSPECTION, WEIGHING, AND APPEAL INSPECTION SERVICES PERFORMED IN THE UNITED STATES.¹

Inspection and weighing service (bulk or sacked grain)	Regular workday (Monday to Saturday)	Nonregular workday (Sunday and Holiday)
(1) Original inspection and official weighing:		
(i) Contract (per hour per service representative).....	\$31.50	\$43.10
(ii) Noncontract (per hour per service representative).....	41.90	57.00
(2) Reinspection, appeal inspection, Board appeal inspection, and review of weighing services: ^{2 3}		
(i) Grading service:		
(a) Grade and factors (per sample).....	61.10	79.50
(b) Protein test (per sample).....	15.30	19.90
(c) Factor determination (per factor).....	30.60	39.75
(ii) Sampling services (per hour per service representative).....	61.10	79.50

SCHEDULE A.—FEES FOR OFFICIAL INSPECTION, WEIGHING, AND APPEAL INSPECTION SERVICES PERFORMED IN THE UNITED STATES.¹—Continued

Inspection and weighing service (bulk or sacked grain)	Regular workday (Monday to Saturday)	Nonregular workday (Sunday and Holiday)
(iii) Review of weighing service (per service representative).....	61.10	79.50
(3) Extra copies of certificates (per copy).....	3.00	3.00
(4) Official track scale testing service.....	44.00	59.90

¹ Official inspection and weighing services include, but are not limited to: grading, weighing, sampling, stowage examination, equipment testing, scale testing and certification, test weight reverification, evaluation of inspection and weighing equipment, demonstrating official inspection and weighing functions, furnishing standard illustrations, and certifying inspection and weighing results.

² Fees for reinspection and appeal inspection services performed at locations where FGIS is providing original inspection service shall be assessed at the applicable contract or noncontract hourly rate as the original inspection. However, if additional personnel are required to perform the reinspection or appeal inspection service, the applicant will be assessed the noncontract original inspection hourly fee.

³ If at the request of the Service a file sample is located and forwarded by an agency for an official appeal, the agency may, upon request, be reimbursed at the rate of \$2.50 per sample by the Service.

* * *

Dated: April 1, 1991.

John C. Foltz,

Administrator.

[FR Doc. 91-9053 Filed 4-17-91; 8:45am]

BILLING CODE 3410-EN-M

Agricultural Marketing Service

7 CFR Part 925

[Docket No. FV-91-256]

California Desert Grapes; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes an assessment rate under Marketing Order No. 925 for the 1991 fiscal period. Authorization of this budget will permit the California Desert Grape Administrative Committee (committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATE: January 1, 1991, through December 31, 1991.

FOR FURTHER INFORMATION CONTACT:

Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 98456, room 2525-S, Washington, DC 20090-6456, telephone 202-447-2020.

SUPPLEMENTARY INFORMATION: This rule is effective under Marketing Agreement and Order No. 925 (7 CFR part 925), regulating the handling of grapes grown in a designated area of southeastern California. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This rule has been reviewed by the Department in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

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

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

There are approximately 20 handlers of California desert grapes under this marketing order, and approximately 90 producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$3,500,000. The majority of grape producers and handlers may be classified as small entities.

The budget of expenses for the 1991 fiscal period was prepared by the California Desert Grape Administrative Committee (committee), the agency responsible for local administration of the marketing order, and submitted to the Department of Agriculture for approval. The members of the committee are handlers and producers of California desert grapes. They are familiar with the committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and

discussed in public meetings. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the committee was derived by dividing anticipated expenses by expected shipments of California desert grapes. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the committee's expenses.

The committee met on February 14, 1991, and unanimously recommended a 1991 budget of \$28,645, \$820 more than the previous year. Increases in rent and utilities will be partially offset by decreases in salaries. The committee also unanimously recommended an assessment rate of \$0.0025 per lug of grapes, a decrease from last season's rate of \$0.003. This rate, when applied to anticipated shipments of 8,000,000 lugs, will yield \$20,000 in assessment income. This, along with \$1,151 in interest income and \$7,494 from the committee's authorized reserve, will be adequate to cover budgeted expenses. The committee recommended utilizing the carryover funds from the 1990 fiscal period to cover part of the 1991 expenses. Funds remaining at the end of the 1991 fiscal period, estimated at \$22,855, will be within the maximum permitted by the order of one fiscal period's expenses.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

A proposed rule was published in the *Federal Register* on March 20, 1991 (56 FR 11699). That document contained a proposal to add § 925.210 to authorize expenses and establish an assessment rate for the committee. That rule provided that interested persons could file comments through April 1, 1991. No comments were received.

It is found that the specified expenses are reasonable and likely to be incurred and that such expenses and the specified assessment rate to cover such expenses will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this section until 30 days after publication in the *Federal Register* (5 U.S.C. 553) because the committee needs to have sufficient funds to pay its

expenses which are incurred on a continuous basis. The 1991 fiscal period began in January, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable grapes handled during the fiscal period. In addition, handlers are aware of this action which was recommended by the committee at a public meeting.

List of Subjects in 7 CFR Part 925

Marketing agreements, Grapes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 925 is hereby amended as follows:

PART 925—GRAPES GROWN IN A DESIGNATED AREA OF SOUTHEASTERN CALIFORNIA

1. The authority citation for 7 CFR part 925 continues to read as follows:

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

2. A new § 925.210 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 925.210 Expenses and assessment rate.

Expenses of \$28,645 by the California Desert Grape Administrative Committee are authorized, and an assessment rate of \$0.0025 per 22-pound container of grapes is established for the fiscal period ending December 31, 1991. Unexpended funds may be carried over as a reserve.

Dated: April 12, 1991.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–9132 Filed 4–17–91; 8:45 am]

BILLING CODE 3410–02–M

7 CFR part 982

[FV–91–228 FR]

Filberts/Hazelnuts Grown in Oregon and Washington; Establishment of Interim and Final Free and Restricted Percentages for the 1990–91 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service is adopting, without modification, as a final rule the provisions of an interim final rule which established interim and final free and restricted percentages for domestic

inshell filberts/hazelnuts for the 1990–91 marketing year under the Federal marketing order for filberts/hazelnuts grown in Oregon and Washington. The percentages indicate the amount of domestically produced filberts/hazelnuts which may be marketed in domestic, export and other outlets. The percentages are intended to stabilize the supply of domestic inshell filberts/hazelnuts in order to meet the limited domestic demand for such filberts/hazelnuts and provide reasonable returns to producers. This action was recommended by the Filbert/Hazelnut Marketing Board (Board), which is the agency responsible for local administration of the order.

EFFECTIVE DATE: April 18, 1991.

FOR FURTHER INFORMATION CONTACT:

Patricia A. Petrella, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2522–S, P.O. Box 96456, Washington, DC 20090–6456; telephone (202) 475–3920.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 982 [7 CFR part 982], as amended, regulating the handling of filberts/hazelnuts grown in Oregon and Washington. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a “non-major” rule under criteria contained therein.

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

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

There are approximately 25 handlers of filberts/hazelnuts subject to regulation under the filbert/hazelnut marketing order and approximately 1,000 producers in the Oregon and

Washington production area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$3,500,000. The majority of handlers and producers of filberts/hazelnuts may be classified as small entities.

The Board's recommendation and this final rule are based on requirements specified in the order. This final rule continues the restriction on the amount of inshell filberts/hazelnuts that can be marketed in domestic markets. The domestic outlets for this commodity are characterized by limited demand, and the establishment of free and restricted percentages are expected to benefit the industry by promoting stronger marketing conditions and stabilizing prices and supplies, thus improve grower returns.

The Board is required to meet prior to September 20 of each marketing year to compute an inshell trade demand and preliminary free and restricted percentages, if the use of volume regulation is to be recommended during the season. The order prescribes formulas for computing the inshell trade demand, as well as preliminary, interim final, and final percentages. The inshell trade demand establishes the amount of inshell filberts/hazelnuts the market can utilize throughout the season. The preliminary percentages release 80 percent of the inshell trade demand, while the interim and final percentages release 100 percent and 115 percent, respectively, of the inshell trade demand.

The inshell trade demand, rounded to the nearest whole number, equals the average of the preceding three "normal" years' trade acquisitions of inshell filberts/hazelnuts, with the provision that the Board may increase such estimate by no more than 25 percent, if market conditions warrant such an increase.

The preliminary free and restricted percentages make available portions of the filbert/hazelnut crop which may be marketed in domestic inshell markets (free) and exported or shelled (restricted) early in the 1990-91 season. The preliminary free percentage is expressed as a percentage of the total supply subject to regulation and is based on preliminary crop estimates.

At its August 27, 1990, meeting, the Board computed and announced preliminary free and restricted percentages of 17 and 83 percent, respectively, to release 80 percent of the inshell trade demand. The purpose of

releasing only 80 percent of the inshell trade demand under the preliminary percentage is to guard against underestimates of the crop. The preliminary restricted percentage is 100 percent minus the free percentage. The preliminary percentages release 80 percent of the inshell trade demand in order to protect against underestimates of the crop. The majority of domestic inshell filberts/hazelnuts are marketed in October, November, and December. By November, the marketing season is well under way.

On or before November 15, the Board must meet to recommend to the Secretary interim percentages which release 100 percent of the inshell trade demand and final percentages which release an additional 15 percent of the three-year-average trade acquisitions.

The Board uses current crop estimates to calculate the interim final and final percentages. The interim percentages are calculated in the same way as the preliminary percentages and release 100 percent of the inshell trade demand previously computed by the Board for the marketing year. Final free and restricted percentages release an additional 15 percent of the average of the preceding three years' trade acquisitions to ensure an adequate carryover into the following season. The final free and restricted percentages must be effective at least 30 days prior to the end of the marketing year (July 1 through the following June 30), or earlier, if recommended by the Board and approved by the Secretary. In addition, revisions in the marketing policy can be made until February 15 of each marketing year. However, the inshell trade demand can only be revised upward.

In accordance with order provisions, the Board met on November 13, 1990, reviewed, and approved an amended marketing policy and recommended the establishment of interim and final free and restricted percentages of 21 and 79 percent and 24 and 76 percent, respectively. The Board also recommended that the final percentages be effective on May 1, 1991, which is 60 days prior to the end of the season. The marketing percentages are based on the industry's final production estimates and release 4,740 tons to the domestic inshell market. The Oregon Agricultural Statistics Service provided an early estimate of 21,000 tons total production for the Oregon and Washington area. However, a handler survey conducted by the Board provided a more current estimate of 21,800 tons total production for the area. Therefore, the Board voted to unanimously accept the more current estimate of 21,800 tons.

The marketing percentages are based on the Board's production estimates and the following supply and demand information for the 1990-91 marketing year:

Inshell Supply	Tons
(1) Total production (Filbert/Hazelnut Marketing Board Handler survey estimate).....	21,800
(2) Less substandard, farm use (disappearance).....	2,150
(3) Merchantable production (the Board's adjusted crop estimate).....	19,650
(4) Plus undeclared carryin as of July 12, 1989, subject to regulation.....	0
(5) Supply subject to regulation (Item 3 plus Item 4).....	19,650
(6) Average trade acquisition based on three prior years' domestic sales.....	4,371
(7) Increase to encourage increased sales (10 percent).....	437
(8) Less declared carryin as of July 1, 1989, not subject to regulation.....	724
(9) Inshell Trade Demand.....	4,084
(10) 15 percent of the average trade acquisitions based on three years domestic sales.....	656
(11) Inshell Trade Demand plus 15 percent (Item 9 plus Item 10).....	4,740

Percentages	Free	Restricted
(12) Interim percentages (Item 9 divided by Item 5) x 100.....	21	79
(13) Final percentages (Item 11 divided by Item 5) x 100.....	24	76

In addition to complying with the provisions of the marketing order, the Board also considers the U.S. Department of Agriculture's 1982 "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" (Guidelines) when making its computations in the marketing policy. This volume control regulation provides a method to collectively limit the supply of inshell filberts/hazelnuts available for sale in domestic markets. The Guidelines require this primary market to have available a quantity equal to 110 percent of recent years' sales in those outlets before secondary market allocations are approved. This is to provide for plentiful supplies for consumers and for market expansion while retaining the mechanism for dealing with oversupply situations. In order to meet expected needs of the trade and to comply with the Guidelines, an increase of 10 percent (437 tons) has been included in the calculations used in determining the inshell trade demand. The established interim and final percentage, which release 100 percent and 115 percent, respectively, of the inshell trade demand, make available 110 percent and 125 percent, respectively, of prior year's sales, thus

exceeding the requirements of the Guidelines.

An interim final rule establishing interim and final free and restricted percentages for the 1990-91 crop year was published in the *Federal Register* on February 8, 1991 (56 FR 5151). That rule provided that interested persons could file written comments through March 11, 1991. No comments were received. Accordingly, interim and final free and restricted percentages as established by that interim final rule are adopted as a final rule without change.

Based on available information, the Administrator of the AMS has determined that the issuance of this rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all available information, it is found that the establishment of interim and final free and restricted percentages, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found that good cause exists for not postponing the effective date of this action until 30 days after publication in the *Federal Register* because: (1) The 1990-91 marketing year began on July 1, 1990, and the percentages established herein apply to all merchantable filberts/hazelnuts handled from the beginning of the crop year; (2) handlers are aware of this action, which was recommended at an open Board meeting, and need no additional time to comply with these percentages which release more filberts/hazelnuts than the preliminary percentages; and (3) this final rule is an adoption, without modification, of an interim final rule effective February 8, 1991, establishing interim and final free and restricted percentages for the 1990-91 crop year.

List of Subjects in 7 CFR Part 982

Filberts/hazelnuts, Marketing agreements and orders, Oregon, and Washington.

For the reasons set forth in the preamble, 7 CFR part 982 is amended as follows:

PART 982—[AMENDED]

1. The authority citation for 7 CFR part 982 continues to read as follows:

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

2. Accordingly, the interim final rule adding § 982.240, which was published at 56 FR 5151 on February 8, 1991, is adopted as a final rule without change.

Note: This section will not appear in the Code of Federal Regulations.

Dated: April 12, 1991.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91-9070 Filed 4-17-91; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 1210

[WRPA Docket No. 1; FV-91-246]

Watermelon Research and Promotion Plan; Amendments to Rules and Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule amends the Watermelon Research and Promotion Plan's rules and regulations by allowing an additional ten days for handlers to report and remit assessments following each month of handling before late charges and interest penalties would be incurred on watermelons handled after April 1, 1991. It also invites comments on the amendments. This action was recommended by the National Watermelon Promotion Board.

DATES: Effective April 18, 1991. Comments which are received by May 20, 1991, will be considered prior to issuance of any final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this interim final rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2525, South Building, P.O. Box 96456, Washington, DC 20090-6456. Comments should reference Docket Number FV-91-246 and the date and page number of this issue of the *Federal Register*. Copies of all comments received will be made available for public inspection in the office of the Docket Clerk, USDA-AMS, room 2525, South Building, 14th and Independence Avenue SW., Washington, DC between 8 a.m. and 4:30 p.m., Monday through Friday except holidays.

FOR FURTHER INFORMATION CONTACT:

Richard H. Mathews, Marketing Order Administration Branch, F&V, AMS, USDA, room 2525-South, P.O. Box 96456, Washington, DC 20090-6456; telephone (202) 447-4140.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under the Watermelon Research and Promotion Plan (Plan) (7 CFR part 1210). The Plan is effective under the Watermelon Research and Promotion Act (title XVI,

subtitle C of Pub. L. 99-198, 7 U.S.C. 4901-4916), hereinafter referred to as the Act.

This interim final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation No. 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

The Act and Plan provide that all producers (not including persons engaged in the growing of less than five acres of watermelons) and handlers of watermelons are subject to regulation under the Plan for watermelons produced in the contiguous 48 States. The Act and Plan provide that watermelon producers and handlers pay equal assessments for operating the program. The Act and Plan further provide that handlers are responsible for collecting and submitting both producer and handler assessments to the Board, reporting their handling of watermelons, and for maintaining records necessary to verify their reportings.

There are approximately 750 watermelon handlers and 5,000 watermelon producers subject to regulation under the Plan. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than \$3,500,000 and small agricultural producers are defined as those having annual receipts of less than \$500,000. The majority of watermelon handlers and producers may be classified as small entities.

This action will not have a significant economic impact on small handlers or producers. This action will benefit handlers by providing additional time, after the month of handling, to file handling reports and remit assessments to the Board. This action also delays the time by which handlers must remit their assessments before interest and late payment charges accrue.

Sections 1647(b)(2) of the Act and 1210.327(b) of the Plan authorize the Board to recommend to the Secretary such rules and regulations as are necessary to effectuate the terms and conditions of the Plan.

Based on the experience of its first year of operation and information received from handlers, the National Watermelon Promotion Board (Board) recommends that paragraphs (c) and (d) of § 1210.518 be amended to lengthen the time periods contained in each. In paragraph (c)(1) of § 1210.518, the Board recommends amending sentences 1 and 3 by changing "20" to "30". The Board recommends that paragraph (c)(4)(ii) of § 1210.518 also be amended by changing "20" to "30". In paragraph (d)(1) of § 1210.518, the Board recommends changing "thirtieth" in sentence 2 to "fortieth" and "20" in sentence 4 to "30". The Board further recommends that the first sentence of paragraph (d)(2) of § 1210.518 be revised for clarity and simplification as well as providing handlers with an additional ten days as has been recommended in other places throughout § 1210.518. In addition, a proviso is being added to paragraph (d)(2) to clarify when the one and one-half percent per month interest will be added to accounts for handlers paying their assessments in accordance with paragraph (c)(4)(ii). The first sentence currently reads as follows:

"In addition to the late payment charge, one and one-half percent per month interest on the outstanding balance, including the late payment charge and any accrued interest, will be added to any accounts delinquent beyond 30 days after the twentieth day after the end of the month such assessments are due."

The Board recommends that the first sentence be amended to read as follows:

"In addition to the late payment charge, one and one-half percent per month interest on the outstanding balance, including the late payment charge and any accrued interest, will be added to any accounts for which payment has not been received by the last day of the second month following the month of handling; *Provided*, that, handlers paying their assessments in accordance with paragraph (c)(4)(ii), will not be subject to the one and one-half percent per month interest under this paragraph until the last day of the second month after such assessments are due under paragraph (c)(4)(ii)."

The Board has received many comments regarding the time allotted for reporting and remitting assessments. Some handlers have stated that 20 days following the month the watermelons were actually handled is an insufficient amount of time to obtain the necessary information to adequately report the hundredweight of watermelons handled and remit the required assessment. Such handlers state they become too involved with the daily business of the watermelon season and would benefit from an additional ten days to file their reports and pay their assessments.

The Board's recommended amendments will provide handlers an additional ten days for reporting and paying their assessments. The Board's recommendations will also allow an additional ten days before the levy of late payment charges and interest. This additional ten days is necessary to maintain the current grace periods provided in the rules and regulations for the receipt of assessments before the imposition of late payment charges and interest. These amendments will have a positive impact on all handlers regardless of size. The amendments will be especially beneficial to those handlers who do not have sufficient work force to update their records daily. Since the majority of both large and small handlers operate their budgets on a monthly basis, the additional ten days should make it easier for handlers to work the reporting and remittance into their normal monthly billing and payment activities.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act (PRA) of 1980 (44 U.S.C. 3501 *et seq.*), this rule contains no new information collection or recordkeeping requirements from those already approved by the OMB under OMB approval number 0518-0158. Approximately 750 handlers will be affected by these provisions.

Based on available information, the Administrator of the AMS has determined that the issuance of this rule will not have a significant economic impact on a substantial number of small entities.

Upon the basis of the evidence provided by the Board, it is found that this action, and all of its terms and conditions as set forth, will tend to effectuate the declared policy of the Act.

Pursuant to the provisions in 5 U.S.C. 553, it is found and determined that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the *Federal Register*, because: (1) This action relaxes the provisions of § 1210.518 by providing additional time for the filing of reports and remitting of assessments and before the imposition of late charges and interest; and (2) The 1991 crop year begins in early April 1991 and any amended rules and regulations should be in place as soon as possible so that all handlers may benefit from the amendments. It is important to note that the watermelon harvest moves from one

part of the country to another throughout the crop year. Accordingly, any amendment must be in place at the beginning of a crop year to benefit all handlers. All written comments received in response to this publication by the date specified herein will be considered prior to issuance of any final rule.

List of Subjects in 7 CFR Part 1210

Agricultural promotion, Agricultural research, Market development, Reporting and recordkeeping requirements, Watermelons.

Recommended amendments

For the reasons set forth in the preamble, chapter XI of title 7 is amended as follows:

PART 1210—WATERMELON RESEARCH AND PROMOTION PLAN

1. The authority citation for 7 CFR part 1210 continues to read as follows:

Authority: 7 U.S.C. 4901-4918.

2. Section 1210.518 is amended by revising paragraphs (c)(1), (c)(4)(ii), (d)(1), and (d)(2) to read as follows:

§ 1210.518 Payment of assessments.

* * * * *

(c) *Payment direct to the Board.* (1) Except as provided in paragraph (e) of this section, each handler shall remit the required producer and handler assessments, pursuant to § 1210.341 of the Plan, directly to the Board not later than 30 days after the end of the month such assessments are due. Remittance shall be by check, draft, or money order payable to the National Watermelon Promotion Board, or NWPB, and shall be accompanied by a report, preferably on Board forms, pursuant to § 1210.350. To avoid late payment charges, the assessments must be mailed to the Board and postmarked within 30 days after the end of the month such assessments are due.

* * * * *

(4) * * *

(ii) Handlers using such procedures shall provide a final annual report of actual handling and remit any unpaid assessments not later than 30 days after the end of the last month of the designated handler's marketing season or at the end of each fiscal period if such handler markets assessable watermelons on a year-round basis.

* * * * *

(d) *Late payment charges and interest.* (1) A late payment charge shall be imposed on any handler who fails to make timely remittance to the Board of the total producer and handler assessments for which any such handler

is liable. Such late payment shall be imposed on any assessments not received before the fortieth day after the end of the month such assessments are due. This one-time late payment charge shall be 10 percent of the assessments due before interest charges have accrued. The late payment charge will not be applied to any late payments postmarked within 30 days after the end of the month such assessments are due.

(2) In addition to the late payment charge, one and one-half percent per month interest on the outstanding balance, including the late payment charge and any accrued interest, will be added to any accounts for which payment has not been received by the last day of the second month following the month of handling; *Provided*, that, handlers paying their assessments in accordance with paragraph (c)(4)(ii), will not be subject to the one and one-half percent per month interest under this paragraph until the last day of the second month after such assessments are due under paragraph (c)(4)(ii). Such interest will continue monthly until the outstanding balance is paid to the Board.

* * * * *

Dated: April 12, 1991.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91-9069 Filed 4-17-91; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 1220

(LS-90-106)

Soybean Promotion, Research, and Consumer Information: Procedures for Nominations of Soybean Producers for Appointment to the Initial United Soybean Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule establishes the procedures and criteria for nominating soybean producers to the initial United Soybean Board (herein referred to as Board), as provided for in the Soybean Promotion, Research, and Consumer Information Act, enacted November 28, 1990. The Act authorizes a national industry-funded program for soybeans and soybean products' promotion and research to be administered by a Board comprised of industry members appointed by the Secretary.

DATES: Effective April 18, 1991; requests from organizations for eligibility to nominate must be received by May 3,

1991; completed nomination forms and membership background information sheets must be received by May 20, 1991.

ADDRESSES: Official nomination forms and membership background information sheets may be requested from the Marketing Programs Branch; Livestock and Seed Division; Agricultural Marketing Service; U.S. Department of Agriculture, room 2624-S; P.O. Box 96456; Washington, DC 20090-6456.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief; Marketing Programs Branch; Livestock and Seed Division; AMS, USDA, room 2624-S; P.O. Box 96456; Washington, DC 20090-6456. (Telephone: 202/382-1115).

SUPPLEMENTARY INFORMATION: This final rule has been reviewed in accordance with Executive Order No. 12291 and Departmental Regulation No. 1512-1 and has been classified a "non-major" rule because it does not meet the criteria for a major rule as stated in the Order.

This action has also been reviewed under the Regulatory Flexibility Act. The Administrator, Agricultural Marketing Service, has determined that this action will not have a significant economic impact on a substantial number of small business entities. The rules herein pertain only to: (1) The procedures for establishing the eligibility of organizations to nominate; (2) the procedures for submitting nominations.

In accordance with the Paperwork Reduction Act of 1980, the information collection requirements contained in this action were approved by the Office of Management and Budget (OMB) and were assigned OMB No. 0581-0093. This action sets forth the procedures for establishing the eligibility of organizations to nominate soybean producers to the initial Board and the procedures for submitting such nominations. Information collection requirements as required by this action and necessary for implementation of these procedures include submission by State promotion organizations of a written statement ("Verification of Compliance With Definition of Qualified State Soybean Board") attesting to their eligibility as a Qualified State Soybean Board to nominate producer members to the initial United Soybean Board and submission of nominations on official nomination forms. The estimated number of responding organizations is 29, with one response estimated per organization of establishing eligibility and one response per nomination, with

an estimated average burden of 0.5 hours and 0.5 hours, respectively.

In addition, each producer nominee for membership on the initial Board is required to submit a membership background information sheet. This information sheet has been previously approved by the Office of Management and Budget and has been assigned OMB No. 0505-011. The estimated number of respondents is 130, with one response per nominee and with an estimated average burden of 0.5 hours.

The Soybean Promotion, Research, and Consumer Information Act of 1990, enacted November 28, 1990 (Act), authorizes the establishment of a national soybean promotion, research, and consumer information program. This program will be funded by assessments paid by domestic soybean producers. The program will be governed by a soybean promotion, research, and consumer information order issued by the Secretary. A proposed rule for such an order was published at 56 FR L7597 (February 25, 1991).

Any final order will be issued after an opportunity for public comment. The proposed order would provide for the establishment of a Board to administer the program. To enable the Secretary to implement any order that may be adopted, it is necessary to establish procedures for the nomination and appointment of Board members.

The Board will be composed of 60 soybean producers not including any temporary membership, appointed by the Secretary from nominations submitted by the Qualified State Soybean Boards.

Under this rule, to ensure that nominees represent the interests of soybean producers, State soybean organizations, which meet criteria specified in section 1969(b)(3) of the Act and in § 1220.520 of this rule, may nominate candidates for appointment to the Board. To be eligible to nominate candidates, organizations must either: (1) Be organized and operating under the laws of the State or (2) be organized and operating within a State, receive voluntary contributions, conduct soybean promotion, research, consumer information, or industry information programs, and represent the soybean producers of the State.

The rule requires an organization to furnish the Secretary with a written statement signed by an official of that organization attesting to the specific eligibility requirements and any other information deemed relevant by the Secretary. If such organizations do not exist in a State or combined unit which is eligible for representation on the

Board, the rule allows the Secretary to solicit nominations in a manner the Secretary deems appropriate.

The rule allows the required written statements or information necessary for an eligibility determination to be submitted in connection with requests for the official nomination forms. Nomination forms may be obtained by contacting the Marketing Programs Branch; Livestock and Seed Division; Agricultural Marketing Service; U.S. Department of Agriculture, room 2624-S; P.O. Box 96456; Washington, DC 20090-6456; (Telephone: 202/382-1115).

This rule also gives the Secretary the right to examine books, papers, records, files, and facilities to verify any information submitted to determine an individual organization's eligibility to nominate members to the Board.

Information obtained from organizations will be kept confidential. However, nothing in the rule prohibits release of general statements based upon data obtained from a number of organizations which do not identify the information obtained from any specific organization.

Comments

On February 25, 1991, the Agricultural Marketing Service published a proposed rule (56 FR 7594) establishing procedures for nomination of soybean producers for appointment to the initial United Soybean Board. The proposed rule was published with requests for comments as a means of providing full public participation in the rulemaking process. Comments on the proposal were requested by March 12, 1991. During the comment period, the Agency received one comment in response to the proposed rule.

Discussion of Comments

One comment submitted on behalf of the American Soybean Association was received regarding the proposal with regard to § 1220.520 *Eligibility to Nominate for Appointment to the Board*. The commenter proposed adding a sentence that would ensure that the Secretary in soliciting nominations where no State soybean promotion organization exists, would solicit "from individuals or organizations which represent producers in such State or unit." While we agree that this recommendation has some merit, we believe that in some States or units, this may not be possible and the Secretary should retain the option to solicit nominations as the Secretary deems appropriate to help ensure that producer nominees are received from each State or unit. Therefore, this recommendation will not be included in the language of

the rule, but every effort will be made to contact organizations who reflect the interests of soybean producers in that State or unit.

Regarding § 1220.530 *Initial Board Membership*, the Commenter recommended that the formula used to determine unit representation on the Board be changed. The proposed order submitted by industry utilized the years 1984-1988 as the basis for average annual soybean production to determine representation on the Board. The commenter believes those years should be used to determine the initial Board. He contends that soybean producers, soybean representative groups and members of Congress intended to use production numbers in those years because it would result in a Board membership which would reflect then-existing representation on the voluntary National American Soybean Development Foundation Board. Utilization of average annual production numbers for the years 1984-1988 would result in 62 producer-nominated members rather than the proposed rule's 60 members. The commenter refers to the Conference Report, the provisions of section 1969(n)(1) of the Act and to delays in passing the Farm Bill, as well as subsequent developments affecting production as basis for using 1984-1988 data. The Act, however, specifically states that average annual soybean production applicable to a crop year is to be determined by using the average of the five previous crops of soybeans, excluding the crop in which production was the highest and the crop in which production was the lowest. To reflect the Act's provisions, the Department utilized the most recent final statistics published by its National Agricultural Statistics Service for five previous crops of soybeans. The years 1985-1989 were used. Consequently, membership distribution for the initial United Soybean Board is based on the average production for the years 1985-1989 as contained in the proposed rule.

Regarding § 1220.535 *Length of Appointment to Initial Board* which states that appointments to the initially-established Board shall be proportionately for 1-year, 2-year, and 3-year terms, the commenter recommended including in the rule a provision for nominating organizations to submit their nominations to the Secretary in order of preference for staggered terms. We have no objection to such a provision and have incorporated it in the rule.

List of Subjects in 7 CFR Part 1220

Administrative practice and procedure, Advertising, Agricultural

research, Marketing agreements, Soybeans and soybean products, Reporting and recordkeeping requirements.

Chapter XI of title 7 of the Code of Federal Regulations is amended by adding a new part 1220 to read as follows:

In addition, the authority citation has been changed for clarity. Pursuant to 5 U.S.C. 553, it is found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the *Federal Register* because organizations and others who may select nominees for the United Soybean Board should begin planning for a nomination process as soon as possible. Nomination procedures take considerable time to complete. Early establishment of these procedures should prevent unnecessary delay in selecting nominees and appointing a Board to implement any Order, that might be adopted, and thereby assist in timely implementation of the Act.

PART 1220—SOYBEAN PROMOTION, RESEARCH, AND CONSUMER INFORMATION

Subpart A-C—[Reserved]

Subpart D—Procedures for Nomination of Soybean Producers for Appointment to the Initial United Soybean Board

Sec.	
1220.500	General.
1220.510	Definitions.
1220.515	Administration.
1220.520	Eligibility to nominate for appointment to the initial Board.
1220.525	Nominations of members for appointment to the Board.
1220.530	Initial Board membership.
1220.535	Length of appointment to initial Board.
1220.540	Acceptance of appointment.
1220.545	Verification.
1220.550	Confidential treatment of information.
1220.555	Paperwork Reduction Act assigned number.
1220.560	[Reserved].

Authority: Title XIX, subtitle E, Public L. No. 101-624, 104 Stat. 3359 (7 U.S.C. 6301-6311).

Subparts A-C [Reserved]

Subpart D—Procedures for Nomination of Soybean Producers for Appointment to the Initial United Soybean Board

§ 1220.500 General.

The Secretary shall determine which organizations are qualified to nominate soybean producers for appointment to the initial Board. The making and

receiving of the nominations shall be conducted in accordance with this subpart.

§ 1220.510 Definitions.

As used in this subpart:

Act means the Soybean Promotion, Research, and Consumer Information Act of 1990, title XIX, subtitle E, of Public Law 101-624, enacted November 28, 1990.

Board means the United Soybean Board.

Department means the United States Department of Agriculture.

Livestock and Seed Division means the Livestock and Seed Division of the Department's Agricultural Marketing Service.

Person means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity.

Producer means any person engaged in the growing of soybeans in the United States who owns, or who shares the ownership and risk of loss of, such soybeans.

Qualified State Soybean Board means a State soybean promotion entity that is authorized by State law. If no such entity exists in a State, then the term "Qualified State Soybean Board" means a soybean producer governed entity

(1) that is organized and operating within a State, and

(2) that receives voluntary contributions and conducts soybean promotion, research, consumer information, or industry information programs.

Secretary means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereinafter be delegated, to act in the Secretary's stead.

Soybean products means a product produced in whole or in part from soybeans or soybean by-products.

Soybeans means all varieties of Glycine max or Glycine soja.

State or United States means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

§ 1220.515 Administration.

The Livestock and Seed Division shall administer the provisions of this subpart.

§ 1220.520 Eligibility to nominate for appointment to the initial board.

(a) *States with existing State soybean promotion organizations.* Existing State soybean promotion organizations are eligible to submit names of producers as nominees for appointment by the

Secretary to the Board. However, such State soybean promotion organizations must provide the Department with written verification that they comply with the definition of a qualified State soybean Board in § 1220.510.

(b) *States with no existing State soybean promotion organizations.* If no State soybean promotion organization exists in a State unit, the Secretary shall solicit nominations for appointments to the initial Board in such manner as the Secretary determines appropriate.

(c) *Combined units.* The Secretary shall solicit nominations for each seat on the initial Board to which a combined unit is entitled in such manner as the Secretary determines appropriate, taking into consideration the recommendations of any State soybean board operating in the unit that provides the Department with written verification that they comply with the definition of a qualified State soybean Board in § 1220.510.

(d) When the Secretary determines that a State soybean promotion organization or other entity is eligible to nominate producer candidates for appointment to the Board, the Secretary shall thereafter notify such organization or entity of the determination.

§ 1220.525 Nominations of members for appointment to the board.

(a) All nominations to the initial Board shall be made in the following manner:

(1) Concurrent with notification of eligibility to nominate, the Secretary shall advise eligible organizations of the number of positions on the Board allotted to each State or combined unit and request the names of at least two nominees for each allotted position.

(2) *Official Nomination Forms.* Official nomination forms, "Nomination of Soybean Producers for Appointment to the United Soybean Board," must be used to nominate producers for appointment to the Board. A membership background information sheet for each nominee listed on the "Nomination of Soybean Producers for Appointment to the United Soybean Board" must be attached to that form. Official nomination forms, background information sheets, and additional information on nominations can be obtained by contacting the Marketing Programs Branch; Livestock and Seed Division; Agricultural Marketing Service; U.S. Department of Agriculture, room 2624-S; P.O. Box 96456; Washington, DC 20090-6456 (telephone: 202/382-1115).

(b) The Secretary may reject any nomination submitted under paragraph (a) of this section. If there are

insufficient nominations from which to appoint members to the initial Board as the result of the Secretary rejecting the nominations submitted by a State or combined unit, the State or combined unit shall submit additional nominations, as provided in paragraph (a) of this section.

§ 1220.530 Initial board membership.

(a) *Base Membership.* The number of producer members appointed to the Board from each State or combined unit shall be allocated as follows:

(1) A State in which the average (of five previous crops of soybeans, excluding the crop in which production was the highest and the crop in which production was the lowest) soybean production is less than 3 million bushels shall be grouped with other States into a combined unit. To the extent practicable, each State with average annual soybean production of less than 3 million bushels shall be grouped with other States with average annual soybean production of less than 3 million bushels into a combined unit. To the extent practicable, each combined unit shall consist of geographically contiguous States and shall have an average annual production of soybeans of at least 3 million bushels.

(2) Subject to the provisions of paragraph (a)(1) of this section, if the average annual soybean production is:

(i) Less than 15 million bushels, the unit shall receive a total of one seat on the Board;

(ii) 15 million bushels or more, but less than 70 million bushels, the unit shall receive two seats on the Board;

(iii) 70 million bushels or more, but less than 200 million bushels, the unit shall receive three seats on the Board;

(iv) More than 200 million bushels, the unit shall receive four seats on the Board.

(3) The Secretary shall use statistics published by the U.S. Department of Agriculture's National Agricultural Statistics Service, Agricultural Statistics Board in the "Crop Production" annual summary. (Copies may be obtained by calling the National Agricultural Statistics Service at 202/447-2127.)

(4) Based on the criteria contained in this section, the number of members on the Board allotted to each unit shall be: Alabama 1; Arkansas 3; Delaware 1; Florida 1; Georgia 2; Illinois 4; Indiana 3; Iowa 4; Kansas 2; Kentucky 2; Louisiana 2; Maryland 1; Michigan 2; Minnesota 3; Mississippi 2; Missouri 3; Nebraska 3; New Jersey 1; North Carolina 2; North Dakota 1; Ohio 3; Oklahoma 1; Pennsylvania 1; South Carolina 2; South Dakota 2; Tennessee 2; Texas 1; Virginia

2; Wisconsin 1; Eastern Region (Consisting of New York, Massachusetts, Connecticut, Rhode Island, Vermont, New Hampshire, Maine, West Virginia, the District of Columbia, and Puerto Rico) 1; and Western Region (Consisting of Montana, Wyoming, Colorado, New Mexico, Idaho, Utah, Arizona, Washington, Oregon, Nevada, California, Hawaii, and Alaska) 1.

(b) *Temporary Membership.* The Secretary may appoint to the initial Board up to three temporary members in addition to the members appointed as otherwise provided in this subpart, as the Secretary determines appropriate. Each such temporary member shall be appointed for a single term not to exceed 3 years. Such appointments would ensure representation on the Board, to the extent practicable, to each State with a State soybean board that was contributing State soybean assessment funds to national soybean promotion and research efforts that reflects the relative contribution of such State to the national soybean promotion and research effort.

§ 1220.535 Length of appointment to initial board.

When the Secretary appoints the members of the initial Board, the Secretary shall also specify the term of office for each member. To the extent practicable, one-third of the members shall serve for 1-year, one-third shall serve for 2-years, and one-third shall serve for 3-years. Nominations to the initial Board may include preferences for individuals to serve the 1-year, 2-year, and 3-year terms.

§ 1220.540 Acceptance of appointment.

Producers nominated to the Board must signify in writing their intent to serve if appointed and to disclose any relationship with any soybean promotion entity or any organization that has a contractual relationship with the Board.

§ 1220.545 Verification.

The Secretary shall have the right to examine at any time the books, documents, papers, records, files, and facilities of nominating units as the Secretary deems necessary to verify the information submitted and to procure such other information as may be required to determine whether the unit is eligible to nominate soybean producers for appointment to the initial Board.

§ 1220.550 Confidential treatment of information.

All documents submitted in

accordance with this subpart shall be kept confidential by all employees of the Department. Nothing in this section shall be deemed to prohibit the disclosure of such information so furnished or acquired as the Secretary deems relevant and then only in the issuance of general statements based upon the reports of a number of persons subject to the order or statistical data collected therefrom when such a statement or data does not identify the information furnished by any one person.

§ 1220.555 Paperwork Reduction Act assigned number.

The control number assigned to the information collection requirements in Part 1220 by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980 is OMB No. 0581-0093 except that OMB No. 0581-0001 has been assigned to an information collection requirement in section 1220.525(a)(2).

§ 1220.560 [Reserved].

Done at Washington, DC., April 12, 1991.
Kenneth C. Clayton,
Acting Administrator.
[FR Doc. 91-9066 Filed 4-17-91; 8:45 am]
BILLING CODE 3410-22-M/8

Commodity Credit Corporation

7 CFR Part 1421

Grain and Similarly Handled Commodities

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: An interim rule was published on January 24, 1991, at 56 FR 2665 which amended the regulations at 7 CFR part 1421 with respect to the Farmer Owned Reserve (FOR) program which is conducted by the Commodity Credit Corporation (CCC) in accordance with section 110 of the Agricultural Act of 1949, as amended (the 1949 Act). This rule was necessary in order to implement the changes made to section 110 by the Food, Agriculture, Conservation and Trade Act of 1990 (the 1990 Act). Generally, the amendments made by this rule specified the manner in which wheat and feed grain producers may enter the FOR program and the terms and conditions of the FOR program. This final rule adopts this interim rule without change.

EFFECTIVE DATE: April 18, 1991.

FOR FURTHER INFORMATION CONTACT: Harold Connor, Program Specialist,

Cotton, Grain, and Rice Price Support Division (CGRD), Agricultural Stabilization and Conservation Service (ASCS), United States Department of Agriculture (USDA), P.O. Box 2415, Washington, DC 20013, telephone (202) 447-8223.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Secretary's Memorandum No. 1512-1 and it has been determined that these program provisions will result in an annual effect on the economy of less than \$100 million.

The title and number of the federal assistance program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies is Grain reserve—10.067.

It has been determined that the Regulatory Flexibility Act is not applicable because the Commodity Credit Corporation (CCC) is 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 these determinations.

It has been determined by environmental evaluations for the wheat and feed grain Farmer Owned Reserve program that the program will have no significant impact on the quality of the human environment.

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V and 48 FR 29115 (June 24, 1983).

Background

On January 24, 1991 (56 FR 2665), CCC published an interim rule which amended 7 CFR part 1421 with respect to the Farmer Owned Reserve (FOR) program.

No comments were received during the comment period which ended on February 25, 1991.

List of Subjects in 7 CFR Part 1421

Grains, Loans programs—agriculture, Price support programs, Warehouses.

PART 1421—[AMENDED]

Accordingly, the interim rule published at 56 FR 2665 on January 24, 1991, which amended 7 CFR part 1421 is hereby adopted as a final rule without change.

Signed this 11th day of April 1991 in Washington, DC.

Keith D. Bjerke,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 91-9135 Filed 4-17-91; 8:45 am]

BILLING CODE 3410-05-M

Farmers Home Administration

7 CFR Parts 1924, 1955, 1962, 1965

Certain Provisions of the Agricultural Credit Act of 1987 and Additional Amendments of Portions of Farmer Programs Regulations

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its insured loan servicing regulations to implement certain provisions of the Agricultural Credit Act of 1987 (Pub. L. 100-233) (ACT) and to provide clarification for the servicing of insured farmer programs loans. On May 23, 1988, FmHA published a proposed rule in the *Federal Register* (53 FR 18392-18523) which explained the Agency's proposed regulations for implementing the Agricultural Credit Act. The FmHA published an interim rule on September 14, 1988, in the *Federal Register* (53 FR 35638-35798) to be effective on October 14, 1988. The interim rule addressed the comments to the proposed rule and requested comments on the interim rule to be submitted on or before November 14, 1988.

This final rule is based on comments received on the interim rule on 7 CFR parts 1924, 1955, 1962, and 1965. FmHA amends its regulations to conform to the ACT and to make other clarification and editorial changes. This action is being taken to:

(1) Facilitate keeping borrowers on the farm or ranch to the maximum extent possible; (2) respond to rural farm problems throughout the nation; (3) to minimize losses under farmer programs loans; (4) reduce the Government's cost of maintaining regulations for obsolete and unfunded farm loan programs; (5) reduce inconsistencies in interpretation of the regulations; and (6) provide more guidance to the FmHA field staff.

EFFECTIVE DATE: April 18, 1991.

ADDRESSES: The Final Regulatory Impact Analysis is available for public inspection in the Regulations, Analysis and Control Branch (RACB) of the Farmers Home Administration (FmHA), room 6348, South Agricultural Building, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT:

Chester Bailey, Assistant to the Assistant Administrator, Farmer Programs, Farmers Home Administration, USDA, room 5025, South Agricultural Building, 14th and Independence Avenue, SW., Washington, DC 20250, telephone (202) 382-1471.

SUPPLEMENTARY INFORMATION:

Classification

This final action has been reviewed under USDA procedures established in Departmental Regulation 1512-1, which implements Executive Order 12291, and has been determined to be major because it will result in an annual effect on the economy of \$100 million or more.

Memorandum of Law

My office has reviewed the regulation which the Farmers Home Administration (FmHA) is publishing as a final rule to implement, among other items provisions of the Agricultural Credit Act of 1987, Public Law 100-233, 101 Stat. 1662 et seq. We find that these regulations comply with that statute and the FmHA has the authority to adopt such regulations pursuant to that Act and section 339 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1989).

Alan Charles Raul,
General Counsel.

Summary of Final Regulatory Impact Analysis (FRIA)

These regulations, with the exception of 7 CFR parts 1951 and 1955, are the remainder of a broad set of regulations that implement the Agricultural Credit Act of 1987 relating to the restructuring of delinquent loans that are expected to have more than a \$100 million impact on the economy.

The USDA has developed a FRIA due to the effect the Act will have on the economy. There are a number of requirements in the Act, however, the most significant requirements are the loan restructuring with debt write-down provisions and the provisions for a secondary market. The secondary market provisions will be covered in a separate document. The Interim Regulatory Impact Analysis (IRIA) for this document was summarized in the interim rule published on September 14, 1988 (53 FR 35638-35798) and is incorporated by reference into this document. The estimates contained in that IRIA are considered to be substantially indicative of the number of borrowers qualifying for the write-down, and associated costs of debt restructuring under the interim

regulations. Changes in the final regulations are not likely to affect servicing and property management procedures more than the extent of debt adjustment under the interim rule restructuring provisions.

Since these provisions are required by the ACT, other alternatives were not considered.

Programs Affected

These changes affect the following FmHA programs as listed in the catalog of Federal Domestic Assistance:

- 10.404—Emergency Loans
- 10.406—Farm Operating Loans
- 10.407—Farm Ownership Loans
- 10.410—Low Income Housing Loans (section 502 Rural Housing Loans)
- 10.416—Soil and Water Loans

Intergovernmental Consultation

1. For the reasons set forth in the final rule related to notice 7 CFR 3015, subpart V (48 FR 29115, June 24, 1983) and FmHA Instruction 1940-J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23, 1983), Emergency Loans, Farm Operating Loans, and Farm Ownership Loans are excluded, with the exception of nonfarm enterprise activity, from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

2. The Soil and Water Loan Program is subject to the provisions of Executive Order 12372 and FmHA Instruction 1940-J.

Environmental Impact Statement

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

Background

The Agricultural Credit Act of 1987 (Pub. L. 100-233) required a number of changes in FmHA regulations. Due to the great number of changes to the interim rule, and to expedite the promulgation of the final rule, we are publishing the revisions to the regulations in separate issuances. The final rule implementing 7 CFR parts 1809, 1902, 1910, 1941, 1943, 1944 and 1945 was published on May 25, 1990, in the *Federal Register* (55 FR 21517). The final rule version of 7 CFR part 1951,

subpart S and part 1955, subparts B and C will be published at a later date.

Interim Rule

The interim rule was published in the *Federal Register* (53 FR 35638) on September 14, 1988, effective October 14, 1988, with a 60-day comment period. The comment period ended November 14, 1988. Comments were received from 77 individuals and organizations, follow-up correspondence and/or dialogue has occurred with some respondents and changes or revisions have been made as a result of a review of the comments. This final rule is based on comments received on 7 CFR parts 1924, 1955, 1962 and 1965.

Discussion of Comments and Regulation Revisions

The comments and regulation revisions will be addressed in the order that the regulations appear in the CFR. Minor changes to correct inconsistencies and to clarify previous changes will not be discussed but are adopted in this final rule.

Part 1924—Construction and Repair

Subpart B—Management Advice to Individual Borrowers and Applicants

Section 1924.51—General

One respondent commented that the definition of "Farmer Program Loan" should be expanded to include Indian Land Acquisition Act loans and Grazing Association loans. More specifically, the respondent argues that these loans should be eligible for the loan restructuring provided for under section 353 of the CONACT, as are all loans now classified as "farmer program loans." The Agency does not adopt this suggestion. Indian Acquisition Act loans are not administered in accordance with the provisions of the CONACT. The implementing statute for this program is 25 USC 488 et seq. The Disaster Assistance Act of 1989 (Pub. L. 101-82) authorized FmHA to debt settle these loans. FmHA published implementing regulations on November 15, 1989, in the *Federal Register* (54 FR 47509), thus no change to this regulation is necessary. While Grazing Association loans are made for agricultural purposes, these loans are not included within its definition of farmer program loans. See also discussion which appeared in the proposed rule published on May 23, 1988, in the *Federal Register* (53 FR 18392-18398). As for the loan restructuring program established by the Agricultural Credit Act of 1987, section 353 of the CONACT states that restructuring is available to a "farm borrower" who has a "farmer program

loan" from the Agency. It is clear that this statute was intended to apply to farmer program loan borrowers as the Agency presently defines them. This is consistent with the premise that the Congress, when using the term "farmer program loans," was cognizant of the established regulatory definition and explicitly adopted the definition.

Section 1924.57—Planning

One respondent commented that this section requires the use of form FmHA 431-2, "Farm and Home Plan," which is not consistent with loan making and servicing regulations that allow for the use of other planning forms. The Agency does not feel this is an issue or that further clarification is needed, as § 1924.57(b) states that the references to form FmHA 431-2 mean this form or other plans acceptable to FmHA which include similar information.

One respondent commented that § 1924.57(b)(1) requires that there always be a current form FmHA 1962-1 in the file of a borrower with loans secured by chattels. The commenter suggested that form FmHA 1962-1 be completed no later than 90 days after the expiration date of the production cycle, as existing regulations require FmHA to release proceeds to pay essential family living and farm operating expenses, and the additional time would result in a more realistic form FmHA 1962-1 and Farm and Home plan. While the commenter's point is well taken for an individual borrower, FmHA administers a nationwide program. In accordance with its authorizing statute, FmHA must release proceeds for essential family living and farm operating expenses. Requiring that a current form FmHA 1962-1 be in the borrower's file at all times is the most efficient way to make sure the borrowers receive the required funds. The regulations both require and authorize the revision of form FmHA 1962-1 to reflect the borrower's current operation. Therefore, the Agency does not adopt the suggestion.

However, to prevent this problem from arising the Agency has clarified § 1924.57(b) to state that forms FmHA 431-2 and FmHA 1962-1 will cover the production/marketing cycle which most accurately reflects the annual production/marketing cycle of the borrower's operation.

One respondent commented that FmHA's definition of a feasible plan is weak. It is asserted that FmHA is making unsound loans because there is no requirement to budget for the replacement of capital items when doing a long range plan, and no requirement that the borrower have a 10% or more

margin between the balance available for payment and the required debt repayments. While this comment is well taken, FmHA published a similar proposal as a proposed rule on January 15, 1987, in the *Federal Register* (52 FR 1706, 1723), and the proposed rule generated adverse public comment that requiring a reserve or budgeting for the replacement of capital items would improperly exclude otherwise eligible borrowers from receiving FmHA assistance.

One respondent commented that the Agency is ignoring good management practices in allowing farmers who suffered qualifying losses, but were not located in a disaster designated County to use County average yields if higher than the farmers actual yields. The Agency added this authority in the interim rule as a result of comments received on the proposed rule, expressing concern about those farmers suffering qualifying losses that were not located in a designated disaster area.

Several respondents stated that the use of the borrower's actual records for the past 5 years is very restrictive, as some borrowers do not have reliable records or have not been farming for 5 years, and in such cases, a 5 year average consisting of the borrower's actual yields, County average yields, and/or State average yields would be appropriate. The Agency agrees and has revised § 1924.57(d)(1) to allow the use of other data sources when the applicant's actual records are not available.

The Agency has added a new § 1924.57(d)(4) to clarify the circumstances when and how revisions will be made to the Farm and Home Plans.

Section 1924.58—Recordkeeping

One respondent commented that § 1924.58(b)(3) indicates that a borrower can be denied loan servicing programs if previously advised in writing that he/she has not been keeping adequate records. The respondent further stated that this restriction does not show up in the eligibility requirements of § 1951.909(c) of subpart S of part 1951 of this chapter. The Agency agrees and will address this comment in subpart S of part 1951 of this chapter which will be published at a later date.

Section 1924.59—Supervision

One respondent commented that it appeared that most borrowers will now require an annual farm visit and that most County Offices do not have adequate staffing to accomplish this requirement. The Agency does not

believe this is an issue. State Directors have the authority to reassign personnel within their jurisdiction to those County Offices with larger farmer program workloads. State Directors also have contracting authority for loan making/servicing actions.

Section 1924.60—Analysis

One respondent commented that it appears that most borrowers will now require an annual analysis, and staffing levels in County Offices do not provide adequate personnel to accomplish this requirement. The Agency does not feel this is an issue. State Directors have the authority to reassign personnel to equalize the workload and also have contracting authority for loan making/servicing functions.

One respondent commented that § 1924.60(d) of subpart B of part 1924 and § 1951.902(a)(2) of subpart S of part 1951 require all FP loans to be reviewed annually, but do not spell out the type of review and are not consistent with the selective nature of the analysis outlined in § 1924.60. The Agency feels the degree of analysis is covered in § 1924.60(b) and that a complete financial and production analysis is needed for those situations described in § 1924.60 (d).

Exhibit A to Subpart B of Part 1924

One respondent commented that the last two sentences of paragraph 1 in exhibit A to subpart B of part 1924 should be deleted. The sentences state that FmHA must release ASCS and CCC payments which it holds as security regarding releases of farm income. The releases will continue up until the time FmHA accelerates that borrower's accounts. The Agency does not agree that the language in exhibit A to subpart B of part 1924 gives a blanket release of ASCS and CCC payments. The exhibit only states that FmHA will release ASCS and CCC payments so that the borrower can pay essential family living and farm operating expenses. The Agricultural Credit Act, Public Law 100-233, requires FmHA to notify borrowers that they are entitled to have FmHA release proceeds from the sale of crops, livestock and poultry products, and other property regularly sold in operating the farm so that they can pay essential family living and operating expenses.

The Agency has revised exhibit A to clarify that FmHA will release proceeds from the sale of crops and livestock products until such time as the borrower's account should become in default and FmHA accelerates the borrower's account.

Part 1955—Property Management

Subpart A—Liquidation for Loans Secured by Real Estate and Acquisition

Section 1955.1—Purpose

The words "individuals and organizations" have been added after the word "loans" in the first sentence for clarification.

Section 1955.3—Definition

Several respondents commented that the definition of farmer programs loan be expanded to include Indian Land Acquisition loans and Grazing Association loans. This comment was not adopted because the Agency does not consider these organizational type loans to be Farmer Programs loans. This issue is discussed in greater detail in the comments under subpart B of part 1924.

The Agency administratively adopts a definition for Leaseback/Buyback property and Farmer Program Loans. Leaseback/buyback property is defined as real property which has collateralized a Farmer Programs loan to which the Government acquired title. The term "Farmer Program loans" (FP) refers to the following types of loans: Farm Ownership (FO), Soil and Water (SW), Recreation (RL), Economic Opportunity (EO), Operating (OL), Emergency (EM), Economic Emergency (EE), Softwood Timber (ST), and Rural Housing loans for farm service buildings (RHF).

Section 1955.10—Voluntary conveyance of Real Property by the Borrower to the Government

One respondent commented that additional notification of possible environmental requirements, in the context of a conservation easement, should be given to borrowers who voluntarily convey real property to the Government and may wish to participate in preservation loan servicing programs. We agree, and have revised this section as well as various other notices FmHA is required to send to the borrower to provide additional guidance to the borrower of possible deed restrictions and conservation easements that may be placed on property once it is in FmHA Inventory.

For consistency and clarity with subpart C of this part, the Agency has added guidelines for the County Supervisor when contracting for an appraiser. The following has been added to § 1955.10 (e) of this subpart:

"For property securing FP loan(s), the contract appraiser must complete the appraisal in accordance with subpart A of part 1809 of this chapter (FmHA Instructions 422.1) for FP property, or

subpart C of part 1922 of this chapter for Single Family Housing property. Also, the appraiser must meet at least one of the following qualifications:

(i) Certification by a National or State Appraisal Society.

(ii) If a certified appraiser is not available, the appraiser may be one who meets the criteria for certification in a National or State appraisal society.

(iii) The appraiser has recent, relevant documented appraisal experience or training, or other factors clearly establishing the appraiser's qualifications.

Section 1955.13—Acquisition of Property by Exercise of Government Redemption Rights

One respondent commented that guidelines should be provided to determine value of redemption rights in those instances where the Government elects not to redeem the property, but state law allows the Government's rights to be sold. This comment was not adopted because of the numerous factors that may influence the value, and, often the value is determined on a case by case basis after negotiating with interested parties that wish to purchase the redemption rights. The Agency has, however, administratively revised the title of exhibit G to, "Worksheet for Accepting a Voluntary Conveyance of Farmer Program Security Property into Inventory" and the use of this exhibit is limited to voluntary conveyance situations.

Exhibit G-1, "Worksheet for Determining Farmer Programs Maximum Bid on Real Estate Property" has been added for the use of determining FmHA's bid.

One respondent commented that exhibit G be replaced with exhibit I, "Guidelines for Determining Adjustments for Net Recovery Value of Collateral" of subpart S of part 1951. The Agency did not adopt the comment because the amount of the Government's bid at a foreclosure sale is determined differently than the Net Recovery value for debt restructuring purposes. The two major differences are that in determining the Government's bid at the foreclosure sale, (1) the Agency takes into consideration potential rent or lease income while the property may be in inventory, and (2) the gain or loss in value of the property due to restrictions that are placed on the property such as conservation easements, conservation reserve program (CRP), etc. Exhibit G-1 has been added for determining FmHA's bid at a foreclosure sale using this criteria.

The exhibit G-1 also provides clarity in the use of the form when taking into consideration prior lienholder's debts and determining the maximum bid at a foreclosure sale.

Section 1955.15—Foreclosure by the Government of Loans Secured By Real Estate

This section was revised to clarify the handling of SFH loans, and to provide guidance for handling offers made by a borrower after acceleration.

No comments were received on this section; however, the Agency has administratively revised § 1955.15(d)(2)(iv) (A) and (B), added (C), (D) and revised (f) (5) and (6) to cross reference the servicing of SFH loans secured by and located on the same farm real estate as the Farmer Program loans(s) to § 1965.26(c) of subpart A of part 1965 of this chapter and provide additional guidance to the County Supervisors.

The Agency has administratively revised § 1955.18(i), "Leaseback/Buyback," to provide clarity and consistency in the definition of leaseback/buyback property.

There were other respondents who requested minor changes to subpart A of part 1955 as to grammar and clarification of phrases which the Agency has adopted, and has amended this subpart to reflect those changes, otherwise, the interim rule is adopted as final rule.

Part 1962—Personal Property

Subpart A—Servicing and Liquidation of Chattel Security

Section 1962.6—Liens and Assignments on Chattel Property

The Agency has administratively revised § 1962.6(c)(2)(i) by changing the word "not" to "no" in the third sentence for readability.

Section 1962.8—Liens on real estate for additional security

One respondent recommended that this section be clarified to state that a lien cannot be taken on the real estate of a delinquent borrower as a condition for receiving any Primary Loan Service program. The Agency does not agree with the recommendation because the Food, Agriculture, Conservation, and Trade Act of 1990 broadened its authority to include certain nonessential, unsecured assets in the calculation of Net Recovery Value. The Agency does not adopt the recommendation.

Section 1962.13—Lists of borrowers given to business firms

The introductory paragraph of this section is revised by removing the requirement that County Supervisors prepare a list of potential purchasers from the borrower's form FmHA 1962-1. This requirement is being removed because it does not apply to lists of potential purchasers of chattels or crops that are subject to an FmHA lien.

Section 1962.17—Disposal of chattel security, use of proceeds and release of liens

One respondent commented that the regulations should include a clear statement that normal income release is to be reinstated once restructuring is complete even for those borrowers that did not ask for income release after their accounts were accelerated. During the processing of the restructuring programs, the borrowers Farm Plan and form FmHA 1962-1, "Agreement for the Use of Proceeds/Release of Chattel Security," are coordinated and completed in accordance with the provisions in § 1924.57(b) of subpart B of part 1924 of this chapter and § 1962.17 of this subpart which includes the full level of release. Therefore, the Agency does not find it necessary to amend its regulations.

One respondent commented that the regulations should be amended to state that borrowers, whose accounts were accelerated on or after November 1, 1985, and on or before May 7, 1987, should receive the full level of releases and not be limited to the \$18,000 commencing on the day that they are determined to be eligible for primary loan servicing. Such accelerated borrower accounts are processed for servicing programs in the same manner as non-accelerated borrower accounts, as set forth in § 1951.909 of subpart S of part 1951 of this chapter. During the processing of the approved request for restructuring, the acceleration is withdrawn, and normal servicing of the account is reinstated which includes the full level of releases. Therefore, the Agency does not find it necessary to amend its regulations.

One respondent commented that the regulation should be amended to provide that borrowers whose accounts were accelerated on or after November 1, 1985, and on or before May 7, 1987, should receive releases up to the \$18,000 limit for the first 12 months after they apply for reinstatement and that it not be divided on a monthly basis. The Agency notified its field offices of its policy for reinstating releases for accelerated borrowers on January 28,

1988, February 2, 1988, and April 5, 1988, because the Agricultural Credit Act of 1987 required the Agency to notify these borrowers, within 45 days after the date of the enactment of the Act, of their right to apply for such releases. The 45-day timeframe did not provide sufficient time to publish regulations. The Act also established a 30-day time limit for accelerated borrowers to apply for such releases after receipt of the notice from the Agency. Since the time limit for applying for releases has expired, the Agency believes that substantially all problems related to release of normal income security for borrowers accelerated on or after November 1, 1985, and on or before May 7, 1987, have been resolved through FmHA's appeals process.

One respondent commented that attachment 1 of exhibit A of subpart S of part 1951 of this chapter should not be sent to a borrower who is denied a release of proceeds from a sale of chattel security because it threatens liquidation and foreclosure which is inappropriate in this circumstance. The Agency does not agree that the use of attachment 1 of exhibit A in this circumstance is inappropriate because it merely provides a comprehensive explanation of the Agency's loan service programs, how to apply for them, the right for a meeting and an appeal, and what happens if a borrower does not win an appeal. The attachment does not threaten the borrower with liquidation or foreclosure. It simply summarizes the process which takes place if a borrower does not qualify for servicing, or the borrower does not liquidate the account voluntarily. The attachment has been reviewed by a readability expert, and approved by the District Court which decided *Coleman vs. Lyng* on November 23, 1988. Therefore, the Agency does not adopt the comment.

One respondent commented that the type of documentation required for the State Director's approval of a release of essential farm machinery should be set forth. The Agency has reviewed this policy and finds that the administrative burden imposed by the State Director's approval is not justified by any approval oversight advantages. The Agency has, therefore, removed the requirement for such approval from § 1962.17(b)(2)(ii) of this subpart.

One respondent commented that § 1962.17(b)(2)(iii) should be revised to require the County Supervisor to document how a borrower's operation can run more efficiently without providing the requested release of proceeds from the sale of chattel security. The Agency agrees and revises

this section to require the County Supervisor to notify the borrower, in writing, why the request for the release was denied and why the County Supervisor does not agree that the planned use of the proceeds is basic, crucial or indispensable to the farming operation, and to give appeal rights.

One respondent commented that § 1962.17(b)(2)(viii)(B) should be clarified to point out that borrowers should not be required to sell crops for less than it would cost them to buy similar crops to feed to their livestock. The Agency does not believe it is necessary to set forth this particular example since the paragraph requires the County Supervisor to find that the feeding of crops to livestock is, in fact, preferable to selling the crops. The Agency adopts the interim rule without the recommended change.

Section 1962.29—Payment of fees and insurance premiums

This section has been clarified by stating that the County Supervisors are authorized to voucher to pay bills for insurance premiums on chattel security property.

Section 1962.34—Transfer of chattel security and EO property and assumption of debts

Reference to form FmHA 1924-14, "Notice—Farmer Program Borrower Servicing Options Including Deferral and Borrower Responsibilities," is removed from the introductory paragraph because the form has become obsolete. In its place is a reference to "attachment 1 of exhibit A of subpart S of part 1951 of this chapter."

Section 1962.40—Liquidation

This regulation has been clarified and reorganized to be more readable. Paragraph (a)(1) has been revised to clarify which attachments and forms must be given to a borrower who is voluntarily liquidating security. An additional clarification requires FmHA to wait 60 days before it discusses voluntary liquidation with the borrower except in serious situations which are documented in detail in the case file. The 60-day time period is desirable so that the borrower will have the option to apply for servicing instead of voluntarily liquidating. Since the Agricultural Credit Act of 1987 has clarified the type and timing of the servicing notice required, the Agency is revising this paragraph to insure that FmHA will have sufficient authority to discuss voluntary liquidation in serious situations as described above. The 60-day time period is provided to conform with the provisions of the 1990 Farm Bill which

allowed borrowers 60 days to apply for servicing.

Paragraph (b) is clarified to state that the farmer program borrowers must be 180 days delinquent to be sent the servicing notices and to identify which forms to send these borrowers.

The 60-day time limit to voluntarily liquidate in paragraph (b)(3) has been removed because it was in conflict with the time limits set forth in the various notices to the borrowers.

Paragraph (b)(4) has been incorporated into paragraph (b)(2). The erroneous reference to accelerating the account after voluntary liquidation has been removed. The paragraph also has been clarified to state when and how the account should be accelerated and a civil action required.

Paragraph (e)(1) has been clarified to include a reference to attachments 1, 3, and 4 of exhibit A of subpart S of part 1951 of this chapter.

Section 1962.41—Sale of chattel security or EO property by borrowers

The introductory text has been clarified to include reference to attachments 1, 3, and 4 of exhibit A of subpart S of part 1951 of this chapter. A cross reference to § 1962.40 (a)(1) of this subpart also has been added.

One respondent commented that the County Committee needs specific guidelines to recommend whether or not a borrower should be released of personal liability for the balance of a debt following a voluntary liquidation. The Agency believes the guidelines set forth in § 1962.41(f) of this subpart are sufficient guidance to the County Committee. Therefore, FmHA does not adopt the respondent's suggestion.

Section 1962.42—Repossession, care, and sale of chattel security or EO property by the County Supervisor

Reference to attachments 1, 3 and 4 of exhibit A of subpart S of part 1951 of this chapter has been added for clarity in paragraph (a).

In paragraph (c), titles of referenced forms have been inserted, and an incorrect reference to "form FmHA 441-19" has been changed to "form FmHA 1955-41".

In paragraph (d), an incorrect reference to "attachments 1 and 2" has been changed to "attachments 1, 3, and 4 of exhibit A of subpart S of part 1951 of this chapter."

Section 1962.46—Deceased borrowers

Paragraph (f) has been revised to clarify how deceased borrower accounts are serviced under subpart S of part 1951 of this chapter. When the County Supervisor determines that the account

of a deceased borrower is in monetary or nonmonetary default, and liquidation is necessary because no survivor or third-party has applied to assume the borrower's FmHA loan, the notices required by subpart S of part 1951 of this chapter will be sent to the executor of the estate and/or other appropriate person(s) or entity(ies) before liquidation as advised by OGC.

Section 1962.47—Bankruptcy and Insolvency

One respondent suggested that this section be amended to require FmHA to send a notice of Preservation Loan Service programs to all borrowers who are not eligible for the Primary Loan Service Programs because they were discharged in a chapter 7 bankruptcy. The agency also does not adopt the commenter's suggestion insofar as it requires sending notices to the attorneys of borrowers discharged in chapter 7 bankruptcies in the future. Pursuant to an FmHA Administrative Notice, FmHA has already provided an additional notice of the Preservation Loan Service programs to the attorneys of borrowers discharged in chapter 7 bankruptcy cases prior to the effective date of the Agricultural Credit Act of 1987 (Act). Borrowers with bankruptcies pending on the effective date of the Act, and thereafter, will receive the appropriate notices through their attorneys when they file for bankruptcy. Paragraph (a)(3) of this section requires the County Supervisor to send attachments 1 and 2 of exhibit A of subpart S of part 1951 of this chapter and exhibit D of this subpart to the borrower's attorney as soon as the County Supervisor learns that a bankruptcy has been filed. These notices discuss both the Primary and Preservation Loan Service programs, the eligibility standards, and advises the borrower how to apply. Exhibit D informs the attorney of borrowers, who have filed a chapter 7 bankruptcy, that FmHA will not continue with borrowers who do not reaffirm their debt with FmHA. Therefore, it is not necessary to send a second notice once the borrower has been discharged. Also, all borrowers, regardless of whether they file for bankruptcy or are discharged in a chapter 7 bankruptcy, are notified of the Preservation Loan Service programs if FmHA acquires title to the property.

Paragraph (a)(3)(i) has been revised for readability to clarify when FmHA should send the loan servicing notices to borrowers under the jurisdiction of the bankruptcy court. Some of the information now contained in this paragraph previously appeared in § 1962.47(a)(3) of this subpart, while

other provisions appeared in § 1951 (c) and (d) of subpart S of part 1951 of this chapter. Consolidation of these provisions clarifies the regulation and improves readability. No notices will be required when OGC advisers that sending the notices is inconsistent with the provisions of a confirmed plan or the Bankruptcy Code. This provision is intended to reflect interpretations by bankruptcy courts which have allowed borrowers and FmHA to provide for the event of default when agreeing to a confirmed plan.

Paragraph (a)(3)(ii) has been revised to clarify how a borrower under the jurisdiction of the bankruptcy court can apply for loan servicing. The time period during which a borrower can apply for servicing has been expanded from 45 days to 60 days to be consistent with the provisions of the 1990 Farm Bill. The Agency has removed the requirement that the borrower's attorney must request from the automatic stay in order to apply for servicing. See the discussion below concerning exhibit D for an explanation of why FmHA removed this requirement. This paragraph has been clarified to require that FmHA obtain relief from the automatic stay before it accelerates the borrower's account in cases where OGC advises that such relief is necessary. This change is necessary to confirm to the Bankruptcy Code since FmHA is amending the interim rule to omit the requirement that the borrower's attorney request relief from the automatic stay in order to apply for servicing.

A new paragraph (a)(3)(iii) has been inserted for purposes of improved readability and clarification of how FmHA will service borrowers who have filed chapter 11, 12 or 13 bankruptcy cases. Much of the information contained in this paragraph previously appeared in § 1962.47(a)(3)(i) and exhibit D of this subpart. Additional provisions were added to clarify the interrelationship of 1951-S regulations with the Bankruptcy Code. These revisions reflect the actual implementation of 1951-S servicing in cases presently within the jurisdiction of bankruptcy courts.

To improve readability, the material previously appearing in paragraph (a)(3)(ii) and § 1951.907(d) dealing with servicing borrowers in chapter 7 bankruptcies has been consolidated into a new paragraph now designated as paragraph (a)(3)(iv).

Paragraph (c)(2) has been clarified to specifically state the notices under 1951-S are required when a bankruptcy is dismissed. This change reflects existing FmHA policy which was not clearly

stated in the previous version of the rule.

Paragraph (c)(3) has been clarified to require the 1951-S notice and to provide for processing under 1951-S and acceleration where necessary, before liquidation in pending chapter 11, 12 and 13 cases. These changes reflect existing FmHA policy, and fill in the administrative requirements necessary to implement the policy. A revision to this paragraph requires FmHA to obtain any necessary relief from the automatic stay in order to comply with the Bankruptcy Code. This paragraph and paragraph (c)(4) have been revised to state that FmHA will not be required to send servicing notices to borrowers in bankruptcy when OGC advises that sending the notices will be inconsistent with a confirmed bankruptcy plan or the Bankruptcy Code. See the discussion under paragraph (a)(3)(i) above.

A new paragraph (c)(4) has been added to explain in detail how an account is to be liquidated once a bankruptcy case is closed. Some of this material was previously contained in paragraph (c)(3) but has been moved to improve readability and clarity. This paragraph references a newly drafted exhibit D-1 which is designed to be sent to the borrower with a courtesy copy to the borrower's attorney. It explains the borrower's option and summarizes the requirements for primary and preservation loan servicing as they relate to borrowers who have been through a bankruptcy, but whose case is now closed. FmHA has added this paragraph in response to complaints that many borrowers are no longer represented by attorneys at this point, and the material contained in exhibit D is confusing and inapplicable to a borrower whose bankruptcy case is closed.

The material previously contained in paragraph (c)(4) has been redesignated as (c)(5). The paragraph has been clarified to reference the use of exhibit D-1 for the reasons explained above. Additional clarifications were made to correct a grammatical error and to state that the 1951-S notices will be sent unless the borrower's attorney was previously notified under 1951-S when the bankruptcy was filed. See also FmHA's response to the comment above that notice should be sent to borrowers who have been discharged in a chapter 7 bankruptcy. Clarifying changes have been made to paragraph (c)(5)(i) to avoid confusion as to when a liquidation can occur in a chapter 7 bankruptcy.

*Exhibit D to Subpart A of Part 1962—
Notice of Borrower's Attorney
Regarding Loan Service Options*

One respondent suggested that the requirement for the borrower's attorney to obtain relief from the automatic stay in bankruptcy before FmHA would process the borrower's servicing application be eliminated. In order to simplify the process of applying for servicing when the borrower has filed bankruptcy, FmHA has adopted this comment. The new procedure is explained to the attorney in exhibit D of this subpart. Exhibit D requires the borrower to return a preliminary application within 60 days of the attorney's receipt of the exhibit. The time period has been expanded from 45 to 60 days to conform to the provisions of the 1990 Farm Bill. The borrower's attorney must consent to such application. The exhibit states that FmHA will not be violating the automatic stay when it accepts the borrower's request for servicing in this matter.

Exhibit D-1 has been inserted to cover situations where the bankruptcy case is closed. See the above discussion concerning the clarifications to paragraphs (c)(3), (c)(4) and (c)(5) of the section.

*Exhibit E to Subpart A of Part 1962—
Releasing Security Sales Proceeds and
Determining "Essential" Family Living
and Farm Operating Expenses*

One respondent recommended that the first paragraph be clarified to provide for a release of essential expenses at planning time and during the crop year. The Agency adopts this recommendation.

Also, the respondent stated that the sentence relating to hired labor in the fourth paragraph implies that hired labor is not an essential expense in beef cattle operations. The Agency disagrees with the respondent's interpretation of this sentence and adopts that portion of the interim rule without change.

Also, the respondent suggested that the words "and suppliers" be added following the word "creditors" in the fourth paragraph. The agency does not adopt this suggestion because a "supplier" is a "creditor" if the borrower owes the supplier for past services or materials.

Also, the respondent suggested that the fourth paragraph be clarified to provide guidance for releasing for rent if the borrower had already entered into a rental agreement and planted corn before FmHA determines that such action would lose money. The Agency

believes that any adverse consequences resulting from such an unsuccessful management decision must be addressed on an individual case basis by the borrower, creditor, and the landlord. A unilateral decision to always pay the landlord, in many situations, would not be in the best interests of the borrower or creditors. The Agency, therefore, does not adopt this suggestion.

One respondent commented that a priority should be established to release security for secured and unsecured debts to other creditors. The respondent also suggested that consideration be given for releasing proceeds from the sale of security on a pro rata basis when such proceeds are insufficient to pay all creditors. The only purpose of exhibit E is to provide an explanation of the term, "essential family living and farm operation expenses," and not to address the method by which liquidation sale proceeds should be released and distributed. The distribution of all sale proceeds is set forth, in detail, in §§ 1962.17 and 1962.44; therefore, this comment is not adopted.

*Exhibit F—Form FmHA 1962-1,
"Agreement For the Use of Proceeds/
Release of Chattel Security"*

One respondent recommended that the list of essential expenses as set forth in § 1962.17(b)(2)(ii) of this subpart be inserted in the paragraph titled "When Can Collateral Be Sold To Pay Essential Family Living and Operating Expenses?" The Agency does not adopt this suggestion because the list can easily be obtained by requesting a copy of the regulation from any FmHA County Office.

Part 1965—Real Property

*Subpart A—Servicing of Real Estate
Security for Farmer Programs Loans
and Certain Note-Only Cases*

**Section 1965.11—Preservation of
security and protection of liens**

One respondent recommended that protective advances should include the payment, by FmHA, of a borrower's prior lienholder account when it can be shown that no other credit is available from FmHA or other sources to refinance such debt. The Agency believes that this extension of credit in the form of a "protective advance" would circumvent the Agency's statutory maximum lending authorities and its annual appropriations for program lending levels. § 1965.11(c)(2)(i) authorizes the payment of prior liens only when it is in the Government's best interest to do so and when the account

will subsequently be liquidated. The Agency, therefore, does not adopt this recommendation.

Paragraph (c)(1)(i) has been revised to provide for the use of exhibit B of this subpart and attachments 1, 3 and 4 of exhibit A of subpart S of part 1951 of this chapter. These references were inadvertently omitted in the interim rule.

Paragraph (c)(1)(ii) has been clarified to explain that the payment of other liens by FmHA must be for the protection of the Government and not for the protection of the borrower's or third-party interest and that such payments are not considered to be protective advances as set forth in § 1965.11(b) of this subpart. Guaranteed loans, also, were added as one method of refinancing another creditor's loan if the creditor has begun foreclosure (initiated an action that could cause a borrower to lose possession of his/her property). Authority to approve advances for the payment of other lienholder's loans has been delegated to State Directors.

Paragraph (c)(2)(i)(B) has been revised to clarify that all appeals be completed before an account is accelerated and liquidated.

Two respondents commented that the reference to the use of attachments 5 and 6 of exhibit A of subpart S of part 1951 of this chapter in paragraph (c)(2)(ii) was incorrect and should have been attachments 1, 3, and 4 instead. The Agency agrees and has removed the reference. The Agency has also made a clarifying change which omits the requirement that additional servicing notices be sent when FmHA decides not to pay off a prior lien. FmHA has determined that it provides sufficient notice when it sends attachments 1, 3 and 4 to the borrower when the County Supervisor learns that a third party has taken action which may jeopardize FmHA's interest or FmHA is joined as a party in a court proceeding as required by § 1965.11(c)(1)(i) of this subpart.

Paragraph (c)(3) has been revised to reference the use of attachments 1, 3, and 4 of exhibit A of subpart S of part 1951 of this chapter and exhibit B of this subpart, and to state that an account will not be liquidated until any appeal is resolved.

**Section 1965.25(d)—Release of valueless
liens**

Two respondents commented. Of those, one respondent commented that the paragraph should be removed while the other respondent commented that single family housing (SFH) loans on nonfarm tracts should be treated differently than SFH loans on farm tracts. The Agency has attempted to

clarify this paragraph by removing the reference to the liquidation of SFH loan security as a condition for the release of a valueless mortgage. The Agency is clarifying existing authorities to provide for a release of a valueless, Farmer Programs junior lien, taken as additional security on a borrower's dwelling that was financed with a Single Family Housing loan, without having to liquidate the Single Family Housing loan. The Agency, therefore, adopts the comment that a SFH Loan on a non-farm tract should not have to be liquidated as a result of releasing a valueless junior lien that secures a farmer program loan.

Section 1965.26—Liquidation action

The regulation has been clarified and reorganized to be more readable. Paragraph (a)(1) has been revised to clarify which attachments and forms must be given to a borrower who is voluntarily liquidating security. An additional clarification requires FmHA to wait 60 days before it discusses voluntary liquidation with the borrower except in serious situations which are documented in detail in the case file. This change is explained in the discussion above regarding clarification to § 1962.40. The 60-day time period is provided to conform with the provisions of the 1990 Farm Bill which allows borrowers 60 days to apply for servicing.

Paragraph (b) has been revised to clarify how the involuntary liquidation servicing of a borrower's account is carried out.

In paragraph (b)(2), the reference to paragraph (b)(1) of this section for when voluntary liquidation must occur is deleted because that time limit is inconsistent with the notice requirements contained in subpart S of part 1951 of this chapter. Paragraphs (b)(2) and (b)(3) have been redesignated as paragraphs (b)(3) and (b)(4).

One respondent commented that non-farmer program loans should be accelerated when attachments 5 and 6 of subpart S of part 1951 of this chapter are sent to the borrower and not when attachments 1 and 2 are sent. The Agency adopts this recommendation in paragraph (c)(1) with the additional clarification that non-farmer program loans will also be accelerated when attachments 1, 3, and 4, or 5, and 6, or 9 and 10 of exhibit A of subpart S of part 1951 of this chapter are sent to the borrower.

Paragraph (c)(1) has been further clarified to add the term chattel to cover loans in default secured by chattels. This change reflects existing FmHA policy which is to consider liquidating all FmHA loans when there is a default

on a loan(s) which impacts the non-defaulting loan(s).

Paragraph (c)(2) has been revised to clarify that if a nonfarm property secures only an SFH loan(s) it will not be liquidated unless the appropriate provisions of subpart G of 1951 of this chapter have been met.

Paragraph (c)(2)(iv) has been revised to require County Committee approval before FmHA can compromise or adjust the farmer program debt when the borrower has a Single Family Housing Loan on a nonfarm tract which is additional security for the farmer program loan. The County Committee approval requirement has been added to conform with § 331(d) of the Consolidated Farm and Rural Development Act which states that FmHA can only approve compromise and adjustment offers on terms which have been recommended by the County Committee.

Paragraph (c)(3) has been added to clarify that SFH loans on farm tracts must be considered for interest credit and/or moratorium at the time servicing options are being considered for the FP loan(s) prior to acceleration.

Section 1965.27—Transfer of real estate security

Paragraph (b)(5)(iii)(B) has been removed because it has been determined that the requirement, that the value of the security be at least equal to the debt, prevented borrowers from receiving assistance authorized by subpart S of part 1951 of this chapter. Also, paragraphs (b)(5)(iii) (C) and (D) are redesignated as paragraphs (b)(5)(iii) (B) and (C).

One respondent commented that often, the unpaid balance on an EE loan exceeds the insured Farm Ownership (FO) loan limit of \$200,000 and cannot be assumed as an FO loan under the provisions of paragraph (c)(1)(iii). The Agency agrees with the respondent and clarifies paragraphs (c)(1)(iii) (A) and (B) of this section to this effect. The Agency points out that such loans may also be assumed on ineligible rates and terms in accordance with the authorities in paragraph (c)(1)(iii)(C) of this section and on the same terms in accordance with paragraph (b)(5) of this section. Such assumptions are not subject to the \$200,000 FO loan limitation.

Paragraph (e) has been revised to remove the reference to obsolete form FmHA 1924-14, and to insert a cross reference to subpart S of part 1951 of this chapter for servicing purposes.

Section 1965.34—Nonprogram (NP) loans

The introductory paragraph of this section has been revised to clarify that the servicing of Farmer Program Nonprogram loans is not authorized under subpart S of part 1951 of this chapter under any circumstances. Any servicing to debtors with only NP loans will be limited solely to those specified in paragraphs (a) through (g) which are not changed.

Exhibit B to Subpart A of Part 1965—Notification of Prior Lienholders Intent to Foreclose

The word "Prior" is changed to "Other" to clarify the exhibit's use.

One respondent commented that reference to attachments 1 and 2 of exhibit A of subpart S of part 1951 of this chapter should be changed to attachments 1, 3, and 4 of exhibit A of subpart S of part 1951 of this chapter. The Agency agrees and adopts the change. Also, the Agency removes references in the exhibit to prior lienholders and the 10-day time period for the borrower to contact the County Supervisor because attachment 3 covers both prior and junior lienholders, and attachments 3 and 4 set forth the proper response time periods for the borrower to contact the County Supervisor.

List of Subjects

7 CFR Part 1924

Agriculture, Construction management, Construction and repair, Energy conservation, Housing, Loan programs—Agriculture, Loan programs—Housing and community development, Low and moderate income housing.

7 CFR Part 1955

Foreclosure, Government acquired property, Government property management, Sale of Government acquired property, Surplus Government property.

7 CFR Part 1962

Crops, Government property, Livestock, Loan programs—Agriculture, Rural areas.

7 CFR Part 1965

Foreclosure, Loan programs—Agriculture, Rural areas.

Accordingly, chapter XVIII, title 7, Code of Federal Regulations is amended by adopting parts 1924, 1955, 1962, and 1965 of the interim rule published September 14, 1988, (53 FR 35638-35798) as a final rule with the following amendments:

PART 1924—CONSTRUCTION AND REPAIR

1. The authority citation for Part 1924 continues to read as follows:

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

Subpart B—Management Advice to Individual Borrowers and Applicants

2. Section 1924.57 is amended by revising the introductory texts of paragraphs (b) and (b)(1), paragraphs (d)(1) and (d)(2), by adding paragraph (d)(4).

§ 1924.57 Planning

(b) *Annual plan (Form FmHA 431-2 "Farm and Home Plan," and Form FmHA 1962-1, "Agreement for the Use of Proceeds/Release of Chattel Security")*. These two forms will cover the production/marketing cycle which most accurately reflects the annual production/marketing cycle of the borrower's operation. The references to form FmHA 431-2 in this subpart mean this form or other plans or documents acceptable to FmHA which include similar information necessary for FmHA to make a decision. FmHA will not require the use of Coordinated Financial Statements.

(1) A new form FmHA 1962-1 must be completed once each year and revised as needed, in accordance with the Forms Manual Insert (FMI) for all borrowers with FmHA loans secured by chattels. There must always be a current form FmHA 1962-1 in the file of a borrower with loans secured by chattels. Form FmHA 1962-1 should be filled out and signed at the same time as a form FmHA 431-2 is signed, if a form FmHA 431-2 is required. The figures on the two forms must be consistent. For example, if the form FmHA 431-2 shows the borrower plans to spend \$10,000 on equipment and no FmHA loan funds are being advanced for that purpose and the borrower has no income except from the farm operation, the form FmHA 1962-1 should show where the \$10,000 will come from (Example—wheat, 3,000 bushels sold, August, \$10,000, Purchase Equipment.) Form FmHA 431-2 will be required for those borrowers:

* * * * *

(d) * * *

(1) Plans will be documented in sufficient detail to adequately reflect the overall condition of the operation, including the borrower's current financial condition. The borrower's projected income and expenses must be based on the borrower's proven record

of production and financial management. For existing farmers, actual production and financial history for the 5 years immediately preceding the year of application is required. For beginning farmers and those with less than a 5 year operating history, the applicant's available production history taken from the applicant's reliable records will be used. To compute the 5-year average for such applicants, the County Supervisor will utilize available records in the order of priority as follows: Agricultural Stabilization and Conservation Service (ASCS) records, for that particular farm; County averages; State averages; Extension Service (ES) data; or other reliable sources of data to develop the projections. The County Supervisor will document the source used to complete the 5-year average. When an accurate projection cannot be made because the applicant's production history has been affected by a disaster(s) declared by the President or designated by the Secretary of Agriculture, and for those farmers who would have had a qualifying loss, as defined in § 1945.154(a)(29) of subpart D of part 1945 of this chapter, but were not located in a designated/declared disaster area, County average yields will be used for the disaster year(s). If the applicant's disaster year(s) yield(s) is less than the County average yield and the borrower's yields were affected by the disaster, County average yields will be used for that year(s). If County average yields are not available, State average yields will be used.

(2) Unit prices for all agricultural commodities produced commercially in each State will be established on a statewide basis by all FmHA State Directors each year and published in a State Supplement which will be issued annually to coincide with the farm planning season. State Directors may establish regional unit prices for different regions of a State when there are transportation costs or other significant factors that establish a regional difference for unit prices within the State. During development of unit prices, the State Director will consult with other agricultural agency representatives and agricultural lenders familiar with State and local conditions, before establishing the commodity prices. State Directors in adjoining States will consult each other and resolve any differences before releasing their established commodity price lists. Farmers who have proven accurate records to support a premium price for a commodity and/or contracts with well established markets will be allowed to use those higher prices. In addition, the

supplement required in this section for commodity prices will also contain the 5-year history of disaster declarations/designations for all counties in the State, indicating the type of disaster(s) and incidence period(s). The information will be used to determine whether any particular year(s) should be considered as a disaster year for the applicant.

* * * * *

(4) Farm and Home Plans will not be revised by the County Supervisor unless information submitted by the borrower is not realistic and/or cannot be verified, or unless there are changes in the farming operation or use of loan funds. All revisions must be made in red ink by crossing out the original data and inserting revised data. Each revision must be dated and initialed by the borrower and County Supervisor.

(i) When there are major revisions which cannot be easily accommodated on the borrower's plan, a new Farm and Home Plan will be completed and attached to the original plan. When a major revision is made, the plan must be marked, "Revision I, II or III, etc.," to reflect the latest revision under consideration. The revisions must reflect the borrower's current operation based on the record of past performance.

(ii) When the automated Farm and Home Plan is used and revisions are needed, a new printout will be provided to the borrower. The County Supervisor will meet with the borrower to discuss, date and initial the revised Farm and Home Plan.

3. Section 1924.57(d)(3) is amended in the second sentence by changing the word "which" to "that."

4. Exhibit A to subpart B of part 1924 is amended by revising the first paragraph to read as follows:

Exhibit A—Letter to Borrower Regarding Releases of Farm Income To Pay Family Living and Farm Operating Expenses

* * * * *

Dear _____:

Public Law 100-233 requires the Farmers Home Administration (FmHA) to notify you that you are entitled to have FmHA release proceeds from the sale of crops, livestock, and livestock products planned to be marketed in the regular course of business including ASCS and CCC payments, so that you can pay essential family living and farm operating expenses. The releases will continue until such time as your account should become in default and FmHA has to accelerate your account.

* * * * *

PART 1955—PROPERTY MANAGEMENT

5. The authority citation for part 1955 continues to read as follows:

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

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

§ 1955.1 [Amended]

6. Section 1955.1 is amended by inserting in the first sentence after the word "loans" the words "individuals and organizations."

7. Section 1955.3 is amended by adding, in alphabetical order, the definitions of "Farmer Program loans" and "Leaseback/Buyback property" to read as follows:

§ 1955.3 Definitions.

* * * * *

Farmer Programs loans. The term "Farmer Program loans" (FP) refers to the following types of loans: Farm Ownership (FO), Soil and Water (SW), Recreation (RL), Economic Opportunity (EO), Operating (OL), Emergency (EM), Economic Emergency (EE), Softwood Timber (ST), and Rural Housing Loans for farm service buildings (RHF).

* * * * *

Leaseback/Buyback property. This refers to real property which has collateralized a Farmer Program loan to which the Government acquired title.

* * * * *

8. Section 1955.10 is amended by revising the introductory text and paragraph (e) to read as follows:

§ 1955.10 Voluntary conveyance of real property by the borrower to the Government.

Voluntary conveyance is a method of liquidation by which title to security is transferred to the Government. FmHA will not make a demand on a borrower to voluntarily convey. If there is equity in the property, FmHA should advise the borrower, in writing, that there is equity in the property before accepting an offer to voluntarily convey. If FmHA receives an offer of voluntary conveyance, acceptance should only be considered when the Government will likely receive a recovery on its investment. In cases where there are outstanding liens, a full assessment should be made of the debts against the property compared to the current market value. FmHA should refuse the voluntary conveyance, if the FmHA lien has neither present nor prospective value or recovery of the value would be unlikely or uneconomical. Instead, for loans to individuals, FmHA should release its lien as valueless in accordance with § 1965.25(d) of subpart A of part 1965 of this chapter or § 1965.118(c) of subpart C

of this chapter, as appropriate. For non-FP borrowers, a voluntary conveyance should only be considered after all available servicing actions outlined in the respective servicing regulations have been used or considered and it is determined that the borrower will not be successful. For FP borrowers, if the borrower has not received exhibit A with attachments 1 and 2 of subpart S of part 1951 of this chapter, a voluntary conveyance should be accepted only after the borrower has been sent exhibit A with attachments 1 and 2 of subpart S of 1951 of this chapter; all available servicing actions outlined in the respective program servicing regulations have been used or considered; and it will be in the Government's best financial interest to accept the FP voluntary conveyance. Exhibit G of this subpart, "Worksheet for Accepting a Voluntary Conveyance of Farmer Program Security Property into Inventory," will be used to determine whether or not to accept an FP voluntary conveyance. In determining if the acceptance of the FP voluntary conveyance is in the best financial interest of the Government, the County Supervisor will determine if the borrower has exhausted all possibilities of restructuring the loan to where a feasible plan of operation may be developed, the borrower has acted in good faith in trying to service the debt and FmHA may recover its investment in return for the acceptance of the voluntary conveyance. In addition, prior to acceptance of a voluntary conveyance of farm real property that collateralizes an FP loan, the County Supervisor will remind the borrower-owner of possible deed restrictions and easement that may be placed on the property in the event the property contains wetlands, floodplains, historical sites and/or other federally protected environmental resources as set forth in exhibit M of subpart G of part 1940 of this chapter and § 1955.137 of subpart C of part 1955 of this chapter. When it is determined that all conditions of § 1951.558(b) of subpart L of part 1951 of this chapter have been met, loans for unauthorized assistance will be treated as authorized loans and exhibit A with attachments 1 and 2 of subpart S of part 1951 of this chapter will be sent prior to accepting a voluntary conveyance. Those borrowers who are indebted for nonprogram (NP) loans who wish to voluntarily convey property will not be sent exhibit A with attachments 1 and 2 of subpart S of part 1951 of this chapter. For Farmer Program borrowers who have received exhibit A with attachments 1 and 2 of subpart S of

part 1951 of this chapter, a voluntary conveyance should only be accepted when it is determined to be in the Government's best financial interest. Rejection of an offer of voluntary conveyance made before or after acceleration from an FP borrower is appealable. For borrowers having both FP and non-FP loans secured by a farm tract, a voluntary conveyance should be handled as outlined above for non-FP loans secured by farm tracts, except that the applicable servicing option for the FP and non-FP loans should be considered separately. This separation of servicing options may permit a borrower to retain the nonfarm tract.

(e) *Appraisal of property.* After an offer of voluntary conveyance, but before acceptance by FmHA, an appraisal of the property will be made to establish the current market value of the property. If a qualified FmHA appraiser is not available to appraise property securing a loan other than MFH, the State Director may obtain an appraisal from a qualified appraiser outside FmHA in accordance with FmHA Instruction 2024-A (available in any FmHA office). For property securing MFH, prior authorization must be obtained by the Assistant Administrator, Housing, to secure an appraisal from a source outside FmHA. For property securing FP loan(s), the contract appraiser must complete the appraisal in accordance with subpart A of part 1809 of this chapter (FmHA Instruction 422.1) for FP property, or subpart C of part 1922 for Single Family Housing property. Also, the appraiser must meet at least one of the following qualifications:

(1) Certification by a National or State Appraisal Society.

(2) If a certified appraiser is not available, the appraiser may be one who meets the criteria for certification in a National or State Appraisal Society.

(3) The appraiser has recent, relevant documented appraisal experience or training, or other factors clearly establishing the appraiser's qualifications.

9. Section 1955.15 is amended by revising paragraphs (d)(2)(iv)(A) and (d)(2)(iv)(B), by adding paragraphs (d)(2)(iv)(C) and (d)(2)(iv)(D), and by revising paragraph (f)(5) and the introductory text of paragraph (f)(6) to read as follows:

§ 1955.15 Foreclosure by the Government of loans secured by real estate.

(d) * * *

(2) * * *
(iv) * * *

(A) When the borrower's dwelling is financed with an SFH loan(s) is secured by and located on the same farm real estate as the Farmer Program loan(s) (dwelling located on the farm), the SFH loan(s) will be serviced in accordance with § 1965.26(c)(1) of subpart A of part 1965 of this chapter.

(B) When the borrower's dwelling is financed with an SFH loan(s) and is located on a nonfarm tract which also serves as additional security for the Farmer Program loan(s), the loans(s) will be serviced in accordance with § 1965.26(c)(2) of subpart A of part 1965 of this chapter.

(C) When the borrower's dwelling is financed with an SFH loan(s) and is located on a nonfarm tract which does not serve as additional security for the Farmer Program loan(s), it will not be accelerated simultaneously with sending out either attachments 5 and 6 or attachments 9 and 10 of exhibit A of subpart S of part 1951 of this chapter, unless it is subject to liquidation based on provisions of § 1965.125 of subpart C of part 1965 of this chapter, taking into consideration the prospects for success that may evolve when the borrower's livelihood is from a source other than the farming operation. If the SFH loan is in default and subject to liquidation based on provisions of § 1965.125 of subpart C of part 1951 of this chapter, the SFH loan(s) must be accelerated at the same time the borrower is sent either attachment 5 or 6 or attachments 9 and 10 to exhibit A of subpart S of part 1951 of this chapter. For those borrowers who are in nonmonetary default on their Farmer Programs loans and fail to return attachment 4 of exhibit A, the Farmer Programs loans and SFH loans will be accelerated at the same time. If the borrower appeals, one appeal hearing and one review will be held for both adverse actions.

(D) If the borrower's FP loan(s) were accelerated prior to May 7, 1987, and the SFH loan(s) is not accelerated, the SFH loan will be accelerated at the same time the borrower is sent either attachments 5 and 6 or attachments 7 and 8 to exhibit A of subpart S of part 1951 of this chapter unless the requirements of either § 1965.25(d) or § 1965.26(c)(2) of subpart A of part 1965 of this chapter are met or the liquidation of the SFH loan is based on provisions of § 1965.125 of subpart C of part 1965 of this chapter. If the borrower is sent attachments 5 and 6 and requests an appeal, one hearing and one review will be held for both the adverse action on the FP loan restructuring request and

SFH acceleration notices. If the borrower is sent attachments 7 and 8, there are no further appeals on the FP loans; but, the borrower is entitled to a hearing and a review on the SFH acceleration notice.

* * *

(f) * * *

(5) Amount of Government's bid. Except for Farmer Program loans and as modified by paragraph (f)(6)(ii) of this section, the Government's bid will be the amount of FmHA's gross investment or the market value of the security, whichever is less. For Farmer Program loans, except as modified by paragraph (f)(6)(ii) of this section, the Government's bid will be the amount of FmHA's gross investment or the amount determined by use of exhibit G-1, "Worksheet for Determining Farmer Program Maximum Bid on Real Estate Property," of this subpart, whichever is less. When the foreclosure sale is imminent, the State Director must request the servicing official to submit a current appraisal (in existing condition) as a basis for determining the Government's bid. Except for MFH properties, if an FmHA appraiser is not available, the State Director may authorize an appraisal to be obtained by contract from a source outside FmHA in accordance with FmHA Instruction 2024-A (available in any FmHA office). For MFH properties, prior approval of the Assistant Administrator, Housing, is necessary to procure an outside appraisal.

(6) Bidding. The State Director will designate an individual to bid on behalf of the Government unless judicial proceedings or State nonjudicial foreclosure law provides for someone other than an FmHA employee to enter the Government's bid. When the State Director determines attendance of an FmHA employee at the sale might pose physical danger, a written bid may be submitted to the Marshal, Sheriff, or

other party in charge of holding the sale. The Government's bid will be entered when no other party makes a bid or when the last bid will result in the property being sold for less than the bid authorized in paragraph (f)(5) of this section.

* * *

10. Section 1955.18 is amended by revising paragraph (i) to read as follows:

§ 1955.18 Actions required after acquisition of property.

* * *

(i) *Leaseback/buyback.* The County Supervisor will notify the immediate previous owner of leaseback/buyback rights by sending exhibit O of subpart S of part 1951 of this chapter, to the immediate previous owner, certified mail, return receipt requested, immediately after FmHA acquires real property that secured an FP loan. The County Supervisor will notify the immediate previous operator of leaseback/buyback rights in accordance with § 1951.911(a)(1)(iii) of subpart S of part 1951 of this chapter by sending exhibit P of subpart S of part 1951 of this chapter, to the immediate previous operator, certified mail, return receipt requested, after FmHA acquires real property that secured an FP loan. In the case of a conflict between homestead protection and leaseback/buyback as to the ownership or lease of the borrower's principal dwelling, the provisions of the homestead protection program will have priority over leaseback/buyback.

* * *

11. Exhibit G to subpart A is revised to read as follows:

Exhibit G—Subpart A—Worksheet for Accepting a Voluntary Conveyance of Farmer Program Security Property Into Inventory

(present owner/borrower)

Refer to Exhibit I in FmHA Instruction 1951-S for guidance in estimating the holding period, incomes and expenses in this exhibit.

1. Market Value of Property (Part 7, Form FmHA 422-1) \$ _____

Estimated Holding Period in Years _____

2. Income

a. Annual Rent _____ × Holding Period _____ = _____

b. Annual Royalties _____ × Holding Period _____ = _____

c. Other Annual Income _____ × Holding Period _____ = _____

d. Annual Land Appreciation _____ × Holding Period _____ = _____

e. Value gained due to restrictions that are placed on the farm such as Conservation Easements, Conservation Reserve Program (CRP), etc. = _____

f. Other (describe) _____ × Holding Period _____ = _____

Total Additions = \$ _____

3. Expenses

a. Total Prior Lienholder Indebtedness (P and I) = _____

b. Other Acquisitions Costs (taxes presently owed, closing costs, survey costs, administrative costs, junior liens, etc.) List: _____

c. Annual Taxes & Assessment _____ × Holding Period _____ = _____

d. Annual Building Depreciation _____ × Holding Period _____ = _____

e. Annual Management Costs _____ × Holding Period _____ = _____

f. Total Essential Repairs to Secure & Resell = _____

g. Annual Decrease in Land Value (if applicable) _____ × Holding Period _____ = _____

h. Total Anticipated Resale Expenses (Commissions, Advertising, etc.) = _____

i. Total Interest Cost

MKT Value \$ _____ × Regular ¹ OL Rate _____ × Holding Period _____ = _____

j. Value loss due to restrictions that are placed on the farm such as Conservation Easements, and Conservation Reserve Program (CRP), etc. = \$ _____

k. Hazardous Waste Clean-up Costs = _____

Total Deductions (Items a through k) = _____

4. Recovery Value End of Holding Period

1. _____ + 2. _____ - 3. _____ = _____
Market Value Total Additions Total Deductions Recovery Value

County Supervisor

Date

Concurrence by:

State Director

Date

12. Exhibit G-1 to Subpart A is added to read as follows:

Exhibit G-1—Worksheet for Determining Farmer Programs Maximum Bid on Real Estate Property

(present owner/borrower)

Refer to Exhibit I in FmHA Instruction 1951-S for guidance in estimating the holding period, incomes and expenses in this exhibit.

1. Market Value of Property (Part 7, Form FmHA 422-1) \$ _____

Estimated Holding Period in Years _____

2. Income

¹ The regular operating loan rate more nearly reflects the Government's cost of money.

<p>a. Annual Rent _____ × Holding Period _____ = _____</p> <p>b. Annual Royalties _____ × Holding Period _____ = _____</p> <p>c. Other Annual Income _____ × Holding Period _____ = _____</p> <p>d. Annual Land Appreciation _____ × Holding Period _____ = _____</p> <p>e. Value gained due to restrictions that are placed on the farm such as Conservation Easements, Conservation Reserve Program (CRP), etc. = \$ _____</p> <p>f. Other (describe) _____ × Holding Period _____ = _____</p> <p>Total Additions = \$ _____</p> <p>3. Expenses</p>	<p>a. Total Prior Lienholder Indebtedness (P and I) = _____</p> <p>b. Other Acquisitions Costs (taxes presently owed, closing costs, survey costs, administrative costs, etc.) List: _____ _____ = _____</p> <p>c. Annual Taxes & Assessment _____ × Holding Period _____ = _____</p> <p>d. Annual Building Depreciation _____ × Holding Period _____ = _____</p> <p>e. Annual Management Costs _____ × Holding Period _____ = _____</p> <p>f. Total Essential Repairs to Secure & Resell = _____</p> <p>g. Annual % Decrease In Land Value (if applicable) _____ × Holding Period _____ = _____</p>	<p>h. Total Anticipated Resale Expenses (Commissions, Advertising, etc.) = _____</p> <p>i. Total Interest Cost MKT Value \$ _____ × Regular ² OL Rate _____ × Holding Period _____ = _____</p> <p>j. Value loss due to restrictions that are placed on the farm such as Conservation Easements, and Conservation Reserve Program (CRP), etc. = \$ _____</p> <p>k. Hazardous Waste Clean-up Costs = _____</p> <p>Total Deductions (Items a through k) = _____</p> <p>4. Bid will be the lesser of:</p>
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<p>a. 1. _____ Market Value</p>	+	<p>2. _____ Total Additions</p>	-	<p>3. _____ Total Deductions</p>	=	<p>_____ Total</p>
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or,

<p>b. _____ Unpaid FmHA Balance on Secured Debt</p>	+	<p>_____ Prior Liens</p>	=	<p>_____ Total</p>
---	---	------------------------------	---	------------------------

County Supervisor

Date
Concurrence by:

State Director

Date

PART 1962—PERSONAL PROPERTY

13. The authority citation for part 1962 continues to read as follows:

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

Subpart A—Servicing and Liquidation of Chattel Security**§ 1962.6 [Amended]**

14. Section 1962.6(c)(2)(i) is amended in the first sentence by changing the word "not" to "that."

§ 1962.8 [Amended]

15. Section 1962.8 is amended by changing the first word in the second sentence from "Such" to "Additional."

16. Section 1962.13 is amended by revising the introductory text to read as follows:

§ 1962.13 Lists of borrowers given to business firms.

List of borrowers whose chattels or crops are subject to an FmHA lien may be made available to business firms in a

trade area, such as sale barns and warehouses, that buy chattels or crops or sell them for a commission. The County Supervisor will give these lists to any such firm on its request. These lists will exclude those borrowers whose only crops for sale require ASCS marketing cards. FmHA will not distribute Form FmHA 1962.1.

* * * * *

17. Section 1962.17 is amended by revising paragraphs (b)(2)(ii), and (b)(2)(iii) to read as follows:

§ 1962.17 Disposal of chattel security, use of proceeds and release of lien.

* * * * *

(b) * * *

(2) * * *

(ii) Essential expenses are those which are basic, crucial or indispensable. The following items are guidelines of what normally may be considered essential family living and farm operating expenses:

Household operating
Food, including lunches
Clothing and personal care
Health and medical expenses, including medical insurance
House repair and sanitation
School, church, recreation
Personal insurance
Transportation
Furniture
Hired labor
Machinery repair

Farm building and fence repair
Interest on loans and credit or purchase agreement
Rent on equipment, land, and buildings
Feed for animals
Seed
Fertilizer
Pesticides, herbicides, and spray materials
Farm supplies not included above
Livestock expenses, including medical supplies, artificial insemination, and veterinarian bills
Machinery hire
Fuel and oil
Personal property tax
Real estate taxes
Water charges
Property and crop insurance
Auto and truck expenses
Utilities payments
Payments on contracts or loans secured by farmland, necessary farm equipment, livestock, or other chattels
Essential farm machinery. An item of essential farm machinery which breaks beyond repair may be replaced when the County Supervisor determines that replacement is a better choice than alternatives such as the lease of a similar piece of machinery or the hiring of the service:

(iii) All of the items in paragraph (ii) may not always be considered essential for every family and farming operation. County Supervisors must consider the individual borrower's operation, and what would be an efficient method of production considering the borrower's

² The regular operating loan rate more nearly reflects the Government's cost of money.

resources. County Supervisors will refer to exhibit E of this subpart for guidance in determining whether an expense will be considered essential and the amount of proceeds which should be released. When the borrower and County Supervisor cannot agree that an expense is essential, the County Supervisor will notify the borrower, in writing, of why the requested release was denied, including why it is not basic, crucial or indispensable to the family and/or the farming operation and will give the borrower an opportunity to appeal in accordance with subpart B of part 1900 of this chapter and paragraphs (a)(2) and (b)(5) of this section.

18. Section 1962.29 is amended by revising the introductory text of paragraph (b) to read as follows:

§ 1962.29 Payment of fees and insurance premiums.

(b) *Insurance premiums.* County Supervisors are authorized to voucher for the payment of bills for insurance premiums on chattel security. Standard Form 1034, "Public Voucher for Purchases and Services Other Than Personal," Form FmHA 2024-1, "Miscellaneous Payment System," must be prepared and submitted according to the Forms Manual Insert (FMI) for payment to be charged to the borrower's account as recoverable cost. Bills may be paid when:

§ 1962.34 [Amended]

19. Section 1962.34 is amended in the fourth sentence of the introductory text by changing the words, "Form FmHA 1924-14, Notice—Farmer Program Borrower Servicing Options Including Deferral and Borrower Responsibilities," to "Attachment 1 of exhibit A of subpart S of part 1951 of this chapter."

20. Section 1962.40 is amended by revising the introductory texts of paragraphs (a)(1) and (e)(1), and paragraph (b) to read as follows:

§ 1962.40 Liquidation.

(a) *Voluntary liquidation.*

(1) *General.* When a borrower contacts FmHA and asks about voluntarily liquidating security, the borrower will be sent attachments 1 and 2 of exhibit A of subpart S of part 1951 of this chapter or attachments 1, 3 and 4, and the preliminary application forms by certified mail, or the forms will be hand delivered at the County Office. The servicing notices which provide possible alternatives to liquidation provide a maximum of 60 days for the borrower to apply for servicing.

Therefore, FmHA will not discuss liquidation or methods of liquidation until 60 days after the borrower receives the notices except in serious situations which are documented in detail in the case file. During the 60-day time period the County Supervisor may answer questions regarding the servicing notices. After 60 days, the borrower will be told that liquidation can be accomplished by:

(b) *Involuntary liquidation.*

(1) *General.* When a borrower makes an unapproved disposition of security, the directions in §§ 1962.18 and 1962.49 of this subpart will be followed. In all other cases, when the County Supervisor, with the advice of the District Director, determines that continued servicing of the loan will not accomplish the objectives of the loan, or that further servicing cannot be justified under the policy stated in § 1962.2 of this subpart, liquidation of the account(s) will be accomplished as quickly as possible under this section and subpart A of part 1955 of this chapter. When liquidation is begun, it is FmHA policy to liquidate all security and EO property, except EO property that the County Supervisor determines is essential for minimum family living needs. The present market value of security that may be retained by the borrower for minimum family living needs will not exceed \$600. However, only so much of the security and EO property will be liquidated as necessary to pay the indebtedness.

(2) *Farmer Program loan cases.* In Farmer Program loan cases, borrowers who are 180 days delinquent must receive exhibit A with attachments 1 and 2 or attachments 1, 3, and 4 of exhibit A of subpart S of part 1951 of this chapter in cases involving nonmonetary default. The County Supervisor will send these forms to the borrower as soon as a decision is made to liquidate. The procedures set out in subpart S of part 1951 of this chapter shall be followed and any appeal must be concluded before any liquidation action (including termination of releases of sales proceeds) is taken. If the borrower fails to return attachment 2 of exhibit A of subpart S of part 1951 of this chapter and a preliminary application within 60 days, the County Supervisor will send Attachments 9 and 10 of Exhibit A of subpart S of part 1951 of this chapter. If the borrower fails to return attachments 4, 6 or 10 of exhibit A of subpart S of part 1951 of this chapter within 60 days, the borrower's account will be accelerated in accordance with § 1955.15(d)(2) of

subpart A of part 1955 of this chapter and paragraphs (b)(2) (i) and (ii) of this section. The County Supervisor will then attempt to repossess the security in accordance with § 1962.42 of this subpart. If this is not possible, the case will be referred for civil action in accordance with § 1962.49 of this subpart. Unmatured installments will be accelerated as follows:

(i) The District Director will accelerate all unmatured installments by using exhibits D or E of subpart A of part 1955 of this chapter except in cases referred to OGC for civil action, if the notice has previously been given.

(ii) Exhibits D or E of subpart A of part 1955 of this chapter will be sent to the last known address of each obligor, with a copy to the Finance Office in those cases referred to OGC for civil action. County Office and Finance Office loan records will be adjusted to mature the entire indebtedness only.

(3) *Lien search.* The County Supervisor will follow the directions set out in paragraph (a)(2) of this section.

(e) * * *

(1) After Attachments 1 and 2 or 1, 3, and 4 of exhibit A of subpart S of part 1951 of this chapter have been sent and if security is in danger of loss or deterioration, the State Director will protect FmHA's interest and approve protective advances in payment of:

21. Section 1962.41 is amended by revising the introductory text to read as follows:

§ 1962.41 Sale of chattel security or EO property by borrowers.

Borrowers who are liquidating voluntarily and who have not been sent exhibit A and attachments 1 and 2 or 1, 3 and 4 of subpart S of part 1951 of this chapter will be processed in accordance with paragraph (a)(1) of § 1962.40 of this subpart before any sale occurs.

22. Section 1962.42 is amended by revising the introductory texts of paragraphs (a) and (c), and paragraph (d) to read as follows:

§ 1962.42 Repossession, care, and sale of chattel security or EO property by the County Supervisor.

(a) *Repossession.* Except as provided in paragraph (d) of this section, prior to any repossession of FmHA security a borrower and all cosigners on the note must receive exhibit A and attachments 1 and 2, or 1, 3 and 4 of subpart S of part 1951 of this chapter and the application forms. The appropriate procedures of subpart S of part 1951 of this chapter

must be followed and any appeal must be concluded. The County Supervisor will take possession of security or EO property when the value of the property, based on appraisal, is substantially more than the estimated sale expenses and the amount of any prior lien, and if the prior lienholder does not intend to enforce the lien. See § 1955.20 of Subpart A of Part 1955 of this chapter.

(c) *Sale*. Repossessed property may be sold by FmHA at public or private sale for cash under Form FmHA 455-4, "Agreement for Voluntary Liquidation of Chattel Security," Form FmHA 1955-41, "Notice of Sale," the power of sale in security agreements under the UCC, or in crop and chattel mortgages and similar instruments if authorized by a State supplement. Also, repossessed property may be sold at private sale when the borrower executes Form FmHA 455-11, "Bill of Sale 'B' (Sale by Private Party)."

(d) *Risk of injury*. If a farmer program loan borrower has abandoned security and the security is in danger of being substantially harmed or damaged, the County Supervisor will attempt to repossess the security as explained in paragraph (a) of this section. Then the County Supervisor will send the borrower and all cosigners on the note attachments 1, 3 and 4 of exhibit A of subpart S of part 1951 of this chapter. The security will be cared for as explained in paragraph (b) of this section until all appeal rights have been given and any appeal has been concluded. When the appeal process is concluded, the security will be returned to the borrower or sold in accordance with paragraph (c) of this section, depending on the outcome of any appeal. The County Supervisor will document the abandonment and the danger of substantial damage in the borrower's case file. In the case of livestock, abandonment occurs if a borrower stops caring for the animals, as determined by the County Supervisor. However, an independent third party (not an FmHA employee) must determine that livestock is in danger of substantial damage. Protective advances may be made in accordance with § 1962.40(e) of this subpart.

23. Section 1962.42 is amended by revising paragraph (f) to read as follows:

§ 1962.46 Deceased borrowers.

(f) *Liquidation of security*. When the County Supervisor determines that the account of a deceased borrower is in monetary or nonmonetary default, and

liquidation is necessary because no survivor or third party has applied to assume the borrower's FmHA loan, chattel security and real estate security will be liquidated promptly in accordance with this subpart and subpart A of part 1965 of this chapter. Before liquidation, the notices required by subpart S of part 1951 of this chapter will be sent to the executor of the estate and/or other appropriate person(s) or entity(ies) as advised by OGC. If a survivor(s) or heir(s) who will continue with the borrower's operation applies for servicing, FmHA will determine whether these individuals meet the requirements of paragraph (g) of this section. If a third party who will not continue with the borrower's operation applies for servicing, the requirements of § 1962.34 of this subpart, or § 1965.47 of subpart A of part 1965 of this chapter, as applicable, must be met. To qualify for servicing, the eligibility and feasibility requirements in § 1951.909 of subpart S of part 1951 of this chapter must also be met. However, the borrower's estate is not eligible for servicing. After the provisions of subpart S of part 1951 of this chapter have been complied with, and the opportunity to appeal has expired, the State Director will request OGC to effect collection if the proceeds from the sale of security are insufficient to pay in full the indebtedness owed to FmHA and other assets are available in the estate or in the hands of heirs.

24. Section 1962.47 is amended by revising paragraphs (a)(3), (c)(2), (c)(3), (c)(4) and (c)(5) to read as follows:

§ 1962.47 Bankruptcy and insolvency.

(a) * * *

(3) *Farmer Programs borrowers*.

(i) The County Supervisor will send the following servicing notices to the attorney of a Farmer Program borrower as soon as the County Supervisor learns that a bankruptcy has been filed: Attachments 1 and 2 of exhibit A (and not exhibit A) of subpart S of part 1951 of this chapter together with exhibit D of this subpart, and the application forms required by § 1951.907 of subpart S of part 1951 of this chapter. In addition, the attorneys of borrowers with confirmed Chapter 11, 12, or 13 plans who are 180 days delinquent on their plan will be sent these notices unless OGC advises that sending the notice is inconsistent with the provisions of the confirmed bankruptcy plan or other provisions of the Bankruptcy Code. The County Supervisor will send courtesy copies of these notices at the same time to the borrower and a dated copy of exhibit D only to OGC. The servicing notices explain that FmHA wants the borrower

to know about the various Farmer Program loan servicing tools.

(ii) If, after consultation with OGC, it is determined that the borrower is under the jurisdiction of the bankruptcy court, and the borrower wants to be considered for loan servicing, the following conditions must be met. The borrower must complete and return attachment 2 of exhibit A of subpart S of part 1951 of this chapter and the required preliminary application forms within 60 days from the attorney's receipt of the notices required by this section. The borrower's attorney, in writing, must also request servicing on behalf of the borrower within the 60-day time period. FmHA will consider this request to be an acknowledgment that FmHA will not be interfering with any rights or protections under the Bankruptcy Code and its automatic stay provisions. FmHA's processing of the application may include consideration of primary and preservation loan servicing options and notification of FmHA's decision on the application in accordance with subpart S of part 1951 of this chapter, and holding any mediation, meetings or appeals requested by the borrower. However, the account will not be accelerated until FmHA has obtained any necessary relief from the automatic stay as determined by OGC.

(iii) In chapters 11, 12, and 13 cases, if the borrower files a bankruptcy plan covering the FmHA debt, FmHA will evaluate the merits of the plan and inform OGC of its recommendation for voting on or objecting to the plan. A plan will not be rejected by FmHA simply because it is not consistent with FmHA's loan servicing regulations. The Government's Attorney (who represents FmHA's interest in bankruptcy court) is free to object to the plan in accordance with the provisions of the Bankruptcy Code. If a borrower is operating under a confirmed bankruptcy plan, desires to apply for loan servicing and qualifies for servicing under FmHA's regulations, the borrower must also comply with provisions of the Bankruptcy Code practiced in that jurisdiction concerning modification of the plan. If a plan is confirmed before servicing and any appeal is completed under FmHA regulations, FmHA will complete the servicing or appeals process, and may consent to a post-confirmation modification of the plan if it is consistent with the Bankruptcy Code and FmHA regulations as appropriate.

(iv) In chapter 7 cases, FmHA will not provide Primary Loan Servicing to a borrower discharged in bankruptcy before or after January 6, 1988, unless

the borrower has reaffirmed the entire FmHA debt. If the chapter 7 debtor wants to reaffirm the debt, FmHA must accept the reaffirmation if permitted under bankruptcy law. If the FmHA debt is reaffirmed, the loan application will be processed in accordance with subpart S of part 1951 of this chapter. If the borrower reaffirms the FmHA 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 § 1951.911 of subpart S of part 1951 of this chapter.

* * *

(c) * * *

(2) If a bankruptcy is dismissed and liquidation of the account is necessary, liquidation will be accomplished in accordance with § 1962.40 of this subpart and § 1965.26 of subpart A of part 1965 of this chapter as appropriate. The borrower will be notified of FmHA's servicing options by the notices required by subpart S of part 1951 of this chapter. The borrower's attorney of record will be sent a courtesy copy of the notices when they are sent to the borrower.

(3) Except as provided in this paragraph, in chapter 11, 12, or 13 cases, if liquidation is necessary while the bankruptcy is pending, the borrower's attorney will be sent exhibit D and attachments 1 and 2 of exhibit A of subpart S of part 1951 of this chapter and any additional attachments required by subpart S of part 1951 of this chapter. The County Supervisor will send courtesy copies of these notices at the same time to the borrower and a dated copy of exhibit D only to OGC. No notices will be sent under this paragraph to the borrower or the borrower's attorney if OGC advises that such act is inconsistent with the provisions of a confirmed bankruptcy plan or other provisions of the Bankruptcy Code. If the borrower applies for servicing within 60 days of the borrower's receipt of a notice under this paragraph, the application will be processed under this paragraph and in accordance with § 1962.47(a)(3)(ii) and (a)(3)(iii) of this section. However, the account will not be accelerated until FmHA has obtained any necessary relief from the automatic stay as determined by OGC. After consultation with OGC as to the timing and the appropriate notice of acceleration, the account will be accelerated in accordance with subpart A of part 1955 of this chapter.

(4) Except as provided in this paragraph, in chapter 11, 12 or 13 cases

if liquidation is necessary after the case is closed, the borrower will be sent exhibit D-1 of this subpart and attachments 1 and 2 of subpart S of part 1951 of this chapter and any additional attachments required by subpart S of part 1951 of this chapter. The borrower's attorney of record will be sent a courtesy copy of exhibit D-1, and OGC will be sent a dated copy. No notices will be sent under this paragraph to the borrower or the borrower's attorney if OGC advises that such act is inconsistent with the provisions of a confirmed bankruptcy plan or other 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 and in accordance with advice from OGC if required before FmHA can approve loan servicing. If an amendment to the confirmed plan is required, the provisions of § 1962.47(a)(3)(iii) of this subpart apply. If the borrower does not qualify for loan servicing and any appeal has been resolved in favor of FmHA, the account will be accelerated in accordance with subpart A of part 1955 of this chapter and the advice of OGC concerning the appropriate notice of acceleration.

(5) In chapter 7 farmer program loan cases, if liquidation is necessary either while the bankruptcy is pending or after the case is closed (see paragraph (c)(2) of this section if the case is dismissed), it will be handled as follows: After discharge, loans can be liquidated if the borrower has not reaffirmed the debt and the property is no longer part of the estate. Liquidation can proceed prior to discharge if the court approves an abandonment order and lifts the automatic stay. Exhibit D-1 of this subpart and attachments 1 and 2 of exhibit A of subpart S of part 1951 of this chapter will be sent to the borrower if the borrower's attorney was not previously notified under subpart S of part 1951 of this chapter during the course of the bankruptcy proceeding. If the notices are sent, the borrower's attorney of record will be sent a courtesy copy of exhibit D-1, and a dated copy of exhibit D-1 will be sent to OGC. If these notices are not required, the borrower will be sent an acceleration notice (exhibit E of subpart A of part 1955 of this chapter), and there will be no appeal of the acceleration. Then the account will be liquidated.

* * *

25. Exhibit D to subpart A is revised to read as follows:

Exhibit D—Notice to Borrower's Attorney Regarding Loan Servicing Options

Procedure Reference: FmHA Instruction 1962-A.

Purpose: This Exhibit or a version approved by the Regional OGC will be used by a County Supervisor to send the attachments 1 and 2 of exhibit A of subpart S of part 1951 of this chapter to the borrower's attorney when the borrower has filed for bankruptcy or is currently under the jurisdiction of bankruptcy court.

RETURN ADDRESS

Borrower's Attorney's Address

Dear : This letter provides important information which the Farmers Home Administration (FmHA) requests you to provide to your client _____ who has filed a bankruptcy petition. Subject to the applicable provisions of the Bankruptcy Code and FmHA regulations, FmHA may take action to enforce its security instrument given by _____ as security for an FmHA loan(s). However, your client may be able to cure one or all of the problems indicated below so that it will not be necessary for FmHA to enforce its security instrument.

☐ Loan payments are \$_____ past due.

☐ Your client has disposed of some of the property used to secure the FmHA loan(s). Your client did not get written approval for this action. This property is

☐ Your client has breached the agreement(s) contained in the security instrument executed by your client in favor of FmHA by taking the following action(s)

☐ Your client has failed to make the required payments under a confirmed bankruptcy plan.

☐ Your client has

Before the Farmers Home Administration (FmHA) can act to enforce its security instruments, its regulations require FmHA to provide borrowers with notice of servicing options. The enclosed forms explain some of the loan servicing options that FmHA has available. In order for FmHA to ascertain whether your client is eligible for these options, it is necessary for FmHA personnel to work closely with your client. If your client requests this contact in the manner described below, we hope that we can assist him or her. However, if favorable action is not possible, we will notify you, and provide your client with the opportunity to appeal the decision. We will not accelerate the account or initiate foreclosure until we comply with the applicable provisions of the bankruptcy code.

If your client wants to apply for primary and/or preservation loan servicing relief from FmHA, you must provide FmHA with a letter

evidencing a request for servicing on behalf of your client within 60 days from your receipt of this letter. To apply for servicing, your client must also submit a signed copy of Attachment 2 and complete and return the preliminary application forms within this 60-day period. By this response, you will be acknowledging that when FmHA processes your client's application for loan servicing it is not interfering with any rights or protections your client may have under the Bankruptcy Code and its automatic stay provisions. FmHA's processing of the application may include considering the borrower for primary and preservation loan servicing options, notifying the borrower of FmHA's decision on the application in accordance with subpart S of part 1951-S of this chapter, and holding any mediation, meetings or appeals requested by your client. If your client fails to complete and return the required information within the 60-day period, FmHA will proceed to enforce its security instrument as allowed under the Bankruptcy Code and FmHA regulations.

If your client has recently filed under chapter 7, in order for FmHA to provide primary loan servicing to your client after discharge, your client must reaffirm the FmHA debt in accordance with the provisions of the Bankruptcy Code. No reaffirmation is necessary for your client to be eligible for preservation loan service programs.

If your client is operating under a confirmed bankruptcy plan, and desires to apply for loan servicing and qualifies for servicing under FmHA's regulations, you must also comply with provisions of the Bankruptcy Code practiced in your jurisdiction concerning modification of the plan. If your client's plan has not yet been confirmed by the Bankruptcy Court, you may choose to file a proposed plan which may or may not contain restructuring features similar to those available under FmHA regulations. The Government, of course, is free to object to the proposed plan in accordance with provisions of the Bankruptcy Code. If a plan is confirmed before servicing and any appeal is completed under FmHA regulations, FmHA will complete the servicing or appeals process, and may consent to a post-confirmation modification of the plan, if appropriate, in accordance with the advice from OGC.

FmHA's farmer program debt servicing regulation is found at 7 CFR, part 1951, subpart S. We cannot promise you or your client that a request for debt servicing will be approved. However, we can promise that a request will be fully and fairly considered by FmHA.

Sincerely,
County Supervisor
Attachments

28. Exhibit D-1 to subpart A of part 1962 is added to read as follows:

Exhibit D-1—Notice to Borrower Regarding Loan Service Options

Procedure Reference: FmHA Instruction 1962.47 (c)(3) and (c)(4)

Purpose: After consultation with the Regional OGC on the status of this case, this exhibit

will be used by a County Supervisor to send the attachments 1 and 2 of exhibit A of subpart S of part 1951 of this chapter to the borrowers who have been discharged under a chapter 7, and to borrowers who have had chapter 11, chapter 12 or chapter 13 bankruptcy plans confirmed but are no longer under the jurisdiction of a bankruptcy court. A courtesy copy of the notices will be sent to the borrower's attorney of record.

RETURN ADDRESS

Borrower's Address

Dear : This letter provides information concerning the Farmers Home Administration's (FmHA) loan servicing programs. If your debt to FmHA has been discharged, this letter is not intended to violate the discharge order, but merely to inform you about the primary and preservation loan service programs now available as a result of the Agricultural Credit Act of 1987. After FmHA complies with its regulations, FmHA may take action to enforce its security instrument which you gave as security for an FmHA loan(s). However, you may be able to cure one or all of the problems indicated below so that it will not be necessary for FmHA to enforce its security instrument.

☐ Loan payments are \$_____ past due.

☐ You have disposed of some of the property used to secure the FmHA loan(s). You did not get written approval for this action. This property is

☐ You have breached the agreement(s) contained in the security instrument which you executed in favor of FmHA by taking the following action(s)

☐ You have failed to make the required payments under a confirmed bankruptcy plan.

☐ You have

Before the Farmers Home Administration (FmHA) can act to enforce its security instruments, its regulations require FmHA to provide borrowers with notice of servicing options. The enclosed forms explain some of the loan servicing options that FmHA have available. If you wish to apply for either primary or preservation loan servicing, you must complete and return attachment 2 of exhibit A of subpart A of this chapter and the preliminary application forms within 60 days of your receipt of this notice. All of these forms are attached to this notice.

Depending on your financial situation, your farming operation and the bankruptcy chapter you used as indicated below, you may or may not qualify for primary or preservation loan servicing. Primary loan servicing is described on pages 1-5 of Attachment 1. Preservation loan servicing is

described on pages 5-7 of Attachment 1. To apply for these programs, you must comply with the 60-day time period set forth above. If you apply for loan servicing and qualify, you must also comply with any applicable provisions of the Bankruptcy Code practiced in your jurisdiction.

1. Chapter 7 Bankruptcy

If you have received a Chapter 7 discharge, the discharge has released you from personal liability for the FmHA debt. You are ineligible for FmHA's primary loan service program since you are no longer indebted to FmHA. If you wish to apply for primary loan servicing, you must reaffirm the entire FmHA debt (which may or may not be possible in your jurisdiction as the bankruptcy case may have to be reopened). If you reaffirm the FmHA debt, and do not qualify for primary loan servicing, it may be possible to revoke the reaffirmation subject to the provisions of the Bankruptcy Code and its time limitations. However, you may apply for preservation loan servicing without reaffirming the FmHA debt. If you qualify for preservation loan servicing, you would be able to retain possession of the home or farm.

2. Chapter 11 Bankruptcy

If you have had a Chapter 11 bankruptcy plan confirmed, you have been discharged from personal liability for your FmHA debt and the bankruptcy case has been closed. However, you are obligated to pay FmHA the amount indicated in your plan. You may still be able to cure one or all of the defaults listed above and also qualify for primary or preservation loan servicing. If you are considering applying for loan servicing, you should consult with your attorney to determine if your confirmed chapter 11 plan will be affected if FmHA approves your loan servicing application. If any changes to the confirmed plan are necessary, please see the discussion below under chapter 12.

3. Chapter 12 Bankruptcy

If you have had a Chapter 12 bankruptcy plan confirmed, and the bankruptcy case has been closed, you may still be able to cure one or all of the defaults listed above and also qualify for primary or preservation loan servicing. Despite any discharge of personal liability for your FmHA debt, you are obligated to pay FmHA the amount indicated in your plan. If you are considering applying for loan servicing, you should consult with your attorney to determine if your bankruptcy plan will be affected if FmHA approves your loan servicing application. Depending on the status of your bankruptcy plan and the bankruptcy law in your jurisdiction, you might be required to file an amended plan which may or may not contain restructuring features similar to those available under FmHA regulations. If amended plans are permitted in your jurisdiction and an amendment is appropriate to your situation, the Government, of course, is free to object to the amended plan in accordance with the provisions of the Bankruptcy Code. If any amended plan is approved before servicing and any appeal is completed under FmHA regulations, FmHA will complete the servicing or appeals process, and may

consent to the amended plan if appropriate in accordance with advice from FmHA's legal counsel.

4. Chapter 13 Bankruptcy

If you have had a chapter 13 plan confirmed, and the bankruptcy case has been closed, you may be legally obligated to repay some or all of your FmHA debt despite any discharge resulting from the completion of your chapter 13 plan. You may still be able to cure one or all of the defaults listed above, and also qualify for primary or preservation loan servicing. If you are considering applying for loan servicing, you should consult with your attorney to determine if your chapter 13 confirmed plan will be affected if FmHA approves your loan servicing application. If your chapter 13 plan is affected, please see the discussion above under chapter 12.

If you fail to complete and return the required information within the 60-day period, FmHA will proceed to enforce its security instrument as allowed by the Bankruptcy Code and FmHA regulations by accelerating your account with the intention of foreclosing or liquidating FmHA's security. After acceleration, you may still be able to apply for preservation loan servicing if FmHA takes the property into inventory. If this event occurs, you will receive another notice with instructions on how to apply for preservation loan servicing. For information on this aspect of the program, please see item V on page 6 of attachment 1. To expedite any preservation loan servicing application, you understand that FmHA's ability to accept a voluntary conveyance is subject to its regulation which can be found at 7 CFR 1955.10.

FmHA's farmer program debt servicing regulation is found at 7 CFR part 1951, subpart S. We cannot promise you that a request for debt servicing will be approved. However, we can promise that a request will be fully and fairly considered by FmHA.

Sincerely,

County Supervisor

Attachments

cc: Borrower's Attorney of record

27. Exhibit E to Subpart A of Part 1962 is revised to read as follows.

Exhibit E—Releasing Security Sales Proceeds and Determining "Essential" Family Living and Farm Operating Expenses

Family Living Expenses

Expenses for household operating, food, clothing, medical care, house repair, transportation, insurance and household appliances, i.e., stove, refrigerator, etc., are essential family living expenses. We do not expect there will be any disagreements over this. However, when proceeds are less than expenses, there might be disagreements about the amounts FmHA should release to pay for particular items within these broad categories. For example, FmHA has to release for transportation expenses, but should FmHA release so that a borrower can buy a new car? If at planning time or during the crop year it appears that there will be sales proceeds available to pay for the borrower's operating and living expenses,

including the expense of a new car, the Form FmHA 1962-1 can be completed to show that FmHA plans to release for a new car. On the other hand, it would also be proper to complete the Form FmHA 1962-1 to release for a used car or for gas and repairs to the borrower's present car. Since it is necessary for FmHA to release for essential family living expenses and because transportation is an essential family living expense, some proceeds must be released for transportation. However, nothing requires FmHA to release for a specific expense; usually, there will be several ways to use proceeds to provide for essential family living expenses. We must provide the borrower with a written decision and an opportunity to appeal whenever there is a disagreement over the use of proceeds or whenever we reject a request for a release.

Farm Operating Expenses

We would expect farm operating expenses to present more of a problem than family living expenses. There will probably be a few disagreements over whether an expense is an operating expense (as opposed to a capital expense), but it is more likely that there will be disagreements over the amount FmHA should release for operating expenses and whether a particular farm operating expense is "essential." As is the case with family living expenses, disagreements will most likely arise when proceeds are less than expenses.

To resolve disputes over the amount to be released, remember that we must be reasonable and release enough to pay for essential farm operating expenses. Although a borrower might not always agree that enough money is being released, if the borrower's essential farm operating expenses are being paid, we are fulfilling the requirements of the statute. We must provide the borrower with an opportunity to appeal when there is a disagreement over the use of proceeds or when we reject a request for a release.

Section 1962.17 of this subpart states that essential expenses are those which are "basic, crucial or indispensable." Whether an expense is basic, crucial or indispensable depends on the circumstances. For example, feed is a farm operating expense, but it is not always an essential expense. If adequate pasture is available to meet the needs of the borrower's animals, feed is not essential. Feed is essential if animals are confined in lots. Hiring a custom harvester is a farm operating expense, but is not an essential expense if the farmer has the equipment and labor to harvest the crop just as well as a custom harvester. Hired labor is an operating expense which might be essential in a dairy operation but not in a beef cattle operation. Payments to creditors are essential if the creditor is unable to restructure the debt or to carry the debt delinquent. Renting land is not essential if the borrower plans to use it to grow corn which can be purchased for less than the cost of production. Paying outstanding bills is essential if a supplier is refusing to provide additional credit but not if the supplier is willing to carry a balance due. Of course, the long term goal of any farming operation is to pay all of its expenses, but when this is not possible, FmHA and the

borrower must work together to decide which farm operating expenses are essential and demand immediate attention and cannot be neglected. These are the essential expenses.

We absolutely must release to pay for essential family living and farm operating expenses; there are no exceptions to this. When deciding whether an expense is essential and when deciding how much to release, the choices we make must be rational, reasonable, fair and not extreme. They must be based on sound judgment, supported by facts, and explained to the borrower. Following these rules will help us avoid disagreements with borrowers.

PART 1965—REAL PROPERTY

28. The authority citation for part 1965 continues to read as follows:

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

Subpart A—Servicing of Real Estate Security for Farmer Program Loans and Certain Note-Only Cases

§ 1965.11 [Amended]

29. Section 1965.11 (c)(1) is amended in the first sentence by changing the word "to" to "or."

30. Section 1965.11 is amended by revising paragraphs (c)(1)(i), (c)(1)(ii), (c)(1)(iii), (c)(2)(i)(B), the introductory text of paragraph (c)(2)(ii), and paragraph (c)(3) to read as follows:

§ 1965.11 Preservation of security and Protection of liens.

* * * * *

(c) * * *

(1) * * *

(i) *County Supervisor's responsibility.*
When the County Supervisor learns about a third party action which could jeopardize the Government's interest in the security or when the County Supervisor or the Government is made a party to a court proceeding, the County Supervisor will immediately send the borrower exhibit B of this subpart (available in any FmHA office) if another lienholder is foreclosing, and attachments 1, 3 and 4 of exhibit A of subpart S of part 1951 of this chapter. Then the County Supervisor will send the following documents to the State Director: the County Office case file, complete with information concerning the action; recommendations for FmHA servicing action; a copy of any petition or complaint, as soon as available; current account balances; a current appraisal report; the name and address of the borrower's attorney, if any; and other information which the County Supervisor believes important such as unpaid taxes, judgments, or other liens.

(ii) *State Director's responsibility.*
The State Director will consult OGC about all lawsuits involving the property and

any other third party actions when OGC's advice would be helpful. The State Director will then advise the County Supervisor of the actions to be taken to protect the Government's interest in the property. The payment of other liens by FmHA will be authorized by the State Director only to protect the Government's interest, not for the protection of the borrower's interest or the interest of any third party. When foreclosure by another creditor or any other action which would cause the borrower to lose possession of the property is imminent, the State Director may consider making a subsequent loan or guaranteed loan, or approving a subordination to permit another lender to make a loan, provided:

(A) The requirements for the primary servicing program(s), a subsequent loan, guaranteed loan or subordination are met, and such assistance is necessary to enable the borrower to retain the property, and

(B) The borrower has the ability and resources necessary to overcome the problems that caused the foreclosure or other action, and

(C) The third party agrees to postpone further action pending the processing of the primary servicing programs, a subsequent loan, guaranteed loan or subordination.

(iii) *Other actions.* The State Director may also approve a transfer and assumption under this subpart provided the action will adequately protect the Government's interest and the third party agrees to delay further action pending processing of the transfer and assumption. The State Director will notify the County Supervisor of the actions to be taken to protect the Government's interest.

(2) * * *

(i) * * *

(B) After acquisition of the prior lien and completion of any appeals in favor of FmHA, the account will be accelerated and liquidated in accordance with § 1965.26(b) of this subpart. No exception will be made to this provision.

(ii) *Decision not to pay off the prior lien.* If FmHA decides not to pay off the prior lien, one of the following actions will be taken.

* * * * *

(3) *Foreclosure sale subject to FmHA mortgage.* When FmHA learns that a junior lienholder is foreclosing, the County Supervisor will send the borrower attachments 1 and 3 and 4 of exhibit A of subpart S of part 1951 of this chapter and exhibit B of this subpart. If the borrower contacts FmHA and wants to apply for servicing relief,

the request will be processed in accordance with subpart S of part 1951 of this chapter. If the junior lienholder forecloses and the property is sold subject to the FmHA mortgage, following the resolution of any appeal in favor of FmHA, the borrower's account will be accelerated and liquidated in accordance with the applicable portion of § 1955.15 of subpart A of part 1955 of this chapter.

* * * * *

31. Section 1965.25 is amended by revising the introductory text of paragraph (d) to read as follows:

§ 1965.25 Release of FmHA mortgage without monetary consideration on basis of additional security because of mutual mistake, non-existence of evidence of indebtedness, or valueless liens.

* * * * *

(d) *Release of valueless liens.* State Directors are authorized to release FmHA mortgages or other liens when the mortgages or liens have no present or prospective value or when their enforcement would likely be ineffectual or uneconomical. This includes release of a junior lien on the borrower's dwelling financed with an SFH loan and located on a nonfarm tract when the junior lien was taken as additional security for a Farmer Program loan(s). This authority does not extend to valueless judgment liens or valueless statutory redemption rights except with the consent of the OGC. The following information will be obtained in determining present or prospective value:

* * * * *

32. Section 1965.26 is amended by revising the introductory texts of paragraphs (a)(1), (c)(2)(iv), paragraphs (b), (c)(1), (c)(2)(iv)(C) and adding paragraph (c)(3) to read as follows:

§ 1965.26 Liquidation action.

(a) *Voluntary liquidation.*

(1) *General.* When a borrower contacts FmHA and asks about voluntarily liquidating security, the borrower will be sent attachments 1 and 2 of exhibit A of subpart S of part 1951 of this chapter or attachments 1, and 3, and 4 and the preliminary application forms by certified mail, or the forms will be hand delivered at the County Office. The servicing notices which provide possible alternatives to liquidation provide a maximum of 60 days for the borrower to apply for servicing. Therefore, FmHA will not discuss liquidation or methods of liquidation until 60 days after the borrower receives the notices except in serious situations which are documented in detail in the case file. During the 60-day time period

the County Supervisor may answer questions regarding the servicing notices. After 60 days, the borrower will be told that liquidation can be accomplished by:

* * * * *

(b) *Involuntary liquidation.*

(1) *General.* When the County Supervisor, with the advice of the District Director, determines that continued servicing of the loan will not accomplish the objectives of the loan, or that further servicing cannot be justified under the policy stated in § 1965.2 of this subpart, liquidation of the account(s) will be accomplished as quickly as possible under this section and subpart A of part 1955 of this chapter.

(2) *Farmer Program loan cases.* In Farmer Program loan cases, borrowers who are 180 days delinquent must receive exhibit A with attachments 1 and 2, or attachments 1, 3, and 4 of exhibit A of subpart S of part 1951 of this chapter in cases involving nonmonetary default. The County Supervisor will send these forms to the borrower as soon as a decision is made to liquidate. The procedures set out in subpart S of part 1951 of this chapter shall be followed and any appeal must be concluded before any liquidation action (including termination of releases of sales proceeds) is taken. If the borrower fails to return attachment 2 of exhibit A of subpart S of part 1951 of this chapter and a preliminary application within 60 days, the County Supervisor will send attachments 9 and 10 of exhibit A of subpart S of part 1951 of this chapter. If the borrower fails to return attachment 4, 6, or 10 of exhibit A of subpart S of part 1951 of this chapter within 60 days, the County Supervisor will submit the case to the District Director in accordance with the provisions of § 1955.15 of subpart A of part 1955 of this chapter.

(3) *Problem case report.* The County Supervisor will complete Form FmHA 1955-2, "Report on Real Estate Problem Case," and submit it in accordance with § 1955.15 of subpart A of part 1955 of this chapter.

(4) *Acceleration of account.* When foreclosure is approved, acceleration of the account and demand for payment will be accomplished according to the applicable paragraphs of § 1955.15 of subpart A of part 1955 of this chapter.

(c) *Multiple loans and loans secured by both real estate and chattels.*

(1) When a borrower is indebted to the FmHA for more than one type of FmHA loan, a thorough study should be made of each loan and the effect liquidation of one or more of the loans would have on any and all other loans.

When liquidation of one or more FmHA loans secured by real estate or chattels is necessary, and it will jeopardize the repayment of or the accomplishment of the purpose of other loans, liquidation of all real estate and all chattel security for all loans will be started at the same time. Chattel security will be liquidated under subpart A of part 1962 of this chapter, except when real estate is transferred in accordance with § 1965.27 of this subpart. When a Farmer Program loan borrower also has another FmHA loan except a SFH loan or a nonfarmer program loan secured by property which also serves as security for the Farmer Program loan, the other loan will be accelerated at the same time the borrower is sent Notice of Intent notices contained in exhibit A of subpart S of part 1951 of this chapter (for example, Attachments 1, 3, and 4, or 5 and 6, or 9 and 10). One consolidated appeal hearing and one review will be held for both actions.

(2) * * *

(iv) Provided the County Committee agrees to the compromise or adjustment offer in accordance with § 1956.57(f) of subpart B of part 1956 of this chapter, the borrower will further agree to compromise or adjust the farmer program debt as follows:

* * * * *

(C) If the borrower cannot make a cash payment as outlined in paragraph (c)(iv)(A) of this section, the County Supervisor will have the borrower execute an Equity Recapture Agreement similar to exhibit D of this subpart, (available in any FmHA office), pledging to pay to FmHA an amount equal to the difference between the SFH debt and the market value of the SFH security as of the date of acceleration of the FP loan(s). The amount will be based on a current appraisal of the SFH security property. The County Supervisor will notify the Finance Office in accordance with the Automated Data Processing Systems (ADPS) Manual when an Equity Recapture Agreement is executed. The original signed Agreement will be attached to the original SFH promissory note and a copy to the borrower's FmHA County Office file. The borrower's file will be retained in the FmHA County Office until the equity is paid pursuant to the Agreement. The noncash credit will be applied as of the date the Agreement was executed. Under such an Agreement, the payment will be due when the borrower sells the SFH property, ceases to occupy it, or graduates to another lender. After the borrower executes the Agreement, the remaining FP debt may be settled as appropriate. An equity receivable

account will be established by the Finance Office in the amount of the Equity Recapture Agreement, and the County Office will remit collection under the Agreement, in the same manner as an SFH subsidy recapture receivable. In addition, the following statement should be recorded in the body of Form FmHA 451-2, "Schedule of Remittance:" Equity Receivable Payment.

* * * * *

(3) SFH loans on farm tracts must be considered for interest credit and/or moratorium at the time servicing options are being considered for the FP loan(s) prior to acceleration. The county office file will be documented to show that interest credit and moratorium were considered. When the Notice of Intent notices, set forth in paragraph (c)(1) of this section are sent to a borrower who also has an SFH loan, and the dwelling is security for the farm loan(s) and is located on the farm tract, it will not be necessary to meet the additional requirements of subpart G of part 1951 of this chapter prior to accelerating the SFH loan accounts. The SFH accounts will be accelerated at the same time that the Notice of Intent notices set forth in paragraph (c)(1) of this section are sent to the borrower. If it is later determined the FP loan(s) is to receive additional servicing in lieu of liquidation, the SFH loan will be reinstated simultaneously with the FP servicing actions and may be reamortized in accordance with § 1951.314 of subpart G of part 1951 of this chapter.

* * * * *

33. Section 1965.27 is amended by removing paragraph (b)(5)(iii)(B), by redesignating paragraphs (b)(5)(iii)(C) and (b)(5)(iii)(D) as (b)(5)(iii)(B) and (b)(5)(iii)(C) respectively, and by revising paragraphs (c)(1)(iii)(A), (c)(1)(iii)(B) and (e) to read as follows:

§ 1965.27 Transfer of real estate security.

* * * * *

(c) * * *

(1) * * *

(iii) * * *

(A) Subject to the FO loan limitations and rates and terms set forth in subpart A of part 1943 of this chapter by an immediate family member of an individual borrower, an immediate family member of any partner of a partnership, joint operator of a joint operation, stockholder of a corporation or member of a cooperative, an entity which is made up of only immediate family members of an individual borrower, or an entity which is made up of only immediate family members of

any partner(s), joint operator(s) stockholder(s) or member(s).

(B) Subject to the FO loan limitations and rates and terms set forth in subpart A of part 1943 of this chapter by an applicant who is determined eligible for an FO loan if the property has a suitable farm tract, or by an applicant eligible for an SFH loan if the property has a suitable dwelling on a farm or non-farm tract. When closing an assumption under this paragraph or paragraph (A) above, the loan will be reclassified as "FO" or "SFH," as applicable.

* * * * *

(e) *Consent of FmHA not required to transfer.* When the FmHA mortgage(s) does not require the Government's consent to the sale of the security and the borrower conveys or proposes to convey the security to a person who is ineligible or unwilling to assume the FmHA debt in accordance with paragraphs (c) or (d) of this section, the Government will not consent to the sale. However, the sale cannot be used as a reason for liquidation. In such cases involving SFH loans, the County Supervisor will advise the State Director of the sale. If the SFH loan account is delinquent or the loan is otherwise in default, the County Supervisor will also advise the State Director of the nature of the default and any specific plans that may have been made to correct the default. If the State Director decides to continue with the account, it will be serviced in the name of the original FmHA borrower, in the usual manner. In such cases involving farmer program loans, they will be serviced in accordance with the provisions of subpart S of part 1951 of this chapter.

* * * * *

34. Section 1965.34 is amended by revising the introductory text to read as follows:

§ 1965.34 Nonprogram (NP) loans.

The servicing of Farmer Program Nonprogram (NP) loans are not authorized under Subpart S of Part 1951 of this chapter under any circumstance. Except as set out in the following paragraphs, debtors to FmHA for NP loans are not eligible to receive any program benefits. Such benefits include limited resource interest rates, reamortization, rescheduling, consolidation, deferral (including softwood timber loans), write-down of debt (including conservation set-aside easements), leaseback/buyback and/or homestead protection, and appeal rights. For an NP debtor with Farmer Programs loans only, the Farmer Program loans will be serviced in accordance with regulations applicable to those loans.

Any servicing to debtors with only NP loans will be limited solely to the following:

35. Exhibit B to subpart A is amended by revising the title to read as follows:

Exhibit B—Notification of Other Lienholders Intent to Foreclose

Dated: January 31, 1991.

Roland R. Vautour,

Under Secretary for Small Community and Rural Development.

[FR Doc. 91-8880 Filed 4-17-91; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

RIN 1218-AB13

Hazardous Waste Operations and Emergency Response

AGENCY: Occupational Safety and Health Administration; Labor.

ACTION: Final rule; corrections.

SUMMARY: On March 6, 1989 at 54 FR 9294, the Occupational Safety and Health Administration (OSHA) published a final rule for hazardous waste operations and emergency response, 29 CFR 1910.120, in the *Federal Register*. On April 13, 1990 at 55 FR 14072, OSHA published a corrections document for that final rule which contained corrections to the preamble and regulatory text of the final rule. This document makes additional corrections to paragraph (a)(3), the definition of "uncontrolled hazardous waste site" and to paragraph (e)(9), certificate of equivalent training.

EFFECTIVE DATE: April 18, 1991.

FOR FURTHER INFORMATION CONTACT:

Mr. James F. Foster, Division of Consumer Affairs, Occupational Safety and Health Administration, room N-3647, U.S. Department of Labor, Washington, DC 20210. (202) 523-8151.

SUPPLEMENTARY INFORMATION: Pursuant to the Superfund Amendments and Reauthorization Act of 1986 (SARA), OSHA published its final rule on Hazardous Waste Operations and Emergency Response, 29 CFR 1910.120, on March 6, 1989 at 54 FR 9294-9336. OSHA published corrections to the preamble and rule on April 13, 1990 at 55 FR 14072.

Two additional errors have come to OSHA's attention. This document corrects those errors.

SARA makes it clear that the OSHA regulation is to protect workers engaged in "hazardous substance removal" or exposed to "hazardous substances" in hazardous waste operations. (See 29 U.S.C. 655, note, (d)(1), for example). Pursuant to that legislative directive, 29 CFR 1910.120 consistently and repeatedly refers to protecting workers from "hazardous substances." The term "hazardous waste" as used technically in certain EPA regulations to define TSD facilities is narrower than the OSHA term "hazardous substance" and OSHA uses the narrow definition only to make its definition of TSD facilities similar to EPA's definition. However, in normal language, in most legislation and in the sense used by governmental bodies generally including EPA for non-TSD purposes, an area may be called an uncontrolled hazardous waste site because of the uncontrolled presence of any hazardous substance, not just "hazardous wastes."

OSHA's clear intention is and has been to protect workers at sites identified by governmental bodies as uncontrolled hazardous waste sites because of the presence of any hazardous substances. To prevent the possibility of any confusion, OSHA is correcting the term "hazardous waste" in the definition of "uncontrolled hazardous waste sites" in 29 CFR 1910.120(a)(3) to "hazardous substances." In addition the clause "identified as an uncontrolled hazardous waste site by a governmental body, whether Federal, state, local or other" is added to the definition to make clear that this definition is to be read in conjunction with the scope paragraph.

SARA provides (29 U.S.C. 656, note, (d)(1) and (d)(3)) that the required training can result from a course and on the job training or from training and experience prior to the effective date of the interim standard. It also provides that, in either case, there be provision for certifying that covered employees have the required training. It is and has been OSHA's intention that a certificate of training be available to employees in both cases and 29 CFR 1910.120(e) and specifically paragraph (e)(6) so indicate. However to avoid possible confusion OSHA is correcting paragraph (e)(9) to further clarify this requirement.

List of Subjects in 29 CFR Part 1910

Hazardous waste, emergency response.

Accordingly 29 CFR 1910.120 is amended to read as follows:

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

§ 1910.120 [Amended]

1. The authority citation for 29 CFR part 1910, subpart H continues to read as follows:

Authority: Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-76 (41 FR 25059), 9-83 (48 FR 35736), or 1-90 (55 FR 9032) as applicable.

Sections 1910.103, 1910.108, 1910.107, 1910.108, 1910.109, 1910.110 and 1910.111 are also issued under 29 CFR part 1911.

Section 1910.110 is also issued under 5 U.S.C. 553 and 29 CFR part 1911.

Section 1910.111 is also issued under 29 CFR part 1911.

Section 1910.120 is also issued under section 126 of the Superfund Amendments and Reauthorization Act of 1986 as amended (29 U.S.C. 655 note), 5 U.S.C. 553, and 29 CFR part 1911.

2. In § 1910.120 paragraph (a)(3) is corrected by revising the definition of "uncontrolled hazardous waste site" to read as follows:

§ 1910.120 Hazardous waste operations and emergency response.

"Uncontrolled hazardous waste site," means an area identified as an uncontrolled hazardous waste site by a governmental body, whether Federal, state, local or other where an accumulation of hazardous substances creates a threat to the health and safety of individuals or the environment or both. Some sites are found on public lands such as those created by former municipal, county or state landfills where illegal or poorly managed waste disposal has taken place. Other sites are found on private property, often belonging to generators or former generators of hazardous substance wastes. Examples of such sites include, but are not limited to, surface impoundments, landfills, dumps, and tank or drum farms. Normal operations at TSD sites are not covered by this definition.

§ 1910.120 [Amended]

3. In § 1910.120 paragraph (e)(9) is corrected by revising it to read as follows:

(e) * * *

(9) *Equivalent training.* Employers who can show by documentation or certification that an employee's work experience and/or training has resulted in training equivalent to that training required in paragraphs (e)(1) through (e)(4) of this section shall not be

required to provide the initial training requirements of those paragraphs to such employees and shall provide a copy of the certification or documentation to the employee upon request. However, certified employees or employees with equivalent training new to a site shall receive appropriate, site specific training before site entry and have appropriate supervised field experience at the new site. Equivalent training includes any academic training or the training that existing employees might have already received from actual hazardous waste site work experience.

Signed at Washington, DC this 10th day of April, 1991.

Gerard F. Scannell,

Assistant Secretary of Labor.

[FR Doc. 91-9087 Filed 4-17-91; 8:45 am]

BILLING CODE 4510-26-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 1

RIN 2900-AE73

Release of Information From Department of Veterans Affairs Claimant Record—Judicial Proceedings

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs is amending its regulations concerning release of claimants' records in judicial proceedings to comply with the precedents set forth in recent court decisions. The regulation, as amended, will enable VA to provide records required by judicial process in accordance with recent court decisions. The regulation, as amended, also provides guidance for disclosing medical records pertaining to drug and alcohol abuse, human immunodeficiency virus and sickle cell anemia treatment, which are protected by 38 U.S.C. 4132.

EFFECTIVE DATE: May 20, 1991.

FOR FURTHER INFORMATION CONTACT: Marjorie M. Leandri, Records Management Service (723), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233-2454.

SUPPLEMENTARY INFORMATION: VA finds that advance publication for notice and public comment is not required. The regulatory amendment involved is consistent with the Secretary's lawful ability to promulgate regulations concerning release of information. The

amendment reflects a change in Departmental policy consistent with recent court decisions. The amendment affects only existing Departmental procedures and practices which are not substantive in their effect. Thus, in accordance with the provisions of 38 CFR 1.12, advance publication in the Federal Register is not necessary. Accordingly, the amendment to the foregoing regulations is now published as final.

This final regulatory amendment does not meet the criteria for a major rule as that term is defined by Executive Order 12291, Federal Regulation. This regulatory amendment will not have a \$100 million annual effect on the economy, will not cause a major increase in costs or prices and will not have any other significant adverse effects on the economy.

The Secretary hereby certifies that these regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), these regulations are therefore exempt from the regulatory analysis requirements of 5 U.S.C. 603 and 604. The reason for the certification is that the involved regulations apply only to release of claimants' records in judicial proceedings, and impose no regulatory burden on small entities.

There are no applicable Catalog of Federal Domestic Assistance Numbers.

List of Subjects in 38 CFR Part 1

Administrative practice and procedure, Cemeteries, Claims, Flags, Freedom of information, Government contracts, Government employees, Infants and children, Inventions and patents, Investigations, Parking, Penalties, Postal Service, Privacy, Reporting and recordkeeping requirements, Seals and insignia, Security measures, Wages.

Approved: April 5, 1991.

Edward J. Darwinaki,

Secretary of Veterans Affairs.

PART 1—[AMENDED]

38 CFR part 1 is amended as follows:
1. Section 1.511 is revised to read as follows:

§ 1.511 Disclosure of claimant records in connection with judicial proceedings generally.

(a)(1) Where a suit (or legal proceeding) has been threatened or instituted against the Government, or a prosecution against a claimant has been instituted or is being contemplated, the

request of the claimant or his or her duly authorized representative for information, documents, reports, etc., shall be acted upon by the General Counsel in Central Office, or the District Counsel for the field facility, who shall determine the action to be taken with respect thereto. Where the records have been sent to the Department of Justice in connection with any such suit (or legal proceeding), the request will be referred to the Department of Justice, Washington, DC, through the office of the General Counsel, for attention. Where the records have been sent to an Assistant U.S. Attorney, the request will be referred by the appropriate District Counsel to the Assistant U.S. Attorney. In all other cases where copies of documents or records are desired by or on behalf of parties to a suit (or legal proceeding), whether in a Federal court or any other, such copies shall be disclosed as provided in paragraphs (b) and (c) of this section where the request is accompanied by court process, or paragraph (e) of this section where the request is not accompanied by court process. A court process, such as a court order or subpoena duces tecum should be addressed to either the Secretary of Veterans Affairs or to the head of the field facility at which the records desired are located. The determination as to the action to be taken upon any request for the disclosure of claimant records received in this class of cases shall be made by the component having jurisdiction over the subject matter in Central Office, or the division having jurisdiction over the subject matter in the field facility, except in those cases in which representatives of the component or division have determined that the records desired are to be used adversely to the claimant, in which event the process will be referred to the General Counsel in Central Office or to the District Counsel for the field facility for disposition.

(2) Where a claim under the provisions of the Federal Tort Claims Act has been filed, or where such a claim can reasonably be anticipated, no information, documents, reports, etc., will be disclosed except through the District Counsel having jurisdiction, who will limit the disclosure of information to that which would be available under discovery proceedings, if the matter were in litigation. Any other information may be disclosed only after concurrence in such disclosure is provided by the General Counsel.

(b) *Disclosures in response to Federal court process.*—(1) *Court order.* Except for drug and alcohol abuse, human immunodeficiency virus and sickle cell

anemia treatment records, which are protected under 38 U.S.C. 4132, where the records sought are maintained in a VA Privacy Act system of records, and are retrieved by the name or other personal identifier of a living claimant who is a citizen of the United States or an alien lawfully admitted for permanent residence, a Federal court order is the process necessary for the disclosure of such records. Upon receipt of a Federal court order directing disclosure of claimant records, such records will be disclosed. Disclosure of records protected under 38 U.S.C. 4132 will be made in accordance with provisions of paragraph (g) of this section.

(2) *Subpoena.* Except for drug and alcohol abuse, human immunodeficiency virus and sickle cell anemia treatment records, which are protected under 38 U.S.C. 4132, where the records sought are maintained in a VA Privacy Act system of records, and are retrieved by the name or other personal identifier of a claimant, a subpoena is not sufficient authority for the disclosure of such records and such records will not be disclosed, unless the claimant is deceased, or either is not a citizen of the United States, or is an alien not lawfully admitted for permanent residence. Where one of these exceptions applies, upon receipt of a Federal court subpoena, such records will be disclosed. Additionally, where the subpoena is accompanied by authorization from the claimant, disclosure will be made. Regarding the disclosure of medical records pertaining to drug and alcohol abuse, human immunodeficiency virus and sickle cell anemia treatment, a subpoena is insufficient for such disclosure. Specific provisions for the disclosure of these records are set forth in paragraph (g) of this section.

(3) A disclosure of records in response to the receipt of a Federal court process will be made to those individuals designated in the process to receive such records, or to the court from which the process issued. Where original records are produced, they must remain at all times in the custody of a representative of the Department of Veterans Affairs, and, if offered and received in evidence, permission should be obtained to substitute a copy so that the original may remain intact in the record. Where a court process is issued by or on behalf of a party litigant other than the United States, such party litigant must prepay the costs of copies in accordance with fees prescribed by § 1.526(i) and any other costs incident to producing the records.

(c) *Disclosures in response to state or local court process.*—(1) *State or local court order.* Except for drug and alcohol abuse, human immunodeficiency virus and sickle cell anemia treatment records, which are protected under 38 U.S.C. 4132, where the records sought are maintained in a VA Privacy Act system of records, and are retrieved by the name or other personal identifier of a living claimant who is a citizen of the United States or an alien lawfully admitted for permanent residence, a State or local court order is the process necessary for disclosure of such records. Upon receipt of a State or local court order directing disclosure of claimant records, disclosure of such records will be made in accordance with the provisions set forth in paragraph (c)(3) of this section. Disclosure of records protected under 38 U.S.C. 4132 will be made in accordance with provisions of paragraph (g) of this section.

(2) *State or local court subpoena.* Except for drug and alcohol abuse, human immunodeficiency virus and sickle cell anemia treatment records, which are protected under 38 U.S.C. § 4132, where the records sought are maintained in a VA Privacy Act system of records, and are retrieved by the name or other personal identifier of a claimant, a subpoena is not sufficient authority for disclosure of such records and such records will not be disclosed unless the claimant is deceased, or, either is not a citizen of the United States, or is an alien not lawfully admitted for permanent residence. Where one of these exceptions applies, upon receipt of a State or local court subpoena directing disclosure of claimant records, disclosure of such records will be made in accordance with the provisions set forth in paragraph (c)(3), of this section. Regarding the disclosure of 4132 records, a subpoena is insufficient for such disclosure. Specific provisions for the disclosure of these records are set forth in paragraph (g) of this section.

(3) Where the disclosure provisions of paragraph (c) (1) or (2) of this section apply, disclosure will be made as follows:

(i) When the process presented is accompanied by authority from the claimant; or,

(ii) In the absence of claimant disclosure authority, the District Counsel having jurisdiction must determine whether the disclosure of the records is necessary to prevent the perpetration of fraud or other injustice in the matter in question. To make such a determination, the District Counsel may require such additional

documentation, e.g., affidavit, letter of explanation, or such other documentation which would detail the need for such disclosure, set forth the character of the pending suit, and the purpose for which the documents or records sought are to be used as evidence. The claimant's record may also be considered in the making of such determination. Where a court process is received, and the District Counsel finds that additional documentation will be needed to make the foregoing determination, the District Counsel, or other employee having reasonable knowledge of the requirements of this regulation, shall contact the person causing the issuance of such court process, and advise that person of the need for additional documentation. Where a court appearance is appropriate, and the District Counsel has found that there is an insufficient basis upon which to warrant a disclosure of the requested information, the District Counsel, or other employee having reasonable knowledge of the requirement of this regulation and having consulted with the District Counsel, shall appear in court and advise the court that VA records are confidential and privileged and may be disclosed only in accordance with applicable Federal regulations, and to further advise the court of such regulatory requirements and how they have not been satisfied. Where indicated, the District Counsel will take appropriate action to have the matter of disclosure of the affected records removed to Federal court.

(4) Any disclosure of records in response to the receipt of State or local court process will be made to those individuals designated in the process to receive such records, or to the court from which such process issued. Payment of the fees as prescribed by § 1.526(i), as well as any other cost incident to producing the records, must first be deposited with the Department of Veterans Affairs by the party who caused the process to be issued. The original records must remain at all times in the custody of a representative of the Department of Veterans Affairs, and, if there is an offer and admission of any record or document contained therein, permission should be obtained to substitute a copy so that the original may remain intact in the record.

(d) Notice requirements where disclosures are made pursuant to court process. Whenever a disclosure of Privacy Act protected records is made in response to the process of a Federal, State, or local court, the custodian of the records disclosed will make reasonable

efforts to notify the subject of such records that such subject's records were disclosed to another person under compulsory legal process. Such notice should be accomplished when the process compelling disclosure becomes a matter of public record. Generally, a notice sent to the last known address of the subject would be sufficient to comply with this requirement.

(e) Disclosures in response to requests when not accompanied by court process. Requests received from attorneys or others for copies of records for use in suits in which the Government is not involved, not accompanied by a court process, will be handled by the component or division having jurisdiction over the subject matter. If the request can be complied with under § 1.503 or § 1.504, and under the Privacy Act (to the extent that such records are protected by the Privacy Act), the records requested will be disclosed upon receipt of the required fee. If, however, the records cannot be furnished under such authority, the applicant will be advised of the procedure to obtain copies of records as set forth in paragraphs (b) and (c) of this section.

(f) Suits by or against the Secretary under 38 U.S.C. 1820. Records pertaining to the loan guaranteed, insured, or made by the Department of Veterans Affairs may be made available by the General Counsel or the District Counsel subject to the usual rules of evidence, and where authorized under the Privacy Act, after clearance with the Department of Justice or U.S. Attorney if appropriate.

(g) Disclosure of drug abuse, alcohol abuse, human immunodeficiency virus and sickle cell anemia treatment or related records under court process. Disclosure of these types of records, which are protected from unauthorized disclosure under 38 U.S.C. 4132, may be made only in response to an appropriate order of a court of competent jurisdiction granted after application showing good cause therefore. In assessing good cause the court is required to weigh the public interest and the need for disclosure against the injury to the patient or subject, to the physician-patient relationship, and to the treatment services. The court, in determining the extent to which any disclosure of all or any part of any record is necessary, shall impose appropriate safeguards against unauthorized disclosure. As to a Federal court order satisfying the requirements of this paragraph, the records will be disclosed as provided in such order. As to a State or local court order satisfying the requirements of this subsection, the

disclosure of the records involved is conditioned upon satisfying the provisions set forth in paragraph (c)(3) of this section. If the aforementioned section is satisfied, and a disclosure of records is to be forthcoming, the records will be disclosed as provided in the court order.

[Authority: 5 U.S.C. 552; 5 U.S.C. 552a; 38 U.S.C. 3301 and 38 U.S.C. 4132]

[FR Doc. 91-9045 Filed 4-17-91; 8:45 am]

BILLING CODE 8320-01-M

38 CFR Part 21

RIN 2900-AF16

Basic Entitlement to Vocational Rehabilitation

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is revising its regulations to conform to the change in the provisions for basic entitlement to a program of vocational rehabilitation services. The Omnibus Budget Reconciliation Act of 1990 limits the basic entitlement of certain service-disabled veterans with compensable service-connected disabilities to benefits and services under the vocational rehabilitation program. Veterans filing an original application on or after November 1, 1990, must have a compensable service-connected disability evaluated at 20 percent or more disabling in order to meet the new conditions of the law. Veterans whose compensable service-connected disabilities are evaluated at less than 20 percent disabling may be considered for a program of vocational rehabilitation services if they applied for vocational rehabilitation benefits before November 1, 1990. The intended effect of this rule is to implement the provisions of the Act.

DATES: These changes are effective November 1, 1990, in accordance with the Omnibus Budget Reconciliation Act of 1990.

FOR FURTHER INFORMATION CONTACT: Morris Triestman, Rehabilitation Consultant, Policy and Program Development, Vocational Rehabilitation Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-6496.

SUPPLEMENTARY INFORMATION: A vocational rehabilitation program may be authorized for a veteran found entitled to benefits and services. This determination is made by counseling psychologists in the Vocational Rehabilitation and Counseling Division on an individual basis. Prior to

November 1, 1990, one of the conditions for basic entitlement to a program of vocational rehabilitation required that the veteran have a service-connected disability which is, or but for the receipt of retired pay would be, compensable and which was incurred or aggravated in service on or after September 16, 1940.

The Omnibus Budget Reconciliation Act of 1990 changes the requirement described above. Under the changes the requirement for service-connected disability as a condition of basic entitlement is met under one of the two conditions listed below.

1. A veteran filing an original application for vocational rehabilitation on or after November 1, 1990, must have a service-connected disability evaluated at 20 percent or more disabling; or

2. A veteran with a service-connected disability evaluated at less than 20 percent disabling filed an original application or reapplied for vocational rehabilitation before November 1, 1990.

VA has determined that this final rule does not contain a major rule as that term is defined in Executive Order 12291, Federal Regulation. The rule will not have a \$100 million annual effect on the economy, will not cause a major increase in costs or prices, and will not have any other significant adverse effects on the economy.

Publication of these changes for public notice and comment is unnecessary because these changes simply implement provisions of law. These regulatory amendments are retroactively effective to November 1, 1990, as specified in the law. Moreover, VA finds that good cause exists for making these rules retroactively effective. A delayed effective date would be contrary to statutory design and would complicate implementation of this provision of law.

Since a notice of proposed rulemaking is unnecessary and will not be published, these changes are not subject to the requirements of the Regulatory Flexibility Act, (RFA). In any case this rule will not have a significant economic impact on a substantial number of small entities as they are defined in the RFA. Pursuant to 5 U.S.C. 605(b), this rule is therefore exempt from the initial and final flexibility analyses requirements of sections 603 and 604. The reason for this certification is that the rule only affects the rights of individual beneficiaries. No new regulatory burdens are imposed on small entities by these amendments.

The Catalog of Federal Domestic Assistance number is 64.116.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs, Loan programs, Reporting requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: March 19, 1991.

Edward J. Derwinski,
Secretary of Veterans Affairs.

PART 21—[AMENDED]

38 CFR part 21, Vocational Rehabilitation and Education, is amended as follows:

§ 21.40 [Amended].

1. Section 21.40 is revised to read as follows:

§ 21.40 Basic entitlement.

A veteran or serviceperson shall be entitled to a program of rehabilitation services under 38 U.S.C. chapter 31 if all of the following conditions are met:

(a) *Service-connected disability.* (1) The veteran has a service-connected disability of 20 percent or more which is, or but for the receipt of retired pay would be, compensable under 38 U.S.C. chapter 11, and which was incurred or aggravated in service on or after September 16, 1940; or

(2) A serviceperson is hospitalized for a service-connected disability in a hospital over which the Secretary concerned has charge pending discharge or release from active military, naval or air service and is suffering from a disability which will likely be compensable at a rate of 20 percent or more under 38 U.S.C. Chapter 11; or

(3) A veteran or serviceperson, as described in paragraphs (a)(1) and (2) of this section, has a service-connected disability which is compensable or is likely to be compensable at less than 20 percent, if the individual filed an original application for Chapter 31 before November 1, 1990.

(b) *Employment handicap.* The veteran or serviceperson is determined to be in need of rehabilitation to overcome an employment handicap.

(Authority: 38 U.S.C. 1502, Pub. L. 101-508)

§ 21.42 [Amended].

2. In § 21.42, paragraph (a) and its authority citation are revised to read as follows:

(a) *Qualifying compensable service-connected disability established.* The basic twelve-year period shall not begin to run until the veteran establishes the existence of a compensable service-connected disability described in § 21.40(a). When the veteran establishes

the existence of a compensable service-connected disability described in § 21.40(a), the basic twelve-year period begins on the day the Department of Veterans Affairs notifies the veteran of this. The ending date is twelve years from the beginning date.

(Authority: 38 U.S.C. 1503(b)(3), Pub. L. 101-508)

§ 21.47 [Amended].

3. In § 21.47, paragraph (b)(3) is revised to read as follows:

(b) * * *

(3) The veteran meets the criteria for eligibility described in § 21.40(a); and

§ 21.50 [Amended].

4. In § 21.50, paragraph (a) is revised and an authority citation is added to read as follows:

(a) *Eligibility for initial evaluation.* VA shall provide an initial evaluation to each individual who applies for benefits under chapter 31 if the individual's compensable service-connected disability meets one of the conditions contained in § 21.40(a).

(Authority: 38 U.S.C. 1502(1), Pub. L. 101-508)

[FR Doc. 91-9046 Filed 4-17-91; 8:45 am]

BILLING CODE 6320-01-M

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Part 95**

[PR Docket No. 90-222; FCC 91-103]

Technical Standards for Transmitters Operating in the 72-76 MHz Band in the Radio Control (R/C) Radio Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action establishes new technical standards for R/C transmitters operating in the 72-76 MHz (VHF) band. The rule changes are necessary so that the VHF channels can be used more efficiently. The effect of the rule changes is to reduce the level of permitted unwanted radiation and to improve the frequency stability of R/C transmitters that are used for remote control of model aircraft, boats, and cars (models).

EFFECTIVE DATE: June 21, 1991.

FOR FURTHER INFORMATION CONTACT: Maurice J. DePont, Federal Communications Commission, Private Radio Bureau, Washington, DC 20554, (202) 632-4964.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, adopted April 1, 1991, and released April 10, 1991. The complete text of this Commission action, including the rule amendments, is available for inspection and copying during normal business hours in the FCC Dockets Branch, (room 239), 1919 M Street, NW., Washington, DC. The complete text of this *Report and Order*, including the rule amendments, may also be purchased from the Commission's copy contractor, Downtown Copy Center (DDC), (202) 452-1422 1114 21st Street, NW., Washington, DC. 20036.

Summary of Report and Order

1. The Technical Regulations for the Radio Control R/C Radio Service (47 CFR part 95) have been amended to establish narrowband technical standards for transmitters operating in the 72-76 MHz band used for the remote control of models. The new technical standards are designed to reduce the permitted level of unwanted radiation and to improve the frequency stability of the aforementioned transmitters. The Commission said that the new technical standards will promote a more effective use of the radio spectrum by making it possible to use all the channels, that are currently available for model operations, at the same location.

2. R/C transmitters manufactured or imported into the United States on or after March 1, 1992, or marketed on or after March 1, 1993, must meet the new narrowband standards. Wideband transmitters purchased before March 1, 1993, may be used until March 1, 1998, at which time their use will be terminated. The Commission said that the cutoff date of March 1, 1998, represents a reasonable compromise between the competing needs of the wideband and narrowband transmitter users.

3. The amended rules are set forth at the end of this document.

4. The amended rules have been analyzed with respect to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501-3520, and found to impose a new or modified information collection requirement on the public. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget as prescribed by the Act.

5. The amended rules are issued under the authority of 47 U.S.C. 154(i), 302, and 303(f) and (r).

List of Subjects in 47 CFR Part 95

Communications equipment, Radio, Reporting and recordkeeping requirements, Technical standards.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Amended Rules

Part 95 of chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 95 continues to read as follows:

Authority: Sections 4, 303, 48 Stat. 1086, 1082, as amended; 47 U.S.C. 154, 303.

2. Section 95.623 is amended by revising paragraph (b) and adding a new paragraph (c) to read as follows:

§ 95.623 R/C transmitter channel frequencies.

* * * * *

(b) Each R/C transmitter that transmits in the 26–27 MHz frequency band with a mean TP of 2.5 W or less and that is used solely by the operator to turn on and/or off a device at a remote location, other than a device used solely to attract attention, must be maintained within a frequency tolerance of 0.01%. All other R/C transmitters that transmit in the 26–27 MHz frequency band must be maintained within a frequency tolerance of 0.005%. Except as noted in paragraph (c) of this section, R/C transmitters capable of operation in the 72–76 MHz band must be maintained within a frequency tolerance of 0.005%.

(c) All R/C transmitters capable of operation in the 72–76 MHz band that are manufactured in or imported into the United States, on or after March 1, 1992, or are marketed on or after March 1, 1993, must be maintained within a frequency tolerance of 0.002%. R/C transmitters operating in the 72–76 MHz band and marketed before March 1, 1993, may continue to be operated with a frequency tolerance of 0.005% until March 1, 1998.

3. In § 95.631(b), in the table in the introductory text the entry for R/C transmitters is revised, the present Note to the table is designated as Note 1 and republished and Note 2 is added to the table; paragraphs (b) (7) and (8) are revised; and paragraphs (b) (10), (11), and (12) are added to read as follows:

§ 95.631 Unwanted radiation.

* * * * *

(b) * * *

Transmitter	Emission type	Applicable paragraphs
R/C: 27 MHz band..	As specified in § 95.627(b).	(1), (3), (7)

Transmitter	Emission type	Applicable paragraphs
72–76 MHz band.	As specified in § 95.627(b).	(1), (3), (7), (10), (11), (12)
.	.	.

Note 1: Unwanted RF radiation may be stated in mean power or in peak envelope power, provided it is stated in the same parameter as TP.

Note 2: Paragraphs (b) (1), (10), (11), and (12) of this section apply to transmitters operating in the 72–76 MHz band that are manufactured or imported into the United States on or after March 1, 1992, or marketed on or after March 1, 1993. Paragraphs (b) (1), (3), and (7) of this section apply to transmitters operating in the 72–76 MHz band that are manufactured or imported into the United States before March 1, 1992, or marketed before March 1, 1993. R/C transmitters operating in the 72–76 MHz band that are marketed before March 1, 1993, and that meet the emission standards specified in paragraphs (b) (1), (3), and (7) of this section, may continue to be operated until March 1, 1998.

* * * * *

(7) At least $43 + 10 \log_{10}$ (TP) dB on any frequency removed from the center of the authorized bandwidth by more than 250%.

(8) At least $53 + 10 \log_{10}$ (TP) dB on any frequency removed from the center of the authorized bandwidth by more than 250%.

(9) * * *

(10) At least 45 dB on any frequency removed from the center of the authorized bandwidth by more than 100% up to and including 125% of the authorized bandwidth.

(11) At least 55 dB on any frequency removed from the center of the authorized bandwidth by more than 125% up to and including 250% of the authorized bandwidth.

(12) At least $56 + 10 \log_{10}$ (TP) dB on any frequency removed from the center of the authorized bandwidth by more than 250%.

* * * * *

[FR Doc. 91–8872 Filed 4–17–91; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

48 CFR Part 1401

RIN 1090-AA14

Department of the Interior Acquisition Regulation System

AGENCY: Department of the Interior.

ACTION: Final rule.

SUMMARY: This rule revises the Department of the Interior Acquisition Regulation (DIAR) System to allow the Department's bureaus and offices (hereinafter referenced as bureaus) to codify regulations which both implement and supplement the Federal Acquisition Regulation (FAR) and the DIAR.

DATE: April 18, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Dean Titcomb, Chief, Acquisition and Assistance Division, Office of Acquisition and Property Management, U.S. Department of the Interior, Mail Stop 5512, 1849 C Street, NW., Washington, DC 20240.

SUPPLEMENTARY INFORMATION: The DIAR would be changed at subpart 1401.3, Agency Acquisition Regulations, to allow bureaus to codify acquisition regulations which would both implement and supplement the FAR and the DIAR.

When the FAR was first published on April 1, 1984, the Department published their FAR Supplement as required by 48 CFR 1.301 (49 FR 14252–14280). The Departmental Supplement established the DIAR System which consisted of codified regulations which are required to be published pursuant to 48 CFR 1.301(b) and unpublished regulations (internal guidance) as provided for under 48 CFR 1.301(a)(2). In the looseleaf version of the DIAR, codified regulations are identified by underlined DIAR section numbers; unpublished regulations do not have underlined section numbers.

The established DIAR system only allowed published and codified bureau-wide regulations to supplement the FAR. One bureau has requested authority to both implement and supplement the FAR and DIAR. Thus, this rule revises §§ 1401.301, 1401.302, 1401.303 and 1401.304 to establish an appendix system which will permit bureaus to publish and codify regulations which implement and supplement the FAR and DIAR in accordance with the procedures outlined in § 1401.304. Codified bureau regulations will be published as a separate appendix to 48 CFR chapter 14. Because this rule concerns only internal procedures, it was not published for public comment in accordance with the Administrative Procedure Act's exception for rules of agency organization, procedure and practice (5 U.S.C. 553(b)(A)).

Primary Author

The primary author of this rule is Ms. Miriam Phillips, Office of Acquisition

and Property Management, Department of the Interior, telephone (202) 208-6705.

Executive Order 12291, Paperwork Reduction Act, Regulatory Flexibility Act, and National Environmental Policy Act

The Department has determined that this rule is not a major rule under Executive Order 12291 since its primary effects are on each bureau's contracting activity. The Department also certifies that this rule will not have a significant economic effect on a substantial number of small entities or other parties eligible to contract with the Department since it will only affect Departmental contracting activities.

This rule does not contain any collections of information which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* The Department of the Interior has determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment pursuant to section 102 (ii)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(ii)(C)).

List of Subjects in 48 CFR Part 1401

Government Procurement.

Accordingly, 48 CFR part 1401 is amended as follows:

Dated: March 22, 1991.

John E. Schrote,

Acting Assistant Secretary, Policy, Management and Budget.

1. The authority citation for 48 CFR part 1401 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390, 40 U.S.C. 486(c), and 5 U.S.C. 301.

PART 1401—DEPARTMENT OF THE INTERIOR ACQUISITION REGULATION SYSTEM

Subpart 1401.3—Agency Acquisition Regulations

1. Section 1401.301 is revised to read as follows:

§ 1401.301 Policy.

(a)(1) Subject to the authorities in paragraph (d) of this section, the Department issues acquisition regulations which implement or supplement the FAR under the Department of the Interior Acquisition Regulation (DIAR) System. The regulations, as part of the FAR system, are issued in accordance with the policy in FAR 1.301(a)(1).

(2) Subject to the authorities in paragraph (d) of this section, the Department also issues internal guidance and instructions under the DIAR System in accordance with the policy in FAR 1.301(a)(2).

(b) Public participation in the promulgation of the acquisition regulations which are published in the **Federal Register** shall follow the Department's rulemaking procedures prescribed in part 318, chapter 6 of the Departmental Manual (318 DM 6) and the procedures in FAR subpart 1.5.

(c) Regulations and internal guidance under the DIAR System are issued pursuant to the authority of the Secretary of the Interior under 5 U.S.C. 301 and 40 U.S.C. 486(c). This authority has been delegated to the Assistant Secretary—Policy, Management and Budget under part 209, chapter 4.1A of the Departmental Manual (209 DM 4.1A).

2. Section 1401.301-70 is added to read as follows:

§ 1401.301-70 Definitions.

(a) *Implement*, as used in this subpart, means coverage that expands upon or specifically indicates the manner of compliance with related higher level coverage.

(b) *Supplement*, as used in this subpart, means material for which there is no counterpart in higher-level coverage.

3. In § 1401.302, the introductory text and paragraphs (a), (c) and (d) are republished. Paragraph (b) is revised. As revised § 1401.302 reads as follows:

§ 1401.302 Limitations.

DIAR System regulations and internal guidance conform to the limitations in FAR 1.301 and consist of—

(a) Published and codified Department-wide regulations which implement or supplement FAR policies and procedures and directly govern the contracting relationship between the Department's bureaus and offices and existing or potential contractors;

(b) Published and codified bureau-wide regulations which implement or supplement FAR and DIAR policies and procedures and govern the relationship between a bureau and existing or potential contractors to satisfy specific and unique needs of the particular bureau;

(c) Unpublished Department-wide internal guidance related to administrative implementation of FAR policies and procedures which does not directly affect existing or potential contractors; and

(d) Unpublished bureau-wide internal guidance which is necessary for administrative implementation of FAR or DIAR System requirements at organizational levels.

4. Section 1401.303 is revised to read as follows:

§ 1401.303 Publication and codification.

(a) (1) Implementing and supplementing regulations issued under the DIAR System are codified under chapter 14 in title 48, Code of Federal Regulations and shall parallel the FAR in format, arrangement, and numbering system.

(2) (i) Department-wide regulations (see 1401.302(a)) are assigned parts 1401 through 1479 under 48 CFR, chapter 14.

(ii) Where material in the FAR requires no implementation, there will be no corresponding number in the DIAR. Thus, there are gaps in the DIAR sequence of numbers where the FAR, as written, is deemed adequate. Supplementary material shall be numbered as specified in FAR 1.303.

(3) (i) Bureau-wide regulations (see § 1401.302(b)) are authorized for codification in Appendices to chapter 14 as assigned by the Director, Office of Acquisition and Property Management, in accordance with § 1401.304(a)(3).

(ii) Regulations implementing the FAR or DIAR are numbered using parts 1401 through 1479. Supplementary material is numbered using parts 1480 through 1499. Numbers for implementing or supplementing regulations are preceded by a prefix to the digit 14 (indicating chapter 14—DIAR) for the organization indicated as follows:

- (A) Bureau of Indian Affairs—BIA
- (B) Bureau of Reclamation—WBR
- (C) Office of the Secretary—OS
- (D) Bureau of Land Management—LLM
- (E) Bureau of Mines—WBM
- (F) Geological Survey—WGS
- (G) Office of Surface Mining—LSM
- (H) Minerals Management Service—LMS
- (I) National Park Service—FNP
- (J) Fish and Wildlife Service—FWS

(b) Copies of issuances under 1401.302 (a), (b) and (c) may be obtained from the Office of Acquisition and Property Management, Office of the Secretary, U.S. Department of the Interior, 1849 C Street, NW., Washington, DC 20240.

5. Section 1401.304 is revised to read as follows:

§ 1401.304 Agency control and compliance procedures.

(a) (1) The DIAR System is under the direct oversight and control of the Director, Office of Acquisition and Property Management, who is responsible for review and preparation for issuance of all Department-wide and bureau-wide codified acquisition regulations published in the **Federal Register** to assure compliance with FAR part 1. Review procedures are contained in part 401 of the Departmental Manual (401 DM) and (3) below. One copy of all

material issued under § 1401.302 (b) and (d) shall be furnished to the Director, Office of Acquisition and Property Management, at the time of issuance.

(2) The Director, Office of Acquisition and Property Management, is also responsible for review and issuance of unpublished Department-wide internal guidance under the DIAR System.

(3) A bureau wishing to issue bureau-wide regulations under § 1401.302(b) shall submit a request to the Director, Office of Acquisition and Property Management, for authority to proceed with the regulation. The request shall include a justification for the regulation, a proposed outline of regulation and the significant contents of the coverage to be included. The Director, Office of Acquisition and Property Management, shall review the request to determine if the regulation should be considered for inclusion into the DIAR or FAR. If a determination is made that the regulation is appropriate for inclusion in the DIAR or FAR, the Office of Acquisition and Property Management will process the regulation accordingly. If a determination is made that the regulation is appropriate for inclusion in bureau-wide regulations only, an appendix to 48 CFR, chapter 14 shall be assigned for the regulation by the Director, Office of Acquisition and Property Management, and authorization shall be granted for the bureau to proceed with the regulation in accordance with the procedures referenced in § 1401.301(b). Rulemaking notices shall be submitted to the Director, Office of Acquisition and Property Management, for processing of Assistant Secretary—Policy, Management and Budget approval under 401 DM 1.4C(3), before signature by the appropriate program Assistant Secretary.

(4) Heads of contracting activities are responsible for establishment and implementation of formal procedures for oversight and control of all unpublished bureau-wide internal guidance issued to implement FAR or DIAR requirements. These procedures shall be reviewed and approved by the Director, Office of Acquisition and Property Management, and shall include—

- (i) Provisions for centralized issuance of all guidance and instructions using a directives system;
- (ii) Methods for periodic review and updating of all issuances;
- (iii) Distribution processes which assure timely receipt by all affected contracting offices; and
- (iv) Provisions for maintaining compliance with FAR 1.304.

(b) The Director, Office of Acquisition and Property Management, is

responsible for evaluating coverage under the DIAR System to determine applicability to other agencies and for recommending coverage to the FAR Secretariat for inclusion in the FAR. Recommendations for revision of existing FAR coverage or new FAR coverage shall be submitted by the head of the contracting activity to the Director, Office of Acquisition and Property Management, for further action.

[FR Doc. 91-8932 Filed 4-17-91; 8:45 am]

BILLING CODE 4310-RF-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 533

[Docket No. FE-88-03; Notice 5]

Light Truck Average Fuel Economy Standards; Model Year 1992

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

ACTION: Denial of petition for reconsideration.

SUMMARY: On April 4, 1990 (55 FR 12487), NHTSA issued a final rule setting a single corporate average fuel economy (CAFE) standard applicable to all light trucks for model year (MY) 1992. That rule discontinued NHTSA's past practice of providing manufacturers with the alternative of complying with separate standards for two wheel drive (2WD) and four wheel drive (4WD) light trucks. General Motors Corp. (GM) has petitioned the agency seeking reinstatement of the practice of setting such alternative standards.

NHTSA has decided to deny the petition. The setting of optional standards for light trucks is not required by statute. The agency believes that setting such standards at this time would be inconsistent with the goal of encouraging fuel economy improvement by the least capable light truck manufacturer with a substantial market share. Further, the agency believes that when it sets the single, combined standard, it adequately considers the risks and uncertainties faced by each manufacturer concerning its projected sales ratio of 2WD to 4WD light trucks. As a result, manufacturers are not subject to undue risk as a result of the agency's decision to promulgate a single combined standard only.

FOR FURTHER INFORMATION CONTACT: Mr. Orron Kee, Office of Market Incentives, National Highway Traffic Safety Administration, 400 Seventh St.,

SW., Washington, DC 20590 (202) 366-0846.

SUPPLEMENTARY INFORMATION: On April 4, 1990 (55 FR 12487), NHTSA issued a final rule setting a single CAFE standard applicable to all light trucks for MY 1992. For the preceding nine model years, beginning in MY 1983, NHTSA had set optional separate 2WD and 4WD standards for each model year in addition to the single combined standard. This approach had the effect of providing manufacturers with additional compliance flexibility, since they could choose to comply with either the separate standards for their 2WD and 4WD fleets, or the combined standard.

The final rule for MY 1992 set a single combined standard, and did not include the optional separate standards. In discontinuing the setting of optional separate standards, the agency noted its belief that the separate standards could potentially decrease fuel economy by encouraging the manufacture of less efficient 4WD models. NHTSA also noted that when it set the combined standard, it accounted for the risk of an adverse effect on a manufacturer's CAFE from the increasing demand for 4WD light trucks versus 2WD light trucks. The agency also noted that the originally intended beneficiaries of the practice of setting optional standards, American Motors and International Harvester, no longer needed such standards since the former has been acquired by Chrysler and the latter has stopped making light trucks.

On May 4, 1990, GM filed a petition seeking reconsideration of the agency's decision to discontinue setting optional separate 2WD and 4WD standards. GM argued that discontinuing the optional separate standards is inconsistent with longstanding agency precedent, and that it would put full line manufacturers at a competitive disadvantage and reduce their flexibility in meeting the light truck CAFE standards. GM's specific arguments and NHTSA's responses to them are set out below.

GM's Arguments

1. GM first asserted that separate CAFE standards for classes of light trucks are authorized by the statute, and that in past rulemakings, NHTSA has endorsed the inclusion of optional separate standards. Specifically, GM cited documents supporting the MY 1983-85 light truck standards. In those documents, according to GM, NHTSA characterized the approach of enabling manufacturers to choose between separate standards or a combined standard as "clearly superior." GM

stated that, in justifying the setting of separate standards, NHTSA has always focused on considerations broader than the specific circumstances surrounding AMC and International Harvester. In support of this contention, GM alleged that NHTSA identified GM as a primary beneficiary of the separate standards at the time the agency set the MY 1990-91 light truck standards.

GM next took issue with NHTSA's statement in the MY 1992 final rule that separate standards are no longer necessary. In particular, the petition questioned NHTSA's concern that retaining separate standards may actually decrease fuel economy by encouraging the production of less-efficient 4WD vehicles by full-line manufacturers. GM offered several arguments on this issue.

2. GM stated there is no basis for distinguishing between full line and limited producers in this regard, and that there is no reason to conclude that such a result is more likely today than at any other time since the separate standards have been in existence.

3. The petitioner argued that its product decisions are market driven, and that market demand provides the only incentive to increase 4WD production.

4. GM asserted that "NHTSA has ample authority in assessing capability and determining the maximum feasible level for a 4WD standard to assure against a failure by manufacturers to make reasonable efforts."

5. GM noted the MY 1992 final rule concludes that manufacturers are unable to make significant improvements in MY 1992 light truck CAFE through technological or marketing actions, and that product restrictions should not be considered as a means of improving CAFE. According to the petitioner, it was therefore impossible for the agency to conclude that retention of the separate standards could encourage increased production of 4WD vehicles.

6. GM contended that the decision to discontinue the separate standards unfairly confers a benefit upon manufacturers making predominantly 2WD vehicles, and that it is not clear that NHTSA already properly accounted for the increasing demand for 4WD vehicles when setting the combined standard.

Responses to GM's arguments

NHTSA agrees that the setting of separate CAFE standards for light trucks is authorized by the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2001, 2002(b)). The agency notes, however, that the promulgation of

standards for different classes of light trucks is a discretionary function of the agency. NHTSA is not required to promulgate separate standards. As discussed below, the agency now believes that the optional separate standards are inconsistent with the goal of encouraging improvements by manufacturers, particularly the least capable manufacturer with a substantial market share.

Although the agency issued separate 2WD and 4WD standards in MY 1980-82 (without issuing corresponding a combined standard for any of those years), the practice of providing a choice between separate standards and a single combined standard had its origin in the MY 1983-85 rulemaking. NHTSA noted that while there are certain advantages to establishing separate standards for each of several vehicle classes, there are also certain disadvantages. The agency noted that separate class standards reduce manufacturers' flexibility in complying with standards, by requiring improvements to each class of vehicles subject to standards rather than permitting the option of making a major improvement to only one class of vehicles. 45 FR 81594, December 11, 1980. A commenter to that rulemaking suggested that the agency issue company-specific light truck standards to take into account the varying ratios of 2WD and 4WD production between various manufacturers. Although the agency supported the goals of that approach at that time, it believed that it lacked the authority to issue manufacturer-specific light truck standards based solely on mix projections. See, 45 FR 81593, 81594, December 11, 1980. The agency concluded that the advantages of a composite standard could be achieved in the 1983-85 model years through the addition of an optional single average fuel economy standard applicable to all companies.

The opportunity to choose the combined standard was intended in part to provide manufacturers with greater compliance and investment flexibility by allowing them to concentrate fuel economy improvements on one fleet at a time. Manufacturers will continue to have this flexibility under the mandatory single combined standard for MY 1992.

GM's assertion that NHTSA stated that being able to choose between the combined and separate standards is "clearly superior" is erroneous. NHTSA's final regulatory analysis (FRA) for the MY 1983-85 rulemaking, discussing the "new" combined standard, stated that "[t]he Agency

believes that an optional standard compared to separate 4x2 and 4x4 standards is clearly superior." In that statement, the agency was simply acknowledging the benefits of the new optional combined standard over the separate standards, which until then had been mandatory. The agency did not seek to endorse a manufacturer's ability to choose to comply with either the separate or combined standards over the adoption of a single combined standard.

NHTSA believes there is no longer a necessary role for separate standards in today's light truck market. As discussed in the MY 1983-85 rulemaking, the agency originally provided separate standards due to the lower fuel economy of 4WD light trucks and the fact that two companies, American Motors and International Harvester, offered fleets comprised almost exclusively of 4WD vehicles. 45 FR 81593, December 11, 1980. As indicated in that notice, given the lower average fuel economy of those vehicles, any single standard would have had to be set low enough to accommodate those companies (giving no incentive for the other companies to achieve higher fuel economy) or above their capability (possibly penalizing those companies). Separate 2WD and 4WD standards avoided this problem. As discussed above, American Motors and International Harvester no longer need such standards. Further, no other manufacturer with a significant market share needs such standards. As discussed in the MY 1992 final rule, there are only four manufacturers currently marketing fleets of predominantly 4WD vehicles, Daihatsu, Suzuki, Subaru and Range Rover. The first three of these manufacturers can easily exceed the MY 1992 combined standard by virtue of their fleets of small, fuel-efficient models. Range Rover's market share is much less than one percent, and the agency concluded that its limited participation in the U.S. market does not warrant establishing separate 4WD and 2WD standards. 55 FR 12496, April 4, 1990.

Also, as explained below, NHTSA believes optional separate standards defeat the intent of the standards to encourage manufacturers, particularly the least efficient manufacturer with a substantial market share, to improve light truck CAFE.

NHTSA also believes that GM's concern about the risk of unanticipated increased demand for 4WD vehicles may be overstated. The increased cost and maintenance of 4WD vehicles, the extent to which they are actually used in off-road or inclement weather situations,

and their low fuel economy could discourage consumers from replacing existing 4WD vehicles with new 4WD models. The agency believes this is increasingly likely as a result of the recent increases in gasoline prices and uncertainties concerning fuel supplies stemming from Iraq's aggression in the Persian Gulf.

NHTSA recognizes that GM's product decisions are market-driven. While the continued setting of separate standards would provide manufacturers with increased flexibility to increase the proportion of 4WD models, this consideration must be balanced against consideration of the need of the nation to conserve energy when NHTSA is setting the standards. At present, NHTSA believes the single standard for MY 1992 provides adequate flexibility for manufacturers. This standard was set considering the projections by industry and the agency of market share of the various light trucks, the projections of the ratio of 4WD vehicles to 2WD vehicles, and the uncertainty surrounding those projections. Therefore, the agency believes it is unnecessary to provide separate standards in order to account for the possibility of mix shifts toward 4WD models.

Based upon its experience in setting light truck CAFE standards, NHTSA believes that the optional separate standards are not consistent with the goal of the statute to encourage improvements by the least capable manufacturer with a substantial market share. NHTSA's statutory obligation is to set the standards at the maximum feasible level. With respect to GM's assertion that NHTSA has ample authority in assessing capability and determining the maximum feasible level for a 4WD standard to assure against a failure by manufacturers to make reasonable efforts, the agency notes that the difficulty does not lie with the separate standards themselves. Instead, it lies with the option of being able to choose to comply with either the separate or the combined standards. The combined standard is based upon the agency's determination of the capability of the least capable manufacturer with a substantial market share. In making this determination, the agency factors in potential risks, including shifts in the ratio of 4WD vehicles to 2WD vehicles, to arrive at a figure that reflects the abilities of the least capable manufacturer. If the agency provides, in addition, optional separate standards, those standards can have the effect of eliminating the

incentive for the least capable manufacturer to make improvements, unless the same manufacturer is the least capable as to both its 2WD and 4WD fleets.

NHTSA disagrees with GM's argument that since there are no actions short of product restrictions that manufacturers can take to make significant improvements in their light truck CAFE by MY 1992, it is impossible for the agency to conclude that retention of the separate standards could encourage increased production of 4WD vehicles. NHTSA believes that providing optional separate standards not only reduces manufacturers' concerns about limiting the impact of the proportion of 4WD vehicle sales on CAFE compliance, but also reduces the incentive for manufacturers to improve the fuel economy of 4WD models.

GM claims that elimination of the separate standards is an advantage for any manufacturer making predominantly 2WD vehicles while acting as a disadvantage for manufacturers whose fleets consist largely or entirely of 4WD models, or those whose fleets have a higher penetration of 4WD vehicles than is envisioned by the 2WD/4WD split implied by the level of the combined standard. The agency does not believe that this claim has merit generally. Any revision to the standard setting process is bound to affect some manufacturers more than others. To the extent there is such an effect, NHTSA does not believe it is inequitable, particularly since most light truck manufacturers are increasing the percent of 4WD vehicles in their fleets, and similarly situated manufacturers are likely to be affected in much the same way.

When establishing the combined standard, the agency considered the projected ratio of 2WD/4WD sales, and the risks and uncertainties surrounding that ratio for the major manufacturers involved, just as it did for other variables affecting CAFE, such as engine and transmission sales projections. NHTSA was well aware of the growing market share of 4WD trucks, and took this into account in the development of the combined standard. Thus, the agency believes there is no undue risk of setting an unreasonable CAFE standard for any large manufacturer with a high projected proportion of 4WD sales.

In this context, the agency notes that when it was considering whether to issue a single standard, or class-based standards during the MY 1979 light truck CAFE rulemaking, GM argued for a

single standard because it would enable a manufacturer to concentrate fuel economy improvement efforts on high-volume models, without having to discontinue low volume, low efficiency models. See, Docket No. FE 76-03-NO1-009, GM submission of January 10, 1977. GM does not explain why it has since rejected this reasoning. Current law provides even more flexibility for manufacturers than was available at that time to meet a single light truck standard, due to the subsequent enactment by Congress of provisions for three year carryforward and carryback of CAFE credits.

Finally, GM argues that large manufacturers run the risk of accruing substantial penalties under a combined standard if the ratio of 4WD to 2WD trucks increases slightly above anticipated levels. While NHTSA recognizes this risk, the agency notes that it is also present where any variable negatively impacting fuel economy, such as a shift to larger models or engines, exceeds projected levels. Further, while 4WD sales in excess of projected ratios can result in penalties, the inverse is true as well; 2WD sales in excess of projected ratios can result in unanticipated credits for the manufacturer. Such risks were taken into account by the agency and balanced against the need of the nation to conserve energy as a part of the CAFE standard setting process.

In conclusion, NHTSA has determined that the setting of a single combined light truck CAFE standard is consistent with the agency's responsibilities under the Cost Savings Act, and that the issuance of optional separate standards for MY 1992 would be inconsistent with the goal of the standards to encourage the manufacturers, especially the least capable manufacturer with a substantial market share, to improve light truck CAFE. The setting of separate CAFE standards for different classes of light trucks is a discretionary exercise of the agency's authority, and GM has provided no convincing reason why the practice of setting separate standards should be continued. Based on the foregoing discussion, GM's petition for reconsideration is denied.

Issued: April 12, 1991.

Jerry Ralph Curry,
Administrator.

[FR Doc. 91-9072 Filed 4-17-91; 8:45 am]

BILLING CODE 4910-50-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 685

[Docket No. 910489-1089]

Pelagic Fisheries of the Western Pacific Region

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency interim rule; establishment of a protected species zone in the Northwestern Hawaiian Islands.

SUMMARY: The Secretary of Commerce (Secretary) issues this emergency interim rule amending current regulations promulgated under the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region (FMP). This rule will close the areas within 50 nautical miles (nm) of certain Northwestern Hawaiian Islands (NWHI), as well as certain corridors between these islands, to pelagic longline fishing. This action is necessary as a result of changes in the pelagic longline fishery and reported interaction between this fishery and the endangered Hawaiian monk seal (*Monachus schauinslandi*). An emergency closure will provide a buffer zone around the seal's activity centers and migratory corridors, immediately reducing or eliminating incidental take resulting from longline fishing operations.

EFFECTIVE DATE: The emergency rule is effective from 0001 hours local time April 15, 1991, to 2400 hours local time July 15, 1991, except for § 685.14, which contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA), and which is not yet effective. When approval from the Office of Management and Budget (OMB) is obtained, an effective date for § 685.14 will be published in the *Federal Register*.

ADDRESSES: Copies of the environmental assessment and the graphic representation of the protected species zone may be obtained from, and comments on the emergency rule should be sent to E.C. Fullerton, Regional Director, Southwest Region, NMFS, 300 South Ferry Street, Terminal Island, CA 90731.

Send comments on the proposed collection of information to the Director, Southwest Region, NMFS, (see above), and to the Office of Information and Regulatory Affairs, Office of Management and Budget, ATTN:

Paperwork Reduction Project 0648-0214, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT:

James H. Lecky, Protected Species Division, Southwest Region, Terminal Island, California (213) 514-6664; Eugene T. Nitta, Pacific Area Office, Southwest Region, Honolulu, Hawaii (808) 955-8831; or Kitty M. Simonds, Western Pacific Regional Fishery Management Council (808) 523-1358.

SUPPLEMENTARY INFORMATION: On November 27, 1990, at the request of the Western Pacific Fishery Management Council (Council), NMFS published an emergency interim rule (55 FR 49285) that placed restrictions on vessels with longline gear on board. Those regulations included, but were not limited to, permitting requirements, logbooks, fishing information, and observer if requested by the Regional Director and if the vessel intended to fish within 50 nm of certain NWHI. The November 27, 1990, emergency interim rule was promulgated as a result of growth in participation in the longline fishery and concerns that that growth would have an adverse impact on fish stocks, on other fisheries, and on protected species, including Hawaiian monk seals and sea birds.

The FMP was approved by the Secretary and implemented at a time when there were few problems apparent in the domestic fisheries for pelagic species. Until recently, monk seal/fishery interactions were not believed to constitute a problem in the NWHI. Section 7 consultations under the Endangered Species Act (ESA) for Fishery Management Plans for the Crustacean, Bottomfish and Seamount Groundfish and Pelagic Fisheries of the Western Pacific Region concluded that these fisheries would not likely jeopardize the continued existence of the Hawaiian monk seal if certain gear and reporting requirements were included in the implementing regulations. There was not a significant domestic longline fishery in the NWHI at that time. However, recent events indicate that interactions between monk seals and the longline fishery may be occurring at a level and in a manner not envisioned in earlier consultations.

Recent information regarding accidental incidental hookings and snaggings of monk seals confirms the occurrence of interactions with the longline fishery (K. McDermond, U.S. Fish and Wildlife Service, personal communication). As of February 6, 1991, a total of six monk seals had been observed on Tern Island, French Frigate Shoals, with jaw or head injuries inconsistent with natural causes. A

seventh animal was seen with a longline hook imbedded in its chest with 30 ft (9.2 m) of monofilament leader attached. Another monk seal was observed ashore on Tern Island with a hook in its mouth. A juvenile monk seal with a bleeding head injury and trailing monofilament line from its mouth was reported to the U.S. Fish and Wildlife Service by a fishing vessel northwest of French Frigate Shoals on January 23, 1991. Nine monk seals with evidence of interaction or injury have been reported or observed. There may have been monk seals that died at sea or were injured and hauled out at other islands and were not observed. Even under the best of conditions, if seals were snagged or entangled only occasionally, but released alive, the risks of injury and mortality from drowning, perforation of the gastrointestinal tract by hooks, or infection and septicemia from hooking and snagging would still be considerable. Any mortality resulting from these interactions would adversely affect the conservation and recovery of the endangered Hawaiian monk seal.

As of March 11, 1991, 19 longline and 13 bottomfish vessel operators had notified NMFS of intent to fish within the 50 nm study zone in the NWHI. There were unconfirmed allegations made by fishermen to NMFS and the Council that a number of vessels were fishing illegally within the study zone.

As a result of this new information, the Council and the NMFS Southwest Region co-sponsored a public hearing in Honolulu, Hawaii, on February 26, 1991, to solicit public testimony on the need for and types of regulatory controls that could be instituted to prevent future takings of Hawaiian monk seals by the longline fishery. Representatives of several environmental groups stated that they favored closures of 50 nm or more to guarantee no takings of monk seals. They also proposed the imposition of mandatory observer coverage in a buffer zone around the NWHI. Several representatives of the fishing industry indicated they believed that interactions were rare and would be limited to waters much closer to islands. They believed that a closure of 20 to 30 nm would be sufficient, with observer coverage out to 50 nm to obtain better data on whether any interactions would occur beyond the closed area. There was general agreement on the need for more effective surveillance of the area to enforce whatever closures were implemented.

The Council subsequently met in an open session in Honolulu from February 27 through March 1, 1991, and further discussed this issue. The Council

concluded that prohibiting longline fishing within 50 nm of certain NWHI, including the waters between islands that are more than 100 nm apart, would be the appropriate action. This area is referred to as a protected species zone and a graphic representation of the zone can be obtained from the Director, Southwest Region (see "ADDRESSES"). The emergency rule is not expected to generate any vessel safety concerns. Vessels that would normally fish in the NWHI are relatively larger longline vessels capable of trips covering hundreds of miles over a 2- to 3-week period. These vessels are equipped to handle heavy sea conditions which are common even within close range of the NWHI. There is not a substantially greater hazard 100 nm or more from shore than there is 5 or 10 nm from shore. In the Council's view, there was no evidence to suggest that there would be interactions beyond these boundaries. The Council has requested, therefore, that the Secretary institute an emergency closure of these waters to longline fishing. The Council intends to follow up with a regular FMP amendment dealing with this problem and has reinitiated consultations under the ESA.

The Secretary concurs with this proposal. The evidence is persuasive that longline fishing around the NWHI has resulted in the incidental take of Hawaiian monk seals. The Secretary has an obligation to exercise his authority to conserve endangered species, and agrees that the closure is likely to contribute to such protection. The Secretary also concurs that the conditions in the fishery and the status of the Hawaiian monk seal warrant immediate action under the emergency authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). Accordingly, the Council's proposed closure is approved and implemented through this emergency interim rule.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this rule is necessary to respond to an emergency situation and is consistent with the Magnuson Act, as amended, and other applicable laws. This emergency rule is implemented for 90 days under section 305(c) of the Magnuson Act and may be extended for an additional 90 days with the agreement of the Council.

NMFS prepared an environmental assessment (EA) for this action. The Assistant Administrator concluded that there will be no significant impact on

the human environment. A copy of the EA is available (see "ADDRESSES").

The Assistant Administrator also finds that the reasons justifying promulgation of this rule on an emergency basis make it impracticable and contrary to the public interest to provide notice and opportunity for comment, or to delay for any period the effective date of these emergency regulations, under the provisions of 553 (b) and (d) of the Administrative Procedure Act.

This emergency rule is exempt from the normal review procedures of Executive Order (E.O.) 12291 as provided in section 8(a)(1) of that Order. This rule is being reported to the Director of OMB with an explanation of why it is not possible to follow the regular procedures of that Order.

The Council has requested that the State of Hawaii concur with a finding that this action is consistent with its coastal zone management program.

This rule contains a collection of information requirement subject to the PRA. A request for approval of this information collection has been submitted to OMB. The public reporting burden for this collection is 10 minutes; 5 minutes for the pre-transit notification and 5 minutes for the post-transit notification. Send comments on the burden estimate or any other aspect of the collection of information, including suggestions for reducing the burden, to OMB and NMFS, Southwest Region (see "ADDRESSES").

This emergency rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Part 685

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: April 12, 1991.

For the reasons set out in the preamble, 50 CFR part 685 is amended as follows:

PART 685—PELAGIC FISHERIES OF THE WESTERN PACIFIC REGION

1. The authority citation for part 685 continues to read as follows:

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

2. In § 685.2, effective from 0001 hours local time on April 15, 1991 to 2400 hours local time on July 15, 1991, new definitions for "Northwestern Hawaiian Islands" and "Protected species zone" are added, in alphabetical order, to read as follows:

§ 685.2 Definitions.

* * * * *

Northwestern Hawaiian Islands means the EEZ of the Hawaiian Islands Archipelago lying to the west of 161° W. longitude.

* * * * *

Protected species zones means the areas within 50 nm of the center geographical positions of Nihoa Island, Necker Island, French Frigate Shoals, Gardner Pinnacles, Maro Reef, Laysan Island, Lisianski Island, Pearl and Hermes Reef, Midway Islands, and Kure Island in the Northwestern Hawaiian Islands. The center geographical positions for these areas are as follows: Nihoa Island 28°05' N. 161°55' W., Necker Island 23°35' N. 164°40' W., French Frigate Shoals 23°45' N. 166°15' W., Gardner Pinnacles 25°00' N. 168°00' W., Maro Reef 25°25' N. 170°35' W., Laysan Island 25°45' N. 171°45' W., Lisianski Island 26°00' N. 173°55' W., Pearl and Hermes Reef 27°50' N. 175°50' W., Midway Islands 28°14' N. 177°22' W., and Kure Island 28°25' N. 178°20' W. Where these areas are not contiguous, lines tangent to and connecting adjacent 50 nm areas between Nihoa Island and Necker Island, French Frigate Shoals and Gardner Pinnacles, Gardner Pinnacles and Maro Reef, and Lisianski Island and Pearl and Hermes Reef, shall delimit the remainder of the protected species zone.

* * * * *

3. In § 685.5, from 0001 hours local time on April 15, 1991, to 2400 hours local time on July 15, 1991, paragraph (i) is suspended and new paragraphs (q) and (r) are added to read as follows:

§ 685.5 Prohibitions.

* * * * *

(q) Fish for pelagic species with longline gear within the protected species zone in the Northwestern Hawaiian Islands as defined in § 685.2.

(r) Fail to notify the NMFS Southwest Enforcement Office of intent to transit the protected species zone as required under § 685.14.

4. Section 685.11 is suspended effective from 0001 hours local time on April 15, 1991, to 2400 hours local time on July 15, 1991.

5. Effective upon clearance from the Office of Management and Budget and publication of a notice to that effect in the *Federal Register*, reserved § 685.14 is added to read as follows:

§ 685.14 Transit notification.

The operator of a longline fishing vessel subject to this part transiting the protected species zone shall notify the NMFS Southwest Enforcement Office at (808) 541-2727 immediately upon entering and immediately upon

departing the protected species zone.

The notification must include the name of the vessel, name of the operator, date and time (GMT) of entry or exit from the protected species zone, and location by latitude and longitude to the nearest minute.

[FR Doc. 91-9145 Filed 4-15-91; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register

Vol. 56, No. 75

Thursday, April 18, 1991

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

Agricultural Marketing Service

7 CFR Part 29

[TB-91-003]

RIN 0581-AA19

Tobacco Inspection; Fees and Charges for Inspection and Grading of Imported Tobacco

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Tobacco Adjustment Act of 1983, as amended, requires the Secretary of Agriculture to fix and collect fees and charges for inspection and grading of all tobacco offered for importation into the United States, except cigar and oriental tobacco. This proposal would change the user fee charge from cents per pound to cents per kilogram. This change would simplify the billing procedures.

DATES: Comments are due on or before May 20, 1991.

ADDRESSES: Send comments to the Director, Tobacco Division, Agricultural Marketing Service (AMS), United States Department of Agriculture (USDA), room 502 Annex Building, P.O. Box 96456, Washington, DC 20090-6456. Comments will be available for public inspection at this location during regular business hours.

FOR FURTHER INFORMATION CONTACT: Ernest L. Price, Director, Tobacco Division, AMS, USDA, room 502 Annex Building, P.O. Box 96456, Washington, DC 20090-6456, telephone (202) 447-2567.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Department proposes to amend the regulations governing the inspection of imported tobacco by changing the user fee charge from cents per pound to cents per kilogram. This action is needed to simplify the billing procedures for the collection of fees charged for inspection,

grading, and testing of tobacco imported into the United States. The U.S. Customs Service requires importers to report weight in kilograms. This requires a conversion to be made from kilograms to pounds. Basing the rate on kilograms would eliminate the need for conversion with its potential for errors.

The current fee of \$.0045 per pound for inspection of imported tobacco would be changed to \$.0099 per kilogram. The current fee of \$.0035 per pound for sampling, testing, and certification of imported tobacco would be changed to \$.0077 per kilogram. Also, the current additional fee of \$.0035 per pound for testing imported tobacco not accompanied by a certification that it is free of prohibited pesticide residues would be changed to \$.0077 per kilogram. The authority for this proposed regulation is contained in the Tobacco Adjustment Act of 1983, as amended (7 U.S.C. 511r).

This proposed rule has been reviewed under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The Administrator, Agricultural Marketing Service, has determined that the proposed rule would not have a significant economic impact on a substantial number of small entities. The proposed rule would not substantially affect the normal movement of the commodity in the marketplace.

This proposed rule has been reviewed under USDA procedures established to implement Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "nonmajor" rule because it does not meet any of the criteria established for major rules under the Executive order.

List of Subjects in 7 CFR Part 29

Administrative practice and procedure, Advisory committees, Government publications, Imports, Pesticides and pests, Reporting and recordkeeping requirements, Tobacco.

For the reasons set forth in the preamble, it is proposed that the regulations in 7 CFR part 29 be amended as follows:

PART 29—[AMENDED]

1. The authority citation for 7 CFR part 29 continues to read as follows:

Authority: 7 U.S.C. 502.

2. Section 29.500 is revised to read as follows:

§ 29.500 Fees and charges for inspection and testing of imported tobacco.

(a) The fee for inspection of imported tobacco is \$.0099 per kilogram and shall be paid by the importer. This inspection fee applies to all tobacco imported into the United States except as provided in § 29.400. Fees for services rendered shall be remitted by check or draft in accordance with a statement issued by the Director, and shall be made payable to "Agricultural Marketing Service."

(b) The fee for sampling, testing, and certification of imported flue-cured and burley tobacco for prohibited pesticide residues is \$.0077 per kilogram and shall be paid by the importer. The fee for testing imported flue-cured and burley tobacco not accompanied by a certification that it is free of prohibited pesticide residues shall be an additional \$.0077 per kilogram. The minimum fee assessed pursuant to this paragraph shall be \$162.00 per lot. Fees for services rendered shall be remitted by check or draft in accordance with a statement issued by the Director, and shall be made payable to "Agricultural Marketing Service."

Dated: April 12, 1991

Kenneth C. Clayton,
Acting Administrator.

[FR Doc. 91-9067 Filed 4-17-91; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 929

[Docket No. FV-91-263PR]

Cranberries Grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York; Amendment of Rules and Regulations; Increase in Base Quantity Reserve

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The proposed rule invites comments on increasing the base quantity reserve for the 1991-92 crop year from the required minimum of 2.0 percent to 2.89 percent of the total base quantities currently issued to cranberry producers, in order to update and expand base quantities for the benefit of producers. This action would help to facilitate the appropriate and equitable

operation of the cranberry marketing order. This action was recommended by the Cranberry Marketing Committee.

DATES: Comments must be received by May 20, 1991.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2085-S, P.O. Box 96456, Washington, DC 20090-6456. Comments should reference the docket number and the date and page number of this issue of the *Federal Register* and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone (202) 475-3920.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Order No. 929 (7 CFR part 929), as amended, regulating the handling of cranberries grown in 10 states. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, (7 U.S.C. 601-674), hereinafter referred to as the "Act."

This proposed rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

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

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

There are approximately 30 handlers of cranberries subject to regulation under the cranberry marketing order and approximately 950 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts

for the last three years of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$3,500,000. The majority of handlers and producers of cranberries may be classified as small entities.

This proposed rule would increase the reserve base quantity from the minimum 2.0 percent required by the order to 2.89 percent, in order to update and adjust producers' base quantities for the 1991-92 crop year. This action was unanimously recommended by the Cranberry Marketing Committee (Committee) at its March 8, 1991, meeting. The Committee is the agency responsible for local administration of the cranberry marketing order.

Each year prior to May 1, the Committee considers its marketing policy for the coming season and estimates a marketable quantity of cranberries. Such quantity is the amount of cranberries deemed necessary to meet the season's total market demand and provide for an adequate carryover of cranberries to the next season. If annual cranberry production is expected to exceed the desired marketable quantity, and, if the Secretary finds, based on a recommendation of the Committee or from other available information, that limiting the quantity of cranberries that may be purchased or handled on behalf of producers would tend to effectuate the declared policy of the Act, the Secretary shall determine and establish the marketable quantity for that crop year. The marketable quantity is then apportioned among all eligible producers by applying an allotment percentage to each producer's base quantity pursuant to section 929.48 of the order. The allotment percentage is established by the Secretary and equals the marketable quantity divided by the total of all producers' base quantities.

Such base quantities are issued to producers: (a) Based on their sales during the period 1968-69 through 1973-74; (b) as a result of transfers of base quantities from other producers; or (c) as part of an annual reserve of at least 2 percent of the total base quantities. The reserve is used annually for the issuance of base quantities to new producers and adjustments in base quantities for existing producers, with 25 percent made available for new growers and 75 percent made available for adjustments for existing producers. Any unallocated portion of the 25 percent available to new producers may, at the discretion of the Committee, be prorated among eligible existing producers on an equitable basis.

On March 8, 1991, the Committee held its annual winter meeting to formulate

its marketing policy for the 1991-92 crop year. They determined that implementation of section 929.49 (the establishment of a marketable quantity and annual allotment) was not warranted. However, Committee members noted that cranberry production, as in recent years, was projected to exceed the total of all current producer's allotment bases. Therefore, they recommended that additional base be issued to all qualified new and existing producers to the full amount to which each producer requested, contingent on each producer's demonstrated ability to produce and sell cranberries. The increase would make additional base quantity available to new and existing producers by increasing the 2.0 percent minimum base quantity reserve, as currently provided, to 2.89 percent. This action would also aid in the updating of base quantities, which would be necessary for any future establishment of a marketable quantity and annual allotment.

The impact of this regulation on producers and handlers would not be significant because the change represents a relaxation of restrictions by increasing the total amount of base quantity available to producers. The amount of base quantity that would be issued represents the total amount of base quantity requested by qualified new and existing producers for the 1991-92 crop year. The Committee intends to distribute base quantity reserve to approximately 16 new producers and 251 existing producers.

Based on the available information, the Administrator of the AMS has determined that issuance of this proposed rule would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 929

Cranberries, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 929 is proposed to be amended as follows:

PART 929—CRANBERRIES GROWN IN THE STATES OF MASSACHUSETTS, RHODE ISLAND, CONNECTICUT, NEW JERSEY, WISCONSIN, MICHIGAN, MINNESOTA, OREGON, WASHINGTON, AND LONG ISLAND IN THE STATE OF NEW YORK

1. The authority citation for 7 CFR part 929 continues to read as follows:

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

2. Section 929.153 is amended by revising the first sentence in paragraph (a) to read as follows:

Subpart—Rules and Regulations

§ 929.153 Base quantity reserve.

(a) *Establishment.* An annual reserve base quantity equal to 2 percent of total base quantities is hereby established: *Provided, That,* for the 1991–92 crop year, the reserve base quantity shall be 2.89 percent.

* * * * *

Dated: April 12, 1991.

William J. Doyle,
Acting Deputy Director, Fruit and Vegetable
Division.

[FR Doc. 91–9068 Filed 4–17–91; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 25

[Docket No. NM–53; Notice No. SC–91–4–NM]

Special Conditions: British Aerospace Public Limited Company Model 4100 Airplane, Main Cabin Aisle Arrangement

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the British Aerospace (BAe) Public Limited Company Model BAe 4100 series airplane. This airplane will have a novel or unusual design feature associated with the main cabin aisle arrangement. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this particular design feature. This notice contains the additional safety standards which the Administrator finds necessary to establish a level of safety equivalent to that established by the airworthiness standards of part 25 of the Federal Aviation Regulations (FAR).

DATES: Comments must be received on or before June 3, 1991.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, Attn: Rules Docket (ANM–7), Docket No. NM–53, 1601 Lind Avenue SW., Renton, Washington 98055–4056; or delivered in duplicate to the Office of the Assistant Chief Counsel at the above address. Comments must be marked: Docket No.

NM–53. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Jeff Gardlin, Regulations Branch, ANM–114, Transport Airplane Directorate, Aircraft Certification Service, FAA, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2136.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator before taking action on this proposal. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM–53." The postcard will be date/time stamped, and returned to the commenter.

Background

On May 24, 1989, BAe Public Limited Company applied for a type certificate for the Model 4100 series airplane in the transport airplane category. The Model 4100 is a derivative of the Model 3100, which is a small airplane and is certificated under the provisions of part 23 of the FAR. The Model 4100 is a low wing, twin-engine turbo-prop airplane configured to seat 29 passengers in a 3-abreast arrangement. The Model 4100 airplane, which has the same fuselage cross section as the Model 3100 airplane, does not have a traditional main cabin aisle arrangement.

The FAR specifies in § 25.815 the minimum aisle width dimensions for transport category airplanes based on the passenger capacity. For airplanes with 20 or more passengers, a minimum 15-inch width at heights 25 inches or less above the main aisle floor and a

minimum 20-inch width at heights greater than 25 inches above the floor must be maintained. Aisle width is measured at any point along the aisle, normal to the centerline of the aisle. The main aisle envisioned by the regulations would run in a straight line from one end of the passenger cabin to the other and would satisfy these width criteria. Long-standing FAA policy has permitted slight deviation from a straight line where there is a transition from one cabin section to another, or where there are interior features which dictate that the aisle move laterally. For example, from tourist class to first class there may be a change from 5-abreast seating to 4-abreast seating which moves the aisle centerline laterally. This has been accepted provided the required widths are maintained at all heights normal to the path that an individual would take. This type of offset normally occurs at one or two points in a main cabin aisle. In addition, there is no offset permitted in the aisle vertically; that is, the required 15-inch dimension must lie completely below the projected 20-inch dimension at all points along the aisle.

British Aerospace has presented a main cabin aisle arrangement which utilizes an offset at each seat row. The left and right seat assemblies are offset from one another longitudinally such that the seatbacks are not opposite each other across the aisle. This arrangement permits a 20-inch measurement between seatbacks (at an angle to the airplane centerline) and the required 15-inch dimension is maintained within the projected 20-inch dimension vertically. Thus the "required aisle" is not a straight line from one end of the cabin to the other, but a series of alternating angular segments from seatback to seatback. It is important to note that there is a straight path along the cabin length, and the aisle floor does not deviate from side to side at all; however, the projected aisle width along this straight path does not reach 20 inches until a height of approximately 48 inches above the floor.

Other significant features of the cabin aisle include the height of the seatbacks above the aisle floor. A "typical" transport airplane cabin has the seatback height approximately 43 inches above the floor, with the space above that essentially open from one sidewall to the other. On the Model 4100, the aisle floor is below the level of the seat mountings such that the seatback height above the aisle floor is almost 50 inches. The overall cabin height is approximately 69 inches. Another feature of the design includes the use of overwing exits which are offset

longitudinally, corresponding to the seat positions on the left and right of the airplane.

This notice, which proposes special conditions for a staggered main cabin aisle, will utilize the existing regulations to develop appropriate design criteria, and make mandatory certain favorable design features in the Model 4100.

Under the provisions of § 21.101, BAe must show that the Model 4100 complies with the regulations established in the certification basis. The certification basis for the Model 4100 is as follows:

The certification basis for the Model 4100 will be established in accordance with § 21.29, using the Joint Aviation Regulations (JAR) as a reference point, with appropriate additional requirements incorporated to provide an equivalent certification basis to the FAR requirements for U.S. certification.

British Aerospace and CAA-UK have elected to have the TC basis be the following:

- JAR 25 as amended through Change 12 dated May 10, 1988;
- JAR 25 Orange Paper Amendment 88-1 effective October 18, 1988;
- JAR 1, definitions as amended through Change 4 dated June 1, 1987; and

—Any additional part 25 paragraphs necessary to provide a composite TC basis equal to the required part 25 certification basis.

Based on §§ 21.29 and 21.17 of the FAR and the TC application date, the applicable U.S. TC basis would be as follows:

- Part 25 of the FAR dated February 1, 1965, as amended by Amendments 25-1 through 25-66;
- Any applicable special conditions issued;
- Any applicable exemptions granted;
- Any equivalent safety findings made;
- The fuel venting requirements of Special Federal Aviation Regulation No. 27, including Amendments 27-1 through the latest amendment in effect on the date the Model 4100 is type certificated, and
- Part 36 of the FAR, including Amendments 36-1 through the latest amendment in effect on the date of TC.

If the Administrator finds that the applicable airworthiness regulations (i.e., Part 25 as amended) do not contain adequate or appropriate safety standards for the Model 4100 because of

a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.17(a)(2).

Novel or Unusual Design Features

The Model 4100 will incorporate the following novel or unusual design features:

The required main cabin aisle widths will be established using measurements taken between seatbacks, which form a path in angular segments. The aisle width measured normal to the fuselage centerline above 25 inches from the floor, will extend from the seat back to the opposite cabin sidewall. Thus, while the required 15-inch dimension at cabin heights below 25 inches from the floor is completely within the projected 20-inch width vertically, the 20 inch portion is not centered over the 15-inch portion. (See Figure 1.)

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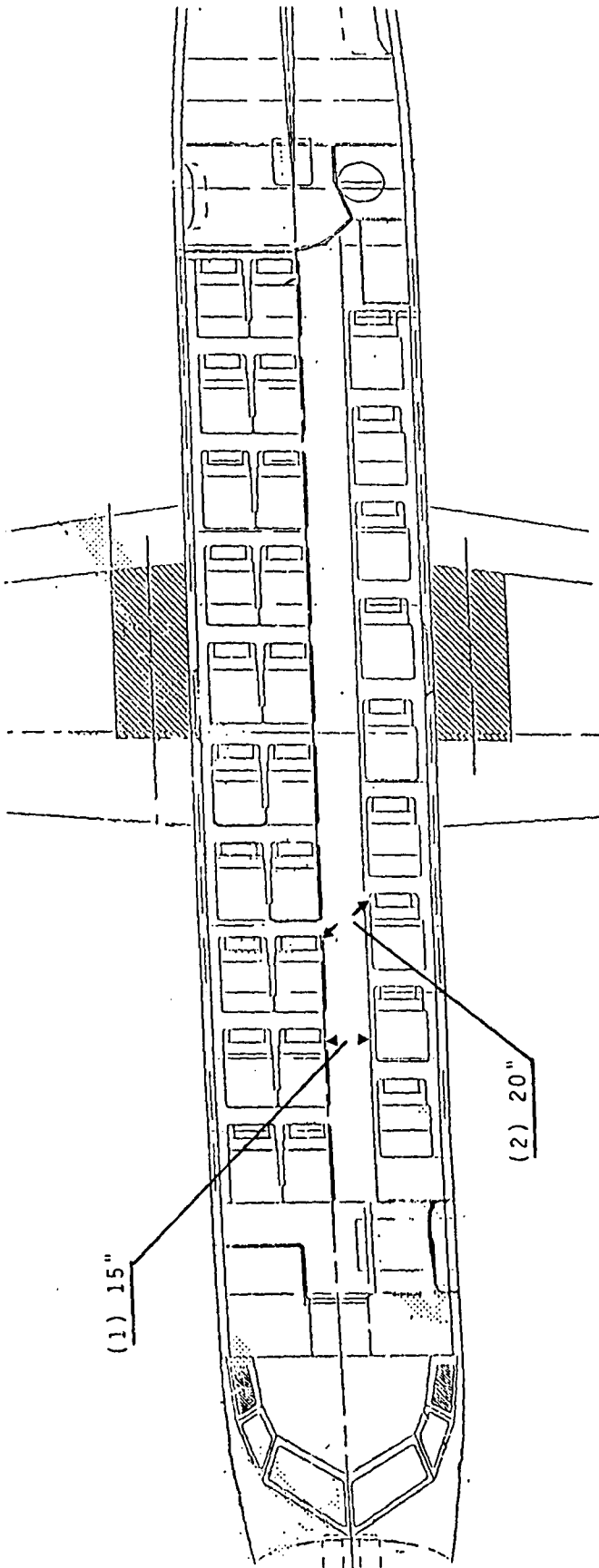


FIGURE 1

- (1) AT HEIGHTS ABOVE THE FLOOR 25" AND BELOW
- (2) AT HEIGHTS ABOVE THE FLOOR ABOVE 25"

The FAA has carefully evaluated the relevant design parameters of the BAe Model 4100 and determined that the proposed main aisle configuration is clearly not what was envisioned by the regulations. The regulations do not specifically prohibit the arrangement proposed; however, the policy in effect is predicated on a largely straight aisle which has only one or two lateral deviations; in other words, a traditional cabin arrangement. Therefore, special conditions are proposed to develop design criteria which will result in a level of safety equivalent to configurations on which the regulations were based.

The BAe Model 4100 incorporates several favorable features from a cabin safety standpoint. These include a good exit to passenger ratio for the number of passengers requested. That is, one pair of Type II exits and one pair of Type III exits for 29 passengers, where the regulations allow up to 39. A second feature is a good exit distribution. Most passenger seats are only 3 seat rows from an exit. A third feature is a low total passenger count. Finally, Type III exits which are offset longitudinally, enable flow to the exits from opposite directions simultaneously without interference. Features of the cabin which are not favorable with respect to a standard configuration include the higher than normal seatback height and the low overall headroom, and the aisle stagger.

The FAA has addressed each of these points in developing these proposed special conditions to preserve the level of safety inherent in the existing fleet. The higher than normal seatback height is not specifically addressed by regulations. Nonetheless, the additional 6-7 inches of restriction vertically will constrict the available space in the aisle for certain individuals and in certain evacuation scenarios. This is a factor that is inherently accounted for in the typical aisle configuration and provides an unquantified but real margin of safety. The FAA has attempted to retain this margin of safety by proposing to achieve a projected 20-inch aisle width at a more typical height above the aisle floor. Due to the very strict design constraints necessary to achieve the aisle configuration proposed for the Model 4100, it is considered mandatory that seat location and specific part number be the subject of FAA approval when any change is made.

Transport category airplanes with a passenger capacity of more than 44 are required to demonstrate by a full scale test that the maximum number of occupants can be evacuated in 90

seconds or less. Airplanes with passenger capacities of 44 or less are not required to meet this specific requirement since it is considered that the other regulations governing passenger safety will obviate the need for a specific evacuation demonstration. For example, the ratio of exits to passengers is much higher for very small passenger capacities than it is for larger capacities. In this case however, the FAA believes that the interior design of the Model 4100 differs sufficiently from the norm that a special evacuation demonstration is necessary to retain the same level of confidence as is provided for in typical designs. The form this demonstration should take has not been decided and will be discussed with the manufacturer and the CAA.

These special conditions are intended to provide requirements which result in a cabin aisle that is as effective and safe as those envisioned by the regulations. Where appropriate, requirements have been drawn from existing regulations. In other cases, new requirements have been developed to preserve the level of safety which is inherent in the design of more conventional aisle arrangements.

Accordingly, in addition to the requirements of § 25.815, the following special conditions are proposed for the BAe Model 4100 airplane with a staggered main aisle. Other conditions may be developed as needed based on further FAA review and discussions with the manufacturer and the Civil Aviation Authority (CAA).

Conclusion

This action affects only certain novel or unusual design features on one Model of airplanes. It is not a rule of general applicability, and it affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Parts 21 and 25

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration proposes the following special conditions for the BAe Model 4100 with an offset main cabin aisle.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f-10, 4321 et seq., E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

1. The BAe Model 4100 may be approved with an offset main aisle provided:

a. There are no more than 29 passenger seats with no more than ten seat rows on either side of the aisle;

b. The interior arrangement includes one pair of Type II and one pair of Type III passenger emergency exits;

c. In addition to the requirements of § 25.815, the aisle projected aisle width is at least 20 inches measured at a height of 43 inches above the aisle floor; and

d. The Type III exits and adjacent seat rows are offset longitudinally such that persons approaching an exit from one end of the cabin may use the exit without interfering with those approaching the other exit from the other end of the cabin.

2. The location and part number of each passenger seat must be defined by a drawing approved by the FAA or foreign civil airworthiness authority. The seat arrangement may not be configured without FAA approval.

3. An evacuation demonstration must be conducted to demonstrate the efficacy of the aisle arrangement.

Issued in Renton, Washington, on April 4, 1991.

Leroy A. Keith,

Manager, Transport Airplane Directorate,
Aircraft Certification Service.

[FR Doc. 91-9090 Filed 4-17-91; 8:45 am]

BILLING CODE 4910-13-M

DELAWARE RIVER BASIN COMMISSION

18 CFR Part 401

Proposed Amendments to Comprehensive Plan, Water Code of the Delaware River Basin and Administrative Manual—Rules of Practice and Procedure; Proposed Rules and Public Hearing

AGENCY: Delaware River Basin Commission.

ACTION: Proposed rules and public hearing.

SUMMARY: Notice is hereby given that the Delaware River Basin Commission will hold a public hearing to receive comments on proposed amendments to its Comprehensive Plan, Water Code of the Delaware River Basin and Administrative Manual—Rules of Practice and Procedure relating to the transfer of water and wastewater to and from the Delaware River Basin. The hearing will be part of the Commission's

regular business meeting which is open to the public.

The Delaware River Basin Commission recognizes the water and related resources of the Delaware River Basin as regional assets vested with local, State and national interests, for which the signatory parties of the Compact have a joint responsibility. The purposes of the Delaware River Basin Compact include the planning, conservation, utilization, development, management and control of the water resources of the Basin to provide for cooperative action by the parties signatory to the Compact with respect to such resources. Since the Compact's enactment, demands upon the waters and related resources of the Basin have steadily increased and are projected to continue to increase, even with the implementation of significant conservation measures. At the same time, the potential for construction of additional water supply storage is limited and costly. The waste assimilative capacity of Basin water is limited, and reductions in streamflow or any additions of wastewater would increase the burden placed on Basin water users. With this in mind, the Commission is herein proposing policy and implementing regulations relating to importations and exportations of water.

DATES: The public hearing is scheduled for Wednesday, May 22, 1991 beginning at 1 p.m. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

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, Delaware River Basin Commission: Telephone (609) 883-9500.

SUPPLEMENTARY INFORMATION: The subjects of the hearing will be as follows:

Amendment to the Comprehensive Plan and Water Code of the Delaware River Basin by the Addition of Policy Relating to the Transfer of Water and Wastewater to and from the Delaware River Basin.

Article 2 of the Water Code of the Delaware River Basin includes Commission policy relating to the conservation, development and utilization of Basin water resources. It is proposed to:

Amend the Comprehensive Plan and article 2 of the Water Code of the Delaware River Basin, which are referenced in 18 CFR part 410, by the addition of a new section to read as follows:

2.30 Importations and Exportations of Water

2.30.1 Definitions

An importation of water is water conveyed or transferred into the Delaware River Basin from a source outside the drainage area of the Delaware River and its tributaries, including the Delaware Bay. The water is then used, depleted, or discharged within the Delaware River Basin.

Conversely, an exportation of water is water taken from within the Delaware River Basin and transferred or conveyed to an area outside the drainage area of the Delaware River and its tributaries, including the Delaware Bay, and not returned to the Delaware River Basin.

2.30.2 Policy of Protection and Preservation

The waters of the Delaware River Basin are limited in quantity and the Basin is frequently subject to drought warnings and drought declarations due to limited water supply storage and streamflow during dry periods. Therefore, it shall be the policy of the Commission to discourage the exportation of water from the Delaware River Basin.

However, the Basin waters have limited assimilative capacity and limited capacity to accept conservative substances without significant impacts. Accordingly, it also shall be the policy of the Commission to discourage the importation of wastewater into the Delaware River Basin that would significantly reduce the assimilative capacity of the receiving stream on the basis that the ability of Delaware River Basin streams to accept wastewater discharges should be reserved for users within the Basin.

2.30.3 Safeguard Public Interest

Review and consideration of any public or private project involving the importation or exportation of water shall be conducted pursuant to this policy and shall include assessments of the environmental and economic impacts of the project and of all alternatives to any water exportation or wastewater importation project.

2.30.4 Commission Jurisdiction and Consideration

The Commission shall exercise its jurisdiction over exportations and

importations of water as specified in the Administrative Manual—Rules of Practice and Procedure.

All projects involving a transfer of water into or out of the Delaware Basin must be submitted to the Commission for review and determination under section 3.8 of the Compact, and inclusion within the Comprehensive Plan.

The applicant shall address, and the Commission will consider (on a case-by-case basis), the following items in addition to issues that may relate specifically to that project:

1. Efforts to first develop or use and conserve the resources outside of the Delaware River Basin.
2. Environmental impacts of each alternative available including the 'no project' alternative.
3. Economic and social impacts of the importation or exportation and each of the available alternatives including the 'no project' alternative.
4. Amount, timing and duration of the proposed transfer and its relationship to passing flow requirements and other hydrologic conditions in the Basin, and impact on instream uses and downstream waste assimilation capacity.
5. Benefits that may accrue to the Delaware River Basin as a result of the proposed transfer.
6. Volume of the transfer and its relationship to other specified actions or Resolutions by the Commission.
7. Volume of the transfer and the relationship of that quantity to all other diversions.

2.30.5 Water Charges

All water transferred from the Delaware Basin will be subject to the consumptive water charges in effect at the time of transfer and in accordance with Resolution No. 74-6, as amended. In addition, the project sponsor of each and every new exportation shall enter into a contract with the Commission for the purchase of Basin waters.

2.30.6 Wastewater Treatment Requirements

It is the policy of the Commission to give no credit toward meeting wastewater treatment requirements for wastewater imported into the Delaware Basin. Wasteload allocations assigned to dischargers shall not include loadings attributable to any importation of wastewater.

2.30.7 Existing Allocations

It is the policy of the Commission to charge all water transferred from the Basin against any special regional

allocation or any depletive use allocation as may exist at the time of receipt of the application for transfer.

2.30.8 Conservation Requirements

It is the policy of the Commission that all applicants for out-of-the Basin transfers indicate the conservation measures which they have taken to forestall the need for a transfer of Delaware River Basin water.

2.30.9 Prior Approvals

All importations and exportations of water *approved* prior to the adoption of this policy shall be exempt from its provisions. Nothing herein shall modify the rights and obligations of the parties to the U.S. Supreme Court Decree of 1954.

List of Subjects in 18 CFR Part 401

Administrative practice and procedure, Environmental impact

statements, Freedom of information, Water pollution control, Water resources.

It is proposed to amend 18 CFR part 401 as follows:

Subchapter A—Administrative Manual

PART 401—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 401 continues to read as follows:

Authority: Delaware River Basin Compact, 75 Stat. 688.

2. Sections 401.35(a)(17) through (19) are added to read as follows:

§ 401.35 Classification of projects for review under section 3.3 of the Compact

(a) * * *

{17} The diversion or transfer of water from the Delaware River Basin (exportation) whenever the design

capacity is less than a daily average rate of 50,000 gallons.

{18} The diversion or transfer of water into the Delaware River Basin (importation) whenever the design capacity is less than a daily average rate of 100,000 gallons except when the imported water is wastewater.

{19} The diversion or transfer of wastewater into the Delaware River Basin (importation) whenever the design capacity is less than a daily average rate of 50,000 gallons.

* * * * *

Dated: April 9, 1991.

Susan M. Weisman,
Secretary.

[FR Doc. 91-8958 Filed 4-17-91; 8:45 am]

BILLING CODE 6360-01-M

Notices

Federal Register

Vol. 56, No. 75

Thursday, April 18, 1991

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.

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Arizona Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that the Arizona Advisory Committee to the Commission will convene at 9 a.m. and adjourn at 11:30 a.m. on May 18, 1991, at the El Paso Marriott Hotel, 1600 Airway Boulevard, El Paso, Arizona 79925. The purpose of the meeting is to discuss civil rights issues in Arizona and plan future Advisory Committee projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Advisory Committee Chairperson, Manuel Pena or Philip Montez, Director of the Western Regional Division (213) 894-3437, (TDD 213/894-0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 9, 1991.
Carol-Lee Hurley,
Chief, Regional Programs Coordination Unit.
 [FR Doc. 91-9107 Filed 4-17-91; 8:45 am]
 BILLING CODE 6335-01-M

Agenda and Notice of Public Meeting of the Idaho Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that the Idaho Advisory Committee to the Commission will convene at 9 a.m. and adjourn at 5 p.m. on May 15, 1991, at the College of Southern Idaho, 315 Falls Avenue, Twin Falls, Idaho 83301. The

purpose of the meeting is to collect data and information concerning education and its impact on minorities in the State of Idaho.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Gladys Esquibel, or Philip Montez, Director of the Western Regional Division (213) 894-3437, (TDD 213/894-0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division office at least five (5) working days before the scheduled date of the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 9, 1991.
Carol-Lee Hurley,
Chief, Regional Programs Coordination Unit.
 [FR Doc. 91-9108 Filed 4-17-91; 8:45 am]
 BILLING CODE 6335-01-M

Agenda and Public Meeting of the Nevada Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that the Nevada Advisory Committee to the Commission will convene at 7 p.m. and adjourn at 8:30 p.m. on May 8, 1991, at the Peppermill Hotel, 2707 South Virginia Street, Board Room, Reno, Nevada 89502. The purpose of the meeting is to brief the Committee on police-community relations issues.

Persons desiring additional information, or planning a presentation to the Committee, should contact Advisory Committee Chairperson, Margo Piscevich or Philip Montez, Director of the Western Regional Division (213) 894-3437, (TDD 213/894-0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 9, 1991.

Carol-Lee Hurley,
Chief, Regional Programs Coordination Unit.
 [FR Doc. 91-9106 Filed 4-17-91; 8:45 am]
 BILLING CODE 6335-01-M

Agenda and Public Meeting of the Nevada Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that the Nevada Advisory Committee to the Commission will convene at 9 a.m. and adjourn at 5 p.m. on May 9, 1991, in room 108, Midby-Bryon Hall, University of Nevada, Reno, 1041 North Virginia Street, Reno, Nevada 89557. The purpose of the meeting is to obtain information on police-community relations issues in Reno.

Persons desiring additional information, or planning a presentation to the Committee, should contact Advisory Committee Chairperson, Margo Piscevich or Philip Montez, Director of the Western Regional Division (213) 894-3437, (TDD 213/894-0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 9, 1991.
Carol-Lee Hurley,
Chief, Regional Programs Coordination Unit.
 [FR Doc. 91-9109 Filed 4-17-91; 8:45 am]
 BILLING CODE 6335-01-M

Agenda and Public Meeting of the New Mexico Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that the New Mexico Advisory Committee to the Commission will convene at 9 a.m. and adjourn at 10 a.m. on May 18, 1991, at the El Paso Marriott Hotel, 1600 Airway Boulevard, El Paso, Texas 79925. The purpose of the meeting is to discuss civil rights issues in New Mexico and plan future Advisory Committee projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Advisory Committee Chairperson, Emma Armendariz or Philip Montez, Director of the Western Regional Division, (213) 894-3437 (TDD 213/894-0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 9, 1991.

Carol-Lee Hurley,
Chief, Regional Programs Coordination Unit.
[FR Doc. 91-9105 Filed 4-17-91; 8:45 am]
BILLING CODE 6335-01-M

Agenda and Public Meeting of the Texas Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that the Texas Advisory Committee to the Commission will convene at 10:30 a.m. and adjourn at 11:30 a.m. on May 18, 1991, at the El Paso Marriott Hotel, 1600 Airway Boulevard, El Paso, Texas 79925. The purpose of the meeting is to disclose civil rights issues in Texas and plan future Advisory Committee projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Advisory Committee Chairperson, Adolfo Canales or Philip Montez, Director of the Western Regional Division, (213) 894-3437 (TDD 213/894-0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 9, 1991.

Carol-Lee Hurley,
Chief, Regional Programs Coordination Unit.
[FR Doc. 91-9110 Filed 4-17-91; 8:45 am]
BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DoC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Telecommunications and Information Administration.

Title: ITS Telecommunications Analysis Services Survey.

Form Number: NTIA Form # N/A; OMB Form # N/A.

Type of Request: New.

Burden: 175 Respondents; 87.5 hours annually.

Average Hours per Response: Average time is 30 minutes.

Needs and Uses: This survey will assess user capability, requirements, and satisfaction regarding ITS Telecommunications Analysis Services.

Affected Public: Individuals, businesses, and other Federal agencies or employees.

Frequency: One time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Maya A. Bernstein, 395-3785.

Copies of the above information collection proposal can be obtained by calling or writing DoC Clearance Officer, Edward Michals (202) 377-3271, Department of Commerce, room H5327, 14th and Constitution Ave, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maya A. Bernstein, OMB Desk Officer, room 3235, New Executive Office Building, Washington, DC 20503.

Dated: April 15, 1991.

Edward Michals,
Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 91-9159 Filed 4-17-91; 8:45 am]

BILLING CODE 3510-BP-M

Agency Form Under Review by the Office of Management and Budget (OMB)

DoC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Telecommunications and Information Administration.

Title: Institute for Telecommunication Sciences Publications Survey.

Form Number: NTIA Form # N/A; OMB Form # N/A.

Type of Request: New.

Burden: 61 Respondents; 15.25 hours annually.

Average Hours per Response: Average time is 15 minutes.

Needs and Uses: This survey will assess the overall quality of both ITS publications and the mechanisms for dissemination of these publications. The information garnered from the survey will aid in updating both the quality and the dissemination procedure.

Affected Public: Individuals, businesses, and other Federal agencies or employees.

Frequency: One time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Maya A. Bernstein, 395-3785.

Copies of the above information collection proposal can be obtained by calling or writing DoC Clearance Officer, Edward Michals (202) 377-3271, Department of Commerce, room H5327, 14th and Constitution Ave, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maya A. Bernstein, OMB Desk Officer, room 3235, New Executive Office Building, Washington, DC 20503.

Dated: April 15, 1991.

Edward Michals,
Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 91-9160 Filed 4-17-91; 8:45 am]

BILLING CODE 3510-BP-M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Monthly Retail and Services

Area Survey (Current Business Report—Interviewer Record).

Form Number(s): B-645, B-646, B-647.

Agency Approval Number: 0607-0067.

Type of Request: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

Burden: 6,123 hours.

Number of Respondents: 37,702.

Avg Hours Per Response: 10 minutes.

Needs and Uses: The Bureau of the Census uses the Current Business Report (Interviewer Record) to collect monthly sales and inventory data from

an area sample or nonemployers, new employer businesses which recently acquired new Employee Identification numbers, and firms erroneously omitted from the list sample. The Bureau includes data derived from the area sample in the estimates from the Monthly Retail Trade Survey and the Services Annual Survey. The Bureau of Economic Analysis incorporates these measures of consumer spending and inventory in its calculations of such national accounts as the Gross National Product. Other government agencies and businesses use the published estimates to gauge current economic trends.

Affected Public: Businesses or other for-profit organizations, small businesses or organizations.

Frequency: Monthly.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Marshall Mills, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Clearance Officer, (202) 377-3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: April 12, 1991.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 91-9084 Filed 4-17-91; 8:45 am]

BILLING CODE 3510-07-M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Export Administration.

Title: Statement by Ultimate Consignee and Purchaser.

Form Number: Agency—EAR Section 775.2; Form BXA-629P; OMB—Control No. 0694-0021.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 15,046 respondents; 7,774 reporting/recordkeeping hours. Average time per respondent is 30 minutes for reporting and 1 minute for recordkeeping.

Needs and Uses: This form is required in support of an export license application where the country of ultimate destination is in Country Group Q, S, V, W, Y, or Z. It is used by licensing officers in determining the validity of the end-use.

Affected Public: Businesses or other for-profit institutions; small business or organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Marshall Mills, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: April 11, 1991.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 91-9085 Filed 4-17-91; 8:45 am]

BILLING CODE 3510-CW-M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Export Administration.

Title: Request for Reexport Authorization.

Form Number: Agency—EAR Section 774.3(b); Form BXA-699P; OMB—Control No. 0694-0010.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 5,825 respondents; 2,437 reporting hours. Average time per respondent is 25 minutes for reporting and 1 minute for recordkeeping.

Needs and Uses: BXA requires the Form BXA-699P to maintain control over the reexport of U.S.-origin goods and technology. The use of this form is intended to prevent the diversion of controlled commodities to proscribed countries.

Affected Public: Businesses or other for-profit institutions; small business or organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Marshall Mills, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, room 5327, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: April 11, 1991.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 91-9086 Filed 4-17-91; 8:45 am]

BILLING CODE 3510-CW-M

Bureau of Export Administration

Telecommunications Equipment Technical Advisory Committee; Closed Meeting

A meeting of the Telecommunications Equipment Technical Advisory Committee will be held May 9, 1991, 9:30 a.m., in the Herbert C. Hoover Building, room 3407, 14th Street & Pennsylvania Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to telecommunications and related equipment and technology. The Committee will meet only in Executive Session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on January 5, 1990, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C., 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings

of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6628, U.S. Department of Commerce, Washington, DC 20230. For further information, contact Lee Ann Carpenter on (202) 377-2583.

Dated: April 12, 1991.

Betty Ferrell,

Director, Technical Advisory Committee Staff.

[FR Doc. 91-9083 Filed 4-17-91; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews.

SUMMARY: The Department of Commerce has received requests to conduct an administrative review of various antidumping and countervailing duty orders, findings, and suspension agreements with March anniversary dates. In accordance with the Commerce Regulations, we are initiating these administrative reviews.

EFFECTIVE DATE: April 18, 1991.

FOR FURTHER INFORMATION CONTACT: Roland L. MacDonald, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone (202) 377-2104.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce ("the Department") has received timely

requests in accordance with § 353.22(a)(1), of the Department's regulations, for an administrative review of various antidumping and countervailing duty orders, findings, and suspension agreements, with March anniversary dates.

Initiation of Reviews

In accordance with §§ 353.22(c) and 355.22(c) of the Department's regulations, we are initiating administrative reviews of the following antidumping and countervailing duty orders, findings, and suspension agreements, with March anniversary dates. We intend to issue the final results of these reviews not later than March 31, 1992.

	Periods to be reviewed
Antidumping Duty Processing	
Germany: Brass Sheet and Strip, A-428-602, Wineland-Werke AG	3/1/90-2/28/91
Israel: Oil Country Tubular Goods, A-508-602, Middle East Tube Co.	3/1/90-2/28/91
Japan: Stainless Steel Butt-Weld Pipe Fittings, A-588-702, Benkan Corp.	3/1/90-2/28/91
Japan: Tapered Roller Bearings, Over 4 Inches, A-588-604, Koyo Seiko, Nippon Seiko, Nachi Fujikoshi, NTN Toyo Bearing	10/1/89-9/30/90
Japan: Television Receiving Sets, Monochrome and Color, A-588-015, Victor Company of Japan, Ltd., Citizen Watch Co., Ltd.	3/1/90-2/28/91
Poland: Electric Golf Cars, A-455-001, Pezetel	7/1/76-6/10/80
Sweden: Brass Sheet and Strip, A-401-601, Outokumpu Copper Rolled Products	3/1/90-2/28/91
Taiwan: Light-Walled Rectangular Carbon Steel Tubing, A-583-803, Ormatube Enterprises	3/1/90-2/28/91
Thailand: Certain Circular Welded Carbon Steel Pipes and Tubes, A-549-502, Saha Thai Steel Pipe Co., Ltd.	3/1/90-2/28/91
Countervailing Duty Proceedings	
Argentina: Certain Apparel, C-357-404	1/1/90-12/31/90
Brazil: Cotton Yarn, C-351-037	1/1/90-12/31/90
Mexico: Certain Textile Mill Products, C-201-405	1/1/90-12/31/90
Netherlands: Standard Chrysanthemums, C-421-601	1/1/90-12/31/90
New Zealand: Carbon Steel Wire Rod, C-614-504	10/1/89-9/30/90
Pakistan: Cotton Shop Towels, C-535-001	1/1/90-12/31/90
South Africa: Ferrochrome, C-971-001	1/1/90-12/31/90
Suspended Investigations	
Brazil: Frozen Concentrated Orange Juice, C-351-005	1/1/90-12/31/90
Thailand: Certain Yarn Products, C-549-401	1/1/90-12/31/90

Interested parties must submit applications for administrative protective orders in accordance with

§§ 353.34(b) and 355.34(b) of the Department's regulations.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930 (19 U.S.C. 1675(a)) and

19 CFR 353.22(c) (1989) and § 355.22(c) (1988).

Dated: April 10, 1991.

Joseph A. Spetrini,
Deputy Assistant Secretary for Compliance.
[FR Doc. 91-9158 Filed 4-17-91; 8:45 am]
BILLING CODE 3510-DS-M

[A-570-808]

Preliminary Determination of Sales at Less Than Fair Value: Chrome-plated Lug Nuts From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that imports of chrome-plated lug nuts from the People's Republic of China (PRC) are being, or are likely to be, sold in the United States at less than fair value. We have notified the International Trade Commission (ITC) of our determination and have directed the U.S. Customs Services to suspend liquidation of all entries of chrome-plated lug nuts from the PRC, as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by June 24, 1991.

EFFECTIVE DATE: April 18, 1991.

FOR FURTHER INFORMATION CONTACT: Gary Bettger or Julie Anne Osgood, Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-2239, or 377-0187, respectively.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We preliminarily determine that imports of chrome-plated lug nuts from the PRC are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The estimated margin is shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the publication of the notice of initiation on November 29, 1990, (55 FR 49548), the following events have occurred. On December 17, 1990, the ITC made a preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of chrome-plated lug nuts from the PRC

that are alleged to be sold in the United States at less than fair value (56 FR 1822, January 17, 1991). On December 17, 1990, and January 4, 1991, and on December 26, 1990, petitioner and respondent, respectively, submitted comments concerning the treatment of the PRC as a nonmarket economy for purposes of this investigation. On December 18, 1990, petitioner alleged that critical circumstances exist of the subject merchandise. We requested information from respondent regarding petitioner's allegation of critical circumstances on January 11, 1991.

On December 19, 1990, the Department presented an antidumping duty questionnaire to the China Chamber of Commerce of Exporters & Importers of Machinery & Electronic Products (COCME). On December 26, 1990, the Embassy of the PRC informed the Department that COCME was not the government's designated representative of producers and exporters of chrome-plated lug nuts. The Embassy informed the Department that China National Machinery & Equipment Import and Export Corporation, Jiangsu Co., Ltd. (CMEC Jiangsu) would be the responding party for the purposes of this investigation.

Based upon requests made by CMEC Jiangsu on December 27, 1990, and January 11, 1991, the Department granted extensions of time until January 9 and 24, 1991, to respond to section A and sections C and D, respectively, of its questionnaire. All responses were received on the above noted dates.

On January 24, 1991, respondent requested that the Department waive the computer format requirements of the questionnaire and allow CMEC Jiangsu to submit its sales information on computer diskettes. This request was granted on February 4, 1991. On February 12, 1991, respondent requested an extension until February 21, 1991, for this submission. This extension was granted and the submission was received on the specified date.

The Department issued supplemental/deficiency letters on February 15 and March 13, 1991. We received responses to these letters on February 26, March 1, 5, and 22, 1991.

Scope of Investigation

On January 10, 1991, petitioner requested that the Department clarify the scope of this investigation to include imports of "unplated lug nuts intended for chrome-plating" from the PRC. The Department informed petitioner on February 7, 1991, that based on the data provided, it did not plan to include unplated lug nuts intended for chrome-plating within the scope of the

investigation. On February 26, 1991, petitioner then requested that the Department clarify the scope to include, "chrome-plated lug nuts, finished or unfinished." On April 10, 1991 petitioner provided further information to supplement its February 26, 1991 request. Petitioner provided sufficient information in support of its request. Therefore, we are clarifying the scope in this preliminary determination.

The merchandise covered by this investigation is one-piece and two-piece chrome-plated lug nuts, finished or unfinished. The subject merchandise includes chrome-plated lug nuts, finished or unfinished, which are more than $1\frac{1}{16}$ inches (17.45 millimeters) in height and which have a hexagonal (hex) size of at least $\frac{3}{4}$ inches (19.05 millimeters) but not over one inch (25.4 millimeters). The term "unfinished" refers to unplated and/or unassembled chrome-plated lug nuts. The subject merchandise is used for securing wheels to cars, vans, trucks, utility vehicles, and trailers. Zinc-plated lug nuts, finished or unfinished, and stainless-steel capped lug nuts are not in the scope of this investigation. Chrome-plated lock nuts are also not subject to this investigation.

Chrome-plated lug nuts are currently provided for under subheading 7318.16.00.00 of the Harmonized Tariff Schedule (HTS). The HTS item number is provided for convenience and customs purposes. The written description remains dispositive.

Period of Investigation

The period of investigation (POI) is May 1, 1990, through October 31, 1990.

Fair Value Comparisons

To determine whether sales of chrome-plated lug nuts from the PRC to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

We based United States price on purchase price for all of CMEC Jiangsu's sales, in accordance with section 772(b) of the Act, because these sales were made directly to unrelated parties prior to the date of importation into the United States. We calculated purchase price based on packed, CIF prices. We made deductions for foreign inland freight, ocean freight, and marine insurance in accordance with section 772(d)(2) of the Act.

We based the deduction for foreign inland freight on freight rates in a

market economy country. See *Final Determination, Carbon Steel Wire Rod from Poland* (49 FR 29434, July 20, 1984).

Foreign Market Value

In past cases (e.g., *Tapered Roller Bearings from the People's Republic of China: Final Determination of Sales at Less than Fair Value*, 52 FR 19748 (May 27, 1987)), indeed in every case conducted by the Department, it has treated the PRC as a nonmarket economy country. Petitioner agrees with the Department's treatment and states that the PRC should continue to be treated as a nonmarket economy country for purposes of this investigation. Respondent, however, claims that regardless of whether the Department views the PRC macro-economy as a nonmarket economy, the chrome-plated lug nut sector is sufficiently market-oriented to permit the Department to determine FMV under section 773(a) of the Act.

We have examined information submitted by interested parties concerning this issue, based on the criteria listed in section 771(18) of the Act. Respondent's claims and a summary of our analysis, a complete version which is on file in this case, follows.

With respect to the first criterion, foreign currency convertibility, respondent claims that the "swap market" rate to which they have access is a bona fide market rate that is determined solely by supply and demand. During the period of investigation, respondent exchanged over half of its foreign exchange at swap centers.

With respect to the second criterion, wage rate determination, respondent claims that Lu Dong can hire and fire workers and set wage rates in accordance with skill levels and seniority. Respondent also states that workers at Lu Dong are free to come and go as they please, without interference from the government. While CMEC Jiangsu states that it has control over its own hiring decisions, it makes no statement about how its wages levels are determined.

With respect to the third criterion, foreign investment, respondent claims that foreign investment in the PRC lug-nut industry is permitted and not restricted by the government. Although no foreign investment currently exists in the chrome-plated lug nut industry, respondent states it would welcome such investment.

With respect to the fourth criterion, the extent of government ownership and control of the means of production, respondent notes that it is owned by a

provincial government and Lu Dong is collectively owned by its employees. Respondent claims that both CMEC Jiangsu and Lu Dong are free to sell existing assets and acquire new assets in accordance with their business and investment plans.

With respect to the last criterion, the extent of government control over the allocation of resources and over the price and output decisions of enterprises, respondent states that CMEC Jiangsu and Lu Dong are free to set prices and determine production levels of products within the scope of their business. Respondent states that Lu Dong can expand the scope of its business and produce non-auto related products, (i.e., it can direct resources out of the lug-nut industry), but to do so it must apply to the local administration of industry and commerce. It is unclear whether and under what conditions CMEC Jiangsu can do the same.

Respondent claims that Lu Dong's steel and chemical product suppliers during the POI were local, public-owned entities and not subject to government control or administration. Based on an earlier submission from respondent, however, it appears that prior to the POI, Lu Dong also sourced steel from state-owned, collectively owned, and individually owned suppliers. Respondent states that the local, public-owned suppliers enjoy autonomous management and operation and are absolutely profit-oriented.

While respondent has claimed that its suppliers of material inputs are independent from government control, we have information that at least half of steel output in the PRC is controlled by the central government. ("The Chinese Economy in 1989 and 1990: Trying to Revive Growth While Maintaining Social Stability," U.S. Central Intelligence Agency, Directorate of Intelligence, p. 22, (July, 1990)). The same CIA report states that price controls have been reimposed on steel (p. 1). Thus, the situation with steel inputs in this proceeding may parallel that of cotton cloth inputs into headwear in our antidumping investigation of headwear from the PRC (*Final Determination of Sales At Less Than Fair Value; Certain Headware from the People's Republic of China, (Headwear)*, 54 FR 11983, March 23, 1989). In *Headwear* we stated,

"Despite the fact that cotton cloth purchased by headwear producers is outside the government plan, the large presence of the government in the production of cotton cloth would indicate that its actions affect the prices and quantities available for producers outside the plan. Given the government's involvement, we are not persuaded that there

are sufficient market-like influences to determine that the prices paid by the headwear producers for cotton cloth are market-driven."

In this proceeding, respondent has provided no information on the broader "markets" for material inputs. Therefore, while Lu Dong may be purchasing from autonomous, independent suppliers, we cannot determine whether steel and chemical producers generally operate in a market environment or whether extensive government involvement in investment, pricing and output decisions for those inputs renders the non-controlled prices paid by Lu Dong meaningless.

We will attempt to gather further information on the steel and chemical sectors during our verification. We will also be gathering further information on how CMEC Jiangsu sets its wage levels and how its management is selected.

For purposes of the preliminary determination, however, the lack of information, particularly with respect to the extent of government control over the steel and chemicals sectors, leads us to conclude that, (1) the merchandise under investigation is exported from a nonmarket economy country, and (2) the available information does not permit the Department to base foreign market value on input prices in the PRC.

As a result, section 773(c) of the Act, as amended by the Omnibus Trade and Competitiveness Act of 1988 (the 1988 Act), requires the Department to determine FMV on the basis of the factors of production utilized in producing the subject merchandise.

The 1988 Act further requires the Department to value the factors of production, to the extent possible, in one or more market economy countries that are at a level of economic development comparable to that of the nonmarket economy country and that are significant producers of comparable merchandise.

The Department has determined that Pakistan is the appropriate country in which to value the factors of production in this investigation. Pakistan is a known producer of lug nuts and we have determined that it is comparable to the PRC in terms of per capita GNP, the national distribution of labor, and growth rate in per capita GNP.

We calculated FMV based on factors of production reported by the exporter, CMEC Jiangsu. We used data regarding the values of the factors of production provided by the U.S. Embassy in Pakistan. This information was obtained from local Pakistani producers of lug nuts. For those factors where respondent did not provide specific

information, or where the Embassy was unable to provide cost information, we have relied on either petitioner's factor information or used an alternative published source of Pakistani data. Where appropriate, the factor values were inflated to POI levels using wholesale price indices published by the International Monetary Fund.

To calculate FMV, the reported factors of production were multiplied by Pakistan values for each component. The factors used to produce lug nuts include materials, energy, water, and labor. To the resulting sum, we added an amount for factory overhead based on Pakistani experience. We then added the statutory minimum of ten percent for general expenses pursuant to section 773(e)(1)(B) of the Act, because the actual average general expenses incurred by Pakistani lug nut producers were below the statutory minimum. Finally, we added the actual average profit earned by Pakistani lug nut producers, and an amount for packing costs to arrive at a constructed FMV for a single chrome-plated lug nut. We made currency conversions in accordance with 19 CFR 353.60(a).

In valuing the factors of production, we have generally used information gathered by our Embassy in Pakistan from Pakistani producers, as noted above. Pricing information on certain factors of production is also available from published, publicly available sources. For example, prices of some material inputs can be obtained by using publicly available data on the value of imports into Pakistan as a proxy for domestic prices in Pakistan. Similarly, labor rates are available in publications from the Bureau of Labor Statistics.

The Department would appreciate receiving comments in the course of this proceeding as to the desirability of relying on published, publicly available sources for information to value factors of production in cases involving nonmarket economy countries. In particular, we would like parties to address the possible trade-off between the "precision" that can sometimes be obtained through gathering information directly from surrogate producers and the predictability that could be gained through reliance on published, publicly available data.

Critical Circumstances

Petitioner alleges that "critical circumstances" exist with respect to imports of chrome-plated lug nuts from the PRC. Section 773(e)(1) of the Act provides that critical circumstances exist if we determine that there is a reasonable basis to believe or suspect:

(A)(i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

(B) There have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Pursuant to section 773(e)(1)(B), we generally consider the following factors in determining whether imports have been massive over a short period of time: (1) the volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports. Because the subject merchandise is imported under a basket category, we requested shipment data from the respondent. Specifically, we asked the respondent to supply monthly volume data from January 1989 through the present. On February 15, 1991, CMEC Jiangsu provided this information.

Pursuant to 19 CFR 353.16(g), we compared the export volume for the three-month period beginning with the month the petition was filed (the comparison period) with the three-month period prior to the filing of the petition (the base period). The Department considers the comparison period because it is the period immediately prior to a preliminary determination in which exporters of the subject merchandise could take advantage of their knowledge of the antidumping investigation to increase exports to the United States without being subject to antidumping duties.

Based on our analysis of the exports of chrome-plated lug nuts submitted by CMEC Jiangsu, we have found there have not been massive imports of the subject merchandise. Therefore, we do not need to consider whether there is a history of dumping or whether there is reason to believe or suspect that importers of this product knew or should have known that it was being sold at less than fair value. Thus, we preliminarily determine that critical circumstances do not exist with respect to imports of chrome-plated lug nuts from the PRC.

Verification

As provided in section 776(b) of the Act, we will verify all information used in reaching our final determination.

Suspension of Liquidation

In accordance with section 773(d)(1) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of chrome-plated lug nuts from the PRC, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the Federal Register. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the subject merchandise exceeds the United States price as shown below next page. The suspension of liquidation will remain in effect until further notice.

Manufacturer/producer/exporter	Weighted-average margin percent
CMEC Jiangsu and all other manufacturers, producers and exporters.....	66.49

ITC Notification

In accordance with section 773(f) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided that the ITC confirms in writing that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

If our final determination is affirmative, the ITC will determine whether these imports are materially injuring, or threatening material injury to, the U.S. industry before the later of 120 days after the date of this preliminary determination or 45 days after our final determination.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than June 3, 1991, and rebuttal briefs no later than June 10, 1991. In addition, a public version and five copies should be submitted by the appropriate date, if the submission is business proprietary. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an

opportunity to comment on arguments raised in case or rebuttal briefs. The hearing will be held at 10 a.m. on June 12, 1991, at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue NW., Washington, DC 20230. Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B-099, within ten days of the date of publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed. In accordance with section 19 CFR 353.38(b), oral presentations will be limited to arguments raised in the briefs.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)) and 19 CFR 353.15.

Dated: April 10, 1991.

Marjorie A. Chorlins,
Acting Assistant Secretary for Import Administration.

[FR Doc. 91-9079 Filed 4-17-91; 8:45 am]
BILLING CODE 3510-DS-M

[A-583-810]

Preliminary Determination of Sales at Less Than Fair Value: Chrome-Plated Lug Nuts From Taiwan

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that chrome-plated lug nuts from Taiwan are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to suspend liquidation of all entries of chrome-plated lug nuts from Taiwan, except for those of Gourmet Equipment (Taiwan) Corporation (Gourmet), as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by June 24, 1991.

EFFECTIVE DATE: April 18, 1991.

FOR FURTHER INFORMATION CONTACT: Mi-Yong Kim or Rick Herring, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-0189 or 377-3530, respectively.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We preliminarily determine that chrome-plated lug nuts from Taiwan, except those exported by Gourmet, are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the notice of initiation (55 FR 49549, November 29, 1990), the following events have occurred. On December 17, 1990, the ITC preliminarily determined that there is a reasonable indication that an industry in the United States is being materially injured by reason of imports or chrome-plated lug nuts from Taiwan (56 FR 1822, January 17, 1991).

On December 19, 1990, the Department presented sections A, B and C of its questionnaire to San Chien Electric Industrial Works, Ltd. (San Chien) and San Shing Hardware Works Co., Ltd. (San Shing). Responses to section A were due on January 2, 1991, and responses to sections B and C were due on January 16, 1991. On December 28 and 31, 1990, San Shing and San Chien, respectively, requested a two week extension of time to respond to section A of the questionnaire. These requests were granted. On January 16, 1991, San Chien submitted a letter stating that it is a trading company, not a manufacturer, and that it purchases the subject merchandise from Gourmet. We received the section A response from San Shing on January 17, 1991.

On January 18, 1991, the Department presented sections A, B, and C of its questionnaire to Gourmet. The section A response was due on February 4, and the responses to sections B and C were due on February 18, 1991. We received the section A response from Gourmet, on February 4, 1991. On January 29, 1991, San Shing requested and was granted an extension of time until February 19, 1991, to respond to sections B and C of the questionnaire.

On January 25, 1991, the Department presented section D of its questionnaire to San Shing and Gourmet. Section D responses were due on February 18, 1991. On February 12, 1991, San Shing requested a further extension of time until February 25 to respond to sections B and C and until March 4, 1991 to respond to section D of the questionnaire. We received San Shing's sections B and C responses, along with revisions to the section A response, on February 25, 1991.

On February 15, 1991, Gourmet requested an extension of time until March 4, 1991, to respond to sections B, C, and D of the questionnaire. We received the sections B, C, and D responses, along with revisions to the section A response, on February 27, 1991.

On February 28, 1991, San Shing requested an extension of time, until March 13, 1991, to respond to section D of our questionnaire. We granted an extension of time until March 7, 1991, and received the section D response on that date.

On March 6 and 11, 1991, we issued supplemental/deficiency questionnaires on the sections A, B, C, and D responses of Gourmet and San Shing, respectively. The responses to the supplemental/deficiency questionnaires were due on March 13 and 18, 1991, for Gourmet and San Shing, respectively. On March 13, 1991, Gourmet requested a one-day extension to respond to the supplemental/deficiency questionnaire. The request was granted and the response was received on March 14, 1991. We received a response to the supplemental/deficiency questionnaire from San Shing on March 18, 1991.

On December 18, 1990, we received a critical circumstances allegation from the petitioner. On January 11 and January 22, 1991, we requested information on the critical circumstances allegation from San Shing and Gourmet, respectively. The due dates for the information were February 15 and February 18, 1991, for San Shing and Gourmet respectively. On February 15, 1991, both San Shing and Gourmet requested an extension of time until February 27, and March 4, 1991, respectively, to submit the critical circumstances data. The requests were granted and the critical circumstances data were received on February 20, and March 1, 1991, from San Shing and Gourmet, respectively.

Scope of Investigation

On January 10, 1991, petitioner requested that the Department clarify the scope of this investigation to include imports of "unplated lug nuts intended for chrome-plating" from Taiwan. The Department informed petitioner on February 7, 1991, that based on the data provided, it did not plan to include unplated lug nuts intended for chrome-plating within the scope of the investigation. On February 26, 1991, petitioner then requested that the Department clarify the scope to include, "chrome-plated lug nuts, finished or unfinished." On April 10, 1991, petitioner provided further information to

supplement its February 26, 1991 request. Petitioner provided sufficient information in support of its request. Therefore, we are clarifying the scope in this preliminary determination.

The merchandise covered by this investigation is one-piece and two-piece chrome-plated lug nuts, finished or unfinished. The subject merchandise includes chrome-plated lug nuts, finished or unfinished, which are more than $1\frac{1}{16}$ inches (17.45 millimeters) in height and which have a hexagonal (hex) size of at least $\frac{3}{4}$ inches (19.05 millimeters) but not over one inch (25.4 millimeters). The term "unfinished" refers to unplated and/or unassembled chrome-plated lug nuts. The subject merchandise is used for securing wheels to cars, vans, trucks, utility vehicles, and trailers. Zinc-plated lug nuts, finished or unfinished, and stainless-steel capped lug nuts are not in the scope of this investigation. Chrome-plated lock nuts are also not subject to this investigation.

Chrome-plated lug nuts are currently provided for under subheading 7318.16.00.00 of the *Harmonized Tariff Schedule* (HTS). The HTS item number is provided for convenience and customs purposes. The written description remains dispositive.

On March 15, 1991, Coyote Enterprises, Inc. (Coyote), a U.S. importer, requested that case-hardened lug nuts be excluded from the scope of this investigation. We have reviewed this submission and on April 8, 1991, determined that it does not provide an adequate basis for excluding the merchandise.

Period of Investigation

The period of investigation (POI) is May 1, 1990 through October 31, 1990.

Such or Similar Comparisons

For both respondent companies, in accordance with section 771(16) of the Act, we established two such or similar categories of merchandise: One-piece chrome-plated lug nuts and two-piece chrome-plated lug nuts.

Fair Value Comparisons

To determine whether sales of chrome-plated lug nuts from Taiwan to the United States were made at less than fair value, we compared the United States price to the foreign market value, as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

For both San Shing and Gourmet, we based the United States price on purchase price, in accordance with section 772(b) of the Act, because all

sales were made directly to unrelated parties prior to importation into the United States.

A. San Shing

We calculated purchase price based on packed, FOB Taiwan port prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign brokerage and handling expenses, foreign inland freight, and containerization, in accordance with section 772(d)(2) of the Act.

B. Gourmet

We calculated purchase price based on packed, FOB factory, Taiwan port or CIF prices to unrelated customers in the United States. We made deductions, where appropriate for foreign inland freight, foreign brokerage, harbor tax, ocean freight, and marine insurance, in accordance with section 772(d)(2) of the Act.

Foreign Market Value

We have based foreign market value for Gourmet and San Shing on constructed value.

A. San Shing

We calculated foreign market value based on constructed value, in accordance with section 773(e)(1) of the Act. Constructed value includes materials, fabrication, general expenses, profit, and packing. In all cases: (1) Actual general expenses were used, since these exceeded the statutory minimum requirement of ten percent of materials and fabrication; (2) the statutory eight percent minimum profit was applied; and (3) since imputed credit was included in selling expenses, the interest expense reflected on the company's books was reduced for a portion of the expense related to those costs in order to avoid double counting.

We included in constructed value an amount equal to the weighted-average selling expenses for the class or kind of merchandise sold in the United States. We made an adjustment to constructed value, in accordance with § 353.56 of the Department's regulations, for differences in circumstances of sale. This adjustment was made for the differences in credit expenses and bank handling charges.

B. Gourmet

We calculated the foreign market value based on constructed value, in accordance with section 773(e)(1) of the Act. Constructed value includes materials, fabrication, general expenses, profit, and packing. In all cases: (1) The statutory minimum requirement of ten

percent of materials and fabrication for general expenses were used, since the actual general expenses were less than ten percent; (2) the statutory eight percent minimum profit was applied; and (3) since imputed credit was included in selling expenses, the interest expense reflected on the company's books was reduced for a portion of the expense related to these costs in order to avoid double counting.

We included in constructed value an amount equal to the weighted-average selling expenses for the class or kind of merchandise sold in the United States. We made an adjustment to constructed value in accordance with § 353.56 of the Department's regulations for differences in circumstances of sale. This adjustment was made for differences in credit expenses.

Currency Conversion

We made currency conversions in accordance with § 353.60(a) of the Department's regulations. All currency conversions were made at the rates certified by the Federal Reserve Bank.

Verification

As provided in section 776(b) of the Act, we will verify all information used in reaching the final determination in this investigation.

Critical Circumstances

Petitioner alleges that imports of chrome-plated lug nuts from Taiwan present "critical circumstances." Under section 733(e)(1)(A) and (b) of the Act, critical circumstances exist if we determine that (1) there is history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and (2) there have been massive imports of the class or kind of merchandise that is the subject of the investigation over a relatively short period.

It is our standard practice to impute knowledge of dumping under section 733(a)(3)(A) of the Act when the estimated margins in our determinations are of such a magnitude that the importer should realize that dumping exists with regard to the subject merchandise. Normally we consider estimated margins of 25 percent or greater to be sufficient. See, e.g., *Final Determinations of Sales at Less than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) and*

Parts Thereof From the Federal Republic of Germany (54 FR 18992, May 3, 1989). The estimated margins in this preliminary determination do not meet the requirements to impute knowledge of dumping under section 733(a)(3)(A)(ii) of the Act. We also examined recent antidumping duty cases and found that there are currently no findings of dumping in the United States or elsewhere of the subject merchandise by Taiwanese manufacturers, producers, and exporters of the subject merchandise.

On this basis, we find that the requirements of section 733(a)(3)(A) are not met with regard to imports of the subject merchandise. Therefore, we preliminarily determine that critical circumstances do not exist.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of chrome-plated lug nuts, except for those from Gourmet, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse for consumption, on or after the date of publication of this notice in the Federal Register. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of chrome-plated lug nuts exceeds the United States price as shown below. This suspension of liquidation will remain in effect until further notice. The margins are as follows:

Manufacturer/producer/ exporter	Weighted-average margin percentage
San Shing.....	4.02.
Gourmet.....	0.03 (<i>de minimis</i>).
All Others.....	4.02.

ITC Notification

In accordance with section 773(f) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

The ITC will determine whether these imports are materially injuring, or

threaten material injury to, a U.S. industry before the latter of 120 days after the date of this determination, or 45 days after the final determination, if affirmative.

Public Comment

In accordance with § 353.38(b) of the Department's regulations, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment. For the date of this hearing and the briefing schedule, please contact the person listed under the "For Further Information Contact" section of this notice. Interested parties who wish to participate in the hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B-099, 14th Street and Constitution Avenue, NW., Washington, DC 20230, within ten days of the publication of this notice in the Federal Register. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed. In addition, ten copies of the business proprietary and five copies of the nonproprietary versions of the case briefs must be submitted to the Department at the address above in accordance with § 353.38 of the Department's regulations. In accordance with § 353.38(b) of the Department's regulations, oral presentations will be limited to issues raised in the briefs.

This determination is published pursuant to section 733(f) of the Act.

Dated: April 10, 1991.

Marjorie A. Chorlins,
Assistant Secretary for Import
Administration.

[FR Doc. 91-9080 Filed 4-17-91; 8:45 am]

BILLING CODE 3510-DS-M

[C-351-406]

Certain Round Shaped Agricultural Tillage Tools From Brazil; Final Results of Countervailing Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative reviews.

SUMMARY: On February 22, 1991, the Department of Commerce published the preliminary results of its 1987 and 1988 administrative reviews of the countervailing duty order on certain round shaped agricultural tillage tools from Brazil. We have not completed

those reviews and determine that net subsidy to be zero for one firm and 1.19 percent *ad valorem* for all other firms for the period January 1, 1987 through December 31, 1987, and zero for one firm and 1.06 percent *ad valorem* for all other firms for the period January 1, 1988 through December 31, 1988.

EFFECTIVE DATE: April 18, 1991.

FOR FURTHER INFORMATION CONTACT: Anne Driscoll, Elizabeth Levy or Michael Rollin, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On February 22, 1991, the Department of Commerce (the Department) published in the Federal Register (56 FR 7340) the preliminary results of its 1987 and 1988 administrative reviews of the countervailing duty order on certain round shaped agricultural tillage tools from Brazil (50 FR 42743; October 22, 1985). The Department has now completed those administrative reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Review

Imports covered by this review are shipments of certain round shaped agricultural tillage tools (discs) with plain or notched edge, such as colters and furrow-opener blades. During the review period, such merchandise was classified under item numbers 666.0015, 666.0020, 666.0050, 666.0060, 666.0065 and 666.0075 of the *Tariff Schedules of the United States Annotated* (TSUSA). This merchandise is currently classifiable under HTS item numbers 8432.21.00, 8432.29.00, 8432.80.00 and 8432.90.00. The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The reviews cover the periods January 1, 1987 through December 31, 1987 and January 1, 1988 through December 31, 1988, and thirteen programs. (1) CACEX Preferential Working Capital Financing for Exports; (2) Income Tax Exemption for Export Earnings; (3) Export Credit Premium for IPI/Portaria 176/84; (4) Preferential Export Financing under CIC-OPCRE of the Banco do Brasil; (5) Preferential Financing for Industrial Enterprises by the Banco do Brasil (FST and EGF loans); (6) Reductions of Taxes and Import Duties under Decree Law No. 77.065 through BEFIEX and CIEIX; (7) Preferential Financing for National

Trading Companies under Resolution 883 of the Banco Central do Brasil; (8) Accelerated Depreciation for Brazilian-Made Capital Goods; (9) Preferential Financing under Resolution 68 and 509 through FINEX; (10) Preferential Financing under Resolution 578/83 through FUNPAR; (11) Preferential Financing under FINEP; (12) Preferential Financing under Resolution 579/83 through PROEX and PROSIM; and (13) Preferential Financing for the Storage of Merchandise Destined for Export under Resolution 330/Portaria 130 of the Banco do Brasil.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received no comments.

Final Results of Review

As a result of our reviews, we determine the net subsidy to be zero for Semeato, and 1.19 percent *ad valorem* for all other firms for the period January 1, 1987, through December 31, 1987, and zero for Semeato, and 1.06 percent *ad valorem* for all other firms for the period January 1, 1989, through December 31, 1988.

Therefore, the Department will instruct the Customs Service to liquidate, without regard to countervailing duties, shipments of this merchandise from Semeato, and to assess countervailing duties of 1.19 percent of the f.o.b. invoice price on all other shipments of the subject merchandise exported on or after January 1, 1987, and on or before December 31, 1987. The Department also will instruct the Customs Service to liquidate, without regard to countervailing duties, shipments of this merchandise from Semeato, and to assess countervailing duties of 1.06 percent of the f.o.b. invoice price on all other shipments of the subject merchandise exported on or after January 1, 1988, and on or before December 31, 1988.

Because the only two programs used by the respondents during the review period, the CACEX Preferential Working Capital Financing for Exports and the Income Tax Exemption for Export Earnings programs, have been terminated by the Government of Brazil, the Department will instruct the Customs Service to waive the collection of cash deposits of estimated countervailing duties on all shipments of the subject merchandise from Brazil entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: April 11, 1991.

Marjorie A. Chodins,
Acting Assistant Secretary for Import
Administration.

[FR Doc. 91-9081 Filed 4-17-91; 8:45 am]

BILLING CODE 3510-DS-M

Short-Supply Determination: Certain Stainless Steel Wire Rod

AGENCY: Import Administration/
International Trade Administration,
Commerce.

ACTION: Notice of short-supply
determination on certain stainless steel
wire rod.

SHORT-SUPPLY REVIEW NUMBER: 46.

SUMMARY: The Secretary of Commerce ("Secretary") hereby grants a short-supply allowance for 30 metric tons of certain modified AISI 308L grade stainless steel wire rod for the remainder of 1991 under the U.S.-EC steel arrangement.

EFFECTIVE DATE: April 10, 1991.

FOR FURTHER INFORMATION CONTACT:
Sally A. Craig or Richard O. Weible,
Office of Agreements Compliance,
Import Administration, U.S. Department
of Commerce, room 7866, 14th Street and
Constitution Avenue, NW., Washington,
DC 20230 (202) 377-0165 or (202) 377-
0159.

SUPPLEMENTARY INFORMATION: On March 11, 1991, the Secretary received an adequate petition from Futura Metals & Alloys Inc. ("Futura") requesting a short-supply allowance for 30 metric tons of certain modified AISI grade 308L stainless steel wire rod for the remainder of 1991 under Article 8 of the Arrangement Between the European Coal and Steel Community and the European Economic Community and the Government of the United States of America Concerning Trade in Certain Steel Products. Futura requested short supply because it alleges that no U.S. producer is either willing to produce this product or able to meet the requested specifications and that its potential foreign supplier has insufficient regular export licenses available during this time period.

The Secretary conducted this short-supply review pursuant to section 4(b)(4)(A) of the Steel Trade Liberalization Program Implementation Act, Public Law No. 101-221, 103 Stat. 1886 (1989) ("the Act"), and § 357.102 of the Department of Commerce's Short-Supply Procedures, 19 CFR 357.102

("Commerce's Short-Supply Procedures").

The requested material meets the following specifications:

Diameter: 5.5 mm;

Chemical Composition:

C—0.020 maximum

Si—0.1-0.3

Mn—1.6-2.0

P—0.015 maximum

S—0.015 maximum

Cr—19.5-20.5

Ni—9.5-10.5

Surface: Free of seams, scabs, ridges
and other surface defects;

Quality: Of a quality to make welding
quality products;

Other: Hot-rolled, annealed and pickled
wire rod in 500kg.-weight coils for
redraw.

Action

On March 11, 1991, the Secretary established an official record on this short-supply request (Case Number 46) in the Central Records Unit, Room B-099, Import Administration, U.S. Department of Commerce at the above address. On March 18, 1991, the Secretary published a notice in the Federal Register (56 FR 11407) announcing a review of this request and soliciting comments from interested parties. Comments were required to be received no later than March 25, 1991, and interested parties were invited to file replies to any comments no later than five days after that date. In order to determine whether this product, or a viable alternative product, could be supplied in the U.S. market for the period of this review, the Secretary sent questionnaires to: Al Tech Specialty Steel Corporation ("Al Tech"), Armco Steel ("Armco"), and Carpenter Technology Corporation ("CarTech"). The Secretary received two timely questionnaire responses, two responses those questionnaire responses, and no comments to the Federal Register notice.

Questionnaire Responses

Al Tech stated in its questionnaire response that it was unable to produce this stainless wire rod to Futura's specifications because it would " * * need relief on phosphorus and silicon levels." CarTech stated in its response that it was willing to supply this wire rod during the period of this review. It offered a minimum of 70,000 lbs. (31.75 metric tons) with a nominal coil weight of 800 lbs. (approx. 363 kgs.) and stated that it could begin supplying Futura in 90 days. CarTech also stated that its normal product has a surface defect allowance of one percent of rod diameter but that it could offer

Futura " * * * a seam-free product at an appropriate price extra." BSSC did not respond in a timely manner.

Futura provided comments to the Secretary on March 29, 1991, responding to CarTech's questionnaire response and describing its attempts to obtain a quotation from CarTech on this material.

Futura stated that it contacted CarTech on March 26, 1991, and was informed that CarTech's questionnaire response was a general response and not tailored to the modifications stipulated by Futura of the standard grade 308L stainless steel wire rod specification. Futura noted that, on March 27, 1991, CarTech's sales department contacted it and obtained the specifications verbally over the telephone. Later that day, at CarTech's request, Futura telefaxed the specifications to the sales department to ensure a speedy response.

On April 1, 1991, Futura received a quotation from CarTech on the requested material and submitted a copy, along with its comments, for the record. In its quote, CarTech offered a defect-free product with a shipment date approximately 8-10 weeks after receipt of an order. CarTech stated that it would not " * * * offer no trace of copper * * * and that copper " * * * could be present up to .30 max." CarTech also stated that a minimum heat lot of 70,000 lbs. (31.75 metric tons) must be ordered. No mention of coil weight was made in the quotation. In its accompanying comments, Futura noted that this offer deviated from its specification regarding chemistry and that the quoted price would make Futura unable to compete.

Analysis

The key question in this review is whether the material offered by CarTech can meet all of Futura's requirements. Futura has requested 30 metric tons of material meeting specifications required by its customer. CarTech has stated that it has the ability to produce the requested product with a copper level of up to a maximum of 0.30 percent. While Futura has indicated in its comments that no copper element should be present, it did not explicitly note this in the product specifications provided in its petition. However, CarTech has also stipulated that it would require a minimum order of 31.75 metric tons before supplying the material to Futura. In determining whether short supply exists, the Secretary considers the willingness of a potential supplier to supply the requested quantity to be a factor in determining short supply. In this review,

CarTech offered to supply only a tonnage greater than that required by Futura without providing an adequate explanation as to why it could not supply the requested quantity. Therefore, the Secretary determines that CarTech's offer does not satisfy Futura's short-supply requirements.

Conclusion

Because the domestic industry is either unable or unwilling to supply the requested product fully meeting Futura's requirements, the Secretary hereby determines that short supply exists with respect to the requested product for this time period. Pursuant to section 4(b)(4)(A) of the Act and § 357.102 of Commerce's Short-Supply Procedures, the Secretary hereby grants a short-supply allowance for 30 metric tons of modified AISI grade 308L stainless steel wire rod for the remainder of 1991.

Dated: April 10, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

DEPARTMENT OF DEFENSE

Office of the Secretary

ACTION: Announcement of public hearing of the Defense Base Closure and Realignment Commission.

SUMMARY: The third public meeting of the Defense Base Closure and Realignment Commission will be held on April 26, 1991 at 10 a.m. in the House Ways and Means Committee Room, Number 1100, the Longworth House Office Building, Capitol Hill, Independence Avenue at New Jersey Avenue. The meeting will be concerned primarily with the taking of testimony by the Commission from the Assistant Secretary of Defense for Production and Logistics, and each of the Assistant Service Secretaries for Installations, on the process of methodology used to determine their recommendations for candidate base closures and realignments.

FOR FURTHER INFORMATION CONTACT: Defense Base Closure and Realignment Commission, Mr. Cary Walker, Director of Communications and Public Affairs, 202-653-0823.

Dated: April 12, 1991.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-9050 Filed 4-17-91; 8:45 am]

BILLING CODE 3810-01-M

Corps of Engineers, Department of the Army

Sargent Beach, Matagorda County, TX; Study of the Gulf Intracoastal Waterway

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent to prepare a DEIS for the section 216 study of the Gulf Intracoastal Waterway at Sargent Beach, Matagorda County, Texas.

SUMMARY: The proposed action to be addressed in the Draft DEIS is to maintain safe, uninterrupted navigational usage of the Gulf Intracoastal Waterway (GIWW) through the Sargent, Texas area. This reach has dimensions of 12 feet deep and a 125-foot bottom width and parallels the Gulf of Mexico shoreline for about 7 miles. The channel is separated from the Gulf by a land barrier ranging in width from about 650 to 950 feet. Coastal erosion has threatened the integrity of the channel and, therefore, the ability to maintain safe, uninterrupted navigation.

FOR FURTHER INFORMATION CONTACT:

Questions about the proposed action and DEIS may be answered by Mr. David J. Petit, (409) 766-3032, Environmental Specialist, Environmental Resources Branch, or Ms. Sheridan Wiley, (409) 766-3050, Study Manager, Coastal Planning Branch, Planning Division, P.O. Box 1229, Galveston, Texas 77553-1229.

SUPPLEMENTARY INFORMATION: The proposed action is to maintain safe, uninterrupted navigational usage of the GIWW through the Sargent, Texas area. The study area includes about 10 miles of coast from the vicinity of Cedar Lakes to East Matagorda Bay.

1. *Alternatives:* Alternatives to be evaluated include realignment of the channel, structures and beach nourishment to maintain a stable shoreline, and the "No Action" plan. Channel realignments being considered would place the new channel farther inland. Various structures designed to stabilize or maintain shorelines such as walls, revetments, groin fields, offshore breakwater, or some combination of these will also be evaluated. Beach nourishment will also be considered since it is a viable method of shoreline stabilization. The "No Action" plan will be presented for comparison purposes in evaluating the various alternatives.

2. *Public Involvement:* Coordination of the project with the public includes release of a Public Notice which provides a description of the alternatives being evaluated, and

requests input to the scoping process for preparation of the Environmental Impact Statement. The Notice was released on March 8, 1991. Information received as a result of the Notice will be used to identify significant resources to be evaluated and issues to be addressed in the DEIS. Coordination with the U.S. Fish and Wildlife Service, National Marine Fisheries Service, and Texas Parks and Wildlife Department will be accomplished during the feasibility study phase.

3. *Coordination:* The Scoping process will involve Federal, State, and local agencies, and other interested persons and organizations. The Public Notice has requested input to the study, and on significant resources and issues associated with the project. This information will be used as part of the scoping process in preparing the DEIS.

4. *DEIS Preparation:* It is estimated that the DEIS will be available to the public in September 1991.

Kenneth L. Denton,
Alternate Army Federal Register Liaison
Officer.

[FR Doc. 91-9101 Filed 4-17-91; 8:45 am]
BILLING CODE 3710-GK-M

Department of the Army

ROTC Affairs Advisory Panel; Meeting

AGENCY: Army Advisory Panel on ROTC Affairs, DOD.

ACTION: Notice of open meeting.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Panel meeting:

Name of Panel: Army Advisory Panel on ROTC Affairs.

Date of Meeting: July 1-2, 1991.

Place: Officer's Club, Fort Knox, Kentucky.

Time: 9 a.m.-5 p.m., 1 July 1991, 9 a.m.-12 p.m., 2 July 1991.

Proposed Agenda: The meeting will consist of briefings and discussions. The meeting is open to the public. Any interested person may appear before or file a statement with the panel at the time, and in the manner, permitted by the Panel. It is projected that the following events will take place during the meeting. After opening remarks by Major General Wallace C. Arnold and the chairman of the Panel, Dr. Anthony F. Ceddia, any administrative matters requiring attention will be resolved. The meeting will then proceed with a variety of recent ROTC Cadet Command initiatives. Major General Arnold will provide an overview of the significant changes since the February 1991 meeting at Cadet Command. Briefings on July 1 will include: Scholarship Update, Missioning Update, Advertising Strategy, Marketing Operation Citizen Soldier, Spring Gold, Green to Gold Update, Camps Update, Cadet Professional Development Training, the High

School Program Update, and the Governmental Agency Program (GAP). On July 2 the Army Advisory Panel on ROTC Affairs will meet in general session to formulate recommendations, consider progress made on previous Panel recommendations, and to select a date for the next Panel meeting.

FOR FURTHER INFORMATION CONTACT:

Colonel Kenneth A. Harris,
Headquarters, United States Army
ROTC Cadet Command, Fort Monroe,
VA 23651-5000, AUTOVON: 8-680-4580.

Kenneth L. Denton,
Alternate Army Federal Register Liaison
Officer.

[FR Doc. 91-9103 Filed 4-17-91; 8:45 am]

BILLING CODE 3710-08-M

Freight Carrier Performance Program; Changes

AGENCY: Military Traffic Management Command, DOD.

ACTION: Notice of changes relative to the Freight Carrier Performance Program, Defense Traffic Management Regulation (AR 55-355, NAVSUPINST 4600.70, AFR 75-2, MCO P4600.24B, DLAR 4500.3).

SUMMARY: The following changes modify criteria which the Military Traffic Management Command (MTMC) will consider when evaluating the level of performance provided by a commercial freight carrier handling Department of Defense (DOD) shipments and establish acceptable telephone response times for shipment acceptance by a carrier and the standards required.

DATES: Comments must be received on or before May 20, 1991.

ADDRESSES: Comments should be addressed to: HQ, MTMC, Attn: MTIN-FF, 5611 Columbia Pike, Falls Church, VA 22041-5050.

FOR FURTHER INFORMATION CONTACT:

Ms. Patricia McCormick, Headquarters, Military Traffic Management Command, Attn: MTIN, 5611 Columbia Pike, Falls Church, VA 22041-5050, (703) 756-1596.

SUPPLEMENTARY INFORMATION: MTMC is authorized by DOD Directive 5160.53 to develop and maintain procedures for the movement of DOD shipments within the continental United States. MTMC is also required to ensure that DOD shipments are tendered to carriers able to meet DOD requirements at the lowest overall cost. Therefore, the following criteria have been established to ensure responsive service by the carrier industry and will be incorporated into chapter 42 of the Defense Traffic Management Regulation (DTMR AR 55-355, NAVSUPINST 4600.70, AFR 75-2, MCO P4600.14B, DLAR 4500.3).

The number of service failures which

may occur prior to a shipping activity placing a carrier in nonuse is as follows:

(a) Failure to pick up as agreed is changed to 2 instances within a 45-day period and furnishing improper/inadequate equipment is also changed to 2 instances within a 45-day period.

(b) Failure to pickup as agreed occurs when a carrier promises to pickup on a certain day. This does not preclude the carrier from contacting the shipper in advance and making acceptable arrangements to pickup on an alternate day. However, if the carrier develops a pattern of calling the day prior or on the day of pickup, the shipper has the option of holding the carrier to the pickup date and charging a failure to pickup, if warranted. Once the carrier accepts the shipment and agrees to pick it up on a specified day, the minimum advance notice requirements as established no longer apply (see paragraph d below).

(c) Improper/inadequate equipment involves furnishing equipment which is not satisfactory to the shipper, e.g., shipper requests a 45 foot van and the carrier arrives with a 40 foot van; equipment furnished is unsuitable for loading, i.e., holes in trailer, unsafe condition, etc. Also included in this is the failure of the driver to possess the appropriate paperwork or identification, i.e., appropriate copy of a trip-, master-, or permanent lease.

(d) Timeframes have been established for minimum notice to the carrier prior to charging a refusal. A refusal may be charged in the carrier refused a general commodities shipment 24 hours in advance of scheduled pickup, or 48 hours advance notice for shipments which require a Transportation Protective Service. This does not preclude the shipper from requesting pickup within a lesser timeframe to meet mission requirements. (See paragraph (e)(3). However, once the carrier accepts the shipment for pickup the timeframes are no longer applicable, and the carrier can then be charged for a no show if it fails to meet pickup data.

(e) Recognizing that carriers need a reasonable amount of time to determine whether they have equipment and employees available to fulfill a DOD shipper or transportation officer's request for service, shippers and carriers are authorized to set a mutually agreeable response time for acceptance or refusal of a shipment. However, failure to accept or decline a shipment as described herein will be considered by MTMC as a shipment refusal. The following will apply in the absence of a specific service agreement:

(1) When offered a shipment, the carrier will have 1-hour to accept or decline the shipment if the carrier is

unable to make an immediate commitment.

(2) Failure on the part of the carrier to return the telephone call during the specified timeframe(s), and either accept or decline the shipment, will be considered on the part of the shipper as a refusal.

(3) The shipper retains the right to specify a shorter response time for high priority shipments, i.e., less than 24 or 48 hours. However, the shipper may not charge the carrier with a refusal if the carrier declines the shipment. Once the carrier accepts the shipment, it is expected to arrive on the specified date, by the specified time, regardless of advance notice.

(f) Disconnected numbers and unanswered inquiries will be considered as evidence that the carrier is no longer interested in providing service to the DOD. Once the MTMC area commands and/or headquarters have been advised by a shipper of a carrier's nonresponsiveness, the carrier will be provided a notice of removal from consideration for participation in DOD freight shipments. Failure on the part of the carrier to respond to the written request, with the requested information, could result in the removal of all tenders of service on file by the carrier. Once removed, the carrier will be required to meet all qualification standards in effect at the time prior to being authorized to file new tenders of service.

The shipper may place a carrier in nonuse for up to 60 days followed by a 60 day probationary period. (This information must be so stated in the initial nonuse correspondence). Any additional service failure during the probationary status at that installation, the shipper may place the carrier in an additional 60 day nonuse status.

The shipper will now be allowed to place a carrier in nonuse for up to 6 months if the carrier has been placed in nonuse, at that activity, 3 times within an 18-month timeframe.

The shipper will have the authority to place a carrier in immediate nonuse, at that activity, for any supportable adverse incident involving drugs, alcohol, or firearms. The incident and action will be immediately forwarded to the appropriate area command for consideration of broader performance action. The shipper must provide a telephone report, followed by appropriate written report or facsimile all pertinent information to the area command at the earliest time possible after the incident and nonuse action.

The area commands will perform an in-depth review of a carrier's performance after receipt of 8 nonuse actions, collectively, from activities

within their jurisdiction, on the same carrier, within a 6-month period. At that time area-wide disqualification may be taken against the carrier using MTMCR 15-1 for up to 180 days.

Headquarters, MTMC, will perform an in-depth review of a carrier's performance once the carrier has accumulated 12 performance actions within a 6-month period, which includes, but not limited to, nonuse actions at shipping activities, any action initiated by the area commands, and letters of concern and/or warnings. Upon completion of the review, if appropriate, nationwide disqualification may be taken against the carrier under MTMCR 15-1.

Kenneth L. Denton,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 91-9104 Filed 4-17-91; 8:45 am]

BILLING CODE 3710-08-M

Military Traffic Management; CONUS

AGENCY: Military Traffic Management Command, DOD.

ACTION: Notice of proposed changes, CONUS automated rate system (CARTS).

SUMMARY: The Military Traffic Management Command (MTMC) is proposing changes to the CONUS Automated Rate System (CARTS). This system is the method by which interstate household goods rates are procured for the Department of Defense (DOD). Carrier comments are requested 60 days from the date of this notice. This notice of proposed changes replaces a previous notice (56 FR 12715), 27 March 1991.

EFFECTIVE DATE: 1 May 1992 Filing Cycle.

FOR FURTHER INFORMATION CONTACT: Ms. Janet Nemier, Military Traffic Management Command, attn: MTPP-CD, room 408, 5611 Columbia Pike, Falls Church, VA 22041-5050, telephone (703) 756-1190.

SUPPLEMENTARY INFORMATION: The current CARTS program has two volumes each year. One cycle is effective May 1 thru October 31, and the other becomes effective November 1 thru 30 April. Each volume contains a number of filing cycles.

The initial filing cycle provides carriers maximum flexibility to establish the specific, compensatory rates at which they desire to move personal property shipments from any origin Personal Property Shipping Office (PPSO) to any destination state. In addition to the initial filing cycle,

carriers may change, correct, or add rates under two separate rate submission procedures.

Once the initial filing cycle is completed, carriers have the opportunity to review rates filed by other carriers. The Me-too filing cycle provides carriers with the opportunity to precisely adjust their rates to the lower rates of other carriers established during the initial filing cycle.

In addition, there are four letter of intent-cancellation (L/C) cycles. These cycles provide carriers newly approved at an installation to precisely meet the rates of other carriers and provide carriers with the opportunity to cancel existing rates.

PROPOSED CHANGES: The me-too cycle contains an additional correction cycle called the M/T-B cycle. It is recommended that this part of the me-too cycle be eliminated. The rates would be forwarded to the Personal Property Shipping Offices sooner and carriers would have the total picture of rates filed for their individual shipment planning.

It is also recommended that the fourth L/C cycle be eliminated. There are very few cancellations by carriers during this cycle and the administrative costs far outweigh the benefits to the Government. Three L/C cycles should be sufficient for new carrier filings and rate cancellations.

Kenneth L. Denton,
Alternate Army Federal Register Liaison Officer.

[FR Doc. 91-9102 Filed 4-17-91; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

Privacy Act of 1974; System of Records

AGENCY: Department of Education.

ACTION: Notice of new system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, and section 406(i) of the General Education Provisions Act (GEPA) (20 U.S.C. 1221e-1), the Department of Education publishes this notice of a new system of records known as: The National Center for Education Statistics' National Assessment of Educational Progress.

This system notice covers three groups: (1) 17-year-olds who have either dropped out or graduated early; (2) young adults; and (3) individual schools. Individual schools are covered by this notice as required under section 406(i)(4)(B)(i) of GEPA.

DATES: Comments on the proposed routine uses in this system of records must be submitted by May 20, 1991. The Education Department filed a report on the new system of records with the Committee on Governmental Affairs of the Senate, the Committee on Government Operations of the House of Representatives, and the Administrator, Office of Management and Budget (OMB) on April 12, 1991. This system of records will become effective after the 60-day period for OMB review of the system expires on June 11, 1991, unless OMB gives specific notice within the 60 days that the system is not approved for implementation or requests additional time for OMB review. The Department will publish any changes to the routine uses that are required as a result of the comments.

ADDRESSES: Comments on the proposed routine uses should be addressed to Gary W. Phillips, Acting Associate Commissioner, Educational Assessment Division, National Center for Education Statistics, U.S. Department of Education, 555 New Jersey Avenue, NW., (Room 308C), Washington, DC 20208-5653. All comments submitted in response to this notice will be available for public inspection, during and after the comment period, at the above address in Room 400E between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Gary W. Phillips, Acting Associate Commissioner, Educational Assessment Division, National Center for Education Statistics, U.S. Department of Education, 555 New Jersey Avenue, NW., (Room 308C), Washington, DC 20208-5653. Telephone: (202) 219-1761.

SUPPLEMENTARY INFORMATION: The Privacy Act of 1974 (see 5 U.S.C. 552a(e)(4)) requires the Department to publish in the Federal Register this notice of a new system of records. The Department's regulations implementing the Privacy Act of 1974 are contained in the Code of Federal Regulations (CFR) at 34 CFR part 5b.

The National Assessment of Educational Progress (NAEP) has collected achievement and background data from: Students of three NAEP age/grade groups (age 9/grade 3 or 4, age 13/grade 7 or 8, and age 17/grade 11 or 12) since the inception of the program; out-of-school 17-year-olds between 1969 and 1976 and in 1979-80; and young adults of ages 26-35 between 1969 and 1974 and in 1976-77, and ages 21-25 in 1985. NAEP has also collected information about the characteristics of teachers and

schools to report student performance in relation to this information.

Most of the data collected by NAEP are not subject to the Privacy Act because neither National Center for Education Statistics (NCES) nor its contractor has access to the names of individual students who participate in the NAEP assessment at selected schools. This information is maintained at the schools attended by the students and is destroyed after a six-month verification period. However, the attached system notice covers two groups of individuals for whom NCES briefly has individually identifiable information—individuals who leave school early as early graduates or drop-outs (out-of-school 17-year-olds) and young adults. In order to collect data about individuals who leave school early and young adults, the contractor must obtain names and addresses of the individuals. These identifying data are maintained by the contractor for a period of six months in order to maintain contact with the individuals for data verification purposes. During this six month period, the data regarding the individuals are identifiable and subject to the Privacy Act. At the end of the six month period, all identifying names and addresses are destroyed and neither the contractor nor NCES can trace information to the individuals who supplied it. Thus, the individuals who are the subjects of this data no longer have the Privacy Act rights of access and amendment, nor do they have the right to limit disclosure of the data without their consent.

A third group covered by this notice is the schools who provide data about individual students, teachers and other school data. Under section 406(i)(4)(B)(i) of GEPA, the Department must treat each school that provides data as if it were an individual under the Privacy Act of 1974. Thus, each school has rights afforded individuals under the Privacy Act. As a result, the Department must publish the attached notice covering individual schools, as well as out-of-school 17-year-olds and young adults who may be surveyed under NAEP.

Dated: March 22, 1991.

Christopher T. Cross,

Assistant Secretary for Educational Research and Improvement.

The Assistant Secretary for Educational Research and Improvement publishes a notice of a new system of records to read as follows:

18-42-0003

SYSTEM NAME:

National Center for Education Statistics' National Assessment of Educational Progress.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

WESTAT, 1650 Research Boulevard, Rockville, Maryland 20850
Educational Testing Service, Rosedale Road, Princeton, New Jersey 08541
National Computer Systems, 2510 N. Dodge Street, Iowa City, Iowa 52245

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Individuals who leave school early as early graduates or drop-outs (out-of-school 17-year-olds) are covered during a six month data verification period; (2) young adults are covered during a six month data verification period; and (3) individual schools are covered under section 406(i)(4)(B)(i) of the General Education Provisions Act (GEPA) (20 U.S.C. 1221e-1(i)(4)(B)(i)).

CATEGORIES OF RECORDS IN THE SYSTEM:

Records contain responses to assessment and survey instruments. The contents of these instruments are of two types: (1) Cognitive test items to assess the educational achievement of students and young adults in various subject areas taught in school; and (2) questions about student demographic and background variables as well as the characteristics of teachers and schools.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

20 U.S.C. 1221e-1.

PURPOSE:

The purpose of the National Assessment of Educational Progress (NAEP), funded by the Department of Education, is to provide information on the educational achievement of young Americans over time.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(a) During a six-month verification period, individually identifiable information about individuals who leave school early or are young adults is subject to the Privacy Act, and may be disclosed under routine uses that are consistent with the Commissioner's authority under section 406(d)(4) of GEPA (20 U.S.C. 1221e-1(d)(4)). The routine uses that apply to this period permit disclosures to individuals who:

(1) Take the oath and sign an affidavit of nondisclosure required under section 406(d)(4) of the General Education Provisions Act (GEPA) (20 U.S.C. 1221e-1(d)(4)), and

(2) Work for a contractor, grantee, or party to a cooperative agreement or other entity that has an agreement with the Commissioner to conduct research for National Center for Education Statistics (NCES), or

(3) Work under a research contract, grant, or cooperative agreement with a Federal, State, or local agency that requires the use of individually identifiable information, and the research is compatible with the purpose for which NCES collected the data, or

(4) Work under an agreement in writing to:

i. Use the information for statistical purposes only,

ii. Maintain the data in accordance with applicable Federal laws,

iii. Prohibit redisclosure in identifiable form, and

iv. Permit NCES' periodic inspection to determine adherence to the contract or agreement.

(b) Regarding the records of individual schools, which, under 20 U.S.C. 1221e-1(i)(4)(B)(i), must be treated as individuals subject to the Privacy Act, NCES may make routine use disclosures, consistent with the statistical purposes for which a record was supplied, as follows:

(1) *Contract disclosure.* When NCES intends to contract with a private firm for the purpose of collating, analyzing, aggregating, maintaining, appending, or otherwise refining records in this system, the Commissioner of Education Statistics may release relevant records to the contractor. The contractor will be required to maintain safeguards under the Privacy Act of 1974 with respect to such records.

(2) *Research disclosure.* Where the Commissioner of Education Statistics determines that an individual or organization is qualified to carry out specific research, the Commissioner may disclose information from this system of records to that researcher solely for the purpose of carrying out that research. The researcher shall maintain the Privacy Act of 1974 safeguards with respect to such records.

(3) *Litigation disclosure—(i) Disclosure to the Department of Justice.* If the Department determines that disclosure of certain records to the Department of Justice is relevant and necessary to litigation and is compatible with the purpose for which the records were collected, the Department may disclose those records as a routine use to the Department of Justice. Such a

disclosure may be made in the event that one of the parties listed below is involved in the litigation, or has an interest in such litigation:

(A) The Department, or any component to the Department;

(B) Any employee of the Department in his or her official capacity.

(C) Any employee of the Department in his or her individual capacity where the Justice Department has agreed to represent the employee; or

(D) The United States where the Department determines that the litigation is likely to affect the Department or any of its components.

(ii) *Disclosure to a court or adjudicative body.* If the Department determines that disclosure of certain records to a court or adjudicative body before which the Department is authorized to appear is relevant and necessary to litigation and is compatible with the purpose for which the records were collected, the Department may disclose those records as a routine use to the court or adjudicative body. Such disclosure may be made in the event that one of the parties listed below is involved in the litigation, or has an interest in such litigation:

(A) The Department, or any component of the Department;

(B) Any employee of the Department in his or her official capacity;

(C) Any employee of the Department in his or her individual capacity where the Justice Department has agreed to represent the employee; or

(D) The United States where the Department determines that the litigation is likely to affect the Department or any of its components.

(4) *FOIA advice disclosure.* In the event the Department deems it desirable or necessary, in determining whether particular records are required to be disclosed under the Freedom of Information Act, disclosure may be made to the Department of Justice for the purpose of obtaining its advice.

(5) *Congressional member disclosure.* Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

POLICIES AND PRACTICES FOR RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM: RETRIEVABILITY:

Records are retrievable by assessment year, subject area, age/grade at the school or individual respondent level.

SAFEGUARDS:

Access to the restricted-use data files and completed test booklets and forms is severely limited to key contractor and

NCES staff. User access to the restricted-use data files has three levels of data access protection. Access to the files is restricted to authorized NAEP staff who have a valid need for immediate access to NAEP data. This access is controlled and monitored by the use of secure "log-on" identification and password protection schemes. Access to individual restricted-use data files is controlled by an access control facility that restricts users to only those files that are necessary and approved for their perusal.

In addition, the restricted-use data files are backed-up to an off-site secure location that will protect NAEP data in the event of a computer center disaster. This off-site storage is in a secure vault that is physically protected from unauthorized entry. The open-ended responses are stored in a secure warehouse with access limited to NAEP project staff.

RETENTION AND DISPOSAL:

The NAEP restricted-use data files are stored in a secure computer facility. The security mechanism includes physical security, data security, and disaster recovery capability. The computer facility is housed within a fire-resistant masonry and steel door structure. Physical access to the facility is electronically controlled through magnetically imprinted identification badges and is limited to authorized staff who have functional responsibilities within the secured areas.

Open-ended responses are kept indefinitely. However, data that could be used to identify individuals are destroyed six months after collection.

SYSTEM MANAGER AND ADDRESS:

Associate Commissioner, Educational Assessment Division, National Center for Education Statistics, Office of Educational Research and Improvement, U.S. Department of Education, 555 New Jersey Avenue, NW., Room 308C, Washington, DC 20208-5653.

NOTIFICATION PROCEDURE:

If an individual wishes to determine whether a record exists for him or her in this system of records, the individual should provide the system manager his or her name, date of birth, and social security number. Requests for notification about whether this system contains information about an individual must meet the requirements of the Department's Privacy Act regulations, 34 CFR 5b.5.

RECORD ACCESS PROCEDURE:

If an individual wishes to gain access to a record in this system of records, he

or she should contact the system manager and provide information as described in the notification procedure. Request for access to a record should reasonably specify the particular record content being sought. Requests for access to a record in this system of records must meet the requirements of the Department's Privacy Act regulations, 34 CFR 5b.5.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest information contained in a record in this system of records should contact the system manager. Requests may be made either in writing or in person, and should specify: (1) The system of records from which the record is to be retrieved; (2) the particular record the requestor is seeking to amend; (3) whether a deletion, an addition, or a substitution is being sought; and (4) the reason(s) for the requested change(s). Requestors should include in their requests any appropriate documentation supporting the requested change(s). For a complete statement of the procedures required for contesting a record, see the Department's Privacy Act regulations, 34 CFR 5b.7.

RECORD SOURCE CATEGORIES:

Data are collected directly from subject individuals and individual schools.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 91-9074 Filed 4-17-91; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Financial Assistance Award: University of Washington

AGENCY: U.S. Department of Energy (DOE), Richland Operations Office.

ACTION: Notice of intent to make a noncompetitive financial assistance award.

SUMMARY: The Richland Operations Office, in accordance with 10 CFR 600.7(b)(2) gives notice of its plan to award financial assistance, in the form of a cooperative agreement, to the University of Washington in Seattle, WA.

SCOPE: This award will help supply the early phase of a project which is expected to result in a comprehensive, scholarly history of the development of technology at the Hanford project and its relation to the community around it.

The DOE has determined that an award on a noncompetitive basis is appropriate for the following reason:

This project is already being conducted, by qualified historians on the faculty at the University of Washington, using the University's own resources, and the resources of third parties are being sought. DOE plans to provide support of \$35,000 for the preliminary phase of the project, the total cost of which is expected to be approximately \$218,000. This phase is expected to produce, in addition to bibliography, a preliminary narrative to coincide with the 50th anniversary of the Hanford project. DOE wishes to assist this history project in order to help ensure a quality, timely completion of the preliminary phase. DOE support will enhance the public benefit to be derived from the enrichment of general historical understanding both of the Department and its predecessor organizations and of the relationship between the development of particular technologies and the people who facilitated it, as illustrated by the Hanford story.

FOR FURTHER INFORMATION CONTACT: Marji W. Parker, U.S. Department of Energy, Richland Operations Office, Procurement Division, P.O. Box 550, Richland, WA 99352. Telephone: (509) 376-2029.

Dated: March 21, 1991.

Robert D. Larson,
Director, Procurement Division, Richland Operations Office.

[FR Doc. 91-9153 Filed 4-17-91; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Nuclear and Uranium Data Program Package; Forms EIA-254, EIA-851, and EIA-858

AGENCY: Energy Information Administration, Department of Energy.

ACTION: Notice of the proposed reclearance for Forms EIA-254, "Semiannual Report on Status of Reactor Construction," EIA-851, "Domestic Uranium Mining Production Report," and EIA-858, "Uranium Industry Annual Survey," and solicitation of comments.

SUMMARY: Under its continuing effort to reduce paperwork and survey burden for respondents (as required by the Paperwork Reduction Act of 1980, Public Law 96-511, 44 U.S.C. 3501 et seq.), the Energy Information Administration (EIA) conducts a consultation program to provide the general public and other Federal agencies an opportunity to comment on proposed and continuing

reporting forms for its surveys. This program helps to ensure that data requested can be provided in the desired format, reporting burden is minimized, reporting forms are clearly understood, and that the impact of collection requirements on respondents can be properly assessed. Currently, EIA is soliciting comments concerning proposed reclearance of Forms EIA-254, "Semiannual Report on Status of Nuclear Construction," EIA-851, "Domestic Uranium Mining Production Report," and EIA-858, "Uranium Industry Annual Survey."

DATES: Written comments must be submitted on or before May 20, 1991. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below of your intention to do so as soon as possible.

ADDRESSES: Send comments to Luther Smith; Energy Information Administration, EI-531; U.S. Department of Energy; Washington, DC 20585. Phone (202) 254-5565.

FOR FURTHER INFORMATION OR TO OBTAIN COPIES OF THE PROPOSED FORM AND INSTRUCTIONS: Requests for additional information or copies of the form and instructions should be directed to Luther Smith at the address listed above.

SUPPLEMENTARY INFORMATION:

- I. Background
- II. Current Actions
- III. Request for Comments

I. Background

In order to fulfill its responsibilities under the Federal Energy Administration Act of 1974 (Pub. L. 93-275) and the Department of Energy (DOE) Organization Act (Pub. L. 95-91), the Energy Information Administration is obliged to carry out a central, comprehensive, and unified energy data and information program which will collect, evaluate, assemble, analyze, and disseminate periodic data and information related to energy resources and reserves, availability, production, demand, technology, and economic and statistical information related to the adequacy of domestic energy resources and production capability to meet the Nation's near- and longer-term future needs.

The Form EIA-254 collects data on nuclear power plants planned or under construction, including plant ownership, design capacity, status, costs, and construction schedules and milestone dates.

The Form EIA-851 collects data on uranium processing operations at conventional mills and nonconventional plants.

The Form EIA-858 collects data on uranium raw materials activities, uranium marketing, and the financial status of the domestic uranium industry.

Data collected on these forms provide a comprehensive statistical characterization of the domestic nuclear industry in these areas: new nuclear power plant construction activity, capacities of nuclear power plants planned and under construction, annual uranium reserves, potential future requirements for uranium production and enrichment facilities, month-to-month uranium concentrate production, status of the industry's annual activities, and limited information about industry plans and commitments for the near term.

Published data from these surveys are used by the Congress, Federal and State agencies, the uranium and electric-utility industries, and the general public. Published data appear in the EIA publications, "Commercial Nuclear Power," "Uranium Industry Annual," "Domestic Uranium Mining and Milling Industry—Viability Assessment," and the "Annual Energy Review."

II. Current Actions

The Forms EIA-254, EIA-851, and EIA-858 will be submitted for reclearance for continued use in collecting data under the Nuclear and Uranium Data Program conducted by the Office of Coal, Nuclear, Electric and Alternate Fuels, EIA.

III. Request for Comments

Prospective respondents and other interested parties should comment on the forms to be submitted for reclearance. The following general guidelines are provided to assist in the preparation of responses.

As a potential respondent:

A. Are the instructions and definitions clear and sufficient? If not, which instructions require clarification?

B. Can the data be submitted using the definitions included in the instructions?

C. Can data be submitted in accordance with the response period specified in the instructions?

D. The estimated burden of reporting for each EIA nuclear and uranium data form is as follows: Form EIA-254, which is filed semiannually, requires about 1 hour per form to submit; Form EIA-851, which was filed by up to 15 firms during 1990, requires approximately 15 minutes per month per filing; Form EIA-858, which is filed annually, requires an average of 32.0 hours to prepare.

Including time spent in reviewing instructions, searching existing data sources, gathering and maintaining required data, preparing and reviewing these data, and completing the survey forms, what is your estimate of the total time required to submit a Form EIA-254, EIA-851, and/or EIA-858?

E. What is the estimated cost of completing each of these forms, including the direct and indirect costs associated with the data collection? Direct costs should include all costs, such as administrative costs, directly attributable to providing the requested information.

F. How can the revised Forms EIA-254, EIA-851, and EIA-858 be improved?

G. Do you know of any other Federal, State, or local agency that collects similar data? If you do, specify the agency, the data element(s), and the means of collection.

As a potential user:

A. Can you use data at the levels of detail indicated on the Form EIA-254, EIA-851, and EIA-858?

B. For what purpose would you use the data? Please be specific.

C. How could the form be improved to better meet your specific needs?

D. Are there alternate sources of data and do you use them? What are their deficiencies and/or strengths?

The EIA also is interested in receiving comments from persons regarding their views on the need for the information contained in the surveys "Semiannual Report on Status of Reactor Construction," Form EIA-254; "Domestic Uranium Mining Production Report," Form EIA-851; and "Uranium Industry Annual Survey," Form EIA-858.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the forms. The comments also will become a matter of public record.

Statutory Authority: Sections 5(a), 5(b), 13(b), and 52 of Public Law 93-275, Federal Energy Administration Act of 1974, 15 U.S.C. §§ 764(a), 764(b), 772(b), 790a, and Section 205, Public Law 95-91, Department of Energy Organization Act, 42 U.S.C. 7135.

Issued in Washington, DC on April 11, 1991.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 91-9154 Filed 4-17-91; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Research

Special Research Grant Program Notice 91-11; Ocean Margins Program

AGENCY: Department of Energy (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Health and Environmental Research (OHER) of the Department of Energy (DOE) announces its interest in receiving applications for Special Grants to support quantitative analytical, experimental, and theoretical studies on the exchange of carbon between the continental shelf and the open ocean. Emphasis within this Ocean Margins Program (OMP) will be on quantifying the role of the coastal ocean in the global flux of carbon. The central goal of the OMP is to determine whether continental shelves are quantitatively significant in removing carbon dioxide from the atmosphere and isolating it via burial in sediments or exporting it to the open ocean. The secondary goals of the OMP are: (1) To quantify the mechanisms and processes by which carbon dioxide is assimilated by protosynthesis or physical-chemical processes on the continental shelf, by which inorganic and organic forms of carbon are transported by seawater circulation and movement on the shelf, and/or by which the forms of carbon are transformed through biological activities in the coastal ocean, and (2) to define sources and ultimate repositories of carbon in the ocean margin that are important in global biogeochemical cycles. Research in the OMP will be complementary with research in other DOE/OHER Marine Programs that focus on quantifying CO₂ concentrations in the open ocean and on developing global-ocean models for carbon cycling.

This notice requests grant applications for: (1) The detailed planning of a field program to assess the exchange of carbon and other biogenic elements between the continental shelf and the interior ocean at a region where the cross-shelf export is expected to be maximum; (2) the development of new instrumentation or techniques to obtain information on the biological and environmental factors affecting carbon fluxes in the ocean; and (3) new and innovative research to understand the physical, biogeochemical, plant, animal, and microbial mechanisms, processes, and interactions that affect the input, assimilation, and transformation of carbon in coastal waters and sediments.

LETTER OF INTENT INFORMATION:

Potential applicants must first submit a letter of intent consisting of a project title and an abstract describing the research project objectives and method of accomplishment. Letters of intent should be received by May 1, 1991, and should be forwarded to: Dr. George Saunders, Ecological Research Division,

Office of Health and Environmental Research, ER-75, U.S. Department of Energy, Washington, DC 20585; or via OMNET if desired. Telephone and telefax numbers are required to be part of the letter of intent. The letter of intent will be used to determine the number and scope of the applications being submitted. This will allow DOE to constitute an ad hoc review panel of the appropriate size and composition. After filing the letter of intent, applicants will receive an acknowledgment that contains the necessary application forms.

DATES: To permit timely consideration for awards in Fiscal Year 1992, formal applications submitted in response to this notice should be received by 4:30 p.m., E.D.T., June 21, 1991. Due to heightened security concerns, hand delivered applications will not be accepted. At this time, the only acceptable means of delivery will be the U.S. Mail or Federal Express.

ADDRESSES: Formal applications should be forwarded to: U.S. Department of Energy, Office of Energy Research, Division of Acquisition and Assistance Management, ER-64, Washington, DC 20585, ATTN: Program Notice 91-11. The Federal Express delivery address is: U.S. Department of Energy, Division of Acquisition and Assistance Management, ER-64/GTN, 19901 Germantown Road, Germantown, MD 20874.

FOR FURTHER TECHNICAL INFORMATION: Contact Drs. George Saunders or Curtis Olsen, Ecological Research Division, Office of Health and Environmental Research, ER-75/GTN, U.S. Department of Energy, Washington, DC 20585, (301) 353-5548/5329 or via OMNET G. Saunders or C. Olsen.

SUPPLEMENTARY INFORMATION: The amount of carbon discharged into the atmosphere from energy and industrial sources during the last 200 years is greater than can be accounted for by estimates of what remains in the atmosphere plus estimates of what has been absorbed by terrestrial or oceanic systems. One to two gigatons of carbon appears to be missing in calculating the carbon balance for the planet. Knowing where this missing carbon is will allow us to better predict if and how much natural systems can assimilate carbon from human generated activities. Several locations for this missing carbon have been suggested. One is the open ocean below the thermocline, another is the coastal ocean where approximately 50% of the ocean's productivity occurs, and a third is within the biomass and soils of terrestrial ecosystems. In order to assess the relative significance of

these locations, the major exchange pathways for carbon in each of these locations needs to be quantified. Previous emphasis has been placed on determining gas-exchange pathways at the air/land and air/sea interfaces and their mediation by biological processes. Emphasis within the DOE/OHER Ocean Margins Program (OMP) will be directed toward determining the extent to which carbon biologically assimilated on the shelf is exported to the deep ocean or buried in coastal sediments. This issue needs to be answered in order to develop accurate budgets for the global flux of carbon and the buildup of greenhouse gases in the atmosphere.

1. *Program Planning* applications should ensure development of a program to estimate annual export of carbon from the ocean margin as well as adequate understanding of the principal processes affecting the flux of carbon. Applications should include: (1) A statement of broad objectives, (2) a description of tasks within each objective, (3) time lines for field measurements, data analysis, and synthesis, (4) cost estimates for completion of the tasks and program, and (5) a description of how the scientific community will be involved in the program design.

2. *Instrument and Technique Development* applications should provide information on: (1) The present state-of-development of the instrument or technique, (2) its precision and accuracy of measurement, (3) the time-scales for testing and operation, and (4) its potential application within a field program for quantifying carbon flux. Applications that develop and precisely apply procedures for automated high-frequency analysis, are encouraged.

Applications on development and application of new molecular and biotechnological methods for determining the factors limiting and regulating the flux of biogeochemically important elements within ocean-margin ecosystems, are also encouraged.

3. *Process-Oriented* applications should focus on quantifying the mechanisms and interactions that affect the input, assimilation, transformation, and biogeochemical fate of carbon in coastal ecosystems and should include a statement on the sampling coverage required for an adequate analysis of the process or mechanism. New and innovative applications to quantify the mechanisms and rates by which DOC (dissolved organic carbon), POC (particulate organic carbon), and DIC (dissolved inorganic carbon) are transformed or converted by biological

processes in coastal waters and sediments are encouraged.

The OMP will be conducted in two phases of approximately three years each. In the first phase, planning and program development will occur in parallel with the development of new instrumentation and new and innovative research on processes. In the second phase, the field program concerning carbon exchange at the shelf boundary will be initiated. Successful instrument development and process studies will be melded into this field program as a multidisciplinary effort.

Subject to the availability of funds for FY 1992, approximately \$1 million is anticipated for planning purposes; approximately \$2 million will be available for instrumentation and technique development; and approximately \$3 million will be available for new and innovative applications to quantify principal mechanisms, processes, and interactions in carbon flux. The instrument/technique and process-oriented applications should be for periods of one to three (1 to 3) years according to design and subject to renewal according to progress. Costs for shiptime requirements should be included in the respondent's application, as well as costs for participation in multidisciplinary science-team meetings, estimated at two (2) trips of one week's duration/year at Washington, DC.

Program Relationships

The Ocean Margins Program is a component of the OHER Ocean Program which is concerned with determining the ocean's role in regulating future levels of atmospheric carbon dioxide. Other components of the OHER Program are focussed on global-ocean measurements of pCO₂ concentrations and inventories, and on the development of global-ocean models for carbon cycling. The ocean margins program is also strongly linked with the Joint Global Ocean Flux Studies Program. There is compelling evidence that the exchange of dissolved and particulate materials between the shelf and interior ocean might be a significant factor concerning the flux of CO₂ and biogenic elements within the global ocean. Linkages are being developed with other agencies conducting research on the continental margins.

The technical portion of the application should not exceed twenty-five (25) double-spaced pages. Lengthy application appendices are not encouraged. Information about development and submission of applications, eligibility, limitations,

evaluation, and selection processes, and other policies and procedures may be found in 10 CFR part 605. Application kits and copies of 10 CFR part 605 are available from the same office listed under the "Addresses" section of this Notice. Instructions for preparation of an application are included in the application kit. Telephone requests may be made by calling (301) 353-4208 or FTS 233-4208. The Catalog of Federal Domestic Assistance Number for this program is 81.049.

Issued in Washington, DC on April 12, 1991.

D.D. Mayhew,

Deputy Director for Management, Office of Energy Research.

[FR Doc. 91-9156 Filed 4-17-91; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

[FE DOCKET NO. 91-04-NG]

Northern Natural Gas Co.; Application for Long-Term Authorization To Import Natural Gas From Canada

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of application for long-term authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application filed by Northern Natural Gas Company (Northern) on January 8, 1991, as supplemented March 22 and April 1, 1991, for authorization to import up to 47,500 Mcf per day of natural gas from Canada through October 31, 2001. Northern proposes to import this gas from Western Gas Marketing Limited (Western Gas) for its system supply. The volumes would enter the United States near Emerson, Manitoba and be transported from that point through the existing pipeline facilities of Great Lakes Gas Transmission Limited Partnership. No new pipeline construction is required.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed at the address listed below no later than 4:30 p.m. Eastern time, May 20, 1991.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056,

FE-50, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478.

FOR FURTHER INFORMATION CONTACT:

P.J. Fleming, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-094, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-4819.

Diane Stubbs, Office of Assistant General Counsel, for Fossil Energy, Office of General Counsel, U.S. Department of Energy, Forrestal Building, room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: On December 31, 1990, Northern Natural Gas Company, Division of Enron Corporation transferred all of its assets and obligations to Northern, a Delaware corporation, including the gas sales contract with Western Gas which is the subject of this application. Under the terms of that contract dated November 1, 1990, Northern is obligated to nominate 60 percent of its base contract quantity of 47,500 Mcf per day on an annual basis or be subject to an additional charge for volumes not taken below the minimum quantity. In addition, Northern may nominate incentive volumes in excess of base volumes nominated on a particular day. If Northern fails to meet its 60 percent annual obligation, Western Gas would retroactively credit incentive volumes delivered during the contract year as base volumes to the extent necessary to make up the base volume deficiency (BV deficiency). After these incentive volume credits, if Northern's base volume nominations remained less than 58 percent of the minimum annual quantity for the contract year, Western Gas could assess a deficiency charge equal to 25 percent of Northern's weighted average cost of gas (WACOG) price for that contract year times the remaining BV deficiency. The contract stipulates that at Northern's sole discretion it has the option to nominate the required quantities, pay the deficiency charge, or employ a combination of both.

For base volumes delivered each month, Northern would pay Western Gas a unit price based on Northern's weighted average cost during the month for purchases of U.S. gas included in Northern's Purchased Gas Adjustment filed with the Federal Energy Regulatory Commission (FERC), minus a commodity charge credit based on the percentage of Canadian transporter demand charges which Northern is required under FERC Opinion No. 256 policy to recover in the commodity portion of its modified fixed

variable designed rates. That percentage may not exceed 18 percent. In addition, Northern would pay demand charges billed to Western Gas each month by Canadian transporters and fuel gas costs incurred by Northern for such transportation. The price for incentive volumes would be negotiated each month.

On the basis of data for the twelve month period ending March 31, 1991, Northern's WACOG ranged from \$1.21 to \$1.92 (U.S.) per MMBtu (its annual average WACOG during the period was \$1.38 per MMBtu). Northern states that for March 1991 the commodity cost under the contract with Western Gas would have been \$1.25 per MMBtu after subtracting a commodity cost credit of \$0.07. As previously noted, however, the total price paid for base volumes consists of the adjusted commodity cost plus the NOVA Corporation of Alberta (NOVA) and TransCanada PipeLines Limited demand tolls and charges for firm transportation to the Emerson, Manitoba import point. Northern estimates that if deliveries had occurred in March 1991, the calculated price of the imported gas at 100 percent load factor would have been \$1.69 per MMBtu, including transportation charges in Canada of \$0.44 and an adjusted commodity cost of \$1.25.

The contract pricing provisions are subject to annual renegotiation at the request of either party and arbitration if the parties cannot agree on a new price. The objective of renegotiation and arbitration would be to achieve a gas price that would be competitive with other long-term, firm supplies delivered into Northern's system and with prices received in comparable contracts for Alberta gas. In addition, the volumes Northern is obligated to take may be reduced if it notifies Western Gas that its gas sales have significantly declined.

Western Gas would fulfill its obligations to Northern through reserve based gas purchase agreements with various Canadian producers, allowing Northern to purchase volumes from a wide variety of producing areas in western Canada and a wide variety of receipt points on the NOVA gathering and transmission system in Alberta.

The decision on Northern's application for import authority will be made consistent with DOE's natural gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In the case of a long-term arrangement such as this, other matters that will be considered in

making a public interest determination include need for the natural gas, and security of the long-term supply. Parties that may oppose this application should comment in their responses on the issues of competitiveness, need for the gas, and security of supply as set forth in the policy guidelines. The applicant asserts that this import arrangement is in the public interest because it is needed, competitive, and its natural gas source will be secure. Parties opposing the import arrangement bear the burden of overcoming these assertions.

NEPA Compliance

The National Environmental Policy Act (NEPA) (42 U.S.C. 4321, *et seq.*) requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any

request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Northern's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, April 13, 1991.
Clifford P. Tomaszewski,
Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.
[FR Doc. 91-9155 Filed 4-17-91; 8:45 am]
BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ES91-23-000, *et al.*]

Iowa Southern Utilities Company, *et al.*; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Iowa Southern Utilities Company

[Docket No. ES91-23-000]

April 10, 1991.

Take notice that on April 4, 1991, Iowa Southern Utilities Company ("Applicant") filed an application with the Federal Energy Regulatory Commission pursuant to Section 204 of the Federal Power Act authorizing the Applicant to issue \$22 million of Notes or First Mortgage Bonds and for exemption from competitive bidding requirements pursuant to § 34.2(b)(2) of the Commission's regulations.

Comment date: May 3, 1991, in accordance with Standard Paragraph E at the end of this notice.

2. General Electric Company

[Docket No. QF91-100-000]

April 11, 1991.

On April 1, 1991, General Electric Company (Applicant), of 2901 East Lake Road, Erie, Pennsylvania 16531, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility is located in Building 4 of Applicant's Transportation Systems Business Operations facility in Erie, Pennsylvania. The facility consists of 4 boilers and 3 extraction steam turbine generating units. Extraction steam produced by the facility is used for various manufacturing processes and space heating in 23 buildings. The primary energy source is bituminous coal. The maximum net electric power production capacity of the facility is 28 MW. The facility has been in operation since 1972.

Comment date: Thirty days from publication in the *Federal Register* in accordance with Standard Paragraph E at the end of this notice.

3. Atlantic City Electric Company

[Docket No. ER91-365-000]

April 11, 1991.

Take notice that on April 5, 1991, Atlantic City Electric Company (AE) with concurrence of Philadelphia Electric Company (PE) tendered for filing as an initial rate schedule under section 205 of the Federal Power Act and part 35 of the regulations issued thereunder, an Agreement between AE and PE dated April 1, 1991.

AE states that the Agreement set forth the terms and conditions for the sale by AE to PE of import capability which AE expects to have available for sale from time to time and the purchase of which will be economically advantageous to PE. The rates for AE services are negotiated but will not exceed \$5.50 per MWH. In order to optimize the economic advantage to both AE and PE, AE requests that the Commission waive its customary notice period and allow this Agreement to become effective on April 8, 1991.

AE states that a copy of this filing has been sent to PE and will be furnished to the New Jersey Board of Public Utilities and the Pennsylvania Public Utility Commission.

Comment date: April 25, 1991, in accordance with Standard Paragraph E at the end of this notice.

4. Idaho Power Company

[Docket No. ER91-257-000]

April 11, 1991.

Take notice that on April 2, 1991, Idaho Power Company (IPC) tendered for filing an Amendment of its filing in the above referenced docket applicable to the Agreement to Supply of Power and Energy between Idaho Power Company and Utah Associated Municipal Power systems, dated February 10, 1988 and the Agreement for Supply of Power and Energy between Idaho Power Company and Washington City, Utah, dated July 6, 1987. The Amended Filing was submitted to supply additional information requested by the Commission Staff.

IPC renews its request for an effective date of April 1, 1991 for the amended rates.

IPC states that copies of the amended filing were served on the Utah Associated Municipal Power Systems, Washington City, Utah, the Idaho Public Utilities Commission and the Utah Public Service Commission.

Comment date: April 25, 1991, in accordance with Standard Paragraph E at the end of this notice.

5. Philadelphia Electric Company

[Docket No. ER91-366-000]

April 11, 1991.

Take notice that on April 8, 1991, Philadelphia Electric Company (PE) tendered for filing and Agreement between PE and Baltimore Gas and Electric Company (BG&E) dated March 11, 1991, supplementing the agreement between PE and BG&E dated January 5, 1990 which is on file with the Commission and designated PE's Rate Schedule FERC No. 49.

PE states that the Agreement removes the existing maximum value of 50 MW on the sale of system energy which it expects to have available for sale from time to time and the purchase of which will be economically advantageous to BG&E. In order to optimize the economic advantages to both PE and BG&E, PE requests that the Commission waive its customary notice period and allow this Agreement to become effective on April 5, 1991.

PE states that a copy of this filing has been sent to BG&E and will be furnished to the Pennsylvania Public Utility Commission and the Maryland Public Service Commission.

Comment date: April 25, 1991, in accordance with Standard Paragraph E at the end of this notice.

6. Southeastern Power Administration

[Docket No. EF91-3031-000]

April 11, 1991.

Take notice that on April 3, 1991, the Deputy Secretary of the Department of Energy confirmed and approved, on an interim basis effective midnight April 20, 1991, Rate Schedules JW-1-C and JW-2-B, for power from Southeastern Power Administration's (Southeastern) Jim Woodruff Project. The approval extends through September 20, 1995. The Deputy Secretary states that the Commission, by order issued August 20, 1987, in Docket No. EF87-3031-000, confirmed and approved Rate Schedules JW-1-B and JW-2-B.

Southeastern proposes in the instant filing to replace Rate Schedules JW-1-B and JW-2-B with JW-1-C and JW-2-B, respectively.

The rate adjustment was designed to provide a stepped increase as follows:

Percent	Schedule	Capacity (\$/kW/Mo.)	Energy (mills/kWh)
40	Interim Approval to September 19, 1991.....	\$3.78	11.20
20	September 20, 1991 to September 19, 1992.....	4.32	12.80
20	September 20, 1992 to September 19, 1993.....	4.86	14.40
20	September 20, 1993 to September 19, 1994.....	5.40	16.00
20	September 20, 1994 to September 19, 1995.....	5.94	17.60

The increase is due primarily to increased operation and maintenance expenses of the Corps of Engineers at the projects.

Comment date: April 30, 1991, in accordance with Standard Paragraph E at the end of this notice.

7. Philadelphia Electric Company

[Docket No. ER91-366-000]

April 11, 1991.

Take notice that on April 8, 1991, Philadelphia Electric Company (PE) tendered for filing as an initial rate under Section 205 of the Federal Power Act and part 35 of the regulations issued thereunder, an Agreement between PE and Atlantic City Electric Company (AE) dated March 19, 1991.

PE states that the Agreement sets forth the terms and conditions for the sale of system energy which it expects to have available for sale from time to time and the purchase of which will be economically advantageous to AE. In order to optimize the economic advantages to both PE and AE, PE

requests that the Commission waive its customary notice period and allow this Agreement to become effective on April 5, 1991.

PE states that a copy of this filing has been sent to AE and will be furnished to the Pennsylvania Public Utility Commission and the New Jersey Board of Public Utilities.

Comment date: April 25, 1991 in accordance with Standard Paragraph E at the end of this notice.

8. Centel Corporation

[Docket No. ER91-363-000]

April 11, 1991.

Take notice that Centel Corporation, Centel Electric—Colorado, on April 3, 1991, tendered for filing Contract No. 90-LAO-565 which contains tariff provisions applicable to the transmission of power to serve the United States Department of Energy, Western Area Power Administration (Western).

This filing is being made to effectuate the following cost-based, agreed-upon

rate that Centel charges Western to wheel power consisting of separate customer, demand and energy charges of \$70 per month, \$.31 per kW-month and \$.000039 per kWh, respectively. These charges reflect the cost of wheeling as determined by a special cost of service study. Application of these rates will result in a projected annual cost to Western of \$24,513.71 based upon a March 1992, ending (Period II) forecasted year. Centel requests an effective date of January 1, 1991, which is the effective date stipulated in the wheeling contract between Western and Centel and therefore requests waiver of the Commission's notice requirements. Copies of the filing were served upon the Western Area Power Administration, Department of the Army Contracting Officer at Tooele, Utah, the Colorado-Ute Electric Association, Inc. and the Arkansas River Power Authority.

Comment date: April 25, 1991, in accordance with Standard Paragraph E at the end of this notice.

9. Philadelphia Electric company

[Docket No. ER91-367-000]

April 11, 1991.

Take notice that on April 8, 1991, Philadelphia Electric Company (PE) tendered for filing as an initial rate under Section 205 of the Federal Power Act and part 35 of the regulations issued thereunder, an Agreement between PE and Delmarva Power & Light Company (DPL) dated March 12, 1991.

PE states that the Agreement sets forth the terms and conditions for the sale of system energy which it expects to have available for sale from time to time and the purchase of which will be economically advantageous to DPL. In order to optimize the economic advantages to both PE and DPL, PE requests that the Commission waive its customary notice period and allow this Agreement to become effective on April 5, 1991.

PE states that a copy of this filing has been sent to DPL and will be furnished to the Pennsylvania Public Utility Commission, the Delaware Public Service Commission, the Maryland Public Service Commission, and the Virginia State Corporation Commission.

Comment date: April 25, 1991, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 91-9057 Filed 4-16-91; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. EC89-5-001]

Southern California Edison Company and San Diego Gas and Electric Co.; Availability of Environmental Assessment

April 12, 1991.

In accordance with the National Environmental Policy Act of 1969, the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), and the Commission's order of October 27, 1989, (49 FERC ¶ 61,091, the Commission staff together with its consultant, URS Consultants, Inc., has prepared an Environmental Assessment (EA) of the proposed merger of the Southern California Edison Company and the San Diego Gas and Electric Company.

Copies of the EA are available for review in the Public Reference Branch, room 3308 of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Comments should be filed within 45 days from the date of this notice and should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Please affix Docket No. EC89-5-001 to all comments. For further information, please contact Douglas E. Matyas, Environmental Assessment Coordinator, at (202) 208-0890.

By direction of the Commission.

Lois D. Cashell,
Secretary.

[FR Doc. 91-9055 Filed 4-17-91; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. PL91-1-000]

Public Conference and Request for Comments on Electricity Issues

April 12, 1991.

On June 18, 1991, the Federal Energy Regulatory Commission will hold a public conference on the current state, and future direction, of the electric utility industry. In view of rapidly emerging changes in the industry, including the formation of independent and affiliated power producers and marketers, increased use of competitive procurement to obtain new supply and/or demand-side resources, the increase in traditional utility reorganizations and mergers, and the passage of the Clean Air Act Amendments of 1990 and the Solar, Wind, Waste, and Geothermal Power Production Incentives Act of

1990, and in view of the National Energy Strategy (NES) and issues raised by State regulators, the industry and others, the Commission believes now is an appropriate time to provide for public discussion of major issues affecting the electric industry and consumers. We particularly would like the public to express its views on the future regulation of electricity markets at the Federal level and the interaction of this regulation with that at the State level.

We invite public utilities (including independent and affiliated power producers and marketers), state regulatory commissions, federal agencies, consumer groups, public power groups, representatives of qualifying facilities under the Public Utility Regulatory Policies Act of 1978, and other interested groups affected by the industry to seek participation in the public conference, and to submit written comments in connection with the public conference, on issues which may include, but are not limited to, the following:

1. Since 1985 the Commission has addressed 31 requests for market-based rates from entities including independent power producers, affiliated power producers' traditional utilities, and power marketers/brokers. Should the Commission continue to act on a case-by-case basis on these types of proposals, or should the Commission consider developing generic guidance for market-based rate requests? Has the Commission's substantive analysis of market-based rate proposals been consistent and comprehensive? How can the Commission provide greater regulatory certainty for sellers and buyers seeking to transact at market-based prices? Has the Commission adequately protected against affiliate abuse problems associated with affiliated power producers/marketers, or should the Commission reevaluate the analysis it has developed thus far?

2. The NES, while recognizing that integrated resource programs are primarily State activities, encourages the Commission to promote integrated resource planning (IRP) in its wholesale ratemaking policies. Can the Commission effectively do this under existing law? How can competition in wholesale generation markets, subject to FERC jurisdiction, be integrated with States pursuing IRP? Is there a tension between competitive procurement and IRP?

¹ Affiliated power producers are power producers affiliated with traditional franchised electric utilities.

3. As competitive markets in electricity generation are emerging, increasing pressure is placed on providing expanded transmission service. Transmission, however, remains a natural monopoly. The NES recommends that the Commission encourage more open access to transmission facilities for both traditional and other suppliers of electric power. We are interested in responses to the following questions, recognizing that the Commission, under existing law, does not have unlimited authority to require transmission. In what ways can the Federal government and States encourage more open access to transmission facilities to ensure that transmission services and facilities are adequate for the emerging competitive generation market, while maintaining reliability standards? What Commission policies and programs inhibit greater transmission access? Should the Commission address transmission access and pricing issues on a case-by-case or a generic basis? What generic approaches to transmission access could best deal with the increasing need to assure reliable and fair access to the transmission system? What generic approaches to transmission pricing or changes to current practices would be appropriate for the Commission to consider?

4. In the past four years, the Commission has received six major electric utility merger proposals, and numerous other proposals for dispositions of jurisdictional facilities. These types of proposals generally raise anticompetitive issues, including the evaluation of increased monopoly power in generation and transmission as a result of the proposed merger. How can the Commission improve the analysis and processing of these complex cases? Should the Commission continue to act on a case-by-case basis or should the Commission consider developing generic guidelines for processing and evaluating merger and disposition of facilities requests?

5. Issues arising under the Clean Air Act Amendments of 1990 primarily involve utilities and their state commissions. What role, if any, should this Commission play in helping to provide a smooth implementation of the Amendments, while fulfilling its exclusive responsibility over wholesale rates under the Federal Power Act?

The Commission invites interested persons to file written comments on any or all of the above general issues, or on other electric issues which they believe are important to the industry's future. To the extent that several groups of

individuals may have similar interests, they are encouraged to file joint comments. Commenters should double space their comments, provide a concise description identifying the commenter, and use the same docket number contained in this notice. Written comments should not exceed 50 pages in length. Commenters should also provide an executive summary of their written comments, not to exceed five pages. Comments (including an executive summary of comments) must be filed with the Commission's Office of the Secretary no later than May 15, 1991.

The Commission also invites interested persons to file requests to participate in the public conference on these issues. Requests must be in writing and submitted to the Office of the Secretary no later than May 15, 1991. Persons with similar positions are requested to file joint requests for participation, so that the Commission can accommodate the maximum number of participants possible. The Commission realizes that it may not be able to accommodate all of these requests to participate in the conference. However, it will seek to ensure that all segments of the industry are adequately represented at the public conference. A list of persons granted requests to participate in the public conference will be available in the Commission's Office of Public Information prior to the conference.

By direction of the Commission.
Commission Trabandt concurred with a separate statement to be issued later.

Lois D. Cashell,
Secretary.

[FR Doc. 91-9056 Filed 4-17-91; 8:45am]
BILLING CODE 6717-01-M

Criteria for Accepting Electronic PGA Filings

April 12, 1991.

The purpose of the Notice is to clarify the procedures to be used for filing and processing quarterly and annual PGA filings made on electronic media. The instructions in FERC Form No. 542-PGA (Revised) (Form 542-PGA) required all quarterly and annual Purchased Gas Adjustment (PGA) filings to be filed with the Commission on 9-track magnetic tape. To facilitate the transition from hard copy PGA filings to electronic PGA filings, Form No. 542-PGA created a three-year transition period commencing on June 1, 1988, in which annual and quarterly PGAs were required to be filed in both hard copy

and on 9-track magnetic tape. For all quarterly and annual PGA filings effective June 1, 1991, and later, the Commission's regulations require only an original and five copies of the transmittal letter, the proposed tariff sheets, the service list, and a form of notice suitable for publication in the *Federal Register* in hard copy, the remainder of the PGA filing is required to be filed on 9 track tape or diskette. With the filing of both a hard copy and an electronic version of the PGA during the transition period, the Commission was able to be liberal in its electronic filing requirements if the electronic PGA filing contained errors in format. However, with the end of the transition period on June 1, 1991, the Commission will no longer accept electronic PGA filings containing errors in format. Therefore, notice is hereby given of the clarification of procedures for filing and processing quarterly and annual PGA filings made on electronic media.

The Commission's regulations governing PGA filings require a natural gas pipeline company to file its PGA in a format consistent with Form 542-PGA.¹ Form 542-PGA states that companies filing PGAs must submit the filings on 9-track magnetic computer tape. The Commission has granted waiver to allow companies who do not have the capability to use 9-track tape to use computer diskettes. The Commission has also granted waiver to companies submitting PGAs on 9-track tape waiver to submit PGAs on diskette. Order No. 493,² issued April 5, 1988, found certain types of electronic media and magnetic recording techniques appropriate for submitting filings to the Commission. Specifically, the Commission found the following electronic media suitable for Commission filing:

(1) In one-half inch (.5") magnetic tape (recorded in EBCDIC or ASCII only):

(a) 1600 BPI (bytes per inch) [63 bytes/mm], recorded in nine parallel tracks on .5" magnetic tape. (IBM 3420 models 3, 5, 7, or equivalent.)

(b) 6250 BPI [246 bytes/mm], recorded in nine parallel tracks on .5" magnetic tape. (IBM 3240 models 4, 6, 8, or equivalent.)

¹ § 154.305(a)(2)(ii) and § 154.306(b)(2).

² Revisions to the Purchased Gas Adjustment Regulations, Order No. 483, 52 FR 43,852 (Nov. 17, 1987); III FERC Stats. & Regs. ¶ 30,778 (Nov. 10, 1987); 52 FR 48,407 (Dec. 22, 1987); III FERC Stats. & Regs. ¶ 30,785 (Dec. 16, 1987); 53 FR 3364 (Feb. 5, 1988); III FERC Stats. & Regs. ¶ 30,796 (Jan. 29, 1988); *reh'g* 53 FR 7495 (Mar. 9, 1988); III FERC Stats. & Regs. ¶ 30,798 (Mar. 2, 1988); 53 FR 11,991 (Apr. 12, 1988); III FERC Stats. & Regs. ¶ 30,802 (Apr. 6, 1988); 53 FR 12,676 (Apr. 18, 1988); III FERC Stats. & Regs. ¶ 30,803 (Apr. 12, 1988); 53 FR 13,254 (Apr. 22, 1988); III FERC Stats. & Regs. ¶ 30,806 (Apr. 18, 1988).

(c) 38,000 BPI (18 track tape), recorded in eighteen parallel tracks on .5" tape cartridge. (IBM 3480 tape cartridge or equivalent.)

(2) In formatted diskettes (recorded in ASCII only):

(a) 5.25" (360KB) double sided, double density diskette, 48 tracks per inch, 40 tracks per surface, 512 bytes per sector, 9 sectors per track.

(b) 5.25" (1.2MB) double sided, high density diskette, 96 tracks per inch, 80 tracks per surface, 512 bytes per sector, 15 sectors per track.

(c) 3.5" (720KB) double sided, low density diskette, 135 tracks per inch, 80 tracks per surface, 512 bytes per sector, 9 sectors per track, 737,280 bytes formatted capacity.

(d) 3.5" (1.44MB) double sided, high density diskette, 135 tracks per inch, 80 tracks per surface.

It is the Commission's intent to grant companies filing PGAs the same flexibility accorded companies making filings pursuant to the Commission's Order No. 493. Therefore, the Commission grants a temporary waiver of Form 542-PGA to accept quarterly and annual PGA filings that conform to the electronic media requirements specified in Order No. 493 and listed in items (1) and (2) above. This temporary waiver will be for a period of three years from the date of this Notice. See the appendix to this notice for filing instructions for PGA filings on diskettes.

All quarterly and annual PGA filings on 9-track magnetic tape must include a completed Standard Form 277 as required by Item 4 of Exhibit D of Form 542-PGA or the submission will be summarily rejected. The original and all copies of the transmittal letter must contain this Standard Form 277. If the submission does not include the completed Standard Form 277, the filing will not be date stamped or docketed and all hard copies of the transmittal letter, the magnetic tape and the filing fee will be immediately returned to the company. Standard Form 277 is not required if a pipeline company files on diskette. Any pipeline company that has not previously been granted waiver of the electronic filing requirements, but is requesting waiver of the electronic requirements in the PGA being filed, will be required to state this fact in a paragraph on the first page of the transmittal letter to be labeled, "Electronic Filing Waiver Request."

Hard copies of PGA filings that duplicate material filed on magnetic tapes or diskettes by companies not required to file in both media will be

considered courtesy copies and will have no Commission standing. Courtesy copies will not be date stamped or docketed. Courtesy copies should be separate from, and not attached in any way to, the six hard copies of the transmittal letter, service list, notice, and tariff sheets filed with the magnetic tape.

Quarterly and annual PGA filings on electronic media must contain all schedules required by Form No. 542-PGA and the Commission must be able to recreate a version of the filing which conforms to the requirements of Exhibit C of form 542-PGA or the submission will be rejected. Schedule G1 or G2, as appropriate, must accompany each initial or compliance filing.

Quarterly and annual PGA filings that contain primary and alternate PGA proposals must state this fact in a paragraph on the first page of the transmittal letter to be labeled, "Primary and Alternate PGA Proposals." A subdocket number will be assigned to any alternate proposals for tracking purposes.

Quarterly and annual PGA filings that contain multiple PGA schedules (i.e. separate PGAs for northern and southern pipeline systems) must state this fact in a paragraph on the first page of the transmittal letter to be labeled, "Multiple PGA Filing." A subdocket number will be assigned to any additional PGA filing for tracking purposes. Each separate PGA filing must contain a separate Schedule D1 for that set of PGA schedules.

Any company filing an update to an annual PGA filing submitted pursuant to § 154.305(c)(4) of the Commission's regulations must state this fact in a paragraph on the first page of the transmittal letter to be labeled, "Update to Annual PGA Filing." A new "TQ" docket number will be assigned to the update for tracking purposes since the update will contain quarterly PGA schedules but the filing will not require a new filing fee.

If a company's electronic PGA filing is rejected due to failure to conform to the requirements of Exhibit C of Form 542-PGA, the docket number assigned the rejected filing is closed. A resubmitted filing will receive a new docket number and require a new filing fee. However, the company may request that the filing fee submitted with the rejected electronic PGA filing be applied to the resubmitted PGA filing. Any such request must be incorporated prominently on the first page of the transmittal letter and specifically refer

to the rejected filing by docket number.

If an electronic PGA filing is rejected due to failure to conform to the requirements of Exhibit C of Form 542-PGA, the company is required to provide a copy of the rejection letter to all parties who received initial notification of the filing under Section 154.16 of the Commission's regulations within 7 days of the receipt of the rejection letter.

The definition of category code 9020 of Exhibit A of Form 542-PGA is clarified to include any supply of natural gas which has been deregulated under the terms of the Natural Gas Policy Act of 1978 or the Natural Gas Wellhead Decontrol Act of 1989.

Lois D. Cashell,

Secretary.

Submission Procedures for Respondents Choosing to file on Diskette

A diskette(s) containing the information specified for each record ID of a PGA filing will be filed with the FERC conforming in all respects with the following requirements:

1. The character code for representing all data should be the American National Standard Code for Information Interchange (ASCII) as defined in FIPS PUB 1-2.
2. The definitions, instructions, and schedule ID/record ID data layouts for Form 542-PGA specify explicitly the data items to be reported and the sequence for recording the information on the diskette(s). Each schedule/record type should be recorded in a separate file. All data from the same schedule/record type should be recorded in the same file. (Note: Record type refers to the record ID.) Each file should be named with a four character identifier formed by concatenating the schedule ID and the record ID, e.g., Schedule A1, Record 01 should have the file name "A101". File names should be included in the transmittal letter accompanying the respondent's filing.
3. The information required for a PGA filing must be recorded on the diskette(s) exactly as specified in the data layout for each schedule/record and in accordance with the general instructions of Form 542-PGA.
4. Each logical record should be terminated by CR (ASCII carriage return character—13 decimal, OD hexadecimal) and LF (ASCII line feed character—10 decimal, OA hexadecimal).
5. Do not omit any numeric item. See the General Instructions for Form 542-PGA for detailed instructions for recording numeric data on the diskette(s).
6. NUMERIC items do not require leading zeros unless specifically noted in the specific instruction or the description of the data item.

[FR Doc. 91-0058 Filed 4-17-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI89-302-003; Docket No. CI90-74-001]

Chevron U.S.A. Inc; Gulf Energy Marketing Co.; Applications for Extension of Blanket Limited-Term Certificates With Pregranted Abandonment¹

April 11, 1991.

Take notice that on March 27, 1991, Gulf Energy Marketing Company of 1301 McKinney, suite 700, Houston, Texas 77010, and on March 29, 1991, Chevron U.S.A. Inc. of P.O. Box 3725, Houston, Texas 77253-3725 (Applicants) each filed an application pursuant to sections 4 and 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder to amend their blanket limited-term certificates with pregranted abandonment previously issued by the Commission in Docket Nos. CI89-302-001 and CI90-74-000 for terms expiring March 31, 1991 to extend the term of such authorizations, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than normal for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before April 18, 1991, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 91-9061 Filed 4-17-91; 8:45 am]

BILLING CODE 6717-01-M

¹ This notice does not provide for consolidation for hearing of the several matters covered herein.

[Docket No. IR-1530-000]

Northwest Iowa Power Cooperative, et al. Petition for Waiver

April 10, 1991.

Notice is hereby given that the twelve non-regulated utilities identified above have filed on April 2, 1991, pursuant to § 292.403 of the Commission's regulations for waiver of certain obligations imposed on these applicant utilities under § 292.303(a) and § 292.303(b) of the Commission's regulations (18 CFR, part 292, subpart C) which implement section 210 of the Public Utility Regulatory Policies Act of 1978 ("PURPA"). On April 2, 1991, the applicant utilities filed a joint PURPA implementation plan.

Under the joint implementation plan, each of the above utilities (except Northwest Iowa Power Cooperative) have requested a waiver of the requirements contained in § 292.303(a) of the Commission's regulations under 18 CFR part 292 which would require those utilities to purchase any power made available from any qualifying facility either directly or indirectly. These utilities are Members of Northwest Iowa Power Cooperative (NIPCO) and have arranged for NIPCO, the Members' jointly-owned all requirements wholesale supplier, to make purchases from qualifying facilities on their behalf.

NIPCO has requested a waiver from § 292.303(b) of the Commission's regulations (18 CFR, part 292, subpart C) which would require it to make retail sales to qualifying facilities. NIPCO and the other identified Member utilities have provided in their joint implementation plan that Members will sell supplementary, interruptible, back-up and maintenance power to qualifying facilities, upon request, at rates that are non-discriminatory, just and reasonable, and in the public interest. In addition, no qualifying facility may be subject to duplicative interconnection charges (as to both the purchase and sale of power), nor will qualifying facilities be subject to charges associated with building separate interconnection facilities to enable Members to deliver retail service, unless the charges would also have been incurred had NIPCO delivered the service.

Given these requirements, the applicants believe that purchases by the Members to qualifying facilities or sales by NIPCO to qualifying facilities are not necessary to encourage cogeneration and small power production and are not otherwise required by section 210 of PURPA.

Any person desiring to be heard or to protest any of the above filings should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All such motions or protest should be filed within thirty (30) days of publication of notice in the *Federal Register*, and should reference the applicable docket number. 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 proceedings. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-9060 Filed 4-17-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TC81-9-004]

Texas Gas Transmission Corp.; Tariff Sheet Filing

April 11, 1991.

Take notice that on April 5, 1991, Texas Gas Transmission Corporation (Texas Gas), P.O. Box 1160, Owensboro, Kentucky 42302, tendered for filing in Docket No. TC81-9-004 the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Second Revised Sheet No. 91
Second Revised Sheet No. 92
Second Revised Sheet No. 93
Second Revised Sheet No. 94
Second Revised Sheet No. 95
Third Revised Sheet No. 96
Second Revised Sheet No. 97

Texas Gas requests that the effective date for the above sheets would be November 1, 1991 and that the related Revised Index of Quantity Entitlements be allowed to be filed as soon as possible, but in no event later than November 1, 1991. The above revised tariff sheets are to replace the tariff sheets which Texas Gas filed on October 1, 1990 in Docket No. TC81-9-003, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

In Docket No. TC81-9-003, Texas Gas proposed changes to its existing curtailment plan approved by Commission order issued April 19, 1983, in Docket No. TC81-9-000. In that filing, Texas Gas also indicated that it would

supplement its filing with a RIQE, which would reflect current customer entitlements as of April 1, 1991. A Data Verification Committee (DVC) has been established to update and verify the priority of service data for each of its customers. However, Texas Gas asserts that the DVC has been unable to complete its research in the time allotted (i.e., by April 1, 1991); therefore, Texas Gas now seeks additional time for the DVC to complete the process of verifying the underlying data needed to support a revised RIQE.

Texas Gas also indicated that its filing, Docket No. TC81-9-004, includes a new section 10.2(h) to Texas Gas' General Terms and Conditions (see the Second Revised Sheet No. 94) which provides that any customer whose requirements have significantly changed may request an update of its requirements by submitting such new requirements to Texas Gas on or before August 1 each year for certification by the DVC. In all other respects, Texas Gas' filing dated October 1, 1990, in Docket No. TC81-9-003, remains unchanged.

Any person desiring to be heard or to make any protest with reference to said tariff sheet filing should on or before April 22, 1991, file with the Federal Energy Regulatory Commission, 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 or 385.211). 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 protests 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. All persons who have heretofore filed need not file again.

Lois D. Cashell,

Secretary.

[FR Doc. 91-9059 Filed 4-17-91; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL 3922-5]

Transfer of Data to Contractors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intended transfer of confidential business information to a subcontractor.

SUMMARY: A contract to the Environmental Protection Agency (EPA), Science Applications International Corporation (SAIC) intends to transfer confidential business information (CBI) collected from the pulp, paper, and paperboard manufacturing, pharmaceuticals manufacturing, pesticides manufacturing and other industries listed below to one of its subcontractors. Transfer of the information will allow the subcontractor to assist EPA in developing effluent limitations guidelines and standards under the Clean Water Act (CWA), and in developing or evaluating the need for regulations under the Clean Air Act (CAA), the Resource Conservation and Recovery Act (RCRA), and the Toxic Substances Control Act (TSCA). The information being transferred was collected or will be collected under the authority of Section 308 of the Clean Water Act. Interested persons may submit comments on this intended transfer of information to the address noted below.

DATES: Comments on the transfer of data are due April 25, 1991.

ADDRESSES: Comments may be sent to Henry D. Kahn, Analysis and Evaluation Division (WH-586), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Henry D. Kahn, Analysis and Evaluation Division (WH-586), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-5406.

For information regarding uses of CBI under RCRA authority contact Alexander McBride, Office of Solid Waste (OS-331), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-4761, and James Lounsbury, Office of Solid Waste (OS-302), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-4807. For information regarding uses of CBI under CAA authority contact Susan Wyatt, Office of Air Quality Planning and Standards (MD-13), Environmental Protection Agency, Research Triangle Park, NC 27711, (919) 541-5674. For information regarding uses of CBI under TSCA authority contact Dwain Winters, Office of Toxic Substances (TS-792), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-6907.

SUPPLEMENTARY INFORMATION: A contractor to EPA, Science Applications International Corporation (SAIC), of McLean, Virginia, intends to transfer information, including CBI, to one of its subcontractors, DPC Corporation of Falls Church, Virginia for data entry. In

accordance with 40 CFR part 2, subpart B, SAIC was identified in the *Federal Register*, Vol. 55, No. 210, October 30, 1990, pp. 45641-43 as one of a number of contractors and subcontractors receiving this information. In effect, this notice merely adds DPC Corporation to the list of subcontractors to SAIC under EPA Contract No. 68-CO-0035.

The information being transferred consists primarily of information previously collected by EPA's Office of Water Regulations and Standards (OWRS) to support the development of effluent limitations guidelines and standards under the Clean Water Act for the pulp, paper, and paperboard manufacturing, pharmaceuticals manufacturing, and pesticides manufacturing industries. In addition, information, including CBI, collected for the development of effluent limitations guidelines and standards for the following industries also may be transferred: oil and gas, machinery manufacturing and repair, centralized waste treatment, dairies, feedlots, fish hatcheries, foundries, fruits and vegetables, glass manufacturing, industrial laundries, ink formulating, meat products and rendering, paint formulating, poultry processing, printing and publishing, seafood processing, sugar processing, textile manufacturing, water supply, and wood preserving.

More specifically, the information being transferred to the subcontractor includes the following information previously collected under the authority of section 308 of the CWA: in the "1990 National Census of Pulp, Paper, and Paperboard Manufacturing Facilities" and a detailed pretest questionnaire in 1989-90; all joint EPA-industry studies, site visit reports, monitoring data and sampling episode reports involving the pulp, paper, and paperboard manufacturing industry generated in 1988-90; information collected by the 1989-90 pharmaceutical screener questionnaire and a detailed pretest questionnaire; and site visit reports, sampling episode reports, and monitoring data submissions from pharmaceutical plants generated since 1984. The information that may be transferred also includes similar types of information and data, such as questionnaire responses, site visit reports, analytical data, and sampling episode reports, previously collected by EPA to support rulemaking activities for the other industry categories listed above.

EPA also intends to transfer to SAIC and DPC Corporation all information listed in this notice, of the type described above (including CBI) that

may be collected in the future under the authority of CWA section 308, as is necessary to enable SAIC and DPC

Corporation to carry out the work required by their contracts to support EPA's development of effluent

limitations guidelines and standards for the industries listed above.

EPA office receiving support	Contractor (P=prime contractor S=subcontractor)	Contract No.	Type of support
OW/OWRS/AED.....	SAIC (P) McLean, VA..... DPC Corporation (S).....	68-CO-0035 68-CO-0035	Statistical. Data entry.

Security Plan for CBI

OWRS has adopted a CBI Data Security Plan for SAIC and its subcontractors under EPA Contract No. 68-CO-0035 for information to be collected for the pulp, paper, and paperboard manufacturing, pharmaceutical manufacturing, pesticides manufacturing, and other industries listed previously. The procedures in these plans also will be extended to CBI information previously gathered by OWRS and to CBI information that may be gathered in the future for the other industries identified above. Personnel of SAIC and DPC Corporation are required to sign non-disclosure agreements and be briefed on appropriate security procedures before they are permitted access to CBI. No person is automatically granted access to CBI; a need to know must exist. All EPA contractors and subcontractors and their personnel are bound by the requirements and sanctions contained in their contracts and EPA's confidentiality regulations found at 40 CFR part 2, subpart B.

Dated: April 11, 1991.

Robert H. Wagland III,
Acting Assistant Administrator for Water.
[FR Doc. 91-0141 Filed 4-17-91; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Request for Additional Information

Agreement No: 202-010776-058.

Title: Asia North America Eastbound Rate Agreement.

Parties: American President Lines, Ltd., Kawasaki Kisen Kaisha, Ltd., A.P. Moller-Maersk Line, Mitsui O.S.K. Lines, Ltd., Neptune Orient Lines, Ltd., Nippon Liner Systems, Ltd., Nippon Yusen Kaisha Line, Sea-Land Service, Inc..

Synopsis: Notice is hereby given that the Federal Maritime Commission, pursuant to section 6(d) of the Shipping Act of 1984 (46 U.S.C. app. 1705), has requested additional information from the parties to the Agreement in order to complete the statutory review of Agreement No. 202-010776-058 required by the Act. This action extends the

review period as provided in section 6(c) of the Act.

Dated: April 12, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,
Secretary.

[FR Doc. 91-9047 Filed 4-17-91; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL TRADE COMMISSION

[Docket No. 9223]

Campbell Soup Company; Proposed Consent Agreement with Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a Camden, N.J., based company from mentioning heart disease or making unsubstantiated health claims in advertising for any soup that contains more than 500 milligrams of sodium per eight ounce serving, without disclosing the sodium content of the soup. Respondent also would be prohibited from representing a connection between its soups and a reduction in the risk of heart disease, unless it possesses competent and reliable scientific or medical evidence.

DATES: Comments must be received on or before June 17, 1991.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Lee Peeler, FTC/S-4002, Washington, DC 20580. (202) 326-3090.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f) of the Commission's Rules of Practice (16 CFR 3.25(f)), notice is hereby given that the following consent agreement containing a consent

order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order to Cease and Desist

The agreement herein, by and between Campbell Soup Company, a corporation, by its duly authorized officer, hereafter sometimes referred to as respondent, and its attorney, and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's Rule governing consent order procedures. In accordance therewith the parties hereby agree that:

1. Respondent Campbell Soup Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at Campbell Place, in the City of Camden, State of New Jersey.

2. Respondent has been served with a copy of the complaint issued by the Federal Trade Commission charging it with violations of sections 5 and 12 of the Federal Trade Commission Act, and has filed answers to said complaint denying said charges.

3. Respondent admits all the jurisdictional facts set forth in the Commission's complaint in this proceeding.

4. Respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

5. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the respondent, in which event it will take such action as the Commission may consider appropriate, or issue and serve its decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in the said copy of the complaint issued by the Commission.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 3.25(f) of the Commission's Rules, the Commission may, without further notice to respondent, (1) issue its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to respondent's address as stated in this agreement shall constitute service. Respondent waives any right it might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or to contradict the terms of the order.

8. Respondent has read the complaint and the order contemplated hereby. Respondent understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered That Campbell Soup Company, corporation, ("Campbell" or

"respondent") its successors and assigns, its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of any soup that contains more than 500 milligrams of sodium per eight ounce serving, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from failing to notify consumers of the sodium content of such soup in any advertisement that directly or by implication mentions heart disease in connection with the soup.

II

It is further ordered That respondent in connection with the advertising, offering for sale, sale, or distribution of any soup in or affecting commerce, as the term "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing directly or by implication that there is a connection between soup or its composition and a reduction in the risk of heart disease, unless at the time of the dissemination of any such representation, respondent possesses and relies upon a reasonable basis for the connection represented, consisting of competent and reliable scientific or medical evidence.

III

It is further ordered That respondent shall distribute a copy of this order to each of its operating divisions, officers, agents, representatives, or employees engaged in the preparation and placement of advertisements or other such sale materials for any soup product.

IV

It is further ordered That respondent shall notify the Commission at least thirty (30) days prior to the effective date of any proposed change in the corporation which may affect compliance obligations arising out of this order, such as its dissolution, assignment, or sale, resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries engaged in the advertising, offering for sale, sale or distribution of any soup product.

V

It is further ordered That respondent, within sixty (60) days after this Order becomes final, shall file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with the order.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from the Campbell Soup Company (Campbell).

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the

agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

According to the Complaint issued by the Commission in this proceeding, Campbell published an advertisement entitled "What's at the bottom of a bowl of Campbell's soup?" (the Nutrition Spread ad), which states, among other things, that most of Campbell's soups are low in fat and cholesterol. The Nutrition Spread ad also states specifically that Campbell's Chicken Noodle is low in fat and cholesterol and has just 15 milligrams of cholesterol and that there is research indicating that a diet low in fat and cholesterol may reduce the risk of some forms of heart disease. The Complaint alleged that Campbell's failure to disclose that its soups are high in sodium is deceptive in light of these representations, given that diets high in sodium may increase the risk of heart disease. In addition, the Complaint alleged that the Nutrition Spread ad represents that Campbell had a reasonable basis for the claim that most of its soups make a positive contribution to a diet that reduces the risk of heart disease, when Campbell did not possess a reasonable basis for this claim.

Under the terms of the proposed consent order, in the advertising for any soup that contains more than 500 milligrams of sodium per eight ounce serving that directly or by implication mentions heart disease in connection with the soup, Campbell must notify consumers of the sodium content of the soup. Furthermore, in the advertising for any soup, Campbell must cease to represent directly or by implication that there is a connection between soup or its composition and a reduction in the risk of heart disease, unless at the time the advertisement is disseminated, Campbell possesses a reasonable basis consisting of competent and reliable scientific or medical evidence for the connection represented. Campbell must distribute a copy of the order to its operating divisions that are involved in the preparation and placement of advertisements and sale materials for soup products, as well as notify the Commission thirty (30) days in advance of any change in the corporation that may affect compliance obligations arising out of the order.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of

the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,
Secretary.

**Separate Statement of Commissioner
Mary L. Azcuenaga**

I am voting to accept the proposed consent agreement in this matter subject to final approval because I believe it will cure the deception alleged in the complaint without unnecessarily restricting the communication of truthful information. Although two aspects of the consent agreement give me some pause, I believe that it is in the public interest to accept it rather than insist on renegotiation.

Although the precise nature of the relationship between sodium and heart disease is still uncertain,¹ the evidence before the Commission gives me reason to believe that Campbell's failure to disclose the sodium content of its soups in ads that mentioned heart disease was deceptive. I believe that part I of the order, which requires Campbell to disclose the sodium content of its soups in such ads, would cure any alleged deception without discouraging Campbell from making truthful claims about fat and cholesterol content. Requiring Campbell to make a more pejorative disclosure if it made truthful fat and cholesterol claims—such as "this soup is high in sodium, and diets high in sodium are associated with high blood pressure"—could discourage those truthful claims, which would harm the millions of consumers who are concerned about their fat and cholesterol consumption.²

The notice order that the Commission approved when it issued the complaint against Campbell would have applied to "food," while the proposed consent order applies only to "soup." I would have preferred the broader product coverage, but in the context of this consent negotiation, I am willing to settle for the more narrow provision. Although the proposed order does not apply expressly to Campbell food products other than soups, it certainly puts Campbell on notice that the Commission might consider similar ads for other food products to be deceptive.

¹ *Consumer Reports*, for example, reviewed the scientific literature on sodium and health last year and advised its readers that "[a] growing body of scientific evidence indicates that the role of dietary salt as a threat to health has been greatly exaggerated."

² Such a disclosure might also be misleading. Whether Campbell's soups are "high" in sodium depends on the consumer's sensitivity to sodium, the sodium content of the other foods he or she consumes, and the sodium content of the foods he or she would substitute for soup.

As I read part II of the proposed order, it does not prohibit Campbell from making truthful, nondeceptive claims about the fat and cholesterol content of its soups, but I am concerned that it could be read in such a way as to have that effect. If one takes the position that even unadorned statements of fat and cholesterol content³ implicitly are, in the language of part II, claims that the product "makes a positive contribution to a diet that reduces the risk of heart disease," and also that the scientific evidence presented to date does not supply Campbell with a reasonable basis for such claims,⁴ Campbell would be unable to make those statements.

Neither of those propositions appears correct to me, at least not on the record before us at this time. A simple and truthful statement of fat and cholesterol content, when accompanied by an accurate disclosure of sodium content, should not be considered to be a representation that soup "makes a positive contribution to a diet that reduces the risk of heart disease."⁵

Even if such a claim were to be implied, it appears that Campbell may have a reasonable basis for it. There is widespread agreement that lowering fat and cholesterol consumption can reduce the risk of heart disease, but there appears to be some controversy over whether the sodium content of Campbell's low-fat, low-cholesterol soups makes them "heart-unhealthy" instead of "heart-healthy" for some consumers. The factual record on this point—as is often the case when the Commission is asked to approve a consent agreement—is not as complete as it could be. Neither has the evidence been tested in an adjudicative

³ Of course, real-life advertising usually contains much more than "unadorned statements" describing objective product characteristics such as fat and cholesterol content. The Commission considers all the elements of an advertisement when evaluating its meaning, and subtle additions to simple, objective statements in an ad may change the overall impression it creates.

⁴ Proponents of this view might argue, for example, that Campbell could not substantiate a "heart-healthy" claim because some consumers might be eating Campbell's soups instead of foods that were better for the heart—i.e., foods that not only contained little or no fat and cholesterol but also little or no sodium. Unless Campbell could substantiate that consumers were substituting soup for less heart-healthy foods, it might be unable to substantiate a claim that its soups make a "positive contribution to a diet that reduces the risk of heart disease."

⁵ Under the Nutritional Labeling Education Act of 1990, Campbell is required to disclose fat, cholesterol, and sodium content on the labels of its soups. Reading part II of the proposed order to prohibit simple fat and cholesterol content statements is tantamount to saying that it might violate the order to reproduce the required nutrition label in an advertisement.

proceeding, which makes it more difficult for us to evaluate its reliability.

Final approval of a proposed consent agreement, of course, depends largely on the contents of any public comments we receive on that agreement. I am hopeful that the public comments on this proposed agreement will include some expert views on the likely net effect of Campbell's soups on heart disease, as well as discussions of the other issues mentioned above. I would find comments on the following issues to be particularly useful in deciding whether to give final approval to this agreement: (1) The relationship between sodium consumption and heart disease; (2) whether the "heart-healthy" characteristics (e.g., low fat and cholesterol content) of some Campbell's soups counterbalance any negative effects on health caused by their sodium content; and (3) whether simple fat and cholesterol content statements (accompanied by a disclosure of sodium content) are, for purposes of the proposed order, claims that a product "makes a positive contribution to a diet that reduces the risk of heart disease."

**Dissenting Statement of Commissioner
Andrew J. Strenio, Jr.**

I continue to find reason to believe that the Campbell Soup Company ("Campbell" or "respondent") misled consumers as charged in the complaint issued in this matter. However, this consent agreement neither cures the alleged deception nor prevents its recurrence. Accordingly, I respectfully dissent from the Commission majority's decision to accept, subject to final approval, the consent agreement.

Of primary concern is part I of the consent. Part I corresponds to the allegation that it was deceptive to tell only part of the story about the relationship of Campbell's soups to a "heart healthy" diet. Advertisements allegedly claimed that Campbell's soups in general (and Chicken Noodle in particular) are heart healthy because they are low in fat and cholesterol. But, the same advertisements omitted any mention that these soups also contain a disproportionately high amount of sodium, a nutrient that is associated with an increased risk of hypertension.¹

¹ Information about the high sodium content of the Campbell's soups in question clearly seems material to consumers shopping for healthier foods. The consensus of medical opinion at this time is that a high sodium diet contributes to hypertension, the leading type of cardiovascular disease and a major risk factor in the development of coronary heart disease. Similarly, the consensus of medical opinion is that consumers generally should limit their daily intake of sodium to reduce the risk of

Continued

The proposed consent agreement simply would require respondent to disclose the amount of sodium in any advertisement that mentions heart disease in connection with soup. The mandated disclosure only would cover soups that contain more than 500 milligrams of sodium per eight-ounce serving.

Unfortunately, this remedy does not rectify the deception charged in the complaint. The alleged deception was not failure to disclose the sodium content of Campbell's soups, but failure to disclose that these soups are high in sodium and that diets high in sodium may increase the risk of heart disease. The proposed remedy, therefore, only would cure the alleged deception if consumers both interpret the content disclosure as meaning that Campbell's soups indeed are high in sodium and also understand the relationship between high sodium consumption and the risk of heart disease. Even presuming that consumers basically understand the latter relationship, the record nevertheless lacks any evidence that consumers would conclude from the content disclosure that the covered soups have high sodium content.

Further, a meaningful disclosure helping consumers put the sodium content information into perspective is all the more imperative because the order provision only applies to advertisements claiming heart benefits from eating Campbell's soups.² Specifically, this record does not reveal whether a significant number of consumers mistakenly would interpret the required statement to mean that the soups are relatively *low* in sodium content. Reading an advertisement featuring heart healthy claims, could reasonable consumers conclude in context that the required statement, "contains x milligrams of sodium per eight-ounce serving," strengthens rather than weakens the overall "good for your heart" message? That possibility cannot be eliminated in the abstract. After all, unless consumers previously have memorized the recommended maximum daily levels of sodium intake or the

sodium levels of other soups, there is nothing intrinsically alarming about the required statement. Until the Commission can rule out this "worst case scenario" with confidence based upon the record, it ought not sign on to this consent when there is so much at stake.³

Of course, the Commission always must be careful to ensure that its remedies are not overly burdensome. Reducing the flow of important information—such as the low-fat or low-cholesterol content of foods—would be highly undesirable. However, requiring Campbell to provide sufficient information to prevent deception is not overly burdensome, nor need it undercut the dissemination of truthful claims.⁴ To conclude, instead, that it is overly burdensome to require companies to provide information necessary to prevent deception would open Pandora's box. A conclusion along these lines would imply that the Commission should allow a "little" deception in some claims if consumers are "deceived to their benefit" by the presence of additional claims in an advertisement. Such a result would usurp consumer sovereignty and constitute bad law and bad policy.

Part II of the proposed settlement poses less serious concerns. The product coverage in part II preferably should extend to all of respondent's foods rather than just to its soups. Nonetheless, this product coverage is acceptable in light of the complaint allegation that respondent lacked a reasonable basis for claiming that most of its soups make a positive contribution to a diet that reduces the risk of heart disease.

Nor is part II likely to chill Campbell's incentive to make truthful and non-deceptive claims. After all, part II merely requires that respondent obey the law by having a reasonable basis for any future claims that its soups make a positive contribution to a diet that reduces the risk of heart disease.⁵ If

² I would welcome public comments that shed light in particular on the current extent of consumer knowledge about both the risks of high sodium intake and the sodium content of foods, as well as on the likely consumer response to the required statement.

⁴ There might be alternative disclosures that would do as good a job of preventing the deception here as the "high in sodium" phrase, yet also prove less onerous to Campbell's. As long as the former condition is satisfied, the latter condition is worth pursuing. For example, a disclosure that provided sodium content along with responsible recommended total sodium intake levels might suffice, or there could be other satisfactory options.

⁵ There is no single, universally accepted figure for the recommended maximum daily level of sodium intake. However, there are a number of convergent recommendations. For instance, the

reasonable consumers are likely to interpret such an advertisement as making a heart healthy claim that respondent cannot substantiate, the ad would violate the order. Yet even without part II, any such unsubstantiated advertisement would run afoul of section 5. No convincing argument has been made that Campbell should be exempted from the well-established requirement under section 5 that sellers must have a reasonable basis for their advertised claims. Certainly, it is clear to me that advertisers have the creativity and integrity to present even complicated or limited claims in an interesting and non-deceptive fashion.

[FR Doc. 91-9123 Filed 4-17-91; 8:45 am]

BILLING CODE 6750-01-M

[File No. 901 0028]

Nintendo of America Inc.; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a Redmond, WA, based corporation from fixing the prices at which its dealers advertise and sell Nintendo home video-game hardware to consumers. In addition, the consent agreement would require the respondent to mail a letter to all of its dealers advising them that they can advertise

National Research Council of the American Academy of Sciences recommended in 1989 that all Americans limit total daily intake of sodium to 2400 milligrams or less. The American Heart Association recommended in 1987 that sodium intake not exceed 3000 milligrams per day. The Select Committee on Nutrition and Human Needs of the United States Senate recommended in 1977 that no more than 2000 milligrams of sodium be consumed per day.

To put this in perspective, consider that one serving of Campbell's Chicken Noodle Soup provides some 910 milligrams of sodium. That is roughly one-third to one-half of the recommendations discussed above for maximum total daily sodium intake. At the same time, that single serving of soup supplies only approximately five percent of an average American's daily caloric intake. While Campbell's Chicken Noodle Soup could well form part of a balanced, nutritious, and healthy diet, consumers would need to be very careful in selecting the rest of their food for the day to still keep their total sodium intake below the ceilings mentioned previously. A consumer who knows that the soup has 910 milligrams of sodium per serving, but is unaware of total recommended intake ceilings, could readily and regularly consume sodium levels that go through the roof.

heart disease. The Surgeon General estimates that 58 million Americans suffer from hypertension. Thus, even if lowered sodium consumption reduces the risk of heart disease for only some hypertensives, the cumulative benefits still are likely to be considerable.

³ To be sure, mandating a disclosure informing consumers that Campbell's soups are "high in sodium" would require the Commission to define the term. However, the Commission made a comparable determination when it charged that Campbell's failure to disclose that certain of its soups are high in sodium was deceptive. Similarly, the consent agreement, by only requiring the disclosure for soups with more than 500 milligrams per eight-ounce serving, implicitly defines "high in sodium."

and sell the products at any price without adverse action by Nintendo.

DATES: Comments must be received on or before June 17, 1991.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary; room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Kevin Arquit or Michael Antalics, FTC/H-374 or S-2627, Washington, DC 20580. (202) 326-2556 or 326-2682.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

The Federal Trade Commission having initiated an investigation of certain acts and practices of Nintendo of America Inc., a corporation, hereinafter sometimes referred to as proposed respondent or "Nintendo" and it now appearing that Nintendo is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is Hereby Agreed by and between Nintendo, by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Nintendo of America Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its principal place of business located at 4820-150th Ave., NE., Redmond, Washington 98052. Respondent is a wholly-owned subsidiary of Nintendo Co. Ltd., with its principal place of business in Kyoto, Japan.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

(a) Any further procedural steps;
(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the

validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. Proposed respondent understands that once the

order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I.

For the purpose of this order, the following definitions shall apply:

(1) *Product* means any home video game hardware, software, accessories, or items related thereto which are manufactured, offered for sale or sold by respondent to dealers.

(2) *Dealer* means any person, corporation, or firm not owned by Nintendo that in the course of its business sells any product. The term "dealer" does not include licensees of Nintendo which do not act as agents, representatives, or distributors of Nintendo.

(3) *Resale Price* means any price, price floor, price ceiling, price range, or any mark-up formula or margin of profit used by any dealer for pricing any product. Such term includes, but is not limited to, any suggested, established, or customary resale price as well as the retail price advertised, promoted or offered for sale by any dealer.

II.

It is Ordered, That respondent Nintendo of America Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or indirectly, or through any corporation, subsidiary, division or other device, in connection with the manufacturing, advertising, offering for sale, sale or distribution of any product in or affecting commerce, as "commerce" is defined by the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Fixing, controlling, or maintaining, directly or indirectly, the resale price at which any dealer may advertise, promote, offer for sale or sell any product.

(2) Requiring, coercing, or otherwise pressuring any dealer, directly or indirectly, to maintain, adopt, or adhere to any resale price.

(3) Securing or attempting to secure, directly or indirectly, any commitment or assurance from any dealer concerning the resale price at which the dealer may advertise, promote, offer for sale or sell any product.

(4) Reducing the supply of products to any dealer or imposing different credit terms in whole or in part due to the dealer's resale price of any product.

(5) Requesting dealers, directly or indirectly, to report the identity of other dealers who advertise, promote, or offer for sale or sell any product below any resale price.

(6) For a period of five (5) years from the date on which this order becomes final, terminating any dealer due in whole or in part to the dealer's resale price of any product. Provided, however, that the respondent retains the right to terminate

unilaterally any dealer for lawful business reasons, unrelated to resale prices, that are not inconsistent with this paragraph or any other paragraph of this order.

III.

It is Further Ordered, That, for a period of five (5) years from the date on which this order becomes final, respondent shall clearly and conspicuously state the following on any list, advertising, book, catalogue, or promotional material where respondent has suggested any resale price to any dealer: Although Nintendo of America Inc. May Suggest Resale Prices for Products, Dealer is Free to Determine on its own the Prices at Which it will Sell the Products.

IV.

It is Further Ordered, That within thirty (30) days after the date of this order becomes final, respondent mail by first class mail the letter attached as exhibit A, together with a copy of this order, to all of respondent's present dealers, personnel, distributors, agents, or representatives having sales or policy responsibilities with respect to respondent's products.

V.

It is Further Ordered, That respondent notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the respective corporation which may affect compliance obligations arising out of the order.

VI.

It is Further Ordered, That respondent, within sixty (60) days after this order becomes final, and at such other times as the Commission or its staff shall request, file with the Commission a verified written report setting forth in detail the manner and form in which respondent has complied and is complying with this order.

Exhibit A

Dear Retailer: Nintendo of America Inc. has agreed, without admitting any violation of the law, to the entry of a Consent Order by the Federal Trade Commission prohibiting certain practices relating to resale prices. A copy of the Order is enclosed. Nintendo has also agreed to a similar order with New York, Maryland and other states. This letter and the accompanying Order have been sent to all of our dealers, sales personnel and representatives.

The Order spells out our obligations in greater detail, but we want you to know and understand the following:

1. You can advertise and sell our products at any price you choose.
2. We will not take any adverse action against you because of the price at which you advertise or sell our products.
3. While we may send materials to you which may contain our suggested retail prices, you are completely free to disregard these suggestions.

Sincerely yours,

President, Nintendo of America Inc.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Nintendo of America Inc.

The proposed consent order has been placed on the public record for 60 days for reception of comments by interested persons. Comments received during this period will become part of the public record. After 60 days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint alleges that Nintendo of America Inc. ("Nintendo") has entered into a combination, agreement, and understanding with certain of its dealers to maintain the resale prices at which certain of its dealers advertise, offer for sale, and sell its home video game hardware. The complaint alleges that this conduct violates Section 5 of the Federal Trade Commission Act.

Nintendo has signed a consent agreement to the proposed consent order which is not limited to home video game hardware as alleged in the complaint, but also applies to all home video game products marketed by Nintendo, including home video game software and accessories. The order's provisions apply to these products as a fencing-in measure. It is not uncommon in Commission cases for remedial orders to go beyond the specific charges in the complaint in order to insure that relief is effective.

The proposed order prohibits Nintendo from fixing, controlling, or maintaining the retail prices at which any dealer may advertise, promote, offer for sale or sell any Nintendo product. The proposed order prohibits Nintendo from coercing or pressuring any dealer to adhere to any resale prices and from securing or attempting to secure commitments from dealers concerning resale prices. In addition, the proposed order prohibits Nintendo from reducing the supply of products to any dealer or imposing different credit terms in whole or in part because of the dealer's resale pricing. The proposed order also prohibits Nintendo from requesting its dealers to report dealers who sell any Nintendo product below any resale price suggested or established by Nintendo. The proposed order prohibits Nintendo for a period of five years from terminating any dealer because of the dealer's failure to adhere to any suggested minimum prices. The

proposed order further provides that Nintendo retains the right to terminate any dealer unilaterally for lawful business reasons, unrelated to resale prices, that are not inconsistent with the order.

The proposed order also requires Nintendo, for a period of five years, to place a disclaimer on any material in which it suggests resale prices which states that the dealer is free to determine the prices at which it will sell its products. In addition, the proposed order requires Nintendo to mail a letter to its dealers which will inform them that they can sell and advertise Nintendo products at any price they choose without having any adverse action taken against them by Nintendo.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 91-9124 Filed 4-17-91; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families; Statement of Organization, Functions, and Delegations of Authority; Reorganization Order

Under the authority of Section 6 of Reorganization Plan No. 1 of 1953 and pursuant to the authorities vested in me as Secretary of Health and Human Services, I hereby order organizational changes in the Department of Health and Human Services as follows:

I. Organization

A. Administration for Children and Families

The Administration for Children and Families is established as an Operating Division of the Department. The following organizational components and programs are transferred to the Administration for Children and Families:

1. The Office of Child Support Enforcement from the Family Support Administration which will remain a separate organizational unit.
2. The Office of Family Assistance from the Family Support Administration.
3. The Office of Refugee Resettlement from the Family Support Administration.
4. The Office of Community Services from the Family Support Administration.

5. The Administration for Children, Youth and Families from the Office of Human Development Services.

6. The Administration for Native Americans from the Office of Human Development Services.

7. The Administration on Developmental Disabilities from the Office of Human Development Services.

8. The Maternal and Child Health Block Grant from the Health Resources and Services Administration, Public Health Service.

9. The Social Services Block Grant from the Office of Human Development Services.

10. All children and families programs (Child Care and Development Block Grant, Title IV Child Care Grants to States) that are legislatively mandated with authority vested in the Secretary.

11. Such other organizational units, or portions thereof, which provide support to the units listed above, as determined hereafter by the Assistant Secretary for Management and Budget. Until such determination has been made and implemented, support for the Administration for Children and Families shall be provided by the organizations currently providing such support to the units transferred under this order.

The Administration for Children and Families shall be headed by the Assistant Secretary for Children and Families and shall report to the Secretary and shall also retain the title of Assistant Secretary for Family Support and the title of Director of the Office of Child Support Enforcement. The Administration for Children and Families will include the following major staff and program components:

Staff Organizational Components

- Office of the Deputy Assistant Secretary for Program Operations.
- Office of Public Affairs.
- Office of Policy and Program Evaluation.

Program Organizational Components

- Office of Child Support Enforcement.
- Office of Family and Child Health.
- Office of Child Care.
- Office of Family Assistance.
- Administration for Children, Youth and Families.
- Office of the Deputy Assistant Secretary for Special Programs.

B. Administration on Aging

The Commissioner on Aging will report directly to the Secretary on policy matters, and will receive administrative and logistics services from the Office of the Secretary.

II. Continuation of Regulations

Except as inconsistent with this Reorganization Order, all regulations, rules, orders, statements of policy and interpretations with respect to the Family Support Administration; Office of Human Development Services; and the Public Health Service (Health Resources and Services Administration) heretofore issued and in effect prior to the date of this Reorganization Order, or to become effective subsequent to said date, are continued in full force and effect.

III. Prior Statements of Organizations, Functions, and Delegations of Authority

A. To the extent inconsistent with this Reorganization Order, all previous statements of organization, functions and delegations of authority, as well as applicable present chapters of the Department's Organizational Manual, are hereby superseded by this Reorganization Order, except that pending further redelegation, all delegations to the Assistant Secretary for Family Support (Administrator, Family Support Administration) pertaining to the Office of Family Assistance, Office of Community Services and the Office of Refugee Resettlement; to the Director of the Office of Child Support Enforcement; to the Assistant Secretary for Human Development Services pertaining to the Administration for Children, Youth and Families, Administration for Native Americans, and the Administration on Developmental Disabilities; and to the Assistant Secretary for Health pertaining to programs from the Health Resources and Services Administration are vested with the Assistant Secretary for Children and Families, with authority to redelegate, consistent with this Reorganization Order and the provisions of the respected delegations.

B. All redelegations of authorities made to the heads of the organizational units transferred by this Reorganization Order and to any other officer or employee of the Department of Health and Human Services and all further redelegations of such authorities in effect immediately prior to the effective date of this Reorganization Order shall continue in effect pending further redelegation.

IV. Funds, Personnel and Equipment

Transfer of organizations and functions effected by this Order shall be accompanied in each instance by direct and supporting funds, positions, personnel, records, equipment, supplies and other resources.

Effective Date: This Reorganization Order shall be effective April 15, 1991.

Dated: April 15, 1991.

Louis W. Sullivan,
Secretary.

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Office of the Secretary

Social Security Administration; Statement of Organization, Functions and Delegations of Authority

Part S of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (HHS) covers the Social Security Administration (SSA). Notice is given that Part S is being revised to reflect the establishment of the Principal Deputy Commissioner of SSA and the establishment of the Offices of the Deputy Commissioners for Systems (S4) and Human Resources (S7). Notice is further given that Chapter S2 for the Office of the Deputy Commissioner, Operations and Chapter S5 for the Office of the Deputy Commissioner, Policy and External Affairs are being amended to reflect internal organizational realignments. Chapter S1 for the Deputy Commissioner, Management is being retitled to reflect the assumption of additional responsibilities and realignments both internally and between Deputy Commissioner components. Chapter S3 for the Deputy Commissioner, Programs remains unchanged. Chapter S6 for the SSA Chief Financial Officer will be deleted. The Deputy Commissioners for Finance, Assessment and Management (S1), Operations (S2), Programs (S3), Systems (S4), Policy and External Affairs (S5) and Human Resources (S7) are all line officials responsible for directing major organizational components. The following chapters reflect these changes.

Chapter S—Social Security Administration

- S.00 Mission
- S.10 Organization
- S.20 Functions
- S.30 Order of Succession

Section S.00 The Social Security Administration—(Mission)

The Social Security Administration is the Nation's primary income security Agency. It administers the Federal retirement, survivors and disability insurance programs, as well as the program of supplemental security

income (SSI) for the aged, blind and disabled and performs certain functions with respect to the black lung benefits program. SSA also directs the aid to the aged, blind and disabled in Guam, Puerto Rico and the Virgin Islands.

Section S.10 The Social Security Administration—(Organization)

The Social Security Administration, under the supervision and direction of the Commissioner of Social Security, includes:

- A. The Office of the Commissioner (SA).
- B. The Office of the Principal Deputy Commissioner (SA).
- C. The Office of the Deputy Commissioner, Finance, Assessment and Management (S1).
- D. The Office of the Deputy Commissioner, Operations (S2).
- E. The Office of the Deputy Commissioner, Programs (S3).
- F. The Office of the Deputy Commissioner, Systems (S4).
- G. The Office of the Deputy Commissioner, Policy and External Affairs (S5).
- H. The Office of the Deputy Commissioner, Human Resources (S7).

Section S.20 The Social Security Administration—(Functions)

The Social Security Administration performs all functions necessary to accomplish the Agency's mission. These are specified in more detail in the sections which follow Section S.30.

Section S.30 The Social Security Administration—(Order of Succession)

- A. 1. In the event of the absence or disability of the Commissioner, the Principal Deputy Commissioner shall serve as Acting Commissioner.
- 2. In the event of the absence or disability of both the Commissioner and Principal Deputy Commissioner or vacancies in the positions, the Secretary of Health and Human Services shall designate one of the Deputy Commissioners to serve as Acting Commissioner.
- 3. In the event of the absence of the Commissioner and the Deputy Commissioners, an SSA official designated by the Commissioner shall serve as Acting Commissioner.
- 4. Should the position of Commissioner, Principal Deputy and the Deputy Commissioners become vacant, or these officials become disabled, an official designated by the Secretary shall serve as Acting Commissioner.
- B. 1. Where an Associate Commissioner has two deputies, one of the deputies shall be designated by the Associate Commissioner to serve as

Acting Associate Commissioner during his/her absence. In the event of a disability of the Associate Commissioner, the Commissioner shall designate one of the Deputy Associate Commissioners to serve as acting Associate Commissioner.

2. In the event of the absence of both an Associate Commissioner and his/her Deputy or deputies, an executive designated by the Associate Commissioner shall serve as Acting Associate Commissioner.

3. Should an Associate Commissioner or his/her Deputy become disabled, an SSA official designated by the Commissioner shall serve as Acting Associate Commissioner.

C. 1. During the absence or disability of a Regional Commissioner, the Deputy Regional Commissioner shall serve as Acting Regional Commissioner.

2. In the event of the absence of both a Regional Commissioner and his/her Deputy, an SSA regional office official designated by the particular Regional Commissioner shall serve as Acting Regional Commissioner.

3. Should both the Regional Commissioner and Deputy Regional Commissioner become disabled, an SSA official designated by the Commissioner shall serve as Acting Regional Commissioner.

Delete: Existing Chapter S6, The Office of the SSA Chief Financial Officer, in its entirety.

Chapter SA—Office of the Commissioner

- SA.00 Mission
- SA.10 Organization
- SA.20 Functions

Section SA.00 The Office of the Commissioner—(Mission)

The Office of the Commissioner (OC) is directly responsible to the Secretary for all programs administered by SSA, for State-administered programs directed by SSA, and for certain functions with respect to the black lung benefits program. It provides executive leadership to SSA. The Office is responsible for development of policy, administrative and program direction, program interpretation and evaluation, maintenance of relations with news media, research oriented to the study of the problems of economic insecurity in American society, and development of recommendations on methods of advancing social and economic security through social insurance and related programs.

Section SA.10 The Office of the Commissioner—(Organization)

The Office of the Commissioner, under the leadership of the Commissioner of Social Security, includes:

- A. The Commissioner of Social Security (SA).
- B. The Office of the Principal Deputy Commissioner (SA).
- C. Immediate Office of the Commissioner (SA), which includes:
 - 1. The Office of the Senior Executive Officer (SAK) which includes:
 - a. The Office of Information Resources Management (SAK-1).
 - b. The Strategic Planning Staff (SAK-2).
 - c. The Office of Executive Operations (SAK-3).
 - 2. The Senior Advisor to the Commissioner (SAL).

Section SA.20 The Office of the Commissioner—(Functions)

A. The Commissioner of Social Security (SA) provides executive leadership to SSA and exercises general supervision over its major components.

B. The Principal Deputy Commissioner (SA) assists the Commissioner in carrying out his/her responsibilities and performs other duties as the Commissioner may prescribe.

C. The Immediate Office of the Commissioner (SA), including the Press Office, the Ombudsman and the Counselor to the Commissioner, provides the Commissioner with staff assistance on the full range of his/her responsibilities. It includes:

- 1. The Office of the Senior Executive Officer (SAK).
 - a. The Office of Information Resources Management (SAK-1).
 - 1. Defines broad policy for management of SSA information (including information collection, manipulation and dissemination) in accordance with the Paperwork Reduction Act and other relevant Office of Management and Budget and HHS guidelines.
 - 2. Defines the Information Resources Management (IRM) program for the Agency, determines appropriate IRM functions and ensures Agency compliance with Federal law, regulations and Departmental requirements.
 - 3. Produces the annual IRM plan which incorporates IRM activities to be conducted throughout the Agency.
 - 4. Oversees overall Agency-wide IRM review activities.
 - 5. Reviews the efficiency and effectiveness of the overall IRM program

in meeting the Agency's strategic goals and objectives and recommends changes for improvements in IRM planning methodologies, directions, policies, standards and control mechanisms.

6. Monitors the development and completion of significant Agency activities such as backup and recovery, capacity planning and acquisition and Title XVI systems modernization and coordinates with the Systems Review Board.

7. Provides staff support to the Office of the Commissioner in researching and clarifying policy, programmatic and operational issues for resolution and/or decision.

b. The Strategic Planning Staff (SAK-2). Establishes and implements a framework for the effective planning, evaluation and management of all of SSA's resources, projects and activities in accordance with applicable law and regulation. Develops and promulgates planning policies, procedures and methodologies for the Agency. Directs the development of the Agency's tactical and strategic planning documents, monitors the implementation of approved plans, and conducts or directs special cross-cutting projects.

c. The Office of Executive Operations (SAK-3).

1. Coordinates priority matters requiring the attention of, or decision by, the Commissioner and directs the tracking and monitoring of actions assigned by the Commissioner to all Agency components.

2. Coordinates and provides liaison for internal communication and correspondence control for OC.

3. Monitors administrative and program policy development and policy implementation activities, and prepares periodic status reports.

4. Ensures that issues requiring the Commissioner's attention are developed timely and coordinated with SSA and HHS components having an interest in the matter; designs and implements procedures for proper coordination and follows through on specific issues.

5. Expedites regulation development, review, clearance, publication and issuance. Oversees the management of the final stages of regulations development and clearance prior to submittal to the Commissioner and the Secretary (when necessary).

6. Communicates the objectives, priorities and standards of OC to individuals involved in the preparation of correspondence and memoranda, and ensures that communications signed or approved by OC are consistent with these standards and objectives.

7. Manages the development and implementation of the Agency's management objectives through the operational planning and tracking system.

8. Reviews and analyzes memoranda and other communications directed to OC for adequacy of coordination and clearances, clearness and conciseness of presentation, timeliness, necessary followthrough and other elements of completed staff work.

9. Works with operating components and staff offices to improve the quality of decision papers and correspondence directed to the Office of the Secretary.

2. The Senior Advisor to the Commissioner (SAL) who serves as a high level advisor to the Commissioner and provides executive leadership in planning and implementing major public affairs activities and outreach initiatives.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration; Statement of Organization, Functions and Delegations of Authority

Part S of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (HHS) covers the Social Security Administration (SSA). Notice is given that Chapter S1 for the Office of the Deputy Commissioner, Management is being retitled as Office of the Deputy Commissioner, Finance, Assessment and Management at the first level below the Commissioner because of the assumption of additional responsibilities. Notice is further given that the Deputy Commissioner for Finance, Assessment and Management will also be the SSA Chief Financial Officer. Notice is further given of the establishment of the Office of Program and Integrity Reviews, The Office of Financial Policy and Operations, the Office of Budget, the Office of Acquisition and Grants, the Office of Facilities Management and the Office of Publications and Logistics Management and their respective subordinate offices, staffs and divisions in that Office. The following material replaces Chapter S1 in its entirety.

Chapter S1—The Office of the Deputy Commissioner, Finance, Assessment and Management

S1.00 Mission

S1.10 Organization

S1.20 Functions

Section S1.00 The Office of the Deputy Commissioner, Finance, Assessment and Management—(Mission)

The Office of the Deputy Commissioner, Finance, Assessment and Management (ODCFAM) directs the administration of comprehensive SSA Management programs including budget, acquisition and grants, facilities management, and publications and logistics. The Office directs the development of Agency policies and procedures as well as the management of the Agency financial management systems. It directs the activities of the Systems Review Board (SRB) and the systems procurement review function. It directs the evaluation of programs operations quality and the management of Agency quality assurance, management integrity and systems security programs and the oversight of SSA's matching operations.

Section S1.10 The Office of the Deputy Commissioner, Finance, Assessment and Management—(Organization)

The Office of the Deputy Commissioner, Finance, Assessment and Management under the leadership of the Deputy Commissioner, Finance, Assessment and Management includes:

A. The Deputy Commissioner, Finance, Assessment and Management (S1).

B. The Assistant Deputy Commissioner, Finance, Assessment and Management (S1).

C. The Immediate Office of the Deputy Commissioner, Finance, Assessment and Management (S1J), which includes:

1. The SSA Senior Financial Executive (S1J-1).

2. The Information Technology Systems Review Staff (S1J-2).

D. The Office of Program and Integrity Reviews (S1K).

E. The Office of Financial Policy and Operations (S1N).

F. The Office of Budget (S1P).

G. The Office of Acquisition and Grants (S1Q).

H. The Office of Facilities Management (S1R).

I. The Office of Publications and Logistics Management (S1S).

Section S1.20 The Office of the Deputy Commissioner, Finance, Assessment and Management—(Functions)

A. The Deputy Commissioner, Finance, Assessment and Management (S1) is directly responsible to the Commissioner for carrying out the ODCFAM mission and providing general supervision to the major components of ODCFAM. The Deputy Commissioner also is the SSA Chief Financial Officer

(SSACFO) and is directly responsible to the Commissioner for carrying out the SSACFO mission.

B. The Assistant Deputy Commissioner, Finance, Assessment and Management (S1) assists the Deputy Commissioner in carrying out his/her responsibilities and performs other duties as the Deputy Commissioner may assign.

C. The Immediate Office of the Deputy Commissioner, Finance, Assessment and Management (S1J) provides the Deputy Commissioner with staff assistance on the full range of his/her responsibilities. It reviews and analyzes existing and proposed delegations of program and administrative decisionmaking authorities within SSA. It includes:

1. The SSA Senior Financial Executive (S1J-1) provides financial management expertise, advice and support to DCFAM in his/her role as the Chief Financial Officer. Serves as a high-level Agency focal point for financial management matters and on selected issues acts as liaison with the Department of the Treasury and the Internal Revenue Service. Monitors Agency activities to improve financial management and management integrity weaknesses to assure Agency commitment and follow through. The Senior Financial Executive is the focal point for Agency combined annual wage reporting/wage reconciliation improvement efforts.

Leads the Audit Management and Liaison Staff which plans and directs SSA's participation in the audit programs conducted by the U.S. Government Accounting Office (GAO) and the HHS Office of Inspector General (OIG) and other external organizations. Develops Agency position on issues presented in the audits. Reviews and evaluates audit reports and monitors and evaluates the implementation of GAO and OIG audit reports and internal survey recommendations. Prepares progress reports and recommends corrective action as required.

2. The Information Technology Systems Review Staff (S1J-2) serves as the principal independent source of advice to the SRB, the DCFAM and the Commissioner on the feasibility, suitability and conformance to regulations of proposed systems plans and acquisitions; on proposed systems design and requirement specifications; and on all other systems strategies and related issues. It reviews the proposed Information Technology Systems (ITS) budget and Agency Procurement Requests for adequacy, clarity, cost-effectiveness, achievability, consistency with Agency plans and to ensure that

project objectives are realistic and complete. It conducts technical reviews of the functional requirements and design specifications of all ITS hardware and software systems to ensure their sufficiency and compliance with applicable policies, procedures and Agency plans. The Staff conducts in-process reviews of systems implementation, planned strategies, contracts, interagency agreements and other ongoing work in the systems area to determine compliance with Agency decisions and plans and monitors significant ITS projects to ensure the Agency objectives and timeframes are met. The Staff conducts postimplementation reviews of Agency systems and ITS acquisitions to determine if Agency investments provide the expected returns and whether Agency objectives are being met with timely and cost-effective methods. The Staff conducts Information Resources Management reviews, maintains the Agency ITS budget project accounting data base and provides the DCFAM and the Commissioner with regular status reports on the execution of the Agency's ITS budget.

D. The Office of Program and Integrity Reviews (S1K) reviews, evaluates and assesses the integrity and quality of the administration of Social Security programs in headquarters and in the field. It recommends corrective changes in programs, policies, procedures or legislation aimed at quality and productivity improvement and/or program simplification. It evaluates the quality of SSA operations with emphasis on the prevention of program and systems abuse, the elimination of waste and the increase of efficiency. It also has responsibility for overseeing SSA's computer matching operations.

E. The Office of Financial Policy and Operations (S1N) has operational responsibility for SSA's accounting and payment operations and establishes requirements for all SSA financial systems and processes to ensure Agency compliance with accounting principles and standards as prescribed by the Comptroller General and Chief Financial Officer of the United States; fiscal policies and procedures prescribed by the Secretary of the Treasury; and management integrity and control standards prescribed by the Office of Management and Budget and HHS under the Federal Managers' Financial Integrity Act.

F. The Office of Budget (S1P) provides overall management of the planning, development and execution of the SSA budget. The Office develops policies and guidelines for the exercise of SSA-wide budget responsibility and evaluates and

appraises the manner in which this responsibility is carried out.

G. The Office of Acquisition and Grants (S1Q) directs the business management aspects of SSA's procurement program and grants management program by awarding and administering contracts, preparing purchase orders or other contractual instruments, and awarding and administering grants. It develops and implements policies, procedures and directives for SSA procurement and grants activities.

H. The office of Facilities Management (S1R) directs the national SSA real property program including short- and long-range facilities planning; design, construction and leasing of central office and large field facilities and maintenance, repair and construction projects and policy development related to these operations and facilities. It acquires, utilizes and manages space at SSA headquarters and develops a comprehensive space inventory and utilization system. The Office of Facilities Management develops, implements and evaluates SSA's environmental protection, safety and protective services programs. It ensures that these programs are responsive to the needs of the Agency and serves as a focal point for inquiries and guidance concerning these programs.

I. The Office of Publications and Logistics Management (S1S) directs a comprehensive SSA printing, publications and distribution management program and develops pertinent policies, standards, and procedures for SSA's forms and publications management, printing, reprographics and distribution programs. It directs the administration and maintenance of the SSA library, the SSA History Room, the historical research program and records management program. It administers the SSA logistics management program, directs the SSA property and supply management programs and manages the operation of SSA warehousing facilities including receipt, storage and issuance of forms publications, supplies and equipment for SSA-wide use. The Office directs activities related to employee transportation including providing headquarters passenger, mail and freight transportation services. The Office directs the SSA mail management program.

Subchapter S1K—Office of Program and Integrity Reviews

S1K.00 Mission

S1K.10 Organization

S1K.20 Functions**Section S1K.00 The Office of Program and Integrity Reviews—(Mission)**

The Office of Program and Integrity Reviews (OPIR) reviews, evaluates and assesses the integrity and quality of the administration of Social Security programs in headquarters and in the field. It recommends corrective changes in programs, policies, procedures or legislation aimed at quality and productivity improvement and/or program simplification. It evaluates the quality of SSA operations with emphasis on the prevention of program and systems abuse, the elimination of waste and the increase of efficiency. It also oversees SSA's computer matching operations.

Section S1K.10 The Office of Program and Integrity Reviews—(Organization)

The Office of Program and Integrity Reviews, under the leadership of the Associate Commissioner for Program and Integrity Reviews, includes:

A. The Associate Commissioner for Program and Integrity Reviews. (S1K).

B. The Deputy Associate Commissioner for Program and Integrity Reviews (S1K).

C. The Immediate Office of the Associate Commissioner for Program and Integrity Reviews (S1K).

D. The Office of Insurance Program Quality (S1KA).

1. The Division of RSI Quality Reports and Analysis (S1KA1).

2. The Division of RSI Policy and Quality Assurance Procedural Management (S1KA2).

E. The Office of Assistance Program Quality (S1KB).

1. The Division of Assistance Program Reviews (S1KB1).

2. The Division of Data Management and Matching Operations (S1KB2).

F. The Office of Disability Program Quality (S1KC).

1. The Division of Disability Quality Policy, Evaluation and Analysis (S1KC1).

2. The Division of Disability Quality Operations (S1KC2).

G. The Offices of Regional Program and Integrity Reviews (S1K-F1—S1K-FX).

Section S1K.20 The Office of Program and Integrity Reviews—(Functions)

A. The Associate Commissioner for Program and Integrity Reviews (S1K) is directly responsible to the Deputy Commissioner, Finance, Assessment and Management (DCFAM) for carrying out OPIR's mission and provides general supervision to the major components of OPIR.

B. The Deputy Associate Commissioner for Program and Integrity Reviews (S1K) assists the Associate Commissioner in carrying out his/her responsibilities and performs other duties as the Associate Commissioner may prescribe.

C. The Immediate Office of the Associate Commissioner for Program and Integrity Reviews (S1K) provides the Associate Commissioner and Deputy Associate Commissioner with staff assistance on the full range of their responsibilities.

D. The Office of Insurance Program Quality (S1KA) plans, designs and maintains a quality review system for the Retirement and Survivors Insurance (RSI) program and the nonmedical factors of the Disability Insurance (DI) program to ensure quality in title II records maintenance, claims and post entitlement action and to foster payment error reduction. It designs sampling methods and techniques, and issues policies and procedures for reviews. It analyzes review data and prepares reports on findings, including recommendations for corrective action, changes in RSI program policies, procedures or computer systems routines reporting on RSI payments and workloads or legislation. The Office plans and designs special reviews of problem areas, and plans and utilizes an automated data base of findings in current and longitudinal analyses so that policy and operational managers can improve the management of the RSI program. The Office provides technical support and guidance to program and integrity field staff in the RSI Quality Review program, and conducts reviews of the Offices of Regional Program and Integrity Reviews (ORPIR) adherence to OPIR review policies and procedures.

1. The Division of RSI Quality Reports and Analysis (S1KA1):

a. Reports on the quality of SSA's RSI program and the nonmedical aspects of the Disability Insurance program.

b. Analyzes results of continuing targeted and user support quality review studies of current claims, postadjudicative actions and ongoing payments. Based on these analyses, issues statistical and narrative reports that include recommendations for improving payment accuracy, automated data processing (ADP) systems, operational processes, component performance and manpower utilization.

c. Designs and maintains a reporting system to communicate quality findings to management officials who need the information.

d. Designs and develops sampling methods and techniques, statistical measures and methods of statistical

evaluation for the efficient and valid measurement of the quality of the RSI and DI nonmedical phases of SSA programs.

e. Designs, develops and conducts tests of current and alternative quality review methodologies. Prepares data analysis plans and analyzes test results to determine more effective, efficient and cost-beneficial methods of conducting payment accuracy/quality reviews.

f. Develops a program for selecting and conducting quality reviews for Social Security number issuance, earnings maintenance functions and other SSA functions throughout program lines. Provides analysis and recommendations and monitors implementation of recommendations.

g. Designs, directs and coordinates the nationwide system and procedures for evaluating 800 number service. The evaluation crosses program lines and includes RSI, DI, SSI and general inquiries. Participates in the survey of callers using the 800 service to obtain public perception of the 800 service. Analyzes the 800 service evaluation and makes corrective action recommendations.

2. The Division of RSI Policy and Quality Assurance Procedural Management (S1KA2):

a. Plans, directs and coordinates the development of technical and operational procedures necessary to implement and maintain a nationwide program for the review of the quality of the RSI program.

b. Maintains an ongoing sample consistency review of all RSI quality review cases to evaluate and analyze the effectiveness of RSI quality review procedures and compliance with the procedures.

c. Reviews new operating policies, procedures, regulations and legislative proposals concerning the RSI program for impact on payment quality and on the uniformity and equity of national instructions.

d. Designs and conducts studies to evaluate RSI policies and procedures and assures that evidential and procedural requirements are uniform and equitable with respect to all applicants and beneficiaries. As a result of studies, issues reports, develops corrective actions and proposes or initiates RSI and quality assessment policy and procedural changes.

e. Conducts a continuing quality review of and issues reports on the nondisability aspects of the initial claims and postadjudicative actions connected with the disability program and foreign claims.

E. The Office of Assistance Program Quality (S1KB) plans, designs and maintains a quality review system for the Supplemental Security Income (SSI) program to ensure quality in adjudication and payment and to reduce payment errors. It designs sampling methods and techniques, and issues policies and procedures for reviews. It analyzes review data and prepares reports on findings, including recommendations for corrective changes in SSI program policies, procedures or legislation. The Office develops and utilizes an automated data base of findings in current and longterm analyses so that policy and operational managers can improve the operation of the SSI program. The Office provides technical support and guidance to program and integrity field staff in the SSI Quality Review Program, and conducts reviews of the ORPIR's adherence to OPIR review policies and procedures. The office oversees of SSA's computer matching operations, including providing periodic reports on the status of SSA matching operations and coordinating SSA's implementation of computer matching legislation. The Office also provides statistical advice on study design and analyses. It also conducts statistical research and analysis of SSA's operational workloads to improve the cost-effectiveness of the RSI, SSI and nonmedical DI programs.

1. The Division of Assistance Program Reviews (S1KB1):

a. Designs and produces quality review reports on claims, posteligibility and redetermination actions, and on the payment and eligibility accuracy of the SSI Program.

b. Analyzes reports and data, and identifies deficiency trends, anomalies, irregularities and weaknesses in SSI program and operations quality. Evaluates findings to ascertain probable causes and recommends improvements in ADP systems, operational processes and component performance.

c. Establishes requirements for the ORPIR's reporting and monitors the quality of the ORPIR's SSI analyses and reports, and manages the Office of Assistance Program Quality interaction with the ORPIR for all dealings in program operations and quality review study/evaluation.

d. Monitors the impact of changes in SSI policy on quality review operations and systems and recommends changes and enhancements to existing SSI quality review ADP systems.

e. Designs, develops and promulgates procedures and forms necessary to maintain a nationwide program for the continuing review of the accuracy and

quality of ongoing SSI payments and the claims adjudication processes.

f. Designs, implements and manages special studies and analyses of SSI program policies and operations. Provides study recommendations to SSA components for program improvements.

g. Maintains current SSI quality review procedures and related instructions to be employed in the case review processes, and reviews SSI quality review procedures developed by the ORPIR for consistency with national policies.

h. Maintains an ongoing sample consistency review of all SSI quality review cases to evaluate and analyze the effectiveness of SSI quality review procedures and compliance with the procedures.

i. Determines the need for SSI quality review process training and technical assistance, and develops national level SSI quality review technical training policies, materials and resources. Reviews technical training materials developed by ORPIR for consistency and possible national implementation.

2. The Division of Data Management and Matching Operations (S1KB2):

a. Supports OPIR components, including ORPIR, by planning, developing, maintaining and improving OPIR's communications and data processing systems and the quality review data bases for SSA programs. Provides related advice.

b. Monitors ADP equipment utilization and data needs to identify equipment needs.

c. Analyzes mainframe, minicomputer, and microcomputer data processing and data communications needs, and develops proposals, designs and specifications to create, modify and maintain OPIR's quality review databases. Coordinates OPIR's ADP procurement and planning.

d. Tests and validates new ADP equipment and software.

e. Develops OPIR policy and training for systems usage and security.

f. Designs and develops sampling methods and techniques for payment and process accuracy review programs. Provides technical guidance related to sample size, design and procedures for quality review programs.

g. Oversees SSA's computer matching operations. Tracks and reports on progress and status of all computer matches. Coordinates SSA's compliance with computer matching legislation.

h. Provides statistical advice to OPIR components on study design and statistical analysis. Conducts research and specialized analyses of the RSI, SSI and nonmedical DI programs to improve

the cost-effectiveness of SSA's operational workloads.

F. The Office of Disability Program Quality (S1KC) plans, designs and maintains a quality review system for the title II and title XVI disability programs to ensure quality in adjudication and payment. It designs sampling methods and techniques, and issues policies and procedures for reviews. It analyzes review data and prepares reports on findings, including recommendations for corrective action or changes in disability program policies, procedures or legislation. The Office plans and designs special reviews of problem areas, and plans and utilizes an automated data base of findings in current and longitudinal analyses so that policy and operational managers can improve the operation of the disability program. The Office provides technical support and guidance to program and integrity field staff in the disability quality review program, and conducts reviews of ORPIR adherence to OPIR review policies and procedures.

1. The Division of Disability Quality Policy, Evaluation and Analysis (S1KC1):

a. Develops disability quality review policy, procedures, forms and instructions for use by State and Federal components in payment and adjudicative process consistency and preeffectuation reviews.

b. Identifies error-prone and user-support type case review workloads, and plans targeted sampling procedures to produce appropriate quality review data. Verifies production of sample levels for targeted reviews. Provides sampling intervals for use by State agencies in their quality review operations.

c. Studies the adjudication and payment quality review programs, and modifies them to accommodate new workloads or to improve quality of the data.

d. Develops sampling techniques for adjudication and payment process quality reviews. Modifies sampling to insure validity of data and to respond to disability program and quality review program changes.

e. Provides technical guidance and support to the ORPIR in regard to disability quality review operations. Develops technical training package and programs for workload, policy or procedural changes.

f. Plans and issues periodic reports related to the quality of disability payment and eligibility processes for the title II and title XVI disability programs.

g. Analyzes data to identify repetitive and significant errors to determine their

causes and costs, and to target areas needing study to determine corrective action.

h. Determines the need for, and designs, special studies to supplement regular reports of disability quality reviews. Coordinates, reviews and evaluates these studies, and helps field offices develop field-initiated studies.

i. Works with program components to identify user requirements for various profiles and to implement and evaluate profiles.

2. The Division of Disability Quality Operations (S1KC2):

a. Conducts consistency quality reviews of samples of QA or preeffectuation reviews by Disability Quality Branches in the ORPIR. These cases include initial claims, reconsideration and continuing disability investigations.

b. Conducts consistency quality reviews of the substantive and technical aspects of samples of continuing disability reviews completed by the Office of Disability Operations and the Disability Review Sections of the Processing Centers.

c. Conducts quality reviews of the substantive and technical aspects of samples of uneffectuated claims adjudicated by the Federal Disability Determination Services and the Office of International Operations.

d. Reviews samples of types of disability cases that have been identified as error-prone or which involve policy, procedural or operational problems. Prepares evaluative reports of the findings derived from such reviews, including recommendations for corrective actions.

e. Designs and conducts special studies of problem areas and prepares reports indicating trends and recommendations for improvements in policy and procedure.

g. The Offices of Regional Program and Integrity Reviews (ORPIR) (S1K-F1-S1K-FX) manage quality assurance and evaluation activities in the field. They conduct independent reviews to determine payment and eligibility error rates in Social Security programs, including errors in Federally-administered State supplementary payments. The ORPIR conduct independent reviews to determine the quality of adjudication processes of Social Security programs. They implement study reviews as formulated by the Office of Program and Integrity Reviews and provide reports, data and analyses; they assist in identifying error trends and sources and recommend corrective actions. They also perform special assessment surveys and analyses.

Subchapter S1N—Office of Financial Policy and Operations

S1N.00 Mission

S1N.10 Organization

S1N.20 Functions

Section S1N.00 The Office of Financial Policy and Operations—(Mission)

The Office of Financial Policy and Operations (OFPO) has operational responsibility for SSA's accounting and payment operations and establishes requirements for all SSA financial systems and processes to ensure Agency compliance with accounting principles and standards prescribed by the Comptroller General and Chief Financial Officer of the United States; fiscal policies and procedures prescribed by the Secretary of the Treasury; and management integrity and control standards prescribed by the Office of Management and Budget and HHS under the Federal Managers' Financial Integrity Act.

Section S1N.10 The Office of Financial Policy and Operations—(Organization)

The Office of Financial Policy and Operations, under the leadership of the Associate Commissioner for Financial Policy and Operations, includes:

A. The Associate Commissioner for Financial Policy and Operations (S1N).

B. The Deputy Associate Commissioner for Financial Policy and Operations (S1N).

C. The Immediate Office of the Associate Commissioner for Financial Policy and Operations (S1N).

D. The Office of Financial Policy and Systems Design (S1NA).

1. The Division of Financial Policy and Standards (S1NA1).

2. The Division of Financial/ Administrative Systems (S1NA2).

3. The Division of Internal Control and Security (S1NA3).

E. The Office of Financial Operations (S1NB).

1. The Division of Program Accounting Operations (S1NB1).

2. The Division of Finance (S1NB2).

Section S1N.20 The Office of Financial Policy and Operations—(Functions)

A. The Associate Commissioner for Financial Policy and Operations (S1N) is directly responsible to the Deputy Commissioner, Finance, Assessment and Management for carrying out OFPO's mission and provides general supervision to the major components of OFPO.

B. The Deputy Associate Commissioner for Financial Policy and Operations (S1N) assists the Associate Commissioner in carrying out his/her responsibilities and performs other

duties as the Associate Commissioner may prescribe.

C. The Immediate Office of the Associate Commissioner for Financial Policy and Operations (S1N) provides the Associate Commissioner and the Deputy Associate Commissioner with staff assistance on the full range of their responsibilities.

D. The Office of Financial Policy and Systems Design (S1NA) develops financial accounting policies and procedures for all SSA financial systems. It plans and directs the analyses of SSA's integrated financial and administrative systems; and develops and executes Agency policies and procedures for systems security and management integrity.

1. The Division of Financial Policy and Standards (S1NA1) defines the requirement that all SSA financial systems and processes must meet to ensure Agency compliance with statutory requirements for administrative control of funds and management integrity controls for prevention of fraud, waste and abuse and with accounting principles and standards prescribed by the Comptroller General and Chief Financial Officer of the United States.

2. The Division of Financial/ Administrative Systems (S1NA2) provides systems analysis and support for SSA's Integrated Financial/ Administrative and other financial systems operated by the DCFAM, including the accounting, administrative payments/collections and travel management functions of the DCFAM; the purchasing contracting, property management and supply management functions of the Office of Publications and Logistics Management and related functions of managers SSA-wide.

3. The Division of Internal Control and Security (S1NA3) directs the operation of the management integrity program that ensures the security, integrity, accuracy and accountability of SSA's operational and administrative processes. It develops management integrity and security policies and provides educational training and awareness programs to inform management and employees of policy and requirements.

E. The Office of Financial Operations (S1NB) prepares financial statements for SSA and the trust funds, and accounts for program revenues, benefits and related administrative expenses. It reports on the state agencies' financial position and the results of operations.

1. The Division of Program Accounting Operations (S1NB1) provides leadership and direction to SSA's program

accounting operations which includes accounting for program revenues, benefit payments, benefit overpayments and losses and analysis and reporting of Agency costs, workloads and productivity. It plans and directs SSA financial cost analysis programs.

2. The Division of Finance (S1NB2) directs SSA's central accounting, reporting and fiscal service operations and develops Agency policy and procedures on fiscal operations. It monitors benefits outlays and informs the U.S. Treasury on needed financial arrangements to cover benefit payments. It provides cash advances to State Disability Determination Services. It manages SSA's administrative payments, claims, collections, travel and related record handling. The Division is also responsible for detecting and resolving all nonbeneficiary debts owed SSA and referring uncollectible debts to the Office of General Counsel. In addition it provides advisory services to SSA management on the legality and propriety of proposed expenditures.

Subchapter S1P—Office of Budget

S1P.00 Mission

S1P.10 Organization

S1P.20 Functions

Section S1P.00 The Office of Budget—(Mission)—

The Office of Budget (OB) provides overall management of the planning, development and execution of the SSA budget. The Office develops policies and guidelines for the exercise of SSA-wide budget responsibility and evaluates and appraises the manner in which this responsibility is carried out.

Section S1P.10 The Office of Budget—(Organization)

The Office of Budget under the leadership of the Associate Commissioner, Office of Budget, includes:

A. The Associate Commissioner, Office of Budget (S1P).

B. The Deputy Associate Commissioner, Office of Budget (S1P).

C. The Immediate Office of the Associate Commissioner, Office of Budget (S1P).

D. The Division of Administrative Budget (S1PA).

E. The Division of Program Budget (S1PB).

F. The Division of Administrative Budget Coordination and Analysis (S1PC).

Section S1P.20 The Office of Budget—(Functions)

A. The Associate Commissioner, Office of Budget (S1P) is directly

responsible to the Deputy Commissioner, Finance, Assessment and Management for carrying out OB's mission and provides general supervision to the major components of OB.

B. The Deputy Associate Commissioner, Office of Budget (S1P) assists the Associate Commissioner in carrying out his/her responsibilities and performs other duties as the Associate Commissioner may prescribe.

C. The Immediate Office of the Associate Commissioner, Office of Budget (S1P) provides the Associate Commissioner and Deputy Associate Commissioner with staff assistance on the full range of their responsibilities.

D. The Division of Administrative Budget (S1PA).

1. Interprets and applies SSA policies and guidelines on budget formulation and execution in the review and analysis of SSA component budget requests.

2. Formulates the operational workload portion of SSA's administrative budget based on SSA plans, policies, and operational data.

3. Monitors and analyzes component spending as part of SSA level budget execution policies.

E. The Division of Program Budget (S1PB).

1. Reviews and consolidates present statutory program cost estimates for trust fund and other Federal fund programs administered by SSA (Retirement, Survivors and Disability Insurance, Black Lung Benefits and Supplemental Security Income). Formulates a unified Agency budget through consolidation of program and administrative budgets, coordinating with OB's other divisions as necessary.

2. Coordinates presentation of the SSA budget in total and by account; presents the proposed budget to the Commissioner; develops budget documents and briefing material for the Commissioner's budget presentation to HHS, the Office of Management and Budget (OMB) and Congress.

3. Reviews, coordinates and presents program cost estimates for proposed legislative, operational policy and regulatory changes. Formulates or directs the formulation of administrative cost estimates for proposed legislative, operational policy and regulatory changes, coordinating with OB's other divisions and other SSA components, as necessary. Provides financial management advice to the Commissioner and other SSA officials in the policy development process.

4. Serves as the SSA focal point for budget information provided to HHS, OMB, congressional appropriations and

budget staffs and, as requested by SSA's Office of Public Affairs, representatives of the media.

F. The Division of Administrative Budget Coordination and Analysis (S1PC).

1. Interprets administrative budgetary policies and limitations, and develops and issues guidelines and instructions to SSA components for budget formulation and execution.

2. Executes the total administrative and program budgets for SSA through issuance of workyear and dollar controls, budgetary allotments/allowances for administrative and program expenditures and employment ceilings to SSA components, coordinating with OB's Division of Administrative Budget and the Division of Program Budget as appropriate.

3. Coordinates and analyzes SSA administrative budget totals including the Information Technology Systems Budget.

4. Provides direct budget support for the Office of the Deputy Commissioner Finance, Assessment and Management.

5. Develops and implements a program to evaluate Agency operations in accordance with the requirements of OMB Instruction A-76.

Subchapter S1Q—Office of Acquisition and Grants

S1Q.00 Mission

S1Q.10 Organization

S1Q.20 Functions

Section S1Q.00 The Office of Acquisition and Grants—(Mission)

The Office of Acquisition and Grants (OAG) directs the business management aspects of SSA's procurement program and grants management program by awarding and administering contracts, preparing purchase orders or other contractual instruments, and awarding and administering grants. It develops and implements policies, procedures and directives for SSA procurement and grants activities.

Section S1Q.10 The Office of Acquisition and Grants—(Organization)

The Office of Acquisition and Grants under the leadership of the Associate Commissioner includes:

A. The Associate Commissioner, Office of Acquisition and Grants (S1Q).

B. The Deputy Associate Commissioner, Office of Acquisition and Grants (S1Q).

C. The Immediate Office of the Associate Commissioner, Office of Acquisition and Grants (S1Q).

D. The Division of Automated Data Processing and Telecommunications Contracts (S1QA).

E. The Division of Contract and Grant Operations (S1QB).

F. The Division of Acquisition Policy and Management Information (S1QC).

Section S1Q.20 The Office of Acquisition and Grants—(Functions)

A. The Associate Commissioner, OAG (S1Q) is directly responsible to the Deputy Commissioner, Finance, Assessment and Management for carrying out OAG's mission and provides general supervision to the major components of OAG.

B. The Deputy Associate Commissioner, OAG (S1Q) assists the Associate Commissioner in carrying out his/her responsibilities and performs other duties as the Associate Commissioner may prescribe.

C. The Immediate Office of the Associate Commissioner, OAG (S1Q) provides the Associate Commissioner and Deputy Associate Commissioner with staff assistance on the full range of their responsibilities.

D. The Division of Automated Data Processing and Telecommunications Contracts (S1QA).

1. Responsible for planning, solicitation, award and administration of contracts, purchase orders, delivery orders or other contractual instruments for the entire range of automatic data processing equipment, software and services; voice-grade telecommunications equipment and services and specialized training and computer support equipment.

2. Provides coordination, assistance and guidance in the development of complex procurement requirements and translates these needs into comprehensive solicitation packages to assure the maximum use of full and open competition.

3. Provides procurement advice, guidance and support for the development of acquisition strategies, evaluation techniques and negotiation of business and technical terms and conditions.

E. The Division of Contract and Grant Operations (S1QB).

1. Responsible for planning, solicitation, award and administration of contracts, purchase orders, delivery orders or other contractual instruments for specialized program needs (e.g., program research, development and demonstration through studies and surveys, consultants, systems designs and evaluations and facilities construction and alterations) and procurement of administrative supplies, equipment and services in support of

SSA's overall operational mission (e.g., technical and professional services, office equipment, moving services, film processing, translations and transcription services). Responsible for contracts for construction and facilities management and operations.

2. Provides coordination, assistance and guidance in the development of complex procurement requirements and translates these needs into comprehensive solicitation packages to assure maximum use of full and open competition.

3. Provides procurement advice, guidance and support for the development of acquisition strategies, evaluation techniques and negotiation of business and technical terms and conditions.

4. Responsible for planning, placement and administration of grants under all SSA discretionary grants programs (including guidance and support in the selection strategy, evaluation process, budget negotiation, planning and development of policies, procedures, regulations and directives).

F. The Division of Acquisition Policy and Information Management (S1QC).

1. Responsible for the development, evaluation and implementation of comprehensive SSA-wide acquisition policies, procedures, regulations and directives.

2. Performs acquisition management reviews of SSA activities with delegated procurement authority.

3. Manages SSA's acquisition planning and tracking processes.

4. Responsible for SSA's acquisition information collection, analysis and reporting activities.

5. Responsible for the planning, designing, developing and administering of automated systems to support SSA's acquisition and grant processes.

6. Provides audit, accounting and financial advisory services in support of the negotiation, administration, settlement and closeout of SSA contracts.

Subchapter SIR—Office of Facilities Management

S1R.00 Mission

S1R.10 Organization

S1R.20 Functions

Section S1R.00 The Office of Facilities Management—(Mission)

The Office of Facilities Management (OFM) manages SSA-wide material management and facilities management programs. It directs the SSA real property program including short- and long-range facilities planning; design, construction and leasing of central office facilities and maintenance, repair and

construction projects and policy development related to these operations. It acquires, utilizes and manages space at SSA headquarters and develops a comprehensive space inventory and utilization system. The Office of Facilities Management develops, implements and evaluates SSA's environmental protection, safety and protective services programs. It ensures that these programs are responsive to the need of the Agency and serves as a focal point for inquiries and guidance concerning these programs.

Section S1R.10 The Office of Facilities Management—(Organization)

The Office of Facilities Management under the leadership of the Associate Commissioner includes:

A. The Associate Commissioner for Facilities Management (S1R).

B. The Deputy Associate Commissioner for Facilities Management (S1R).

C. The Immediate Office of the Associate Commissioner for Facilities Management (S1R).

D. The Division of Facilities (S1RA).

E. The Division of Environmental Protection and Security (S1RB).

Section S1R.20 The Office of Facilities Management—(Functions)

A. The Associate Commissioner for Facilities Management (S1R) is directly responsible to the Deputy Commissioner for Finance, Assessment and Management for carrying out OFM's mission and provides general supervision to the major components of OFM.

B. The Deputy Associate Commissioner for Facilities Management (S1R) assists the Associate Commissioner in carrying out his/her responsibilities and performs other duties as the Associate Commissioner may prescribe.

C. The Immediate Office of the Associate Commissioner for Facilities Management (S1R) provides the Associate Commissioner with staff assistance on the full range of his/her responsibilities.

D. The Division of Facilities (S1RA)

1. Directs the national SSA real property program including short- and long-range facilities planning; design, construction and leasing of central office and large field facilities; maintenance, repair and construction projects and policy development related to these operations. Oversees the preventative maintenance program for all Government-owned, SSA-occupied buildings nationwide.

2. Responsible for SSA field facility planning and space management. Acquires, utilizes and manages space at SSA Headquarters and directs a comprehensive space inventory and utilization system.

3. Provides technical guidance, consultation, coordination and advice on architectural and engineering design for SSA, manages a technical drafting service and design support function and provides an engineering resource to plan and review alterations, repairs and improvements to SSA facilities.

4. Develops and implements SSA-wide policies, objectives, standards and procedures in the areas of real property and space management.

5. Provides SSA liaison on all matters concerning space and real property management, delegations of building operations and space acquisition with the General Services Administration, HHS, other Federal agencies and the Public Works Committees.

E. The Division of Environmental Protection and Security (S1RB)

1. Develops SSA policy and procedures and directs programs in the areas of protective security, suitability investigations for SSA contractor employees and emergency preparedness program plans.

2. Develops, implements and evaluates SSA's environmental protection and safety programs in conformance with appropriate laws, policies and regulations. Ensures that these programs are responsive to the needs of the Agency. Serves as a central SSA reference point for inquiries, guidance and interpretation and as liaison with HHS and other non-SSA entities on environmental protection, safety and protective security matters.

Subchapter S1S—Office of Publications and Logistics Management

S1S.00 Mission

S1S.10 Organization

S1S.20 Functions

Section S1S.00 The Office of Publications and Logistics Management—Mission

The Office of Publications and Logistics Management (OPLM) provides overall management of the SSA logistics and publications program. It directs a comprehensive SSA printing, publications and distribution management program and develops pertinent policies, standards, and procedures for SSA's forms and publications management, printing, reprographics and distribution programs. It directs the administration and maintenance of the SSA library, the SSA History Room, the historical

research program and records management program. It administers the SSA logistics management program, directs the SSA property and supply management program, manages the operation of SSA warehousing facilities including receipt, storage and issuance of forms publications, supplies and equipment for SSA-wide use. The Office directs activities related to employee transportation including providing headquarters passenger, mail and freight transportation services. It directs the SSA mail management program.

Section S1S.10 The Office of Publications and Logistics Management—(Organization)

The Office of Publications and Logistics Management includes:

A. The Director for Publications and Logistics Management (S1S).

B. The Deputy Director for Publications and Logistics Management (S1S).

C. The Immediate Office of the Director for Publications and Logistics Management (S1S).

D. The Division of Logistics Services (S1SA).

E. The Division of Publications Management (S1SB).

Section S1S.20 The Office of Publications and Logistics Management—(Functions)

A. The Director for Publications and Logistics Management (S1S) is directly responsible to the Deputy Commissioner for Finance, Assessment and Management for carrying out OPLM's mission and provides general supervision to the major components of OPLM.

B. The Deputy Director for Publications and Logistics Management (S1S) assists the Director in carrying out his/her responsibilities and performs other duties as the Director may prescribe.

C. The Immediate Office of the Director for Publications and Logistics Management (S1S) provides the Director with staff assistance on the full range of his/her responsibilities.

D. The Division of Logistics Services (S1SA).

1. Administers the SSA logistics management program, including the formulation of SSA-wide policies, procedures and directives pertaining to logistics management services.

2. Directs the SSA property and supply management program. Provides equipment maintenance and repair services to SSA Headquarters components.

3. Manages the operation of SSA warehousing facilities, including receipt,

storage and issuance of forms, publications, supplies and equipment for SSA use worldwide. Controls the maintenance of stock and provides general labor services for SSA Headquarters.

4. Directs activities related to employee transportation including providing Headquarters passenger, mail and freight transportation services. Develops transportation policies, procedures and standards that apply nationwide.

5. Plans, develops and reviews projects and studies relative to the automated Social Security Supply System and other automated systems related to logistics services.

E. The Division of Publications Management (S1SB).

1. Directs a comprehensive SSA in-house printing and publications management program, including forms and publications management, reports clearance, phototypesetting, electronic publishing, conventional printing and binding production, reprographics, micro-form publishing, Braille publishing, distribution and acquisition.

2. Obtains printing, binding and distribution services from private vendors under contracts negotiated and entered into by the Government Printing Office (GPO).

3. Manages SSA's acquisition, leasing and utilization of reprographic/duplicating equipment and automatic copy-processing and copy-duplicating machines.

4. Develops policies, standards and procedures for SSA's forms and publications management, printing, reprographics and distribution programs. Provides SSA-wide services for these programs.

5. Provides SSA liaison on all matters concerning printing policy and acquisition of printing supplies, services and equipment with HHS, GPO and the Congressional Joint Committee on Printing.

6. Performs the reports clearance function, delegated by the Department to the Commissioner of SSA, which includes management of the Information Collection Budget submitted annually to the Office of Management and Budget.

7. Manages, integrates and implements all electronic publishing services for SSA.

8. Provides centralized special media services to all SSA visually-impaired employees.

9. Directs the administration and maintenance of the SSA library, the SSA History Room, and the SSA or research program. Coordinates the acquisition

and dissemination of information resources in all formats.

10. Directs the SSA records management program, including the SSA vital records program and develops and implements SSA-wide policies, objectives, standards and procedures governing record retention and disposal, files and filing equipment and correspondence. Represents SSA in all records management matters with the General Services Administration and the General Accounting Office and in records management matters and negotiations with the National Archives and Records Administration.

11. In coordination with SSA's Office of Program and Integrity Reviews, implements the records management aspects of the Privacy Act, including development of necessary records safeguards, review of the accuracy of SSA notices of new and changed records systems and provision of advice and assistance to SSA components on Privacy Act requirements for records management.

12. Directs the SSA mail management program and plans, develops and implements SSA-wide policies, objectives and standards governing mail and messenger operations. Conducts studies and analyses to improve mail service and to reduce SSA's mail costs, determines the most economical mailing methods for SSA components, beneficiaries and members of the general public. Represents SSA in negotiations with the U.S. Postal Service and provides mail processing, including in-house mailing and messenger services for SSA Headquarters.

Delete: Existing Chapter S1, The Office of the Deputy Commissioner for Management in its entirety.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration; Statement of Organization, Functions and Delegations of Authority

Part S of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (HHS) covers the Social Security Administration (SSA). Notice is given that Chapter S2, the Office of the Deputy Commissioner for Operations at the first level below the Commissioner is being amended to reflect the deletion of the Office of Central Processing as a second level component below the Commissioner and the elevation of the Offices of Central Records Operations and the Office of Disability and International Operations. Notice is further given of the retitling of the Office

of Regional Operations as the Office of the Regional Commissioner and of the establishment of three new offices. The three new offices are the Office of Public and Employee Services, the Office of Operations Management and Program Integration and the Office of Automation Support. The changes are as follows:

Chapter S2—Office of the Deputy Commissioner, Operations

- S2.00 Mission
- S2.10 Organization
- S2.20 Functions

Section S2.00 The Office of the Deputy Commissioner, Operations—(Mission)

Delete the last three sentences.

Add the following three sentences.

It promotes systems and operational integration and defines user needs in the strategic planning process. It determines automation support for Operations components. This office defines user concerns in the development of operational and programmatic specifications for new and modified systems, evaluations and implementation phases.

Section S2.10 The Office of the Deputy Commissioner, Operations—(Organization)

F. The Immediate Office of the Deputy Commissioner, Operations (S2A):

Delete

1. The Office of Planning and Operations Management (S2A-1).

Add

1. The Senior Advisor to the Deputy Commissioner, Operations (S2A-2).
Reletter F to C.

Delete

D. The Office of Central Processing (S2E).

E. The Office of Systems Support (S2G).

Reletter and retitle:

C. The Office of Regional Operations (S2D) as F. Office of the Regional Commissioner (S2D).

Add

D. The Office of the Central Records Operations (S2B).

E. The Office of Disability and International Operations (S2H).

G. The Office of Public and Employee Services (S2J).

H. The Office of Operations Management and Program Integration (S2K).

I. The Office of Automation Support (S2L).

Section S2.20 The Office of the Deputy Commissioner, Operations—(Functions)

F. The Immediate Office of the Deputy Commissioner, Operations (S2):

Delete

1. The Office of Planning and Operations Management (S2A-1).

Add

1. The Senior Advisor to the Deputy Commissioner, Operations (S2A-2) assists the Deputy Commissioner on a wide variety of special management issues affecting Agency operations and the delivery of SSA programs to the public.

Reletter F to C.

Delete

D. The Office of Central Processing (S2E).

E. The Office of Systems Support (S2G).

Reletter and retitle:

C. The Office of Regional Operations (S2D) as F. Office of the Regional Commissioner (S2D).

Add

D. The Office of Central Records Operations (S2B) provides executive direction and leadership for the nationwide establishment and maintenance of basic records supporting Social Security programs. It manages centralized records operations and three geographically-dispersed data operations centers (DOCs). The Office establishes and maintains applications for Social Security numbers, applications for employer identification numbers and application for hospital insurance identification cards. It receives and processes Social Security earnings reports from private and governmental employers and adjustments or corrections to posted earnings items. The Office conducts centralized Supplemental Security Income (SSI) eligibility redetermination operations; maintains records of SSA enumeration and earnings records in hard copy, microfilm, magnetic tape and disc form and maintains an ongoing data exchange activity with the Treasury Department on the compilation and verification of individual earnings data.

E. The Office of Disability and International Operations (S2H) provides executive direction and leadership to centralized disability and foreign claims operations. It directs the processing of claims under disability and Black Lung Benefits programs and maintains beneficiary rolls. It directs the review of initial and reconsidered determinations of disability excluded from State agency

jurisdiction and directs the authorization of disability claims not authorized by District Offices (DOs) at the initial, reconsideration and other appeal levels. It directs the development, adjudication, authorization of payment or disallowance of claims for Retirement, Survivors and Disability Insurance (RSDI) benefits filed by persons in foreign countries; determines eligibility for Hospital Insurance (HI) and supplementary medical insurance (SMI) on related claims, determines entitlement to benefits based on international Social Security agreements. It determines whether and when eligibility or payments should be terminated, suspended, continued, increased or reduced in amount; recovers or waives recovery of amounts incorrectly paid to beneficiaries. It serves as liaison on operational issues which affect the administration of the United States Social Security program abroad, with the Department of State, other Federal agencies, agencies of foreign governments and private organizations.

G. The Office of Public Services and Employee Services (S2J) provides leadership and direction to the public service and employee support activities conducted in DCO to measure the overall effectiveness and efficiency of the ROs, DO/BOs, TSCs, PCs and the OCRO. It directs and/or coordinates the internal management support functions to ensure effective operations position management, workforce utilization and management analysis and planning. It directs the overall DCO budget process. OPES has responsibility to plan, implement, manage and assess the interrelated duties of delivering SSA program and related services to the public, provides oversight for DCO in developing and maintaining operations employees as a compassionate, highly motivated, well-trained and equipped work force. OPES assures effective delivery of SSA programs and contributes to the broader role of delivery of HHS programs. It is the focal point in DCO's fulfilling its responsibility as a model employer.

H. The Office of Operations Management and Program Integration (S2K) is responsible for providing operations analysis and program integration support to the Deputy Commissioner, Operations and for conducting studies and analyses related to operations workloads and workflows. This Office provides broad operations

support to the FOs, TSCs, PCs, ODIO and the OCRO, including the three DOCs. OOMPI also is responsible for integrating operational delivery of public services under the RSDI Program, the SSI Program, and the Black Lung Program for domestic beneficiaries and for the delivery of RSDI Program services to foreign beneficiaries. Additionally, this Office provides broad operations support to the maintenance of the basic earnings data which support the Social Security programs. OOMPI is responsible for ensuring that the basic operational processes fulfill the mission of SSA and the objectives of the Commissioner. This Office establishes close, effective working relationships with SSA's Policy and Program components and with other Federal agencies which have vital links in the delivery of service to the public.

I. The Office of Automation Support (S2L) is responsible for integrating service delivery and employee concerns with modern technology. It determines and defines DCO requirements for software and hardware support. OAS directs user evaluations of new technology assuring that technology meets DCO needs and coordinates all implementation activities. OAS develops, implements and administers evaluative tools for hardware purchases and software development. Assures that the most recent technology is integrated into the operations of all DCO components.

Delete subchapter S2E, The Office of Central Processing in its entirety.

Add the following new subchapters.

Subchapter S2B—Office of Central Records Operations

- S2B.00 Mission
- S2B.10 Organization
- S2B.20 Functions

Section S2B.00 The Office of Central Records Operations—(Mission)

The Office of Central Records Operations (OCRO) provides executive direction and leadership for the nationwide establishment and maintenance of basic records supporting Social Security programs. It manages centralized records operations and three geographically-dispersed DOCs. The Office maintains applications for Social Security numbers, and applications for employer identification numbers. It receives and processes Social Security earnings reports from private and governmental employers and

adjustments or corrections to posted earnings items. The Office conducts centralized SSI eligibility redetermination operations; maintains records of SSA enumeration and earnings records in hard copy, microfilm, magnetic tape and disc form and maintains an ongoing data exchange activity with the Treasury Department on the compilation and verification of individual earnings data.

Section S2B.10 The Office of Central Records Operations—(Organization)

The Office of Central Records Operations, under the leadership of the Director, includes:

- A. The Director, Office of Central Records Operations (S2B).
- B. The Deputy Director, Office of Central Records Operations (S2B).
- C. The Immediate Office of the Director, Office of Central Records Operations (S2B).
- D. The Division of Certification and Coverage (S2BA,B).
- E. The Division of Earnings and Adjustments (S2BC).
- F. The Division of Operations Support (S2BE).
- G. The Data Operations Centers (S2B-F6,8,9).

Section S2B.20 The Office of Central Records Operations—(Functions)

A. The Director, OCRO (S2B) is directly responsible to the Deputy Commissioner, Operations for carrying out OCRO's mission and managing its respective components.

B. The Deputy Director, OCRO (S2B) assists the Director in carrying out his/her responsibilities and performs other duties as the Director may prescribe.

C. The Immediate Office of the Director, OCRO (S2B) provides internal operations and management analysis staff support and assistance to the Director, the Deputy Director and all OCRO components.

D. The Division of Certification and Coverage (S2BA,B).

1. Makes determinations as to coverage under the Social Security Act, as amended, of services performed by employees or self-employed individuals in earnings disagreement cases if a claim for benefits has not been filed.

2. Reviews determinations on correctness of earnings data, coverage, increment years, total earnings, closing dates, primary insurance amounts and, in disability cases, determinations as to whether work requirements are met.

Makes these determinations when needed.

3. Answers inquiries about earnings records, including earnings discrepancies; investigates and adjusts incorrectly reported earnings items and resolves discrepancies where SSA's records disagree with individual allegations of services rendered or remuneration received.

4. Certifies earnings record data to DOs and PCs for use in the adjudication of RSI/DI cases.

5. Certifies earnings data from SSA to the Railroad Retirement Board (RRB), indicating eligibility under both systems, and makes preliminary findings of jurisdiction on handling claims.

6. Maintains files of microfilmed employer wage reports; self-employed income reports; detailed earnings listings and a file of earnings reported incorrectly or incompletely by employers or by self-employed individuals.

E. The Division of Earnings and Adjustments (S2BC)

1. Establishes records and maintains control of agreements with State and interstate entities and modifications of these agreements and reviews wage statements submitted for State and interstate entity employees.

2. Corresponds with employers and the Internal Revenue Service (IRS) about the correction and processing of employer wage reports and self-employment income reports.

3. Performs clerical operations necessary for the audit and control of the annual updating of employer earnings reports and for correcting improperly reported earnings items.

4. Ensures that SSI payments are interfaced with various external payment programs such as the Veterans Administration (VA), the RRB, the Office of Personnel Management and the Department of Defense.

F. The Division of Operations Support (S2BE)

1. Provides programming, scheduling and operating support for the automated processing of operational, administrative, management and statistical computer programs for OCRO and other SSA components. Develops technical requirements for information reporting systems. Converts magnetic tape files to computer output microfilm. Maintains OCRO magnetic tape library.

2. Processes source documents, keying input through data entry systems for subsequent input and processing through computer systems in OCRO and the Office of Systems Operations (OSO).

3. Provides internal mail, central microfilm storage and retrieval services to OCRO.

4. Performs microphotographic services for SSA. Maintains master copies of basic systems and microfilm records to assure continuous operations should records be destroyed; reproduces, on film, records for current use and for preservation of a variety of employee and employer records.

G. The Data Operations Centers (S2B-F6, 8, 9) (located at appropriate geographical locations throughout the United States)

1. Receive, examine and microfilm annual and (where necessary) quarterly wage reports filed by employers.

2. Process source data through computer-controlled data entry and telecommunications systems for input to the central computer complex at SSA headquarters. Source data processed includes applications for Social Security numbers, employers' annual earnings reports, HI utilization records and other pertinent documents.

3. Perform electronic editing, validating and balancing functions related to the processing of source data and transmit products to SSA headquarters computer complex for processing in a timely manner.

4. Operate a large complex of data entry terminals, computers and communications equipment.

Subchapter S2H—Office of Disability and International Operations

S2H.00 Mission

S2H.10 Organization

S2H.20 Functions

Section S2H.00 The Office of Disability and International Operations—(Mission)

The Office of Disability and International Operations (ODIO) provides executive direction and leadership to centralized disability operations that process claims under disability and Black Lung Benefits programs and maintain beneficiary rolls. It directs the review of initial and reconsidered determinations of disability excluded from State agency jurisdiction, and directs the authorization of disability claims not authorized by DOs at the initial, reconsideration and other appeal levels. It responds to public and congressional correspondence on disability operations issues.

It directs the development, adjudication, authorization of payment or disallows claims for RSDI benefits filed by persons in foreign countries; determines eligibility for HI and SMI on related claims, determines entitlement to benefits based on international Social Security agreements. It determines whether and when eligibility or

payments should be terminated, suspended, continued, increased or reduced in amount; recovers or waives recovery of amounts incorrectly paid to beneficiaries. It serves as liaison on operational issues which affect the administration of the United States Social Security program abroad, with the Department of State, other Federal agencies, agencies of foreign governments and private organizations.

Section S2H.10 The Office of Disability and International Operations—(Organization)

The Office of Disability and International Operations, under the leadership of the Director, includes:

A. The Director, Office of Disability and International Operations (S2H).

B. The Deputy Director, Office of Disability and International Operations (S2H).

C. The Immediate Office of the Director, Office of Disability and International Operations (S2H).

1. The Operations Analysis Staff (S2H-1).

D. The Office of Disability Operations (S2HA).

1. The Process Divisions (S2HA1, 2, 3, 4).

2. The Division of Appealed Claims (S2HA5).

E. The Office of International Operations (S2HB).

1. The International Process Division (S2HB1).

2. The Division of Reconsideration and Disability Determinations (S2HB2).

3. The International Operations and Totalization Staff (S2HB3).

F. The Office of Support Services (S2HC).

1. The Division of Management Support (S2HC1).

2. The Division of Operations Support (S2HC2).

3. The Systems Planning Staff (S2HC3).

Section S2H.20 The Office of Disability and International Operations—(Functions)

A. The Director, ODIO (S2H) is directly responsible to the Deputy Commissioner, Operations, for carrying out ODIO's mission and managing its respective components.

B. The Deputy Director, ODIO (S2H) assists the Director, ODIO in carrying out his/her responsibilities and performs other duties as the Director may prescribe.

C. The Immediate Office of the Director, ODIO (S2H) provides internal operations analysis staff support and

assistance to the Director and all ODIO components.

1. The Operations Analysis Staff (S2H-1) conducts operations analysis and provides support to the Director of Disability and International Operations in the resolution of operational and procedural problems.

D. The Office of Disability Operations (S2HA) plans, directs and coordinates activities related to the processing and maintenance of domestic disability claims for individuals under age 59, and for Black Lung and End Stage Renal Disease cases under the jurisdiction of the component. It directs activities related to continuing disability reviews of title XVI and concurrent title II/XVI claims under section 1619. It has responsibility for processing initial claims allowed at the administrative law judge and other appellate levels for disability claims under the jurisdiction of the component.

1. The Process Divisions (S2HA1,2,3,4)

a. Make initial determinations of disability and reconsider disability determinations of claims excluded from State agency jurisdiction. Make determinations of continuing disability entitlement.

b. Make determinations of entitlement or eligibility to primary or auxiliary benefits, and authorize allowance or disallowance of disability claims not authorized by district offices and reconsider those cases appealed for issues other than the existence of disability. Make representative-payee determinations and process representative-payee accountability reports.

c. Adjust, suspend and terminate benefits, and prepare benefit payment data for introduction into the computer system; process all actions to maintain beneficiary payment rolls; recover or waive recovery of amounts incorrectly paid to beneficiaries, prepare and release award certificates, denial letters and other claims-related notices and maintain the Office of Disability Operations' (ODO) files of claims folders.

d. Answer inquiries regarding individual cases and ensure expeditious processing of actions where claimant hardship is indicated.

e. Contact outside Federal/State components such as the Department of Labor (DOL), RRB, Workmen's Compensation Commissions (WCC) and other SSA components, as necessary, to resolve disability claims actions.

2. The Division of Appealed Claims (S2HA5)

a. Processes, through payment or denial, those cases where the issue of disability has been decided in the administrative hearing process. Makes determinations of entitlement or eligibility of claimants to primary or auxiliary benefits, and authorizes allowance or disallowance based on nondisability entitlement factors in those cases. Completes full adjudication and payment implementation, including payment of attorney fees and determinations of offsetting amounts of disability insurance benefits due to previous entitlement to SSI. Makes representative-payee determinations.

b. Implements payment to beneficiaries and establishes benefit payment records in the computer system. Takes actions needed to convert benefit and claims data into acceptable computer format. Recovers or waives recovery of amounts incorrectly paid to beneficiaries.

c. Prepares and releases award certificates, denial letters and other claims-related notices, and controls large volumes of claims folders during the adjudicative process.

d. Answers inquiries about individual cases and ensures expeditious processing of actions where claimant hardship is indicated.

e. Contacts outside Federal/State components, such as DOL, WCC and other SSA components, particularly the Office of Hearings and Appeals (OHA), as necessary, to implement disability claims actions.

E. The Office of Internal Operations (OIO) (S2HB) serves as liaison with the Department of State, other Government agencies and SSA components on matters pertaining to the administration of the program abroad. It directs the Social Security representatives stationed overseas, appraises the role of foreign service posts in administering the Social Security program abroad and conducts special studies to evaluate the overseas program. Has responsibility for the operational implementation of totalization agreements. Negotiates operational accords and procedures with foreign Social Security agencies for the implementation of agreements. Develops requirements for totalization processing. OIO plans, directs and coordinates activities pertinent to development and processing of foreign claims. Directs the processing of postentitlement actions. Assures the proper application of tax liability to benefit payments abroad and is the focal point for debt management activities in the foreign sector. Directs

the processing of sensitive and controlled correspondence related to the program abroad. It directs the reconsideration of claims for benefits filed by persons overseas and the approval of fees for attorney and other representatives. It directs a variety of State agency type functions for disability claims filed abroad such as the development and adjudication of initial claims, continuing disability reviews and other disability benefits issues.

1. The International Process Division (S2HB1)

a. Develops and adjudicates Retirement, Survivors and Disability Health Insurance (RSDHI) claims, and makes decisions on continuing eligibility for persons living in foreign countries. This includes cases filed under the totalization agreements.

b. Determines health insurance eligibility and proper payees for these beneficiaries; makes decisions regarding recovery of overpayments; processes nonreceipt allegations and congressional, critical, hardship and controlled correspondence and cases; performs material associations and record maintenance activities; types notices and other correspondence.

c. Processes requests for Social Security numbers from individuals residing in foreign countries.

d. Provides translation services to SSA, including translation of program material for foreign visitors, materials relating to foreign pension systems, documents and other materials required to process foreign claims and some domestic claims.

2. The Division of Reconsideration and Disability Determinations (S2HB2)

a. Reconsiders determinations on claims for benefits filed by persons living in foreign countries; prepares claims material for appealed cases. Reconsiders certain adverse claims involving benefits by persons in foreign countries; approves fees for attorneys and other representatives of claimants outside the United States.

b. Make findings of administrative finality. Determines proper application of regulations governing the disclosure of confidential records.

c. Performs functions similar to domestic State agencies related to the determination of entitlement to, and processing of, foreign disability claims. Includes the development and review of medical evidence and other factors required for the adjudication of initial claims.

d. Processes continuing disability reviews for foreign beneficiaries.

3. The International Operations and Totalization Staff (S2HB3)

a. Provides liaison with the Department of State and other Government agencies to ensure SSA operations, systems and administrative policies and procedures are correctly carried out as they affect the Social Security program overseas.

b. Evaluates and provides direction and guidance to the Social Security representatives stationed overseas, and ensures that necessary administrative support is provided to carry out SSA's mission abroad.

c. Furnishes information on Social Security foreign program matters and concerns to other SSA components, officials in HHS, other Government agencies, members of Congress and the public. Designs and conducts validation and other special studies to foster integrity in the Social Security program overseas.

d. Overseas the operational implementation of totalization agreements. Participates in negotiations with foreign government representatives and negotiates operational accords and procedures with foreign Social Security agencies.

e. Prepares forms and procedures for ODIO and foreign service post employees, and participates with the Office of International Policy (OIP) in the development of district office instructions, applications, notices, public information materials and systems requirements for totalization processing, and continually evaluates the processing of cases under existing agreements.

f. The Office of Support Services (OSS) (S2HC) plans, directs and coordinates support activities for ODIO in a broad range of essential administrative areas including: personnel and organization management, labor and employee relations, budget and facilities management, managerial, technical and clerical training, integrity and security. It directs long-range systems planning and has responsibility for ADP hardware and software support activities for ODIO. OSS directs ODIO liaison between OSO and the Department of Treasury to ensure timely benefit payments. It ensures delivery, distribution and dispatch of mail for ODIO, and overseas ODIO's folder and record control operation.

1. The Division of Management Support (S2HC1)

a. Provides administrative support services to the Director, ODIO; the

Director, Disability Operations and the Director, International Operations in such areas as:

- Budget development and monitoring
- Personnel management
- Labor relations
- Management information
- Facilities/materiel management
- Organization planning

b. Develops and conducts ODIO-wide operational training and employee development activities. Analyzes and evaluates training needs and effectiveness. Ensures that required agency-level, other Government agency and private vendor training is provided.

c. Performs independent reviews to detect and prevent employee and beneficiary fraud. Plans, develops and implements ODIO's security program and conducts security reviews. Reviews beneficiary fraud cases and determines whether cases will be referred for prosecution. Determines proper application of regulations governing the disclosure of confidential records.

2. The Division of Operations Support (S2HC2)

a. Provides automated data processing (ADP) hardware and software support for ODIO. Conducts analyses relating to user software application development, contract maintenance and equipment use.

b. Serves as SSA liaison with the Department of Treasury to ensure timely payments.

c. Integrates and controls benefit payment processing operations.

d. Delivers, distributes and dispatches mail for ODIO.

e. Oversees the ODIO folder and record control operations. Identifies and resolves folder and record control problems and coordinates case location activities.

3. The Systems Planning Staff (S2HC3)

a. Directs the development of long-range systems planning for ODIO and evaluates ongoing systems requirements.

b. Analyzes office automation activities and systems operations, and recommends enhancements to improve capabilities. Evaluates systems changes prior to implementation and conducts post-implementation analysis.

c. Oversees procurement of ADP hardware and software for ODIO.

d. Provides technical advice and information to managers and employees in ODIO on systems development and changes that affect operations.

Retitle: Subchapter S2D, The Office of Regional Operations as The Office of the Regional Commissioner.

Delete: Section S2D.00 in its entirety.

Delete: Section S2D.10 in its entirety.

Delete: Section S2D.20, A. through D., the Letter E. and the first paragraph in E.

Replace: Subchapter S2D with the following:

Subchapter S2D—Office of the Regional Commissioner

S2D.00 Mission

S2D.10 Organization

S2D.20 Functions

Section S2D.00 The Office of the Regional Commissioner—(Mission)

The Office of the Regional Commissioner (ORC) serves as the principal SSA component at the regional level and assures effective SSA interaction with HHS ROs; other Federal agencies in the regions; State welfare agencies; State DDSs and other regional and local organizations. The Office provides regional program leadership and technical direction for the RSDI programs, the Black Lung Benefits program; and the SSI Program. It issues regional operating policy and procedures for these programs and evaluates program effectiveness. It implements national operational and management plans for providing SSA service to the public, and directs a regionwide network of FOs, TSCs and where present, PCs. The Office manages and coordinates SSA regional operations and provides administrative support to SSA regional components. It establishes regional priorities and issues policy directives consistent with national program objectives, operational requirements and systems; and implements a regional SSA public affairs program. The Office maintains a broad overview of administrative operations of the ROs of SSA' OHA and DOCs to assure effective coordination of SSA activities at the regional level.

Section S2D.10 The Office of the Regional Commissioner—(Organization)

The Office of the Regional Commissioner, under the leadership of the Regional Commissioner, includes:

A. The Regional Commissioner (S2D1–S2DX).

B. The Deputy Regional Commissioner (S2D1–S2DX).

C. The Immediate Office of the Regional Commissioner (S2D1–S2DX).

D. The Office of the Assistant Regional Commissioner for Program Operations and Systems (S2D1B–S2DXB).

E. The Office of the Assistant Regional Commissioner for Field Operations (S2D14–S2DX4).

F. The Office of the Assistant Regional Commissioner for Management and Budget (S2D17-S2DX7).

G. The Office of the Assistant Regional Commissioner for Processing Centers Operations (S2D25, 35, 45, 55, 75, 95).

Section S2D.20 The Office of the Regional Commissioner—(Functions)

A. The Regional Commissioners (S2D1-S2DX) are directly responsible to the Deputy Commissioner, Operations, for carrying out the RC's mission and managing their respective SSA regional organizations.

B. The Deputy Regional Commissioner (S2D1-S2DX) assists the RC in carrying out his/her responsibilities, and performs other duties as the RC may prescribe.

C. The Immediate Office of the Regional Commissioner (S2D1-S2DX) provides the RC with high-level staff assistance on the full range of his/her responsibilities. It also furnishes staff support for the civil rights, equal opportunity and external affairs functions.

D. The Office of the Assistant Regional Commissioner for Programs Operations and Systems (S2D1B-S2DXB).

1. Provides program leadership and technical direction for the RSDI, SSI and Black Lung Benefits programs in the region. Issues regional operating policies and procedures necessary to ensure implementation of national policies for these programs. Establishes and maintains a field visit program covering DDSs, FOs, TSCs and PCs to determine the effectiveness of RSDI, SSI and Black Lung Benefits program policies and procedures, and to provide technical assistance in the resolution of operational problems relating to these programs. Evaluates RSDI, SSI and the Black Lung Benefits program effectiveness in the region.

2. Assists State DDS agencies in developing their operating budgets, reviews these budgets with the Assistant Regional Commissioner for Management and Budget and submits recommendations on the acceptability of DDS budgets to the RC. Manages a comprehensive review and analysis program covering State DDS agency operations.

3. Plans, directs and coordinates regional activities concerning Social Security coverage agreements between SSA and State or interstate entities; carries out negotiations with State or interstate authorities on the content of these agreements; makes recommendations to final approving officials regarding the execution of new

coverage agreements, modifications in existing agreements, or the termination of agreements and processes requests for further extensions, or extensions for more than 1 year, of time limits for assessments, credits or refunds of amounts due.

4. Negotiates and maintains agreements with States covering the administration of optional State SSI supplementation, mandatory minimum State SSI supplementation and Medicaid eligibility determinations. Evaluates and monitors State budgets necessary to carry out these agreements and maintains ongoing dialogues with States on SSI program issues in such areas as adjustment levels, hold harmless provisions, operational aspects of the Food Stamp program, social service referral practices, etc. Directs the preparation of regional operations instructional material necessary to implement agreements negotiated with the States.

5. Oversees SSA regional ADP systems and automated processing operations, assures their effectiveness and carries out an ongoing regional systems planning program to assure effective integration of regional operating and management systems. Coordinates and monitors regional implementation of major changes to national systems on behalf of SSA's Central Office components dealing with systems activities.

6. Conducts operational analyses and provides support to regional operations management in the resolution of operational, procedural and systems problems. Consolidates, reviews and arranges for the distribution of regional program instructions and systems instructional material developed at the regional level. Coordinates with HHS' Rehabilitation Services Administration and other agencies to attain disability insurance (DI), Black Lung Benefits and SSI program goals. Maintains relationships with professional medical organizations, interacts with outside groups representing program interests or concerns and consults with representatives of community and private organizations on operational matters.

E. The Office of the Assistant Regional Commissioner for Field Operations (S2D14-S2DX4).

1. Provides leadership, guidance and direction FOs and TSCs.

2. Ensures the consistency of field operations in the region with national and regional policies and procedures and is accountable for the effectiveness of these operations.

F. The Office of the Assistant Regional Commissioner for Management and Budget (S2D17-S2DX7)

1. Furnishes leadership and support to SSA regional operations components in the areas of financial, manpower and organization management and other areas of management concern.

2. Develops regional management policies, procedures and guidelines consistent with prevailing Federal, HHS and SSA requirements and objectives. Guides and controls regional administrative management operations and administrative practices. Evaluates component performance and needs in these areas to assure effective and economical use of available resources and takes appropriate action on behalf of the RC to remedy or correct any inefficiencies or undesirable practices uncovered in administrative management operations.

3. Furnishes financial management staff expertise and professional judgments required to compile and recommend effective regional/State operating budgets.

4. Coordinates regional operations administrative management issues and concerns with the HHS RO, SSA headquarters and other Federal-regional authorities.

5. Carries out the SSA regional security program.

G. The Office of the Assistant Regional Commissioner for Processing Center Operations (S2D25,35,45,55,75,95) (located in the six regions containing PCs)

1. Review and authorize payment or disallow claims for RSI/DI benefits and HI entitlement; certify RSI/DI benefit amounts to the Treasury Department for payment and maintain RSI/DI benefit and HI records.

2. Determine whether and when eligibility or payments should be terminated, suspended, continued, increased or reduced in amount and reconsider determinations on initial claims and continuing eligibility.

3. Maintain RSI/DI payment rolls; recover or waive recovery of amounts incorrectly paid to RSI/DI beneficiaries; receive, record and deposit Supplemental Medical Insurance premium and overpayment refunds and make representative payee determinations and process related accountability reports.

4. Answer inquiries about individual RSI/DI cases and claims determinations and ensure expeditious processing of actions where inquiries indicate claimant hardship.

5. Receive and coordinate computer programs and exceptions on case

processing; maintain accounting controls and assure, by sample audit, that magnetic tape records reflect actual authorized payment actions.

6. Coordinate PC operations with the other components within ORC, other SSA components, RRB, VA, the United States Postal Service and other Federal agencies as required.

Add the following new subchapters.

Subchapter S2J—Office of Public and Employee Services

S2J.00 Mission
S2J.10 Organization
S2J.20 Functions

Section S2J.00 The Office of Public and Employee Services—(Missions):

The Office of Public and Employee Services (OPES) provides leadership and direction to the public service and employee support activities conducted in DCO to measure the overall effectiveness and efficiency of the ROs, DO/BOs, TSCs, PCs and the OCRO. It directs and/or coordinates the internal management support functions to ensure effective operations position management, workforce utilization and management analysis and planning. It directs the overall DCO budget process. OPES has responsibility to plan, implement, manage and assess the interrelated duties of delivering SSA program and related services to the public, provides oversight for DCO in developing and maintaining operations employees as a compassionate, highly motivated, well-trained and equipped work force. OPES assures effective delivery of SSA programs and contributes to the broader role of delivery of HHS programs. It is the focal point in DCO's fulfilling its responsibility as a model employer.

Section S2J.10 The Office of Public and Employee Services—(Organization)

The Office of Public and Employee Services, under the leadership of the Associate Commissioner includes:

A. The Associate Commissioner for Public and Employee Services (S2J).

B. The Deputy Associate Commissioner for Public and Employee Services (S2J).

C. The Immediate Office of the Associate Commissioner for Public and Employee Services (S2J).

D. The Division of Service Delivery and Employee Services (S2JA).

E. The Division of Resource and Management Information (S2JB).

Section S2J.20 The Office of Public and Employee Services—(Functions)

A. The Associate Commissioner for Public and Employee Services (S2J) is

directly responsible to the Deputy Commissioner, Operations for carrying out OPES' mission and provides general supervision to the major components of OPES.

B. The Deputy Associate Commissioner for Public and Employee Services (S2J) assists the Associate Commissioner in carrying out his/her responsibilities and performs other duties as the Associate Commissioner may prescribe.

C. The Immediate Office of the Associate Commissioner for Public and Employee Services (S2J) provides the Associate Commissioner with staff assistance over the full range of his/her responsibilities.

D. The Division of Service Delivery and Employee Services (S2JA)

1. Develops and recommends to DCO standards and practices for national and international delivery of services. Plans, implements and evaluates the full range of SSA's service to the public through a network of FOs, TSCs, PCs, ODIO and OCRO (including DOCs).

2. Establishes service delivery policies and develops and evaluates standards for measuring service to the public to ensure that quality, efficient and compassionate service is provided.

3. Plans, conducts and evaluates for DCO public information/referral programs to ensure Agency and other public and private services are effectively provided to the community within the guidelines and direction provided by DCPEA and the Commissioner. Ensures SSA's public affairs/information efforts are implemented effectively and efficiently within DCO components.

4. Establishes policies and develops criteria on field office accessibility (hours of service, size of field offices, type and location of services, etc.).

5. Directs the planning, analysis and evaluation of field office structure and develops innovative concepts for the future role of DCO components, particularly field offices, including improvements in service.

6. Plans, implements and evaluates the overall direction and strategy for DCO quality management programs. Establishes systematic measurement processes to ensure efficient and effective service to the public and to improve services to employees. Implements and evaluates programs which create an environment of employee involvement, growth and positive change.

7. Identifies training and career development needs of DCO employees and ensures these needs are met. Assesses future training needs as technology advances and plans and implements component career

enhancement programs to ensure employees have skills needed to plan and prepare for these technological changes.

8. Within the guidelines published by DCHR, plans and oversees implementation in DCO components of projects which improve employee environment and well being (wellness/fitness, child care, elder care, office space/furniture).

9. Provides staff support to DCO in planning, developing, implementing and evaluating comprehensive handicapped, EEO and affirmative employment programs to ensure all employees are treated equitably.

10. Plans and implements effective management communication networks to ensure employees are kept informed of DCO's and SSA's initiatives as well as determining, evaluating and addressing employee concerns and their input to improving services delivery.

11. Ensures open and effective communications with employees, unions and management associations. Provides staff support to DCO in planning and providing effective performance management/awards programs ensuring fair and equitable treatment of all employees. Develops innovative approaches to job restructuring/enhancements from a DCO perspective. Plans, develops, implements and analyzes pilots and studies to enhance the quality of the workforce.

E. The Division of Resource and Management Information (S2JB)

1. Performs a broad range of financial management, budget and management information activities. Formulates, executes and monitors component budgets and spending plans. Develops and monitors DCO's operating budgets. Develops reprogramming recommendations for DCO management consideration.

2. Analyzes and develops budget cost analyses based on Agency constraints, initiatives and legislation. Analyzes budget data, program cost allocations, operating program input, workload and productivity information for the preparation of the annual budget.

3. Analyzes and monitors component productivity to determine staffing requirements and ensure effective delivery of service. Establishes component FTEs, workyears and dollar allocations, including identification of reprogramming needs. Distributes and monitors GSA building delegations budget.

4. Analyzes legislative, procedural and technological changes and ensures appropriate resource allocations are provided to effectively implement those

changes. Plans and implements budgetary incentives and provides staff support to DCO on pay reform projects.

5. Implements and maintains an integrated management information system through studies and analyses which identify specific operating areas to be measured and to control workloads. Identifies DCO management needs and working with DCS components develops information sources and reporting format and methods to deliver the timely, pertinent information that managers need to effectively manage SSA's programs and delivery of service.

6. Analyzes data to identify trends which DCO management must consider in developing plans for development of human and materiel resources. Designs, develops and analyzes various weekly, quarterly and annual management information reports.

Subchapter S2K—Office of Operations Management and Program Integration

S2K.00 Mission
S2K.10 Organization
S2K.20 Functions

Section S1K.00 The Office of Operations Management and Program Integration—(Mission)

The Office of Operations Management and Program Integration (OOMPI) is responsible for providing operations analysis and program integration support to the Deputy Commissioner, Operations and for conducting studies and analyses related to operations workloads and workflows. This Office provides broad operations support to the FOs, TSCs, PCs, ODIO and the OCRO, including the three DOCs. OOMPI also is responsible for integrating operational delivery of public services under the RSDI Program, the SSI Program, and the Black Lung Program for domestic beneficiaries and for the delivery of RSDI Program services to foreign beneficiaries. Additionally, this Office provides broad operations support to the maintenance of the basic earnings data which support the Social Security programs. OOMPI is responsible for ensuring that the basic operational processes fulfill the mission of SSA and the objectives of the Commissioner. This Office establishes close, effective working relationships with SSA's Policy and Program components and with other Federal agencies which have vital links in the delivery of service to the public.

Section S2K.10 The Office of Operations Management and Program Integration—(Organization)

The Office of Operations Management and Program Integration, under the

leadership of the Associate Commissioner for Operations Management and Program Integration, includes:

A. The Associate Commissioner for Operations Management and Program Integration (S2K).

B. The Deputy Associate Commissioner for Operations Management and Program Integration (S2K).

C. The Immediate Office of the Associate Commissioner for Operations Management and Program Integration (S2K).

D. The 800 Number Management Staff (S2KA).

E. The Division of Operations Management (S2KB).

F. The Division of Program Integration (S2KC).

Section S2K.20 The Office of Operations Management and Program Integration—(Functions)

A. The Associate Commissioner for Operations Management and Program Integration (S2K) is directly responsible to the Deputy Commissioner, Operations for carrying out OOMPI's mission and provides general supervision to the major components of OOMPI.

B. The Deputy Associate Commissioner for Operations Management and Program Integration (S2K) assists the Associate Commissioner in carrying out his/her responsibilities and performs other duties as the Associate Commissioner may prescribe.

C. The Immediate Office of the Associate Commissioner for Operations Management and Program Integration (S2K) provides the Associate Commissioner with staff assistance on the full range of his/her responsibilities.

D. The 800 Number Management Staff (S2KA).

1. Plans, implements, evaluates and manages the 800 number network and operations including the management of the Headquarters and Birmingham teleservice control centers.

2. Plans, develops, implements and evaluates systematic measurement processes to assess the overall effectiveness and efficiency of the 800 number, network capacity and routing of calls.

3. Develops an effective management information system in support of the 800 number. Provides executive leadership for intercomponent work groups related to 800 number issues.

4. Develops and updates instructional material and the TSC Operating Guide. Initiates requests for telephone systems changes and enhancements necessary

for the successful evolution of the 800 number service.

5. Provides planning, implementation and coordination activities with the service contractor ensuring adequate service is provided.

E. The Division of Operations Management (S2KB).

1. Plans and coordinates for DCO postentitlement cyclical workloads; maintenance of beneficiary and earnings records; appeals process; certification of payment and recoupment of overpayment processes impacting on FOs, TSCs, PCs, ODIO and OCRO (including the DOCs).

2. Plans, designs and implements studies and analyses to assess payment processing activities and affected operational goals and objectives. Plans and initiates new, accurate and prompt processing workflows for Social Security claims and postadjudicative actions.

3. Establishes workload processing schedules assuring efficient sequences of interrelated workloads and recommends to DCO appropriate priorities to achieve maximum positive impact and appropriate balance within program delivery.

4. Coordinates among DCO component operational processes with programs administered with other government agencies such as RRB, Treasury, IRS, VA, State Department and the Administration on Aging.

5. Schedules cyclical and other special workloads so that they can be accomplished effectively and efficiently with minimal disruption to ongoing service and performance levels.

6. Identifies both measured and nonmeasured workloads throughout Operations and develops processing strategies (such as transferring workloads among components) to avoid workload and staffing imbalances.

7. Plans, implements and evaluates new, innovative and creative ideas and work processes to ensure the most effective and efficient program delivery to the public. Revises workflows to fully utilize technological advances and plans for key change initiatives.

8. Plans, implements and evaluates operational processes in order to utilize employee skills and component capabilities to ensure high levels of service to the public and increased employee job satisfaction.

9. Creates workflows and processes which maximize an accurate, timely product with systemic safeguards preventing error and assuring a full audit trail for automated and paper products.

F. The Division of Program Integration (S2KC).

1. Plans, develops or participates in the development of operational policy and procedures to assure effective and efficient implementation of national and international program activities in FOs, TSCs, PCs, ODIO and OCRO (including DOCs).

2. Plans and implements studies designed to assess DCO's processing activities and affected operational goals and objectives to ensure appropriate integration of program and new policies.

3. Provides analysis and recommendations to the DCO regarding legislative planning and implementation. Provides technical guidance to DCO management and ensures integration of RSI, DI, SSI and Medicare policies and procedures.

4. Develops partnerships with Office of Disability, Office of Retirement and Survivors Insurance, Office of Supplemental Security Income, Office of Policy and Health Care Financing Administration to assure effective implementation of program delivery in the context of operational constraints.

5. Provides oversight for DCO to the earnings and enumeration processes. Supports the adjudication of claims and maintenance of postentitlement records. Serves as DCO focal point for outreach activities.

6. Plans, directs and evaluates the quality of program activities throughout operational components. Develops initiatives to improve the quality of the claims, postentitlement and preclaims processes.

7. Participates with appropriate Policy components in SSA to provide clear, accurate and timely notices to the public and to fully utilize automation to reduce the need for manually-prepared notices.

Subchapter S2L—Office of Automation Support

S2L.00 Mission
S2L.10 Organization
S2L.20 Functions

Section S2L.00 The Office of Automation Support—(Mission)

The Office of Automation Support (OAS) is responsible for integrating service delivery and employee concerns with modern technology. In concert with the Deputy Commissioner for Systems (DCS), it determines and defines DCO user needs for software and hardware support. OAS directs user evaluations to assure that technology meets DCO needs and coordinates all user implementation activities. Working with DCS, it assures that the most recent

technology is integrated into the operations of all DCO components.

Section S2L.10 The Office of Automation Support—(Organization)

The Office of Automation Support under the leadership of the Associate Commissioner, includes:

A. The Associate Commissioner for Automation Support (S2L).

B. The Deputy Associate Commissioner for Automation Support (S2L).

C. The Immediate Office of the Associate Commissioner for Automation Support (S2L).

D. The Division of Software Implementation (S2LA).

E. The Division of Technology Support (S2LB).

Section S2L.20 The Office of Automation Support—(Functions)

A. The Associate Commissioner for automation Support (S2L) is directly responsible to the Deputy Commissioner, Operations for carrying out OAS' mission and provides general supervision to the major components of OAS.

B. The Deputy Associate Commissioner for automation Support (S2L) assists the Associate Commissioner in carrying out his/her responsibilities and performs other duties as the Associate Commissioner may prescribe.

C. The Immediate Office of the Associate Commissioner for Automation Support (S2L) provides the Associate Commissioner with staff assistance on the full range of his/her responsibilities.

D. The Division of Software Implementation (S2LA)

1. Works with the systems, policy, security, training and personnel components during the development and implementation of all modernized software to ensure that security, user and operational needs are satisfied within DCO.

2. Works with DCO user components to define the operational requirements for modernized software, training materials and procedural support and helps shape the directions the Agency takes to meet these needs.

3. In concert with DCS, ensure that functional requirements are accurate, straightforward and efficient and support the mission of providing high quality public service.

4. Evaluates with DCS and DCO users all modernized software and support material prior to implementation to confirm that operational requirements

have been met and that effective and efficient audit and security controls are in place to deter and detect improper systems usage for fraudulent purposes.

5. Coordinates DCO user component software implementation activities and provides help desk support for problem reporting, analysis and remedial measures as well as providing procedural clarification.

6. Works with DCS to monitor and support national software and online and batch systems performance on behalf of the operational end user to ensure that operational expectations and performance standards are satisfied.

7. Develops and manages effective mechanisms to evaluate user reaction to modernized software and support materials in order to help define, shape and refine future Agency approaches to modernized software development.

8. Directs the activities of the Model District Office and Test Processing Module, which are the major operational components for testing and evaluating modernized software.

E. The Division of Technology Support (S2LB)

1. Serves as the focal point for user systems related planning within operations. Working with DCS components, determines and defines the technological hardware needs for the operational components and promotes the acquisition, effective implementation and innovative usage of this technology.

2. Identifies operational needs and works through DCS to evaluate and promote the implementation of state-of-the-art technologies such as imaging, storage and retrieval alternatives, and optical disk capabilities that can modernize and streamline labor-intensive current processes.

3. Provides leadership for operations implementation of automated computer processes resident in OCRO, ODIO, PCs, FOs, and DOCs and identifies and defines needed support, such as procedural and technical training, to assure the smooth operation of those computer processes.

4. Arranges with the appropriate technical staff in the systems components to provide technical training when needed; and provides oversight in the management of operating software, version control and scheduling of these local computer operations.

5. Through analytical and evaluative mechanisms it develops and manages, the division ensures that modern technology serves the needs of all DCO

employees, including those employees with disabilities, that fully participate in the accomplishment of our mission.

6. Supports field components in their efforts to integrate modern technology into day-to-day work environments and articulates user needs as the Agency moves into distributed processing platforms and office automation/local intelligence arenas.

7. Assures that proper technical support, including procedural instructions and comprehensive user training, is provided for these distributive platforms, such as Local Area Networks, where needed.

Department of Health and Human Services

Social Security Administration; Statement of Organization, Functions and Delegations of Authority

Part S of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (HHS) covers the Social Security Administration (SSA). Notice is given of the establishment of the Office of the Deputy Commissioner for Systems (S4) at the first level below the Commissioner and the establishment of the Office of Systems Operations, the Office of Systems Design and Development, the Office of Systems Requirements, the Office of Systems Planning and Integration, the Office of Information Management and the Office of Telecommunications and their respective subordinate offices, staffs and divisions in that Office. The changes are as follows:

Chapter S4—Office of the Deputy Commissioner, Systems

S4.00 Mission

S4.10 Organization

S4.20 Functions

Section S4.00 The Office of the Deputy Commissioner, Systems—(Mission)

The Office of the Deputy Commissioner, Systems (ODCS) directs the conduct of systems and operational integration and strategic planning processes, and the implementation of a comprehensive systems configuration management, data base management and data administration program. Initiates software and hardware acquisition for SSA and oversees software and hardware acquisition procedures, policies and activities. Directs the development of operational and programmatic specifications for new and modified systems, and oversees development, validation and implementation phases.

Section S4.10 The Office of the Deputy Commissioner, Systems—(Organization)

The Office of the Deputy Commissioner, Systems, under the leadership of the Deputy Commissioner, Systems, includes:

A. The Deputy Commissioner, Systems (S4).

B. The Assistant Deputy Commissioner, Systems (S4).

C. The Immediate Office of the Deputy Commissioner, Systems (S4C).

D. The Office of Systems Operations (S4E).

E. The Office of Systems Design and Development (S4G).

F. The Office of Systems Requirements (S4H).

G. The Office of Systems Planning and Integration (S4J).

H. The Office of Information Management (S4K).

I. The Office of Telecommunications (S4L).

Section S4.20 The Office of the Deputy Commissioner, Systems—(Functions)

A. The Deputy Commissioner, Systems (S4) is directly responsible to the Commissioner for carrying out the ODCS mission and providing general supervision to the major components of ODCS.

B. The Assistant Deputy Commissioner, Systems (S4) assists the Deputy Commissioner in carrying out his/her responsibilities, and performs other duties as the Deputy Commissioner may prescribe.

C. The Immediate Office of the Deputy Commissioner, Systems (S4C) provides the Deputy Commissioner with staff assistance on the full range of his/her responsibilities.

D. The Office of Systems Operations (OSO) (S4E) directs, manages and coordinates the planning, acquisition, implementation, security, operation and maintenance of SSA's computer systems operations. It directs and coordinates the transition, implementation and operation of current/ongoing operating systems support software, including diagnostic software. OSO coordinates with the Office of Telecommunications (OTC) in the design and implementation of the critical interface between OTC's telecommunications facilities and OSO's teleprocessing complexes. OSO interfaces with the Office of Systems Design and Development (OSDD) and the Office of Information Management (OIM) in the transition and implementation of redesigned programmatic, and administrative systems to progressively replace existing application systems. It manages

the computer operations complex which process SSA's programmatic support, administrative, management information and statistical application systems. OSO conducts continuing assessments and engineering analyses of the computer operations, as well as equipment performance analyses and coordinates with OSDD the implementation of necessary improvements to existing resources. It directs and coordinates the activities associated with the planning, management, acquisition, procurement and renewal of ADP equipment, software and technical services for SSA to maintain operational systems and to prevent progressive deterioration. OSO develops, controls and implements operational plans which include the preparing of technical specifications, evaluation criteria, acceptance test criteria, facilities engineering plans and budget estimates to maintain operational systems. It advises the Deputy Commissioner, SSA Executive Staff and external monitoring authorities such as the Department of Health and Human Services, the General Services Administration (GSA), the General Accounting Office (GAO), the Office of Management and Budget (OMB) and Congress on SSA's computer systems operations.

E. The Office of Systems Design and Development (OSDD) (S4G) directs the design and development and maintenance of all software to support SSA's social insurance and income maintenance programs. The Office directs SSA's data base integration activities to improve the administration of SSA's data bases and to implement modern data base management systems software. It designs and develops all new or improved programmatic data base-oriented systems. OSDD directs a comprehensive software engineering program to modernize the Agency's programmatic applications software by developing new software and improving existing software engineering technologies. It develops and oversees the implementation of standards, methods and procedures for software design and development. It plans and directs a software development facility to support applications development personnel and supports the testing of new or redesigned software. OSDD directs and coordinates a comprehensive management program for SSA's programmatic software.

F. The Office of System Requirements (OSR) (S4H) directs, develops and coordinates operational and programmatic information requirements and functional specifications for new systems and modifications to existing

systems in direct support of SSA programs. It manages an Agencywide process for assessment of user requirements and establishment of priorities for software development and modification. The Office directs validation of systems processes against user-defined performance criteria to ensure conformance with requirements and approves the resulting system for operational acceptance. It directs the development of procedures and instructions to support user needs in effective implementation of all systems. It develops and implements standards for analysis and requirements definition and validation phases of the system development process. It designs, develops and executes an interactive validation environment and associated automated techniques, methodologies, tools and data bases necessary for conducting the validations for all programmatic systems. It develops control, auditability and security standards and ensures their implementation through the systems development life cycle.

G. The Office of Systems Planning and Integration (OSPI) (S4J) directs and conducts comprehensive integration and systems planning processes. It provides management leadership and direction to systems activities in the areas of data administration, software engineering technology and systems engineering management, including configuration management and quality assurance. It carries out a variety of technology assessment functions, including the development of pilot projects to evaluate specific technology applications in SSA. The Office develops the Information Technology Systems Budget for Systems, prepares the detailed budget submission and develops monitoring and tracking systems. It also develops systems security policy for the systems community and coordinates technical activities for Systems components.

H. The Office of Information Management (OIM) (S4K) directs, develops and coordinates SSA-wide administrative, management and statistical information (AMSI) systems. The Office is responsible for long-range planning and analyses to define new and improved systems processes to support SSA's long-term AMSI needs. It directs the coordination of user requirements with private contractors, the SSA user community and the State Disability Determination Services to ensure efficient and effective administration of management information needs and related systems support. OIM directs a comprehensive

data base administration program for the control of SSA's AMSI data bases. It develops technical specifications for the acquisition, implementation and operation of AMSI ADP and telecommunications resources.

I. The Office of Telecommunications (OTC) (S4L) plans, implements and evaluates SSA's communications technology and systems. It is responsible for evaluating current and emerging communications technologies and for designing, acquiring, implementing, operating and maintaining new integrated telecommunications systems combining voice, data, video, facsimile, and other SSA communications requirements. OTC directs, manages and coordinates the planning, analysis, design, acquisition, implementation, operation and maintenance of SSA's existing telecommunications systems. It manages the telecommunications operations complexes located at the Central Office, Regional Offices and field sites. It is responsible for SSA's comprehensive voice communication management program.

Subchapter S4E—Office of Systems Operations

S4E.00 Mission

S4E.10 Organization

S4E.20 Functions

Section S4E.00 The Office of Systems Operations—(Mission)

The Office of Systems Operations (OSO) directs, manages and coordinates the planning, acquisition, implementation, security, operation and maintenance of SSA's computer systems operations. It directs and coordinates the transition, implementation and operation of current/ongoing operating systems support software, including diagnostic software. OSO coordinates with the Office of Telecommunications (OTC) in the design and implementation of the critical interface between OTC's telecommunications facilities and OSO's teleprocessing complexes. OSO manages the implementation of production application software at all network platforms and interfaces with the Office of Systems Design and Development (OSDD) and the Office of Information Management (OIM) in the transition and implementation of redesigned programmatic, and administrative systems to progressively replace existing application systems. OSO administers all activities pertaining to configuration management, change management and problem management. It manages the computer operations complex which process SSA's programmatic support;

administrative, management information and statistical application systems. OSO conducts continuing assessments and engineering analyses of the computer operations, as well as equipment performance analyses and coordinates with OSDD the implementation of necessary improvements to existing resources. It directs and coordinates the activities associated with the planning, management, acquisition, procurement and renewal of ADP equipment, software and technical services for SSA to maintain operational systems and to prevent progressive deterioration. OSO develops, controls and implements operational plans which include the preparing of technical specifications, evaluation criteria, acceptance test criteria, facilities engineering plans and budget estimates to maintain operational systems. It advises the Deputy Commissioner, SSA Executive Staff and external monitoring authorities such as the Department of Health and Human Services, the General Services Administration, the General Accounting Office, the Office of Management and Budget and Congress on SSA's computer systems operations.

Section S4E.10 The Office of Systems Operations—(Organization)

The Office of Systems Operations (S4E), under the leadership of the Associate Commissioner for Systems Operations, includes:

A. The Associate Commissioner for Systems Operations (S4E).

B. The Deputy Associate Commissioner for Systems Operations (S4E).

C. The Immediate Office of the Associate Commissioner for Systems Operations (S4E).

D. The Office of Computer Processing Operations (S4EA).

1. The Division of Productions Systems Operations (S4EA1).

2. The Division of Computer Operations Production Control (S4EA2).

3. The Division of Operational Support Software (S4EA3).

E. The Office of Systems Support and Planning (S4EB).

1. The Division of Operational Capacity Performance Management (S4EB1).

2. The Division of Standards and Control (S4EB2).

3. The Division of Operational Resource Management (S4EB3).

F. The Office of Teleprocessing Management (S4EC).

1. The Division of Integration and Environmental Testing (S4EC1).

2. The Division of Teleprocessing Systems Operations (S4EC2).

Section S4E.20 The Office of Systems Operations—(Functions)

A. The Associate Commissioner for Systems Operations (S4E) is directly responsible to the Deputy Commissioner, Systems, for carrying out the OSO mission and providing general supervision to the major components of OSO.

B. The Deputy Associate Commissioner for Systems Operations (S4E) assists the Associate Commissioner in carrying out his/her responsibilities and performs other duties as the Associate Commissioner may prescribe.

C. The Immediate Office of the Associate Commissioner for Systems Operations (S4E) provides the Associate Commissioner and Deputy Associate Commissioner with staff assistance on the full range of their responsibilities.

D. The Office of Computer Processing Operations (OCPO) (S4EA) plans, directs and manages data processing operations in support of social insurance and income maintenance programs, software testing, statistical and administrative information systems. It ensures that systems operational plans are consistent with overall OSO plans. OCPO manages a complex data processing facility of computers and related equipment, processes programmatic and management information data in conjunction with OSI, OSR, OSD and the Office of Information Management. It designs, develops, implements and provides operating control systems software and operational standards for SSA's programmatic and management information ADP equipment including data processing facility, data base and operations software support. OCPO conducts operational/technical evaluations of operations in the data processing facility and advises the Associate Commissioner for Systems Operations and other SSA officials on operational/technical matters concerning computer operations. OCPO serves as liaison with other SSA officials on technical matters concerning data processing facility operations. It serves as liaison with other SSA components, Federal and non-Federal agencies and other organizations on operational data processing matters. OCPO maintains operating systems software and develops operational standards for the data processing facility. It reviews and approves technical and operational systems priorities among program areas to ensure maximum use of OSO resources. OCPO coordinates the resolution of operational problems identified by OSR

and the customers of OSO's computer systems. It conducts integration testing, validation and acceptance of ADP hardware and applications software.

1. The Division of Production Systems Operations (S4EA1).

a. Operates the centralized Office of Systems Operations (OSO) computer facility which includes computer systems hardware and associated peripheral equipment.

b. Schedules day-to-day workflow for the automated data processing (ADP) facility within plans and priorities established by the Office of Computer Processing Operations, Division of Computer Operations Production Control.

c. Controls the flow of materials into ADP production jobs. Reviews production results for accuracy and completeness.

2. The Division of Computer Operations Production Control (S4EA2).

a. Manages the production workload of OSO and administers effective resource utilization.

b. Manages and directs the automated magnetic media processes and directs the activity of the magnetic tape library function. Serves as the focal point for management of all magnetic media storage resources, both internal and external to the Agency.

c. Participates in the design reviews of proposed application systems to assure operational support and control aspects are being considered. Analyzes applications systems to assure compliance with systems standards. Approves applications systems for production status and incorporates them into the production library. Before acceptance of any new batch applications, performs preproduction testing to minimize unexpected impacts to existing schedules and to ensure the most optimum use of existing data center resources.

d. Represents OSO in User Service Agreement negotiations and measures compliance against committed service levels. Serves as the central contact point in OSO for all customer complaints and questions regarding production processing.

e. Maintains the integrity, manages and performs required recovery of all operational data, data media, tape and direct access for systems.

3. The Division of Operational Support Software (S4EA3).

a. Directs the analysis, design, development, implementation and maintenance of computer operating systems and utility software in support of programmatic and management

information workloads for SSA's central data processing center.

b. Designs, develops, implements and operates production control ADP systems which supervise library controls, automates the scheduling and allocates the production workload.

c. Directs the design, development, implementation and maintenance of information systems software in support of the central data processing center's problem, change and configuration management systems.

d. Supports the user liaison and systems development activities of other OSO components in the resolution of technical and operational problems.

E. The Office of Systems Support and Planning (OSSP) (S4EB) directs all OSO operational systems support planning and control activities. It directs the development of broad OSO systems plans and determines planning requirements at various levels in OSO. The Office performs capacity management, monitors the usage of all computer and telecommunications resources to determine future requirements based upon future workload information. It directs the planning, design and implementation of software based security safeguards and controls to prevent unauthorized access, detect fraud or abuse and protect the confidentiality of personal or sensitive data. It participates in the development of policies and procedures for the acquisition of ADP computer and telecommunications equipment systems, software and services and maintenance in compliance with SSA, HHS, OMB and GSA policies and regulations. OSSP administers the Federal and HHS standards program within OSO and serves as the SSA point of contact for these programs. OSSP proposes resource requirements for systems activities in OSO to the Associate Commissioner for Systems Operations. It directs and coordinates the OSO activities associated with the operational planning, data processing facility security, quality assurance, management, utilization measurement, acquisition and renewal of operational ADP equipment, and software and technical services to maintain operational systems and prevent progressive deterioration. OSSP is responsible for all technical support and training for microcomputer/workstation architecture and is the focal point for office automation within OSO. It is the central OSO point of contact for quality assurance and control activities. It serves as liaison with other SSA components, HHS and external monitoring authorities, including GSA,

OMB, GAO and Congress on SSA ADP operations.

1. The Division of Operational Capacity Performance Management (S4EB1).

a. Evaluates computer performance and monitors resource utilization to ensure that OSO's operational computer systems capacity is utilized effectively and efficiently. Ensures that OSO's systems performance objectives are being met and that data bases are efficiently implemented. Prepares recommendations to OSO management and as directed, performs similar functions for other SSA components.

b. Ensures that sufficient ADP capacity is available to process present and future workloads, coordinating decisions on target systems for new/modified workloads and systems configuration changes.

c. In conjunction with other Deputy Commissioner for Systems' components, develops ADP Capacity Plan for 1-, 2- and 5-year timeframes.

d. Provides advice and services to other OSO components in the use of computer interpretation of reports and data resulting from evaluation and utilization studies.

e. Uses operational research tools to investigate operational efficiency problems and develop workload and utilization relationships.

2. The Division of Standards and Control (S4EB2).

a. Develops, publishes and implements standards and operating procedures within OSO. Develops and controls enforcement mechanisms to ensure adherence to operational standards. Administers the Federal and HHS systems standards program within OSO.

b. Directs the planning, implementation and evaluation of the systems security program in OSO under HHS and SSA privacy and security policies.

c. Serves as OSO liaison with other SSA components in matters of privacy and security. Provides for the security of all OSO resources in the centralized OSO computer boundaries established by the Deputy Commissioner for Management.

d. Provides planning, evaluation and oversight on disaster recovery capabilities in order to maintain continuity of data center operations. Develops, implements and evaluates systems and procedures for the security and protection of data.

e. Formulates an OSO-wide Systems Plan and assigns responsibility to OSO components for various parts of the Plan. Works with OSO components to evaluate their proposed systems

objectives in terms of technical feasibility, availability of resources and systems costs. Identifies the major OSO activities and resources needed to support these objectives. Directs and coordinates the OSO technical workpower, equipment and other special costs for the SSA budget process and justifies these on the basis of the ADP plan.

f. Coordinates OSO activities related to the SSA ADP Plan. Directs the preparation of detailed project plans including resource estimates for projects of which OSO has the lead. Monitors progress and use of workpower and equipment resources by OSO components against their approved plans. Develops standard methods for project management and assists OSO components in their use.

g. Manages the OSO technical training program. Assesses needs, and formulates and executes strategies to upgrade individual knowledge and skill levels.

h. Performs systems analysis, configuration design, software selection, implementation and procurement support for microcomputers, minicomputers and computer graphics systems and equipment for various components of OSO. Provides state-of-the-art technical expertise including the evaluation of new and existing office systems activities and provides support for enhancements, modifications, design and/or redesign. Research and analyze emerging office systems developments to ensure technology awareness and provide supporting systems development, design, planning and implementation. Provides office systems training support within OSO.

3. The Division of Operational Resource Management (S4EB3).

a. Directs OSO's participation in the Information Technology Systems (ITS) procurement process.

b. Performs technical and cost reviews of all OSO/ITS procurements. Performs technical review of procurement proposals for Information Technology Systems (ITS) resources.

c. Provides support for ITS Technical Evaluation Committees.

d. Supports contract administration for all OSO/ITS contracts.

e. Provides technical support to Project Officers in the development, modification and administration of ITS contracts.

f. Directs the renewal process for existing lease and maintenance contracts for ITS and telecommunications equipment and services.

g. Manages the fiscal administration of all ITS contracts, collecting, analyzing

and reporting performance data to support required fiscal and other contractual proceedings.

h. Manages a centralized inventory of all SSA ITS and telecommunications equipment, and manages the ITS excess equipment process.

i. Provides for the centralized certification and authorization for the lease and maintenance of SSA's ITS and telecommunications equipment.

j. Provides necessary staff support to all users within OSO for the development of procurement documents and documentation.

k. Develops and maintains the OSO macroprocurement plan which relates to planned acquisitions of ITS equipment, software, system design and system support services.

l. Serves as Project Officer for ITS recompetition/ongoing maintenance contracts.

m. Provides technical support to OSO and other SSA components during major procurement activities. Ensures that procurement documentation complies with directives published by SSA and higher monitoring authorities. Provides recommendations for disposition of procurement proposals for ITS resources.

F. The Office of Teleprocessing Management (OTM) (S4EC) plans, directs and controls the integration, testing and the production release of new or online host programmatic and telecommunications related hardware and network software. It develops policy and standards for integration testing, validation and acceptance testing of ADP telecommunications network software. Administers the change management process from the teleprocessing complex. It maintains and installs teleprocessing software and develops operational standards for teleprocessing operations. OTM ensures that teleprocessing operational plans are consistent with overall OSO and OTC plans. It is the central OSO point of contact for quality assurance and control activities. It coordinates the resolution of operational problems identified by OSR and OTC.

1. The Division of Integration and Environmental Testing (S4EC1).

a. Directs and controls all activities with the release of new or enhanced versions of host programmatic and telecommunications-related software. Enforces software acceptance and certification standards. Directs the initial staging of program modules to be tested, including generation of executable code.

b. Develops and maintains extensive test data bases for use in the

acceptance, integration and environmental testing processes.

Develops and incorporates the use of software simulators and emulators in software acceptance testing.

c. Directs the integration testing of new or enhanced communications host software, remote network/terminal and microprocessor software and network communications software. Participates in the movement and/or migration of software systems and associated data files between complexes and processing components.

d. Directs environmental testing to ensure that new or enhanced software is compatible with changing hardware configurations. Directs the integration of new or enhanced SSA programmatic software. Administers the generation of finalized testing results for evaluation. Directs software performance evaluations, parallel testing, timing studies, inter/intrasystem relationship and testing trend analysis.

e. Responsible for administering ADP hardware integration and acceptance testing.

f. Provides the checks and balances on SSA's ADP systems and equipment procurement for complying with contractual performance requirements throughout the life cycle of the procurement.

g. Directs the design, development and implementation of software to gather and report statistical information on the functioning of telecommunications networks. Distributes the information to other SSA components to report on network performance and equipment utilization.

h. For all teleprocessing application software, manages and controls libraries, controls and migrates software into the production environment and designs and develops backup and recovery procedures.

i. Administers all activities pertaining to configuration management for the OSO change management system.

2. The Division of Teleprocessing Systems Operations (S4EC2).

a. Procures, installs, modifies, and tunes all online/batch teleprocessing monitor systems software, vendor support products, and Data Base Management Systems. Designs, modifies, implements, and installs specialized teleprocessing system software to support new teleprocessing application software including in-house modifications.

b. Directs all teleprocessing software problem determination and resolution.

c. Participates in the establishment of teleprocessing software standards for application design and for the use of data base packages within the SSA

network environment. Formulates policy for data base applications software systems and monitors and optimizes performance of that software.

d. Coordinates with other OSO components in addressing teleprocessing software concerns regarding system capacity issues and system configuration proposals.

e. Develops teleprocessing software procedures for computer operations components.

f. Manages all online teleprocessing and Data Base Management Systems interface regions.

g. Operates and maintains an integrated systems and technical coordination control center and help desk to coordinate problem identification and resolution activities with the Office of Telecommunications.

Subchapter S4G—The Office of Systems Design and Development

S4G.00 Mission

S4G.10 Organization

S4G.20 Functions

Section S4G.00 Office of Systems Design and Development—(Mission)

OSDD directs the design, development and maintenance of all software to support SSA's social insurance and income maintenance programs. It is responsible for a comprehensive software engineering program and oversees the implementation of standards, methods and procedures in connection with this program. OSI directs and coordinates a comprehensive software configuration management program and manages a detailed project control system for OSDD software development projects. It directs SSA's data base administration management program and designs, develops and, with OSO, implements the production of all new or improved data base oriented systems. It develops policies and procedures, prepares procurement documents for and oversees acquisition of software packages and tools and software support services. OSDD plans and directs a software development facility to support applications development personnel. It serves as liaison with other SSA components, HHS and external monitoring authorities including GSA and GAO and Congress on SSA applications systems planning and software and data base development.

Section S4G.10 Office of Systems Design and Development—(Organization)

The Office of Systems Design and Development, under the leadership of the Associate Commissioner for

Systems Design and Development, includes:

A. The Associate Commissioner for Systems Design and Development (S4G).

B. The Deputy Associate Commissioner for Systems Design and Development (S4G).

C. The Immediate Office of the Associate Commissioner for Systems Design and Development (S4G).

D. The Software Technology and Engineering Center Staff (S4GA).

E. The Office of Software Improvement and Engineering (S4GB).

1. The Logical Application Group I—Data Gathering and Architectural Software (S4GB1).

2. The Logical Application Group II—Programmatic Processing Software (S4GB2).

3. The Logical Application Group III—Specialized Software Support (S4GB3).

4. The Division of Data Base Systems (S4GB4).

F. The Office of Programmatic Systems (S4GC).

1. The Division of Earning Systems (S4GC1).

2. The Division of RSDI Data Systems (S4GC2).

3. The Division of RSDI Transaction Systems (S4GC3).

4. The Division of Supplemental Security Income Systems (S4GC4).

Section S4G.20 Office of Systems Design and Development—(Functions)

A. The Associate Commissioner for Systems Design and Development (S4G) is directly responsible to the Deputy Commissioner, Systems, for carrying out the OSDD mission and providing general supervision to the major components of OSDD.

B. The Deputy Associate Commissioner for Systems Design and Development (S4G) assists the Associate Commissioner in carrying out his/her responsibilities and performs other duties as the Associate Commissioner may prescribe.

C. The Immediate Office of the Associate Commissioner for Systems Design and Development (S4G) provides the Associate Commissioner and Deputy Associate Commissioner with staff assistance on the full range of their responsibilities.

D. The Software Technology and Engineering Center Staff (STECS) (S4GA) plans and manages the Software Engineering Facility (SEF) to provide an integrated set of automated tools, techniques and services in support of SSA's application development community. STECS provides support for both programmatic and management information applications throughout

each phase of the systems development life cycle, including analysis, design, programming, testing, validation, production and maintenance. STECS plans, designs, develops, selects and implements automation methods and standards for the design and development stages of the Software Engineering Technology; and provides for automated software configuration management, quality control and library migration. STECS provides technical assistance to SEF users with specific emphasis on software tools used by the programming community; and acts as liaison between the SEF user community and the computer center to ensure that user needs are being met. STECS monitors SEF performance to ensure that appropriate service levels are continuously maintained; performs impact analyses and validation of proposed software development tools before they are installed on the SEF and manages the SEF Direct Access Storage Device pool. STECS also manages a security program for the SEF which includes administration of SSA's security software, control of system access, and coordination of OSDD component Security Officer activities.

E. The Office of Software Improvement and Engineering (OSIE) (S4GB) directs the design and development of all new or improved in-house file access software for data base/master record files, including selection and installation of commercial data base management packages in connection with systems modernization and design/development initiatives. It identifies, evaluates, selects and manages software improvement projects which are implemented internally by OSIE, are assigned to OSDD operational support components or to private contractors. OSIE prepares draft requirements statements and statements of work for the acquisition of software packages/tools and software contractor support services. It designs and develops new software systems/subsystems based on systems modernization plans or user requirements. It designs and develops all new or improved in-house applications support software designed to promote data base/master record data independence. It is responsible for all analyses in support of data standardization and data quality improvement/assurance in connection with software improvement and design and development initiatives. It establishes and maintains a data dictionary to support and control its function.

1. The Logical Application Group I—Data Gathering and Architectural Software (S4GB1) designs, develops, coordinates and implements new or redesigned software to meet SSA's automated data processing needs in the broad area of data gathering for programmatic processes. Projects would include data gathering for areas such as initial claims, postentitlement, debt management, earnings and enumeration data. Such specific systems needs are defined through functional specifications provided by OSR. Systems design projects are national in scope, affect all SSA components and are integral to the satisfactory completion of the Agency Strategic Plan (ASP).

2. The Logical Application Group II—Programmatic Processing Software (S4GB2) designs, develops, coordinates and implements new or redesigned software to meet SSA's automated data processing needs in the broad area of programmatic processes. Projects would include such areas as earnings eligibility/entitlement, pay/computations and debt management. Specific systems needs are defined through functional specifications provided by OSR. Systems design projects are national in scope, affect all SSA components and are integral to the satisfactory completion of ASP.

3. The Logical Application Group III—Specialized Support Software (S4GB3) designs, develops, coordinates and implements new or redesigned software to meet SSA's ADP needs in the broad area of specialized support. Projects would include such areas as notice utilities, workload management inquiries, data exchange and accounting. Specific systems needs are defined through functional specifications provided by OSR. Systems design projects are national in scope, affect all SSA components and are integral to the satisfactory completion of ASP.

4. The Division of Data Base Systems (S4GB4).

a. Plans, designs, develops and implements the Data Base Integration Program.

b. Provides for the establishment, issuance and enforcement of standards for physical data definition, record and file design and for the selection and implementation of data storage architectures.

c. Establishes systems and procedures for protecting and monitoring the security data. This includes data access controls, data base backup and recovery and data access audit trails.

d. Selects, establishes, modifies and maintains data base structures, access methods and associated software, as required by changes in objectives, data storage technologies and performance requirements.

e. Designs and develops new or improved applications support software to promote data independence and to facilitate interaction between data bases and application software.

f. Establishes and maintains the Data Resource Management System (DRMS) which provides automated support for the analysis, design, development, maintenance and control of SSA software.

g. Designs, evaluates, conducts analyses and provides support services related to data administration and data base management improvement projects. Prepares draft requirement statements and statements of work for use in the acquisition of software packages/tools and software contractor support services related to the project areas.

F. The Office of Programmatic Systems (OPS) (S4GC) plans, directs and coordinates the development of operational ADP systems which directly support SSA's social insurance and income maintenance programs. Based on user requirements developed by OSR, it develops and modifies programmatic applications software systems, including systems analysis and design, programming, documentation, testing, implementation and maintenance. OPS coordinates systems development activities with OSR to assure full integration with OSDD and SSA plans. It assures implementation of systems operating policies by developing detailed standards, methods and procedures consistent with OSDD directives and standards. OPS serves as liaison with other OSDD and SSA components, other governmental agencies and private organizations on operational systems development and maintenance functions.

1. The Division of Earnings Systems (S4GC1) performs the systems analysis, design, programming and testing necessary to develop and maintain current, new and redesigned systems in response to approved user systems requirements for preentitlement earnings and enumeration applications. These systems establish, correct and maintain Social Security number records, update and maintain records of new and duplicate Social Security cards, establish and maintain summary earnings records, process earnings and adjustments, investigate incorrectly reported earnings and post to the proper

account; provide earnings record information to employers, employees and self-employed individuals and establish, correct and maintain vested pension rights identification and notification records.

2. The Division of RSDI Data Systems (S4GC2) performs the Systems analysis, design, programming and testing necessary to develop and maintain current, new and redesigned systems in response to approved user systems requirements and the SET manual for RSDI data base establishment and maintenance applications. These systems edit incoming new records and transactions, control in-process and stored transactions, retrieve and display transaction and MBR-related data both in an online and off line environment, exchange data with non-SSA systems, produce monthly benefit payment information, produce yearly benefit payment statements, generate personalized earnings benefit statements, and provide statistical and actuarial study data. Conducts liaison with other SSA components and Federal and State agencies to plan the development of RSDI systems applications. Provides the Associate Commissioner for Systems Design and Development and other SSA offices with a technical assessment of the effect of legislation, administrative and systems modernization proposals on existing RSDI applications.

3. The Division of RSDI Transaction Systems (S4GC3) performs the systems analysis, design, programming and testing necessary to develop and maintain current, new and redesigned systems in response to approved user systems requirements for RSDI transaction processing. These systems calculate insured status, primary insurance amounts, benefit estimates and benefit payment rates; record and modify entitlement and eligibility factors; identify overpayments and control their disposition; provide beneficiary notices; update and maintain a variety of records and materials which record the results of automated processing; produce or extract management information data for management use; and provide data exchange information for other SSA and non-SSA systems. Translates user requirements, as approved by OSR, into detailed design, development and testing activities and system documentation for current, new or redesigned systems.

4. The Division of Supplemental Security Income Systems (S4GC4).

a. Provides the systems analysis, design, programming and testing necessary to develop and maintain

current, new and redesigned application systems to support the SSI program. These systems: Edit new records and transactions; maintain and revise the SSI master file to reflect changes; compute both Federal SSI benefit and State supplementary payments and produce payment information for the Treasury Department; account for disbursement of Federal and State funds; prepare recipient notices of claims decisions and changes in status and payment; identify and control overpayment activity; select and control cases requiring redetermination; exchange data with Government record systems to verify recipient income; generate data for State use in determining supplementation amounts and Medicaid eligibility; provide record query and response capability; control folder location and movement; produce statistical, management and actuarial data as needed and control exception processing and diary control mechanisms.

b. Translates approved user requirements for SSI systems and performs detailed design, development, testing and system documentation activities to make changes to existing systems or produce new or redesigned systems in response to user requirements.

c. As directed, conducts liaison with other SSA components and Federal and State agencies to determine the feasibility and to plan the development of SSI claims, transaction and support systems.

d. Provides the Associate Commissioner for Systems Design and Development and other SSA offices, as appropriate, with a technical assessment of the impact of legislative, administrative and systems modernization proposals on existing SSI systems.

Subchapter S4H—The Office of Systems Requirements

S4H.00 Mission

S4H.10 Organization

S4H.20 Functions

Section S4H.00 Office of Systems Requirements—(Mission)

The Office of Systems Requirements (OSR) directs, develops and coordinates organizational information requirements and functional requirements for new systems and modifications to existing systems in direct support of SSA programs, as well as statistical and administrative information systems. OSR is responsible for long-range planning and analyses to define new and improved systems processes in support of user requirements and

maintains a comprehensive, updated and integrated set of systems requirements specifications. OSR directs validation of systems operations against user-defined requirements and performance criteria, and approves the resulting system for operational acceptance. It directs the development of procedures and instructions to support user needs in effective implementation of all systems. OSR develops security standards and ensures implementation of the standards within OSR. It directs the evaluation of the effect of proposed legislation, policies or regulations to determine the impact on SSA systems and develops information requirements and procedures as they relate to such legislation, regulations and SSA policy directives. It directs the coordination of user requirements with SSA central and regional operations to ensure the efficiency and effectiveness of program information needs and overall systems support. Based on input from users, OSR translates organizational information requirements and priorities into plans and, in line with OSDD and OSO systems targets, develops SSA's annual Automated Data Processing (ADP) Plan and directs development and maintenance of the plan. OSR serves as primary contact and advocate for the SSA user community on issues concerning the development of organizational information requirements, functional specifications and supporting operational procedures and instructions. OSR provides system support for the Agency's programmatic systems interactive validation environment project management and control, resource management, ITS Budget/ADP Plan coordination, Agency Strategic Plan and workload scheduling.

Section S4H.10 Office of Systems Requirements—(Organization)

The Office of Systems Requirements, under the leadership of the Associate Commissioner for Systems Requirements, includes:

A. The Associate Commissioner for Systems Requirements (S4H).

B. The Deputy Associate Commissioner for Systems Requirements (S4H).

C. The Immediate Office of the Associate Commissioner for Systems Requirements (S4H).

D. The Office of Claims and Payment Requirements (S4HA).

1. The Division of Claims and Control (S4HA1).

2. The Division of Payment Processes (S4HA2).

3. The Division of RSDI Postentitlement Systems (S4HA3).

4. The Division of Supplemental Security Income Systems (S4HA4).

5. The Modernization Coordination and Transition Management Staff (S4HA5).

E. The Office of Pre-Claims Requirements (S4HB).

1. The Division of Enumeration and Employer Identification (S4HB1).

2. The Division of Earnings Reporting and Maintenance (S4HB2).

3. The Division of Earnings Correction and Certification (S4HB3).

4. The Division of User Support and Interfaces (S4HB4).

5. The Pre-Claims Modernization Coordination Staff (S4HB5).

F. The Office of Planning, Control and Validation (S4HC).

1. The Division of Planning and Support (S4HC1).

2. The Division of Requirements Support, Standards and Security (S4HC2).

3. The Division of Validation (S4HC3).

Section S4H.20 The Office of Systems Requirements—(Functions)

A. The Associate Commissioner for Systems Requirements (S4H) is directly responsible to the Deputy Commissioner, Systems, for carrying out the OSR mission and providing general supervision to the major components of OSR.

B. The Deputy Associate Commissioner for Systems Requirements (S4H) assists the Associate Commissioner in carrying out his/her responsibilities and performs other duties as the Associate Commissioner may prescribe.

C. The Immediate Office of the Associate Commissioner for Systems Requirements (S4H) provides the Associate Commissioner and Deputy Associate Commissioner with staff assistance on the full range of their responsibilities.

D. The Office of Claims and Payment Requirements (OCPR) (S4HA) develops, evaluates and implements organizational information requirements for modifications to systems in direct support of SSA's multiple social insurance and income maintenance programs, as well as statistical and administrative information systems. OCPR maintains a comprehensive and integrated set of systems requirements specifications and validation tests of systems changes against user requirements and performance criteria and certifies that changes are in conformance with specifications for assigned areas of responsibility. OCPR develops procedures and instructions to

support user needs in effective implementation of systems, evaluates proposed legislative and policy changes to determine the impact on SSA systems and develops information requirements and procedures needed to implement legislation, regulations and policy directives. In assigned areas, it coordinates development of user requirements with SSA headquarters and regional operations components, as well as Federal and State agencies, and represents users in resolving systems problems with the Office of Systems Design and Development and the Office of Systems Operations.

1. The Division of Claims and Control (S4HA1).

a. Plans, develops, evaluates and implements organizational information requirements, functional specifications, procedures, instructions and standards, including security and fraud detection for the initial claims process; control of claims folders and claims-related material; the transaction control operation; earnings data requests; RSDI disallowances; appeals processes and management data reports.

b. Participates with the Office of Planning, Control and Validation (OPCV) in the planning and conduct of integrated validation tests of new systems and modifications to existing systems against user-defined requirements and performance criteria, and certifies that the changes are in conformance with functional specifications.

c. Develops and maintains a comprehensive, updated and integrated set of systems requirements specifications for the claims and control process.

d. Performs requirements analyses and definition, conveying SSA-approved user needs and requirements in the area of claims and control to the Office of Systems Design and Development (OSDD) for development of ADP specifications and systems design.

e. Evaluates legislative proposals, regulations and policy changes affecting the claims and control process.

f. Represents users in resolving system discrepancies and errors relating to existing claims and control processes with OSDD and OSO representatives.

g. Coordinates user requirements with SSA central and field offices to ensure the efficiency and effectiveness of program information needs and overall systems support.

2. The Division of Payment Processes (S4HA2).

a. Plans, develops, evaluates and implements organizational information requirements, functional specifications, procedures, instructions and standards,

including security and fraud detection, for the Master Beneficiary Record (MBR) update operations; titles II and XVI check-related areas, the taxation process, overpayment, underpayment, misuse, fraud and civil suit actions and benefit-related accounting operations.

b. Participates, with OPCV, in the planning and conduct of integrated validation tests of modifications to existing systems against user-defined requirements and performance criteria, and certifies that the changes are in conformance with functional specifications.

c. Develops and maintains a comprehensive, updated and integrated set of systems requirements specifications for the payment process.

d. Performs requirements analyses and definition, conveying SSA-approved user needs and requirements in the area of titles II and XVI payment processes to OSDD for the development of ADP specifications and systems design.

e. Evaluates legislative proposals, regulations and policy changes affecting the payment process.

f. Represents users in resolving system discrepancies and errors relating to existing payment processes with OSDD and OSO representatives.

g. Coordinates user requirements with SSA central and field offices and Federal and State agencies to ensure the efficiency and effectiveness of program information needs and overall systems support.

3. The Division of RSDI Postentitlement Systems (S4HA3).

a. Plans, develops, evaluates and implements organizational information requirements, functional specifications, procedures, instructions and standards, including security and fraud detection, for ADP of RSDI postentitlement reports and events (work notices, student reports, etc.) that involve manual/automated suspensions, terminations or reinstatements; related beneficiary notices; address and/or representative-payee changes and Medicare enrollment, withdrawal and terminations actions; critical case processing, attorney fees, cyclical workloads and Black Lung processes.

b. Participates, with OPCV, in the planning and conduct of integrated validation tests of modifications to existing systems against user-defined requirements and performance criteria, and certifies that the changes are in conformance with functional specifications.

c. Develops and maintains a comprehensive, updated and integrated set of systems requirements

specifications for the RSDI Postentitlement process.

d. Performs requirements analyses and definition, conveying SSA-approved user needs and requirements in the area of RSDI Postentitlement to OSDD for the development of ADP specifications and systems design.

e. Evaluates legislative proposals, regulations and policy changes affecting the RSDI Postentitlement process.

f. Represents users in resolving system discrepancies and errors relating to the existing RSDI Postentitlement process with OSDD and OSO representatives.

g. Coordinates user requirements with SSA central and field offices and Federal and State agencies to ensure the efficiency and effectiveness of program information needs and overall systems support.

4. The Division of Supplemental Security Income Systems (S4HA4).

a. Plans, develops, evaluates and implements organizational information requirements, functional specifications, procedures, instructions and standards, including security and fraud detection for title XVI (SSI) processes and redetermination operations.

b. Participates, with OPCV, in the planning and conduct of integrated validation tests of modifications to existing systems against user-defined requirements and performance criteria, and certifies that the changes are in conformance with functional specifications.

c. Develops and maintains a comprehensive, updated and integrated set of systems requirements specifications for the SSI process.

d. Performs requirements analyses and definition, conveying SSA-approved user needs and requirements in the area of SSI Initial Claims and Posteligibility Operations to OSDD for the development of ADP specifications and systems design.

e. Evaluates legislative proposals, regulations and policy changes affecting the SSI process.

f. Represents user in resolving system discrepancies and errors relating to the existing SSI process with OSDD and OSO representatives.

g. Coordinates user requirements with SSA central and field offices and Federal and State agencies to ensure the efficiency and effectiveness of program information needs and overall systems support.

5. The Modernization Coordination and Transition Management Staff (S4HA5).

a. Directs the integration of projects and activities supporting transition into the modernized systems environment.

b. Communicates legislative and other changes to staff supporting both the existing and modernized systems, crossing OSR component lines when necessary to interact with Program Benefits, Earnings, Enumeration, Data Exchange, Inquiries Response, Debt Management, etc.

c. Coordinates the maintenance of the Program Benefit Functional Requirements; monitors and coordinates validation release activities; coordinates with Claims Development, Eligibility/Entitlement, Payment Computation and Notice Generation.

d. Monitors Program Benefits workplan; monitors system release certification workload; coordinates earnings interface and monitors NDMS, CICS, Enumeration, Data Exchange and Teleservice coordination.

e. Coordinates MSOM activities including Version Directory Management, Indexing, Cataloging, Scheduling and Transmittal release.

f. Coordinates and evaluates legislative proposals and implementation affecting both the title II and title XVI programs.

g. Participates, with OPCV, OCPD and OPR analysts, in the planning and preparation of validation plans and schedules.

E. The Office of Pre-Claims Requirements (OPR) (S4HB) develops, evaluates and implements organizational information requirements for modifications to systems which establish, correct and maintain Social Security earnings records; issues new and duplicate Social Security cards and related records; furnishes Trust Fund information to the Department of the Treasury; accomplishes vested pension rights identification and notification, and provides a variety of data exchange and data information services that relate to enumeration and earnings records. OPR maintains a comprehensive and integrated set of systems requirements specifications and conducts validation tests of system changes against user requirements and performance criteria and certifies that changes are in conformance with specifications for assigned areas of responsibility.

It develops procedures and instructions to support user needs in effective implementation of systems, evaluates proposed legislative and policy changes to determine the impact on SSA systems and develops information requirements and procedures needed to implement legislation, regulations and policy directives. In assigned areas, OPR coordinates the development of user requirements with SSA headquarters and regional operations components, as

well as Federal and State agencies and represents users in resolving systems' problems with OSDD and OSO.

1. The Division of Enumeration and Employer Identification (S4HB1).

a. Plans, develops, validates and implements organizational system, methods, standards, control and procedures for the establishment, correction and maintenance of Social Security numbers; for the issuance of new or replacement cards; for the establishment and maintenance of employer identification information; for the classification of employers; for the Death Master, NEWS and TRIDE files; for the employer reporting control and SSA/IRS reconciliation process; and for State and local reporting audit and reconciliation.

b. Participates, with OPCV, in the planning and conduct of integrated validation tests of modifications to existing systems against user-defined requirements and performance criteria, and certifies that the changes are in conformance with functional specifications.

c. Develops and maintains a comprehensive, updated and integrated set of systems requirements specifications for the enumeration and the employer identification and control process.

d. Performs requirements analyses and definition, conveying SSA-approved user needs and requirements in the area of enumeration and employer identification and control to OSDD for the development of ADP specifications and systems design.

e. Evaluates legislative proposals, regulations memoranda of understanding and policy changes affecting the enumeration process and the employer identification and control process.

f. Represents users in resolving system discrepancies and errors relating to existing enumeration and employer identification and control processes with OSDD and OSO representatives.

g. Coordinates user requirements with SSA central and field offices and Federal and State agencies to ensure the efficiency and effectiveness of program information needs and overall systems support.

2. The Division of Earnings Reporting and Maintenance (S4HB2).

a. Plans, develops, evaluates and implements organizational information requirements, functional specifications, procedures, instructions and standards, including those relating to security and fraud detection, for reporting private and public sector earnings data; for establishment, correction and

maintenance of earnings records and for reconciling disagreements and resolving discrepancies.

b. Participates, with OPCV, in the planning and conduct of integrated validation tests of modifications to existing systems against user-defined requirements and performance criteria, and certifies that the changes are in conformance with functional specifications.

c. Develops and maintains a comprehensive, updated and integrated set of systems requirements specifications for the earnings reporting and maintenance process.

d. Performs requirements analyses and definition, conveying SSA-approved user needs and requirements in the area of earnings reporting to OSDD for the development of ADP specifications and system design.

e. Evaluates legislative proposals, regulations and policy changes affecting the earnings reporting process.

f. Represents users in resolving system discrepancies and errors relating to the existing earnings reporting and maintenance process with OSDD and OSO representatives.

g. Coordinates user requirements with SSA central and field offices and Federal and State agencies to ensure the efficiency and effectiveness of program information needs and overall systems support.

3. The Division of Earnings Correction and Certification (S4HB3).

a. Plans, develops, evaluates and implements organizational information requirements, functional specifications, procedures, instructions and standards, including those relating to security and fraud detection for use, access and exchange of earnings; for providing certified earnings data to support titles II and XVI programmatic processes; for issuing earnings and benefit estimate statements; for reconciling disagreements and resolving discrepancies related to earnings data and for reinstating earnings data from suspense.

b. Participates, with OPCV, in the planning and conduct of integrated validation tests of new systems or modifications to existing systems against user-defined requirements and performance criteria, and certifies that the changes are in conformance with functional specifications.

c. Develops and maintains a comprehensive, updated and integrated set of systems requirements specifications for earnings data use and State and local contribution and liability, and data accessing processes.

d. Performs requirements analyses and definition, conveying SSA-approved

user needs and requirements in the area of earnings data use and State and local contributions and liability, and data accessing processes to OSDD for the development of ADP specifications and systems design.

e. Evaluates legislative proposals, regulations and policy changes affecting use and maintenance of earnings data and State and local contributions and liability, and data accessing processes.

f. Represents users in resolving system discrepancies and errors relating to earnings data uses, existing State and local contributions and liability, and data accessing processes with OSDD and OSO representatives.

g. Coordinates user requirements with SSA central and field offices and Federal and State agencies to ensure the efficiency and effectiveness of program information needs and overall system support.

4. The Division of User Support and Interface (S4HB4).

a. Plans, develops, evaluates and implements organizational information, requirements, functional specifications, procedures, instructions and standards, including security and fraud detection for data exchanges between SSA systems and other Federal and State agencies; data bases; data base access for information, teleprocessing and for statistical and administrative information.

b. Participates, with OPCV, in the planning and conduct of integrated validation tests of modifications to existing systems against user-defined requirements and performance criteria, and certifies that the changes are in conformance with functional specifications.

c. Develops and maintains a comprehensive, updated and integrated set of systems requirements specifications for the interface and data base access processes and the statistical and administrative information process.

d. Performs requirements analyses and definition, conveying SSA-approved user needs and requirements in the area of data base accesses and interfaces to OSDD for the development of ADP specifications and systems design.

e. Evaluates legislative proposals, regulations and policy changes affecting the interface and administrative and statistical systems.

f. Represents users in resolving system discrepancies and errors relating to the existing interface and administrative and statistical processes with OSDD and OSO representatives.

g. Coordinates user requirements with SSA central and field offices and Federal and State agencies to ensure the efficiency and effectiveness of program

information needs and overall systems support.

5. The Pre-Claims Modernization Coordination Staff (S4HB5).

a. Plans and directs the coordination and integration of activities that support the transition into the modernized systems environment. Plans, develops, evaluates and implements organizational information requirements, functional specifications, procedures, instructions and standards, including those relating to security and fraud detection for Major Logical Application Groups (e.g., Earnings, Enumeration and Data Exchange) with emphasis on integration and transition from the current to modernized systems.

b. Participates, with OPCV, in the planning and conduct of unit validation tests of modifications to existing systems against user-defined requirements and performance criteria, and certifies that the changes are in conformance with functional specifications.

c. Develops and maintains a comprehensive, updated and integrated set of system requirements specifications for the modernized Pre-Claims Major Logical Application Groups (Earnings, Enumeration and Data Exchange).

d. Performs requirements analyses and definition, conveying SSA-approved user needs and requirements in the area of modernized earnings, enumeration and data exchange to OSDD for the development of ADP specifications and system design.

e. Evaluates legislative proposals, regulations and policy changes affecting the modernized earnings, enumeration and data exchange processes.

f. Represents users in resolving system discrepancies and errors relating to the existing earnings, enumeration and exchange processes with OSDD and OSO representatives.

g. Coordinates user requirements with SSA central and field offices and Federal and State agencies to ensure the efficiency and effectiveness of program information needs and overall systems support.

F. The Office of Planning Control and Validation (S4HC) plans, analyzes, evaluates, coordinates and documents user requirements and changes in system processes to support near-term as well as long-term needs in relation to SSA's multiple social insurance and income maintenance programs and statistical and administrative information systems. OPCV develops security standards and ensures implementation of the standards within OSR. It develops validation standards

and requirements, conducts integrated validations of systems application processes. It identifies requirements for an Interactive Validation Environment (IVEN) and associated automated techniques, methodologies, tools and data bases necessary for conducting the validations of systems processes. OPCV develops and maintains the overall SSA plan for fulfilling immediate and long-range user requirements, including determining, classifying and defining SSA organizational systems needs and publishing the approved plan. The office analyzes user audit data collection requirements, prepares detailed functional requirements and validates the collection of audit data. It also ensures the accuracy of security access control requirements and prepares security access requirements. It coordinates approved system requirement changes with systems modernization plans. OPCV develops and maintains a management support system which provides resource accounting, project control and workload scheduling and controls user initiated automated data processing budget items relating to the ADP plan.

1. The Division of Planning and Support (S4HC1)

a. Directs development, operation and maintenance of Management Support Systems which provide automated support to the Office of Systems Requirements (OSR) planning, monitoring, project and resource management functions. Analyzes management requirements and needs of other OSR components, and develops appropriate systems support capability. Acquires necessary ADP capability to meet user needs through equipment acquisition or timesharing agreements. Works with the Office of Strategic Planning and Integration (OSPI) and the Office of Information Management (OIM) contractors and other involved components to develop, maintain and implement systems management support and control processes to integrate OSR's management support systems and processes systems-wide.

b. Provides standards, procedures, systems support and technical assistance to OSR project managers to facilitate preparation of work plans. Directs review of project work plans to ensure completeness, compatibility with standards and managerial directives, and requirements and conformity to the ADP Plan, Configuration Control Board (CCB) decisions and other management decisions. Coordinates systems-wide approval of new and modified plans, and ensures that differences and conflicts among components are

resolved. Provides for monitoring progress of work projects against work plans and reporting status to systems management.

c. Develops procedures and works with systems management to develop, maintain and implement configuration control and systems change control processes. Directs review and control of requests for modification of SSA systems. Ensures that all requests are in accordance with ADP Plan and CCB decisions and correspond to approved project work plans. Monitors change requests through the systems life cycle, and ensures that all necessary concurrences and approvals are obtained and that implementation is scheduled for appropriate systems versions.

d. Plans and analyzes information and resource requirements to determine the requirements for new or improved systems processes to support long-term agency needs, and develops a final list of recommended requirements for new or improved systems, setting priorities among the requirements.

e. Develops, maintains and publishes the overall approved SSA plan for fulfilling short-term and long-range information system requirements, including determining, classifying and ranking systems needs of all SSA components, and recommends final priorities for approval; documents all critical issues having major Agency-wide impact and forwards them to the Associate Commissioner for Systems Requirements for resolution.

f. Coordinates approved system requirements changes for pre-claims and claims areas with system modernization plans maintained by OSDD.

2. The Division of Requirements Support, Standards and Security (S4HC2).

a. Conducts studies to define Agency processes, information needs, data flow and interrelationships among organizational and systems components, data bases and processes.

b. Develops appropriate standards and procedures for functional requirements definition and analysis stage activities; e.g., functional requirements documentation; evaluates the effectiveness of the standards and reviews OSR products for quality to ensure that the standards are being maintained. Serves as focal point for coordinating the development and maintenance of the Project Management Handbook, as well as maintenance of Software Engineering Technology (SET) for all OSR's standards and procedures.

c. Develops controls, auditability and security standards for the organizational

information requirements for all SSA systems, and ensures the implementation of the standards within all areas of OSR's functional responsibilities. Also, develops methods to improve control and security features based on established standards and cost/benefit considerations.

d. Reviews functional requirements documents, requests for system modifications, procedural issuance and related material developed by OSR components to determine adherence to SSA, HHS and the Office of Management and Budget standards relating to the security and integrity of SSA data processing and information systems.

e. Leads and/or coordinates reviews of programmatic processes and systems to identify weaknesses in control, auditability and security features, makes recommendations for improvement, and coordinates activities with other SSA components to ensure that approved recommendations are implemented.

f. Provides the capability for, and performs dynamic testing and static testing of, all programmatic systems in support of SSA and oversight Agency requirements, as well as in support of OSR control and audit process reviews.

g. Develops requirements for, and authorizes systems software changes to, various Control and Audit Test Facility (CATF) software modules and programmatic modules used in the performance of static and dynamic testing, and validates those changes. Authorizes changes to the SSA Data Acquisition and Response System's (SSADARS) security system and the Data Communications Utility (DCU).

h. Coordinates with users and all systems components on Privacy Act and Freedom of Information Act (FOIA) issues to ensure that functional requirements (FR) and procedures are in conformance with that legislation.

i. Supports the procurement and use and integration of automated tools; e.g., Computer-Aided Software Engineering (CASE) tools, Problem Statement Language/Problem Statement Analyzer (PSL/PSA), etc., in support of OSR's development and maintenance of FRs, documents and data models for SSA's programmatic systems.

j. Provides assistance to the configuration management process by developing strategies and guidelines for baselining automated FR data bases.

k. Develops and maintains a framework for interrelating data models, FRs and software design. Develops requirements for standardizing data collection across application areas.

1. Performs requirement analyses and definition and conveys SSA approved user needs and requirements in the area of audit data collection to OSDD for the development of ADP specifications and systems designs.

m. Reviews SSA approved security access control requirements to ensure that they reflect any recent additions or modifications to an applications functionality and conveys the requirements to OSO for an update of the access control apparatus.

n. Performs security, functional security and audit trail data collection validations to ensure that profiles are accurate, security does not interfere with the functionality of an application and audit trail data are properly collected.

o. Develops, maintains and manages the office automation and networking functions for OSR.

3. The Division of Validation (S4HC3).
a. Designs, develops, evaluates and implements automated techniques and methodologies for the validation phase of system development in accordance with established standards and in support of modified operational systems and system modernization efforts.

b. Identifies and documents requirements for automated validation tools and validation data bases.

c. Designs, develops, evaluates and implements validation files and historical data bases, validation tools and model test plans for use by OSR components in conducting integrated validation tests.

d. Executes integration/validation tests and analyzes the results to ensure that all activities have been performed and all necessary outputs have been produced in order to assist in the validation of programmatic administrative and statistical processes and major OSR developmental projects.

e. Coordinates with other system components and users in evaluating the analysis of the validation.

f. Performs integration and pilot validations, including operational procedures, to ensure that the functional requirements have been met and that the systems are free of operating faults.

g. Certifies resulting systems for operational acceptance.

h. Constructs periodic software version releases for modified operational systems and software modernization projects using systems change control procedures.

Subchapter S4J—Office of Systems Planning and Integration

S4J.00 Mission

S4J.10 Functions

S4J.20 Organization

Section S4J.00 Office of Systems Planning and Integration—(Mission)

The Office of Systems Planning and Integration directs and conducts comprehensive systems integration and systems planning processes. It provides management leadership and direction to systems activities in the areas of data administration, software engineering technology and systems engineering management, including configuration management and quality assurance. It carries out a variety of technology assessment functions, including the development of pilot projects to evaluate specific technology applications in SSA. The Office develops the Information Technology Systems budget for Systems, prepares the detailed budget submission and develops monitoring and tracking systems. It also develops and monitors systems security policy for the systems community, and coordinates technical training activities for SSA Systems components.

Section S4J.10 Office of Systems Planning and Integration—(Organization)

The Office of Systems Planning and Integration (OSPI) under the leadership of the Director, OSPI includes:

A. The Director, Office of Systems Planning and Integration (S4J).

B. The Deputy Director, Office of Systems Planning and Integration (S4J).

C. The Immediate Office of the Director, Office of Systems Planning and Integration (S4J) which includes:

1. The Data Administration Staff (S4J-1).

D. The Division of Systems Engineering (S4JA).

E. The Division of Systems Planning (S4JB).

F. The Division of Financial, Procurement and Information Management (S4JC).

Section S4J.20 Office of Systems Planning and Integration—(Function)

A. The Director, Office of Systems Planning and Integration (S4J) is directly responsible to the Deputy Commissioner for Systems for carrying out the Office of Systems Planning and Integration's mission and managing its respective components.

B. The Deputy Director, Office of Systems Planning and Integration (S4J) assists the Director in carrying out his/her responsibilities and performs other duties as the Director may prescribe.

C. The Immediate Office of the Director, Office of Systems Planning and Integration (S4J) provides internal operations and management analysis

staff support and assistance to the Director, the Deputy Director and all of the Office of Systems Planning and Integration components. It includes:

1. The Data Administration Staff (S4J-1) which is responsible for the overall operation of the SSA Data Resource Management (DRM) Program. This responsibility includes developing a strategy for the standardization of SSA data definitions and usages, and establishing the SSA data dictionary and authorizing subsequent changes to it. The Staff establishes the DRM policy framework, including policies, definition of responsibility, procedures, standards, and control/audit mechanisms for the definition, collection, validation and usage of DRM data. The Staff builds data models and develops a plan to evolve from existing systems to implementation of the models. The staff also reviews and approves requests for systems services to assure compliance with published DRM standards.

D. The Division of Systems Engineering (S4JA) is responsible for the development of Systems-wide policies, procedures and standards for all phases of the systems life cycle development process; development of methods to assure the quality of systems products; and development and maintenance of the Software Engineering Technology, which includes the policies, standards, guidelines, procedures, tools and training elements pertaining to the following software life cycle stages: requirements definition and analysis, design, programming, validation, operation and review. The Division develops proposals and recommendations for new software engineering methods for use at SSA, based on extensive research into various methodologies utilized by other data processing installations. Develops a configuration management and change control system which ensures the orderly flow, recording, status accounting and enforcement of configuration procedures. Develops and maintains quality assurance procedures and mechanisms to assure that software products satisfy user requirements and conform to the defined standards, guidelines and procedures of SSA systems. It identifies major integration issues and develops alternative solutions and recommendations.

E. The Division of Systems Planning (S4JB) is responsible for long-range systems planning, technology assessment and planning for and acquiring technical training for Systems personnel. It conducts systems planning within the framework of SSA's overall strategic planning initiative. It develops

and recommends major systems goals and objectives and produces a systems plan to achieve these goals. The Division analyzes the current SSA data processing environment, future systems requirements and technology forecasts to determine their implications for mid- and long-range systems planning. It develops pilot projects to evaluate technologies, particularly in the area of artificial intelligence and expert systems, for selected applications. Evaluates technical and nontechnical training needs for all Systems offices and coordinates and evaluates vendor provided and in-house training as applicable.

F. The Division of Financial, Procurement and Information Management (S4JC) has primary responsibility for directing the development of the Systems 5-year Information Technology Systems (ITS) plan and budget; and the planning, analysis, allocation and monitoring of technical resources. It directs the fiscal management and tracking of ITS procurements and keeps management advised of the status of all ITS acquisitions. The Division functions as an advisor and consultant to the Deputy Commissioner for Systems, on all matters related to the development and execution of the 5-year plan and budget for the allocation of resources. The Division is also responsible for the development, implementation and maintenance of automated systems to support management control, tracking and reporting activities of the Office of Systems Planning and Integration, including procurement tracking and management, systems budget tracking, full-time equivalency management and systems life cycle cost tracking. The Division operates the Systems Management Center, a fully automated center for the integration, analysis and display of information produced by these management control systems.

Subchapter S4K—Office of Information Management

S4K.00 Mission
S4K.10 Organization
S4K.20 Functions

Section S4K.00 The Office of Information Management—(Mission)

The Office of Information Management (OIM) provides overall management of the SSA-wide administrative, management and statistical information systems. It is responsible for long-range planning and analyses to define new and improved systems processes to support SSA's long-term AMSI needs. Directs the coordination of user requirements with

private contractors, the SSA user community and the State Disability Determination Services to ensure efficient and effective administration of management information needs and related systems support. Directs a comprehensive data base administration program for the control of SSA's AMSI data bases. Develops technical specifications for the acquisition, implementation and operation of AMSI ADP and telecommunications resources.

Section S7K.10 The Office of Information Management—(Organization)

The Office of Information Management includes:

- A. The Associate Commissioner for Information Management (S4K).
- B. The Deputy Associate Commissioner for Management (S4K).
- C. The Immediate Office of the Associate Commissioner for Information Management (S4K).
- D. The Division of Office Systems (S4KA).
- E. The Division of Information Resource Management (S4KB).
- F. The Division of Information Systems Policy and Administration (S4KC).
- G. The Division of Administrative Systems Development (S4KE).
- H. The Division of Management Information Systems Development (S4KG).

Section S4K.20 The Office of Information Management—(Functions)

- A. The Associate Commissioner for Information Management (S4K) is directly responsible to the Deputy Commissioner for Systems for carrying out OIM's mission and provides general supervision to the major components of OIM.
- B. The Deputy Associate Commissioner for Information Management (S4K) assists the Associate Commissioner in carrying out his/her responsibilities and performs other duties as the Associate Commissioner may prescribe.
- C. The Immediate Office of the Associate Commissioner for Information Management (S4K) provides the Associate Commissioner and the Deputy Associate Commissioner with staff assistance on the full range of their responsibilities.
- D. Division of Office Systems (S4KA).
 - 1. Plans, implements, integrates and controls Office Automation (OA) functions at SSA and is responsible for development and dissemination of OA standards and policies.
 - 2. Monitors technology trends and maintains current information on OA

hardware, software and data communications.

3. Works with SSA users to provide solutions to OA needs that are consistent with Agency OA policies.

4. Assists SSA users in determining and refining OA requirements, configuring and engineering solutions, planning for future needs, coordinating implementation and evaluating effectiveness.

5. Assists SSA users in determining network and interfacing needs, implementing solutions, planning for expansion and determining staff training needs.

6. Provides a full range of initial and follow-up OA support for SSA users in requirements analysis, system design, network needs determination, engineering, implementation, application needs determination, network control, operations support and training.

E. Division of Information Resource Management (S4KB).

1. Coordinates with the Office of the Deputy Commissioner, Finance, Assessment and Management and the staff components under the Deputy Commissioner, Operations on all areas within Division control (e.g., Information Technology Systems (ITS) budget, management information (MI) systems design and delivery, ongoing user support).

2. Directs the development and monitoring of the ITS budget for OA/end-user computing/MI-related hardware, software and services.

3. Directs the preparation, review and approval of OA/end-user computing/MI procurements.

4. Maintains knowledge of each MI area and monitors support provided by division.

5. Directs SSA-wide work measurement and performance management systems, as well as component work measurement systems for the field, State agencies and Regional Program and Integrity Review offices.

6. Directs audits and analyses of MI systems and reports to ensure adherence to users' and Agency needs, Federal and SSA guidelines and integrity standards.

7. Serves as initial point of user contact for MI delivery-related problems.

8. Directs the OIM's total quality management program and manages OIM's production environment, including systems support.

F. Division of Information Systems Policy and Administration (S4KC).

1. Plans, formulates, develops and maintains SSA's MI Policy.

2. Develops and maintains strategic and technical level views and plans from an OIM automated information systems integration perspective (e.g., cross application area integration) to define how the various OIM automated information systems map into SSA's MI logical and physical information systems architectures as required by the Agency's MI Policy. Manages the technical aspects related to such views, plans and MI integration.

3. Plans, develops and coordinates MI policy and integration among all involved SSA components, and plans for the transition to, and integration with, current SSA automated information systems and with those of the future.

4. Initiates and submits project proposals through the formal OIM review and approval process for development of new or modified automated information systems where necessary to facilitate integration among SSA's administrative and MI systems under the Agency's logical and physical MI systems architectures.

5. Represents SSA and works with HHS, other Government agencies and the private sector on issues involving MI policy, automated information systems, integration, software development, exchange of information, information systems data and data base topics, and other MI and automated information systems related matters.

6. Plans, develops, administers and maintains SSA's administrative and MI data, and data base requirements and standards in consultation with internal OIM Divisions and external SSA components. Assists in the development, maintenance and enforcement of SSA's end-user computing policies, standards and procedures.

7. Responsible for SSA's Information Systems Data and DataBase Administration functions as well as providing support to other internal OIM Divisions and liaison with external components.

G. Division of Administrative Systems Development (S4KE).

1. Responsible for the entire administrative systems development life cycle.

2. Designs, develops, coordinates and implements new administrative application systems and enhancements to existing systems which include quality assurance, financial/physical and human resources, and planning/policy and procedures.

3. Assists other parts of OIM in procurement associated with application projects.

H. Division of Management Information Systems Development (S4KG).

1. Responsible for the entire MI systems life cycle.

2. Designs, develops, coordinates and implements new MI application systems and enhancements to existing systems which include workload management, work measurement, program demographics, earnings and employee/employer statistics.

3. Assists other parts of OIM in procurements associated with application projects.

Subchapter S4L—Office of Telecommunications

S4L.00 Mission

S4L.10 Organization

S4L.20 Functions

Section S4L.00 The Office of Telecommunications—(Mission)

The Office of Telecommunications (OTC) plans, implements and evaluates SSA's communications technology and systems. It is responsible for evaluating current and emerging communications technologies and for designing, acquiring, implementing, operating and maintaining new integrated telecommunications systems combining voice, data, video, facsimile, and other SSA communications requirements. The OTC directs, manages and coordinates the planning, analysis, design, acquisition, implementation, operation and maintenance of SSA's existing telecommunications systems. It manages the telecommunications operations complexes located at the Central Office, Regional Offices and field sites. It is responsible for SSA's comprehensive voice communication management program.

Section S4L.10 The Office of Telecommunications—(Organization)

The Office of Telecommunications (S4L), under the leadership of the Associate Commissioner for Telecommunications, includes:

A. The Associate Commissioner for Telecommunications (S4L).

B. The Deputy Associate Commissioner for Telecommunications (S4L).

C. The Immediate Office of the Associate Commissioner for Telecommunications (S4L).

D. The Division of Network Communications Support (S4LA).

E. The Division of Communications (S4LB).

Section S4L.20 The Office of Telecommunications—(Functions)

A. The Associate Commissioner for Telecommunications (S4L) is directly responsible to the Deputy Commissioner, Systems, for carrying out

the OTC mission and providing general supervision to the major components of OTC.

B. The Deputy Associate Commissioner for Telecommunications (S4L) assists the Associate Commissioner in carrying out his/her responsibilities and performs other duties as the Associate Commissioner may prescribe.

C. The Immediate Office of the Associate Commissioner for Telecommunications (S4L) provides the Associate Commissioner and Deputy Associate Commissioner with staff assistance on the full range of their responsibilities.

D. The Division of Network Communications Support (S4LA).

a. Directs the installation and operation of SSA's telecommunications network facilities for the transmission of program and management data over SSA-established networks.

b. Monitors telecommunications operations, analyzes equipment problems and effects proper maintenance and repair.

c. Directs the implementation of new or revised operating policies and procedures.

d. Implements standards for controlling workflow and for assuring the integrity of data processed through the data communications operations.

e. Directs the operational performance evaluation of SSA's data communications systems.

f. Provides technical expertise and assistance on data communications procurement and other SSA systems modernization projects.

g. Operates and maintains integrated telecommunications and technical control center, centrally and at the remote network nodes, to provide a point of contact for field offices reporting equipment or operational problems.

h. Conducts ongoing analyses of network design configurations and workloads, and initiates changes to the network topology to optimize cost/performance.

i. Reviews standards and procedures for applications developers interfacing with SSA's data communications network. Evaluates requested or proposed applications for impact on network resources.

j. Maintains and controls an inventory of all remote data communications equipment which accesses SSA's telecommunications networks.

k. Analyzes telecommunication problems affecting local and remote users of the telecommunications

networks. Identifies and corrects chronic problems and trends.

l. Directs the design, development, testing and installation of telecommunications control software used to support SSA's data communications systems. Manages telecommunications software changes to ensure compatibility with hardware modification.

m. Participates in the establishment of standards with appropriate OSO and other SSA systems organizations for using networking and teleprocessing monitor packages within the SSA Network environment.

n. Directs the planning, analysis, design and evaluation of specialized software systems including vendor-supplied telecommunications software for applicability and use in the data communications system supported by OSO.

E. The Division of Communications (S4LB) directs and administers SSA's comprehensive voice communications management. Oversees the administration of facsimile and video telecommunications throughout the Agency. It is responsible for planning, implementing and evaluating communications technology and systems. It is responsible for the development and promulgation of policies, standards and procedures for the acquisition, utilization, operations, maintenance, retention and disposal of voice communications systems Agency-wide.

Statement of Organization, Functions and Delegations of Authority

Part S of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (HHS) covers the Social Security Administration (SSA). Notice is given that Chapter S5 is being amended to reflect the relocation of The Office of Research and Statistics. The changes are as follows:

Chapter S5—Office of the Deputy Commissioner, Policy and External Affairs

S5.00 Mission
S5.10 Organization
S5.20 Functions

Section S5.10 The Office of the Deputy Commissioner, Policy and External Affairs—(Organization)

Add

B. The Assistant Deputy Commissioner, Policy and External Affairs (S5).

Reletter the remaining Subsections C through H.

Add

I. The Office of Research and Statistics (S5H).

Section S5.20 The Office of the Deputy Commissioner, Policy and External Affairs—(Functions)

Add

B. The Assistant Deputy Commissioner, Policy and External Affairs (S5) assists the Deputy Commissioner in carrying out his/her responsibilities and performs other duties as the Associate Commissioner may prescribe.

Reletter the remaining Subsections C through H.

Add

I. The Office of Research and Statistics (S5H) collects and maintains statistical information, conducts research and analysis and disseminates findings to various audiences. It conducts research on income security, redistribution effects on the economy of Social Security benefits and financing and adequacy of cash benefits. It establishes linkages of SSA data with data from other statistical and record systems and develops and simulates economic models to analyze the impact of present and projected program alternatives under various conditions. The Office publishes research findings, compiles and publishes statistical data and provides SSA-wide statistical leadership and methodology about statistics. Its major responsibilities can be categorized into five functional areas: the development of program statistics, research on income security issues, legislative impact studies, technical assistance to others and the publication of statistics and research results.

Subchapter S5R—Office of Policy

Section S5R.00 The Office of Policy—(Mission)

Delete the fourth and fifth sentences.

Section S5R.10 The Office of Policy—(Organization)

Delete E.

Reletter: F to E and G to F.

Section S5R.20 The Office of Policy—(Functions)

Delete E.

Reletter F to E and G to F.

Subchapter S5H—Office of Research and Statistics

S5H.00 Mission

S5H.10 Organization

S5H.20 Functions

Section S5H.00 The Office of Research and Statistics—(Mission)

The Office of Research and Statistics (ORS) is responsible for providing information on the effects on individuals and the economy of programs operated by SSA and the interactions among these programs, other tax and income-transfer programs and economic, social and demographic forces.

Section S5H.10 The Office of Research and Statistics—(Organization)

The Office of Research and Statistics under the leadership of the Director, Office of Research and Statistics, includes:

A. The Director, Office of Research and Statistics (S5H).

B. The Deputy Director, Office of Research and Statistics (S5H).

C. The Immediate Office of the Director, Office of Research and Statistics (S5H).

D. The Publications Staff (S5HA).

E. The Program Analysis Staff (S5HB).

F. The Division of Economic Research (S5HC).

G. The Division of Statistical Operations and Services (S5HE).

H. The Division of Statistics Analysis (S5HG).

Section S5H.20 The Office of Research and Statistics—(Functions)

A. The Director, Office of Research and Statistics (S5H) is directly responsible to the Deputy Commissioner for Policy and External Affairs for carrying out ORS' mission, and provides general supervision to major components of ORS.

B. The Deputy Director, Office of Research and Statistics (S5H) assists the Director in carrying out his/her responsibilities and performs other duties the Director may prescribe.

C. The Immediate Office of the Director, Office of Research and Statistics (S5H) provides the Director and Deputy Director with staff assistance on the full range of their responsibilities and helps coordinates the activities of ORS components.

D. The Publications Staff (S5HA).

1. Advises ORS on the development, organization and presentation of research and statistical studies.

2. Publishes and distributes these studies to national and international audiences.

3. Assesses informational needs of SSA staff, staff in other Government agencies, the social science research community and the public for data and findings from the ORS research program.

E. The Program Analysis Staff (S5HB).

1. Plans, designs and conducts surveys of program target groups and performs policy-relevant research.

2. Analyzes the impact of proposed policy options, legislative proposals and special high-priority issues and prepares briefing materials for SSA administrators.

F. The Division of Economic Research (S5HC).

1. Plans, directs and executes issue-oriented research to provide information about relationships between Social Security program, the economy and other aspects of society.

2. Makes program revenue projections and interprets changing demographic and economic trends as they relate to the broad field of economic security and to overall economic and social policy.

3. Studies such major areas as: Social Security financing, economic impacts of Social Security, income maintenance, effect of Social Security on lifetime income redistribution, alternative measures of income adequacy, and labor market and retirement behavior.

G. The Division of Statistical Operations and Services (S5HE).

1. Plans and directs the development, implementation, maintenance and revision of a broad statistical program to support the research and analysis responsibilities of ORS concerning the basic Retirement, Survivors and Disability Insurance (RSDI) and Supplemental Security Income (SSI) program statistics.

2. Provides statistical services throughout SSA and technical consultation to users of these statistics, both within and outside SSA.

H. The Division of Statistics Analysis (S5HG).

1. Plans and develops a continuing program of research and analysis related to Social Security, SSI, other social welfare programs and to the employment, earnings and coverage status of the nation's workforce.

2. Plans, directs and conducts for publication, the collection of RSDI and SSI statistics as well as statistics on employment and earnings covered under the Social Security program.

Statement of Organization, Functions and Delegations of Authority

Part S of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (HHS) covers the Social Security Administration (SSA). Notice is given of the establishment of the Deputy Commissioner, Human Resources (S7) at the first level below the Commissioner and the establishment of the Office of

Personnel, the Office of Labor-Management Relations, the Office of Civil Rights and Equal Opportunity, the Office of Training and the Office of Workforce Analysis and their respective subordinate staffs and divisions. The changes are as follows:

Chapter S7—The Office of the Deputy Commissioner, Human Resources**S7.00 Mission****S7.10 Organization****S7.20 Functions****Section S7.00 The Office of the Deputy Commissioner, Human Resources—(Mission)**

The Office of the Deputy Commissioner, Human Resources (ODCHR) directs the administration of comprehensive SSA human resources programs including: Personnel management, labor-management relations, employee relations, civil rights and equal opportunity, training and workforce analysis.

Section S7.10 The Office of the Deputy Commissioner, Human Resources—(Organization)

The Office of the Deputy Commissioner, Human Resources, under the leadership of the Deputy Commissioner, Human Resources, includes:

A. The Deputy Commissioner, Human Resources (S7).

B. The Assistant Deputy Commissioner, Human Resources (S7).

C. The Immediate Office of the Deputy Commissioner, Human Resources (S7A).

D. The Office of Personnel (S7B).

E. The Office of Labor-Management Relations (S7C).

F. The Office of Civil Rights and Equal Opportunity (S7E).

G. The Office of Training (S7G).

H. The Office of Workforce Analysis (S7H).

Section S7.20 The Office of the Deputy Commissioner, Human Resources—(Functions)

A. The Deputy Commissioner, Human Resources (S7) is directly responsible to the Commissioner for carrying out the ODCHR mission and providing general supervision to the major components of ODCHR.

B. The Assistant Deputy Commissioner, Human Resources (S7) assists the Deputy Commissioner in carrying out his/her responsibilities and performs other duties as the Deputy Commissioner may prescribe.

C. The Immediate Office of the Deputy Commissioner, Human Resources (S7A) provides the Deputy Commissioner and the Assistant Deputy Commissioner

with staff assistance on the full range of their responsibilities.

D. The Office of Personnel (OPE) (S7B) directs a comprehensive SSA personnel management program. It develops, implements and maintains a fully integrated and coordinated personnel management program responsive to the needs of SSA. The Office manages personnel programs in the following areas: personnel policy and research, personnel data, position classification and organization management, recruitment and placement, employee counseling, personnel management evaluation, executive personnel services, employee assistance services, personnel information planning, employee recognition and health services.

E. The Office of Labor-Management Relations (OLMR) (S7C) is directly responsible to the Deputy Commissioner for Human Resources for carrying out OLMR's mission and provides general supervision to the major components of OLMR. The Office manages the SSA labor-management relations program, including the development and evaluation of the program and the formulation of SSA-wide labor-management relations policy.

F. The Office of Civil Rights and Equal Opportunity (OCREO) (S7E) is directly responsible to the Deputy Commissioner for Human Resources for carrying out OCREO's mission and provides general supervision to the major components of OCREO. The Office provides overall management of the SSA-wide programs of civil rights and equal opportunity, including the development of SSA-wide civil rights and equal opportunity policy.

G. The Office of Training (OT) (S7G) is responsible for the management and administration of a national training program to enhance SSA's capability of providing effective and efficient service to the public. It develops and issues Agencywide policies, procedures and operational guidelines for the design, development, implementation, maintenance and evaluation of all SSA training activities. It directs the financial management of training monies to ensure accountability of money spent to train and develop the Agency's employees.

H. The Office of Workforce Analysis (OWA) (S7H) develops, implements and directs a comprehensive program of management studies, research and analysis. It implements a comprehensive workforce effectiveness program and conducts studies of work processes and procedures. It provides SSA liaison with HHS, other Federal agencies and outside sources on these matters.

Subchapter S7B—Office of Personnel

S7B.00 Mission
S7B.10 Organization
S7B.20 Functions

Section S7B.00 The Office of Personnel—(Mission)

The Office of Personnel (OPE) directs a comprehensive program designed to provide the full range of personnel management programs, including personnel management evaluation, executive personnel services, recruitment and placement, employee counseling, personnel policy and research, personnel data, employee assistance services, personnel information planning, employee recognition, health services and classification and organization management. The Office develops policy and guidelines for the SSA-wide management of those programs and evaluates the manner in which they are carried out.

Section S7B.10 The Office of Personnel—(Organization)

The Office of Personnel under the Associate Commissioner, Office of Personnel, includes:

- A. The Associate Commissioner, Office of Personnel (S7B).
- B. The Deputy Associate Commissioner, Office of Personnel (S7B).
- C. The Immediate Office of the Associate Commissioner of Personnel (S7B).
- D. The Executive Recruitment and Services Staff (S7BA).
- E. The Division of Personnel Operational (S7BB).
- F. The Division of Classification and Organization Management (S7BC).
- G. The Division of Personnel Policy and Data (S7BE).
- H. The Center for Employee Services (S7BG).

Section S7B.20 The Office of Personnel—(Functions)

- A. The Associate Commissioner, Office of Personnel (S7B) is directly responsible to the Deputy Commissioner, Human Resources for carrying out the Office of Personnel's mission and provides general supervision to the major components.
- B. The Deputy Associate Commissioner, Office of Personnel (S7B) assists the Associate Commissioner in carrying out his/her responsibilities and performs other duties as the Associate Commissioner may prescribe.
- C. The Immediate Office of the Associate Commissioner, Office of Personnel (S7B) provides the Associate Commissioner and Deputy Associate

Commissioner with staff assistance on the full range of their responsibilities.

D. The Executive Recruitment and Services Staff (S7BA).

- 1. Develops and implements all SSA policies and activities relating to the Agency's executive personnel management program.
- 2. Develops and implements policies and guidelines for SSA administration of the Senior Executive Service (SES).
- 3. Recruits for and places individuals in positions in the SES in accordance with Office of Personnel Management (OPM) and HHS regulations.
- 4. Provides staff support to the Executive Resources Board in administering a systematic program to manage SSA's executive and professional resources and ensuring the appropriate selection of candidates to participate in official executive development programs.
- 5. Provides staff support to the Performance Review Board in reviewing performance plans and subsequent appraisals of career and noncareer executives in SES and employees in equivalent level positions.

E. The Division of Personnel Operations (S7BB).

- 1. Implements policies and regulations pertaining to SSA recruitment and placement. Initiates and processes personnel actions for SSA Headquarters employees and participates with office managers and staffs in assessing placement actions; directs the administration of all Merit Promotion Plans applicable within Baltimore/Washington Headquarters components. Processes necessary administrative actions required for new employees entering on duty.
- 2. Implements policies, regulations and affirmative action programs pertaining to special recruitment and staffing activities for SSA Headquarters and field organizations; develops and implements special needs placement programs, including handicapped and veterans readjustment programs.
- 3. Directs the development and operation of SSA services in the areas of health benefit information and pre-retirement counseling.
- 4. Reviews and processes all personnel and payroll actions in conformance with OPM and HHS regulations.
- F. The Division of Classification and Organization Management (S7BC).
- 1. Develops and implements SSA-wide programs of position classification and position management within SSA Headquarters. Directs position

classification and position management activities having SSA-wide significance.

2. Provides advice and assistance to all SSA components on activities and issues that involve position classification and position management; serves as the central SSA referral point on these programs and acts as SSA liaison with OPM, HHS and other non-SSA entities and organizations with respect to assigned areas of responsibility.

3. Formulates and oversees the implementation of policies, procedures, standards, directives and objectives which assure that position structure and management promote cost-effective operations and the efficient use of employee skills.

4. Provides leadership and coordination in the formulation of SSA policies, directives and programs relating to the Fair Labor Standards Act and to salary and wage surveys; and conducts a continuing review of the applicability of classification standards and, as appropriate, negotiates with OPM for the revision of such standards or the development of single agency standards.

5. Directs an SSA-wide program for inspection and evaluation of SSA's personnel management program including employment and staffing, position management and classification, employee relations, equal employment opportunity and labor relations. Conducts administrative surveys and special studies to provide managers with information and assistance to assure conformance with OPM regulations and HHS/SSA policies and directives.

6. Authorizes the establishment of positions and organizations, providing advice and guidance to managers on organizational structure and preparing **Federal Register** and Organization Manual material.

G. The Division of Personnel Policy and DATA (S7BE).

- 1. Directs the formulation and issuance of SSA personnel policies and directives. Provides guidance on matters pertaining to such areas as staffing, compensation, appraisals and performance standards, personnel information disclosure and management communications and ensures that such guidance is consistent with pertinent laws, regulations and policies. Oversees the dissemination and implementation of SSA-wide policies and directives pertaining to personnel management areas. Directs the development and maintenance of the SSA personnel manual system, reviewing all issuances under this system.

2. Directs the development and operation of SSA performance management and employee awards programs. Develops and implements SSA employee suggestion, incentive and honor awards programs and administers the performance management systems.

3. Plans and directs ongoing development, analysis and evaluation of SSA's personnel recordkeeping systems; develops general objectives and performance standards for automated systems and detailed specifications for development or modification of computer programs used in automated systems and proposes changes in these systems to meet SSA's human resources data, statistics and information needs. Coordinates, with SSA's Office of the Deputy Commissioner, Systems, the planning, development, modification and evaluation of automated systems.

4. Plans, designs and evaluates the use of personal computers and provides office automation support for human resources systems. Operates selected data processing/office automation systems in the Office of Personnel.

H. The Center for Employee Services (S7BG).

1. Provides professional counseling and referral services for emotionally disturbed employees and for employees with alcohol or drug problems. Provides technical advice and guidance to SSA management officials on matters related to these functions.

2. Develops, implements and evaluates SSA's employee health services programs in conformance with appropriate laws, policies and regulations.

3. Directs the development and operation of SSA's Workers' Compensation services programs. Provides assistance to employees regarding claims for loss of wages, settlement awards, notices of injury and required medical reports.

4. Provides overall coordination and direction to work environment improvement efforts within SSA. Coordinates a variety of studies throughout SSA designed to improve the work environment.

5. Designs, analyzes and implements a variety of research projects in the areas of personnel management.

6. Plans, develops and implements a variety of employee and family-oriented programs and services in the areas of Child Care, Elder Care, fitness and wellness.

Subchapter S7C—Office of Labor-Management Relations

S7C.00 Mission

S7C.10 Organization

S7C.20 Functions

Section S7C.00 The Office of Labor-Management Relations—(Mission)

The Office of Labor-Management Relations (OLMR) provides overall management of an SSA-wide program of labor-management relations, including the development and evaluation of the program and the formulation of SSA-wide labor-management relations policy.

Section S7C.10 The Office of Labor-Management Relations—(Organization)

The Office of Labor-Management Relations under the leadership of the Director, Office of Labor-Management Relations, includes:

A. The Director, Office of Labor-Management Relations (S7C).

B. The Deputy Director, Office of Labor-Management Relations (S7C).

C. The Immediate Office of the Director, Office of Labor-Management Relations (S7C).

Section S7C.20 The Office of Labor-Management Relations—(Functions)

A. The Director, Office of Labor-Management Relations (S7C) is directly responsible to the Deputy Commissioner, Human Resources for carrying out OLRM's mission and provides general supervision to the major components of OLRM.

B. The Deputy Director, Office of Labor-Management Relations (S7C) assists the Director in carrying out his/her responsibilities and performs other duties as the Director may prescribe.

C. The Immediate Office of the Director, Office of Labor-Management Relations (S7C) provides the Director and the Deputy Director with staff assistance on the full range of their responsibilities.

1. Plans and directs the development and evaluation of the SSA labor-management and employee relations (disciplinary/adverse and unacceptable performance) programs; formulates SSA-wide labor-management and employee relations policy; serves as the SSA reference point for inquiries, guidance and interpretations on labor-management and employee relations matters and provides SSA liaison with OPM, HHS and other non-SSA entities and organizations concerning labor-management and employee relations in SSA.

2. Implements labor-management relations programs and policies throughout SSA's Headquarters and field organizations; participates in negotiation and implementation of such procedures with labor organizations; resolves or recommends resolution in labor relations disputes and advises management during bargaining sessions.

3. Represents SSA management in all labor-management relations matters and proceedings which are adjudicated outside the Agency.

4. Provides the full range of labor-management relations advisory services to all SSA components to ensure proper application of negotiated agreement provisions and directs monitoring of union-management consultations as required by negotiated agreements or executive orders.

5. Implements an SSA program for disciplinary/adverse and unacceptable performance actions, in accordance with applicable regulations and procedures. Provides technical assistance, guidance, representation and letter-writing services for misconduct and performance action cases to management in SSA Headquarters. Also provides these services to the field in complex cases.

6. In coordination with HHS' Office of the General Counsel, researches law, executive orders, court, Merit Systems Protection Board and Comptroller General decisions, regulations, policies, precedents and procedures on disciplinary/adverse actions, employee appeals and grievances.

Subchapter S7E—Office of Civil Rights and Equal Opportunity

S7E.00 Mission

S7E.10 Organization

S7E.20 Functions

Section S7E.00 The Office of Civil Rights and Equal Opportunity—(Mission)

The Office of Civil Rights and Equal Opportunity (OCREO) provides overall management of the SSA-wide programs of civil rights and equal opportunity.

Section S7E.10 The Office of Civil Rights and Equal Opportunity—(Organization)

The Office of Civil Rights and Equal Opportunity, under the leadership of the Director, Office of Civil Rights and Equal Opportunity, includes:

A. The Director, Office of Civil Rights and Equal Opportunity (S7E).

B. The Deputy Director, Office of Civil Rights and Equal Opportunity, (S7E).

C. The Immediate Office of the Director, Office of Civil Rights and Equal Opportunity (S7E).

D. The Division of Complaints Analysis and Monitoring (S7EA).

E. The Division of Equal Opportunity Planning and Studies (S7EB).

Section S7E.20 The Office of Civil Rights and Equal Opportunity—(Functions)

A. The Director, Office of Civil Rights and Equal Opportunity (S7E) is directly responsible to the Deputy Commissioner, Human Resources for carrying out OCREO's mission and provides general supervision to the major components of OCREO.

B. The Deputy Director, Office of Civil Rights and Equal Opportunity (S7E) assists the Director in carrying out his/her responsibilities and performs other duties as the Director may prescribe.

C. The Immediate Office of the Director, Office of Civil Rights and Equal Opportunity (S7E) provides the Director and Deputy Director with staff assistance on the full range of their responsibilities.

D. The Division of Complaints Analysis and Monitoring (S7EA).

1. Directs implementation and evaluation of the SSA Equal Employment Opportunity Discrimination Complaint program for both Headquarters and the field; provides advice, guidance and assistance to SSA officials concerning the discrimination complaint program area and related management matters.

2. Provides leadership, guidance and direction in formulating and implementing SSA policies, regulations and procedures pertaining to the timely, accurate, fair and impartial processing of discrimination complaints throughout the Headquarters and field organizations.

3. Provides overall direction regarding all aspects of SSA's complaint system in order to ensure uniformity in complaint handling, resolution and disposition. Directs the preparation of guidelines on all complaint matters.

4. Prepares proposed dispositions on complaints of discrimination against SSA. Ensures compliance with any corrective or remedial action directed by SSA, HHS, Equal Employment Opportunity Commission (EEOC) or any other agency having authority to so direct.

5. Develops litigation information and documentation for the Office of the General Counsel and the U.S. Attorney's Office in employment discrimination court suits filed against SSA. Prepares the Agency's brief for complaints appealed to EEOC. Also, responds to interrogatories submitted in class complaints. Analyzes new and recent court decisions, public laws and Federal regulations for their impact on SSA complaint processing.

6. Directs special projects and studies of the various aspects of SSA's

nationwide discrimination complaint process to evaluate the overall effectiveness of the equal opportunity program. Directs the analysis of trends observed during projects and studies and implements new procedures as required.

7. Provides the authoritative interpretations on legal, regulatory and technical discrimination complaint matters to SSA management nationwide.

E. The Division of Equal Opportunity Planning and Studies (S7EB).

1. Directs the development and monitoring of SSA's equal opportunity and civil rights programs.

2. Provides leadership, direction and guidance throughout the Headquarters and field organizations in the formulating and implementing of SSA policies, regulations and procedures pertaining to the development of sound affirmative civil rights and equal opportunity programs. Approves, on behalf of the Deputy Commissioner, affirmative employment program plans prepared by components and regions. Develops the overall SSA affirmative employment program plan.

3. Develops guidelines and procedures for effective affirmative employment program planning and monitoring throughout SSA. Develops recommendations on affirmative employment policy and operations for the Director, Office of Civil Rights and Equal Opportunity.

4. Reviews non-SSA equal opportunity and civil rights issuances, EEOC and court decisions for applicability to SSA policy statements. Develops instructions and guidelines to transmit or implement equal opportunity and civil rights policy decisions in SSA.

5. Conducts and coordinates studies or analyses of SSA's human resources and operating policies and procedures to assess their equal opportunity and civil rights impact.

6. Directs the development and maintenance of minority disabled persons employment information system(s) for SSA employees and applicants for employment.

7. Develops and tracks SSA's major initiatives that relate to civil rights and equal opportunity and oversees their implementation.

8. Plans, directs and implements special programs for minority, female, Hispanic and handicapped employees of SSA.

9. Directs the SSA-wide program of processing civil rights complaints, which involves developing complaint policy, procedures and guidelines for applying standards under the civil rights statutes. Develops SSA standards, consistent

with government-wide standards, for delivering services to members of the public and meeting other SSA service and outreach commitments under civil rights statutes.

10. Develops, implements, monitors and evaluates special recruitment plans, programs and projects for targeted equal opportunity groups.

11. Develops, monitors and evaluates SSA compliance program(s) under civil rights statutes.

12. Coordinates with, and reports to, HHS' Office of Civil Rights on SSA's civil rights compliance function.

Subchapter S7G—Office of Training

S7G.00 Mission

S7G.10 Organization

S7G.20 Functions

Section S7G.00 The Office of Training—(Mission)

The Office of Training (OT) directs a nationwide program designed to assure that all levels of SSA employees receive the training necessary to provide effective and efficient service to the public.

Section S7G.10 The Office of Training—(Organization)

The Office of Training under leadership of the Director, Office of Training, includes:

A. The Director, Office of Training (S7G).

B. The Deputy Director, Office of Training (S7G).

C. The Immediate Office of the Director, Office of Training (S7G).

D. The Division of Management and Employee Development (S7GA).

E. The Division of Technical Training (S7GB).

Section S7G.20 The Office of Training—(Functions)

A. The Director, Office of Training (S7G) is directly responsible to the Deputy Commissioner, Human Resources for carrying out OT's mission and provides general supervision to the major components of OT.

B. The Deputy Director, Office of Training (S7G) assists the Director in carrying out his/her responsibilities and performs other duties as the Director may prescribe.

C. The Immediate Office of the Director, Office of Training (S7G) provides the Director and Deputy Director with staff assistance on the full range of their responsibilities.

D. The Division of Management and Employee Development (S7GA)

1. Directs, designs, develops, implements, conducts and evaluates all

SSA supervisory, managerial and executive-level training development activities.

2. Has Agencywide responsibility for common needs and general skills training, including related developmental activities for nonsupervisory personnel.

3. Initiates independent studies and analyses to anticipate and identify new or changing training and development needs in a dynamic organizational environment.

4. Engages in applied research and development efforts associated with training and development programs administered by the division. Provides ongoing consultative assistance and support to SSA components, including training needs identification and program design; monitors and evaluates Agency training and developmental activities to ensure desired results and effects of nontechnical training provided to the Agency's employees. Fosters and maintains effective communications with appropriate internal and external organizations to ensure positive results relative to Agency objectives, policy directives, new initiatives, inservice training needs, etc.

5. Plans, directs, coordinates, and administers the activities relative to developing and executing budget activities; evaluates SSA training in terms of cost-effectiveness, quality and value to the Agency; plans, formulates, and implements SSA training policies and provides overall support and coordination to the training function. Coordinates attendance for Government-sponsored and non-Government-sponsored conferences.

E. The Division of Technical Training (S7GB)

1. Directs the design, development, implementation, and evaluation of SSA program/technical training, including entry-level and advanced program, systems-user and computer technology training and other technical training to meet the needs of SSA components Agencywide.

2. Conducts ongoing research to identify automated technologies and instructional methodologies for application to training throughout SSA.

3. Develops guidelines and procedures to determine technical training needs, and reviews and evaluates technical training Agencywide.

Subchapter S7H—Office of Workforce Analysis

S7H.00 Mission

S7H.10 Organization

S7H.20 Functions

Section S7H.00 The Office of Workforce Analysis—(Mission)

The Office of Workforce Analysis (OWA) directs a comprehensive program of management studies, research and analysis. It implements and manages a comprehensive workforce effectiveness system and conducts studies of work processes and procedures.

Section S7H.10 The Office of Workforce Analysis—(Organization)

The Office of Workforce Analysis under the leadership of the Director, Office of Workforce Analysis, includes:

A. The Director, Office of Workforce Analysis (S7H).

B. The Immediate Office of the Director, Office of Workforce Analysis (S7H).

Section S7H.20 The Office of Workforce Analysis—(Functions)

A. The Director, Office of Workforce Analysis (S7H) is directly responsible to the Deputy Commissioner, Human Resources for carrying out OWA's mission and provides general supervision to the major components of OWA.

B. The Immediate Office of the Director, Office of Workforce Analysis (S7H) provides the Director with staff assistance on the full range of his/her responsibilities.

1. Develops and implements comprehensive workforce utilization and planning programs to improve productivity and the use of the SSA workforce.

2. Conducts studies and analyses of work processes and procedures, workflows and workload processing positions; applies a variety of disciplines and techniques, including management analysis and model building to assure best workforce utilization and recommends action to top SSA executives for improving the effectiveness of the SSA workforce.

3. Develops SSA-wide workforce management policies, procedures and guidelines; develops, analyzes and interprets workforce forecasting data and projects future workforce needs, including the types of skills and positions required.

4. Directs, develops and implements a comprehensive program of management studies, research and analysis to evaluate and determine the feasibility of implementing major changes affecting the SSA organization, its administrative practices and its methods of operation. Studies and analyses are Agencywide, frequently deal with issues of a sensitive

nature and may involve other Government agencies.

5. Undertakes feasibility, predictive benefit and cost/risk analyses to identify alternatives and to develop administrative strategies for consideration by the SSA Executive Staff in responding to Agencywide problems and issues.

6. Directs, develops and conducts Agencywide reviews and studies using industrial engineering, model building and other scientific approaches and methodologies.

Dated: April 2, 1991.

Louis W. Sullivan,

Secretary for Health and Human Services.

[FR Doc. 91-8905 Filed 4-17-91; 8:45am]

BILLING CODE 4190-11-M

Centers for Disease Control

Advisory Committee for Injury Prevention and Control; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control (CDC), announces the following committee meeting:

Name: Advisory Committee for Injury Prevention and Control (ACIPC).

Time and Date: 8 a.m.-5 p.m., May 20, 1991.
8 a.m.-12 noon, May 21, 1991.

Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

Status: Open to the public, limited only by the space available.

Purpose: The Committee will continue to make recommendations on policy, strategy, objectives, and priorities including the balance and mix of intramural and extramural research; advise on the development of a national plan for injury prevention and control, the development of new technologies and their application; and review progress toward injury prevention and control.

Matters to be Discussed: The Committee will discuss the external cause of injury coding of hospital discharges (E-coding), completion of a national agenda for injury control, implementation of the Trauma Care Systems Planning and Development Act of 1990 (Pub. L. 101-590), the second world injury conference, the injury control atlas, and intramural and extramural research and intervention programs for injury control.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: John F. Finklea, M.D., Executive Secretary, ACIPC, Division of Injury Control, Center for Environmental Health and Injury Control, CDC, 1600 Clifton Road, NE., Mailstop F-36, Atlanta, Georgia 30333, telephone, 404/488-4690 or FTS 236-4690.

Dated April 12, 1991.

Elvin Hilyer,

*Associate Director for Policy Coordination,
Centers for Disease Control.*

[FR Doc. 91-9076 Filed 4-17-91; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 89P-0391]

Canned Tuna Deviating from the Standard of Identity; Extension of Temporary Permit for Market Testing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the extension date of a temporary permit issued to StarKist Seafood Co. to market test in interstate commerce canned smoke-flavored tuna products. This action will allow the permit holder to continue experimental market testing of the product while the agency takes action on the permit holder's petition to amend the standard of identity for canned tuna.

DATES: The new expiration date of the permit will be either the effective date of a final rule for any proposal to amend the standard of identity for canned tuna that may result from the petition or 30 days after termination of such proposal.

FOR FURTHER INFORMATION CONTACT: Nannie H. Rainey, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C St., SW., Washington, DC 20204, 202-485-0107.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17, FDA issued a temporary permit to StarKist Seafood Co., 180 East Ocean Blvd., Long Beach, CA 90802, to market test three kinds of experimental packs of canned smoke-flavored tuna products including solid white tuna in spring water, chunk light tuna in spring water, and chunk light tuna in vegetable oil. Notice of issuance of the temporary permit to StarKist Seafood Co. was published in the *Federal Register* of October 13, 1989 (54 FR 42045). The agency issued the permit to facilitate interstate market testing of products that deviate from the U.S. standard for canned tuna in 21 CFR 161.190 in that they contain added natural smoke flavor in an amount not to exceed 0.5 percent of the weight of the finished food. The test products meet all the requirements of 21 CFR 161.190 except for this deviation.

StarKist Seafood Co. has requested that FDA extend the temporary permit

to allow the firm to measure consumer acceptance of the food pending final action on its petition to amend the standard of identity for canned tuna (21 CFR 161.190) to permit the use of natural smoke flavor. FDA has concluded that it is in the best interest of consumers to grant the extension requested by the permit holder.

As provided in 21 CFR 130.17(i), FDA is inviting interested persons to participate in the market test under the same conditions that apply to the StarKist Seafood Co., including the labeling requirements and the amounts of test product to be distributed, except that the designated areas of distribution shall not apply.

Any interested person who wishes to participate in the market test must notify, in writing, the Acting Director, Division of Food Chemistry and Technology (HFF-414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204. The notification must include the amount of test product to be distributed, the areas of distribution, and labeling that will be used for the test product.

FDA is extending the expiration date so that the permit expires either on the effective date of a final rule for any proposal to amend the standard of identity for canned tuna that may result from the petition or 30 days after termination of such a proposal. All other conditions and terms remain the same.

Dated: April 5, 1991.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 91-9092 Filed 4-17-91; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 91E-0062]

Determination of Regulatory Review Period for Purposes of Patent Extension; ProSom™

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for ProSom™ and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA-

305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Nancy E. Pirt, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have elapsed before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product ProSom™. ProSom™ (estazolam) is indicated for the short-term management of insomnia characterized by difficulty in falling asleep, frequent nocturnal awakenings, and/or early morning awakenings. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for ProSom™ (U.S. Patent No. 3,987,052) from the Upjohn Co. and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. FDA, in a letter dated March 14, 1991, advised the Patent and Trademark Office that this human drug product had

undergone a regulatory review period and that the approval of ProSomTM represented the first commercial marketing of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the regulatory review period for ProSomTM is 5,298 days. Of this time, 2,733 days occurred during the testing phase of the regulatory review period, while 2,565 days occurred during the approval phase. These periods of time were derived from the following dates:

1. The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective: June 26, 1976. The applicant claims May 25, 1976, as the date the investigational new drug (IND) application became effective. However, FDA records indicate that the IND effective date was June 26, 1976, which was 30 days after FDA receipt of the IND application.

2. The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act: December 19, 1983. The applicant claims December 16, 1983, as the date the new drug application (NDA) for ProSomTM (NDA 19-080) was filed. However, FDA records indicate that the NDA was received by FDA on December 19, 1983. Also, the applicant claims that the NDA number was NDA 19-680. However, FDA records indicate that the NDA number is NDA 19-080.

3. The date the applicant was approved: December 26, 1990. FDA has verified the applicant's claim that its NDA was approved on December 26, 1990. However, as previously noted, the applicant claimed that the NDA number was NDA 19-680, but FDA records indicate that the correct number is NDA 19-080.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 2 years of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before June 17, 1991, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before October 15, 1991, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review

period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d Sess., pp. 41-42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 11, 1991.

Stuart L. Nightingale,
Associate Commissioner for Health Affairs.
[FR Doc. 91-9093 Filed 4-17-91; 8:45 am]
BILLING CODE 4160-01-M

[Docket No. 91E-0061]

Determination of Regulatory Review Period for Purposes of Patent Extension; CutivateTM

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for CutivateTM and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Nancy E. Pirt, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory

review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have elapsed before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product CutivateTM. CutivateTM (fluticasone propionate) is indicated for the relief of the inflammatory and pruritic manifestations of corticosteroid-responsive dermatosis. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for CutivateTM (U.S. Patent No. 4,335,121) from Glaxo Group Ltd., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. FDA, in a letter dated March 14, 1991, advised the Patent and Trademark Office that the human drug product had undergone a regulatory review period and that the approval of CutivateTM represented the first commercial marketing of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the regulatory review period for CutivateTM is 1,593 days. Of this time, 1,178 days occurred during the testing phase of the regulatory review period, while 415 days occurred during the approval phase. These periods of time were derived from the following dates:

1. The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective: August 6, 1986. FDA has verified the applicant's claim that the date the investigational new drug application became effective was August 6, 1986.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act:* October 28, 1989. FDA has verified the applicant's claim that the new drug application (NDA) for Cutivate™ (NDA 19-957) was filed on October 28, 1989.

3. *The date the application was approved:* December 14, 1990. FDA has verified the applicant's claim that NDA 19-957 was approved on December 14, 1990.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,004 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before June 17, 1991, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before October 15, 1991, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d Sess., pp. 41-42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 11, 1991.

Stuart L. Nightingale,
Associate Commissioner for Health Affairs.
[FR Doc. 91-9094 Filed 4-17-91; 8:45 am]
BILLING CODE 4160-01-M

[Docket No. 91E-0068]

Determination of Regulatory Review Period for Purposes of Patent Extension; Floxin®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Floxin® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Nancy E. Pirt, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have elapsed before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Floxin®. Floxin® (ofloxacin) is a broad spectrum, synthetic antibacterial agent for oral administration. Subsequent to this

approval, the Patent and Trademark Office received a patent term restoration application for Floxin® (U.S. Patent No. 4,382,892) from Daiichi Seiyaku Co., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. FDA, in a letter dated March 14, 1991, advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of Floxin® represented the first commercial marketing of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the regulatory review period for Floxin® is 2,955 days. Of this time, 1,852 days occurred during the testing phase of the regulatory review period, while 1,103 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective:* November 27, 1982. FDA has verified the applicant's claim that the date the investigational new drug application became effective was November 27, 1982.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act:* December 22, 1987. FDA has verified the applicant's claim that the new drug application (NDA) (NDA 19-735) was filed on December 22, 1987.

3. *The date the application was approved:* December 28, 1990. FDA has verified the applicant's claim that NDA 19-735 was approved on December 28, 1990.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 2 years of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before June 17, 1991, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before October 15, 1991, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review

period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d Sess., pp. 41-42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 11, 1991.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 91-9095 Filed 4-17-91; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Medicare and Medicaid Programs; Meeting of the Advisory Council on Social Security

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Change in meeting date and location.

SUMMARY: In the Federal Register of April 10, 1991, at 56 FR 14529, we indicated that, under section 706 of the Social Security Act, a meeting of the Advisory Council on Social Security would be held on April 25, 26, and 27, 1991 at the Dupont Plaza Hotel. The purpose of this notice is to notify the public of a change in the location of the meeting and the cancellation of the third day of the meeting, April 27.

DATE: The meeting will be open to the public on April 25 and 26, 1991 from 9 a.m. to 6 p.m.

ADDRESS: Sheraton Crystal City, 1800 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Robert Lagoyda, Program Analyst, Advisory Council on Social Security, room 638 G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington DC 20201, 202-245-0217.

Dated: April 12, 1991.

Ann D. LaBelle,

Executive Director, Advisory Council on Social Security.

[FR Doc. 91-9241 Filed 4-17-91; 8:45 am]

BILLING CODE 4120-01-M

Health Resources and Services Administration

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory body scheduled to meet during the month of June 1991:

Name: Maternal and Child Health Research Grants Review Committee.

Date and Time: June 5-7, 1991, 9 a.m.

Place: The Maryland Room Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Open on June 5, 1991, 9 a.m.-10 a.m. Closed for remainder of meeting.

Purpose: To review research grant applications in the program area of maternal and child health administered by the Bureau of Maternal Child Health and Resources Development.

Agenda: The open portion of the meeting will cover opening remarks by the Director, Division of Systems, Education and Science, Maternal and Child Health Bureau, who will report on program issues, congressional activities and other topics of interest to the field of maternal and child health. The meeting will be closed to the public on June 5, at 10 a.m. for the remainder of the meeting for the review of grant applications. The closing is in accordance with the provisions set forth in section 552b(c)(6), title 5 U.S.C. Code, and the Determination by the Administrator, Health Resources and Services Administration, pursuant to Public Law 92-463.

Anyone requiring information regarding the subject Council should contact Contran Lamberty, Dr.Ph.H., Executive Secretary, Maternal and Child Health Research Grants Review Committee, room 9-12, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-2190.

Agenda items are subject to change as priorities dictate.

Dated: April 15, 1991.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 91-9161 Filed 4-17-91; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-91-3253]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for

review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Wendy Sherwin, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT:

David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708-0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: April 11, 1991.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Historically Black Colleges and Universities Program—FR-3003.

Office: Community Planning and Development.

Description of the Need for the Information and Its Proposed Use: Provide grants to Historically Black Colleges and Universities to help them

expand their role and effectiveness in addressing community development needs, including neighborhood

revitalization, housing and economic development in their localities.
Form Number: None.
Respondents: Nonprofit institutions.

Frequency of Submission:
 Recordkeeping, On Occasion, Monthly, and Annually.
Reporting Burden:

	Number of respond- ents	×	Fre- quency of re- sponse	Hours per response	= Burden hours
Application.....	100		1	40	4,000
Quarterly Report.....	15		3	7	315
Final Report.....	15		1	4	60
Recordkeeping.....	15		1	7	105

Total Estimated Burden Hours: 4,480.
Status: New.

Contact: James Turk, HUD, (202) 708-3176, Wendy Sherwin, OMB, (202) 395-6880.

Dated: April 11, 1991.

[FR Doc. 91-9127 Filed 4-17-91; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Service's Information Collection Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Service and OMB, Paperwork Reduction Project (1018-FWS004), Washington, DC 20503, telephone 202-395-7340.

Title: Cabin Permit Applications on National Wildlife Refuges in Alaska.
OMB Approval No. N/A.

Abstract: The National Wildlife Refuge Administration Act requires that economic privileges on any national wildlife refuge be authorized by permit only when the activity will not be incompatible with the purposes for which the refuge was established. In addition, the Alaska National Interest Lands Conservation Act of 1980 (ANILCA) allows the Secretary of the Interior to permit cabins on national wildlife refuges in Alaska, if the permit

applicant provides certain items of information. The required application items will be used to determine eligibility of an applicant; ensure that the applicant is aware of requirements upon termination of the permit; ensure that the applicant is aware that he/she has no legal interest in the real property on which the cabin is located; and provide the Service with names of immediate family members who may be eligible to renew a permit for continued use and occupancy upon the original claimant's death.

Service Form number(s): N/A.

Frequency: On occasion.

Description of Respondents:

Individuals and households.

Estimated Completion Time: The reporting burden is expected to average 90 minutes per response.

Annual Responses: 195.

Annual Burden Hours: 293.

Service Information Collection Clearance Officer: James E. Pinkerton, Mail Stop—224 Arlington Square, U.S. Fish and Wildlife Service, Washington, DC 20240; telephone 703/358-1943.

Dated: January 10, 1991.

David Olsen,

Assistant Director—Refuges and Wildlife.

[FR Doc. 91-9064 Filed 4-17-91; 8:45 am]

BILLING CODE 4310-55-M

Receipt of Application for Permit

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 et seq.), and the regulations governing marine mammals (50 CFR part 18).

PRT-757159

Applicant: U.S. Fish and Wildlife Service, Alaska Fish & Wildlife Research Center, 1011 East Tudor Road, Anchorage, Alaska 99503.

Type of Permit: Scientific Research

Name and number of Animals: sea otters (*Enhydra lutris*) 400

Summary of Activity to be Authorized: The applicant proposes to take (capture, blood and tissue sample, flipper tag, subcutaneously implant with a transponder chip and release) these animals for the purpose of analyzing genetic markers to quantify the amount of genetic differentiation among populations and subspecies. They propose to define the geographic scale on which sea otter populations may be identified as discrete units, and facilitate delineating sea otter populations with implications for development of zonal management plans. This study will not require the sedation of sea otters.

Source of Marine Mammals for Research: Waters around the Aleutian and Kodiak Archipelago, the Alaska and Kenai Peninsula, Prince William Sound, southeast Alaska and Washington.

Period of Activity: May 1991 through 1993.

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 432, 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 this application are available for review by any party who submits a written request for a copy of such documents to, or by appointment during normal business hours (7:45-4:15) in, 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 432, Arlington, Virginia 22203. Phone: (703/358-2104); FAX: (703/358-2281)

Dated: April 12, 1991.

Karen W. Rosa,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 91-9150 Filed 4-17-91; 8:45 am]

BILLING CODE 4310-50-M

Bureau of Land Management**[MT-921-08-4120-11; MTM 80081]****Musselshell and Yellowstone Counties; Montana; Exploration of Coal Deposits****AGENCY:** Bureau of Land Management, Montana State Office.**ACTION:** Notice of invitation; Coal Exploration License Application MTM 80081.

Members of the public are hereby invited to participate with Meridian Minerals Company in a program for the exploration of coal deposits owned by the United States of America in the following described lands located in Musselshell and Yellowstone Counties, Montana:

*T. 6 N., R. 26 E., P.M.M.*Sec. 12: Lots 1, 2, 3, 4, W $\frac{1}{2}$ E $\frac{1}{2}$, W $\frac{1}{2}$ (All)Sec. 24: Lots 1, 2, 3, 4, W $\frac{1}{2}$ E $\frac{1}{2}$, NW $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$ *T. 6 N., R. 27 E., P.M.M.*Sec. 2: Lots 1, 2, S $\frac{1}{2}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 4: Lots 1, 2, 3, 4, S $\frac{1}{2}$ N $\frac{1}{2}$, S $\frac{1}{2}$ (All)Sec. 6: Lots 1 to 7, incl., S $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ (All)

Sec. 8: All

Sec. 10: All

Sec. 14: All

Sec. 18: Lots 1, 2, 3, 4, E $\frac{1}{2}$, E $\frac{1}{2}$ W $\frac{1}{2}$ (All)

Sec. 20: All

Sec. 22: NW $\frac{1}{4}$, S $\frac{1}{2}$

Sec. 28: All

Sec. 30: Lots 1, 2, 3, 4, E $\frac{1}{2}$, E $\frac{1}{2}$ W $\frac{1}{2}$ (All)

Sec. 32: All

Sec. 34: All

*T. 7 N., R. 27 E., P.M.M.*Sec. 34: Lots 1, 2, 3, 4, N $\frac{1}{2}$, N $\frac{1}{2}$ S $\frac{1}{2}$ (All)

7,873.01 acres—Musselshell County

1,920.00 acres—Yellowstone County

Total acres: 9,593.01

Any party electing to participate in this exploration program shall notify, in writing, both the State Director, Bureau of Land Management, P.O. Box 36800, Billings, Montana 59107; and Meridian Minerals Company, 5613 DTC Parkway, Englewood, Colorado 80111. Such written notice must refer to serial number MTM 80081 and be received no later than 30 calendar days after publication of this Notice in the *Federal Register* or 10 calendar days after the last publication of this Notice in the *Roundup Record-Tribune & Winnett Times*, whichever is later. This Notice will be published once a week for 2 consecutive weeks.

The proposed exploration program is fully described and will be conducted pursuant to an exploration plan to be approved by the Bureau of Land Management. Copies of the exploration plan as submitted by Meridian Minerals Company is available for public

inspection at the Bureau of Land Management, Montana State Office, Granite Tower Building, 222 North 32nd Street, Billings, Montana during regular business hours (9 a.m. to 4 p.m.) Monday through Friday.

Dated: April 8, 1991.

T.P. Lonnie,*Acting State Director.*

[FR Doc. 91-0120 Filed 4-17-91; 8:45 am]

BILLING CODE 4310-DN-M**[CA-940-01-4111-15; CAS 021009B]****California: Proposed Reinstatement of Terminated Oil and Gas Lease**

Under the provisions of Public Law 97-451, a petition for reinstatement of oil and gas lease CAS 021009B for lands in Kern County, California, was timely filed and was accompanied by all required rentals and royalties accruing from December 1, 1987, the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rental at the rate of \$5.00 per acre and for royalty at the rate of not less than 16% making all the rates lower than that percentage in the royalty schedule in the lease 16% but leaving all the rates higher than that percentage the same as original specified in the royalty schedule. Payment of a \$500 administrative fee has been made.

Having met all the requirements for reinstatement of the lease as set out in section 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease effective December 1, 1987, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above, and the reimbursement for cost of publication of this notice.

Dated: April 8, 1991.

Fred O'Ferrall,*Chief, Leasable Minerals Section.*

[FR Doc. 91-0131 Filed 4-17-91; 8:45 am]

BILLING CODE 4310-84-M**[AK-070-01-4230-10; F-87222]****Mineral Exploration Permit****AGENCY:** Bureau of Land Management, Interior.**ACTION:** Notice of realty action.

SUMMARY: This notice of realty action involves a proposal for a temporary use permit to be issued to NANA Regional Corporation. The permit is intended to authorize mineral exploration.

DATES: Comments and an application must be received by June 3, 1991.

ADDRESSES: Comments and an application must be submitted to the Kobuk District Manager, 1150 University Avenue, Fairbanks, Alaska 99709-3844.

FOR FURTHER INFORMATION CONTACT: Betsy Bonnell (907) 474-2336.

SUPPLEMENTARY INFORMATION: The site examined and found suitable for permit under the provisions of Section 302 of the Federal Land Policy and Management Act of 1976, and 43 CFR part 2920, as described as within: T. 7 N., R. 17 W., Kateel River Meridian.

The comments and application must include a reference to this notice. Annual rental is estimated to be less than \$250 per year.

Dated: April 8, 1991.

Helen H. Hankins,*Kobuk District Manager.*

[FR Doc. 91-0128 Filed 4-17-91; 8:45 am]

BILLING CODE 4310-JA-M**[WY-030-01-4212-11; WYW-122472]****Realty Action; Lease and Sale for Recreation and Public Purposes; Wyoming****AGENCY:** Bureau of Land Management, Interior.

ACTION: Notice of realty action; recreation and public purposes classification and application for lease and sale in Albany County.

SUMMARY: The following public lands in Albany County, Wyoming have been examined and found suitable for classification for and/or lease conveyance to the University of Wyoming, Department of Physics and Astronomy under provisions of the Recreation and Public Purposes Act, as amended, 43 U.S.C. 869 et seq.

6th Principal Meridian

T. 13 N., R. 77 W.,

Section 13: Lots 1, 2, 3, NE $\frac{1}{4}$ NE $\frac{1}{4}$,NW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$.

The above land consists of approximately 240 acres more or less.

FOR FURTHER INFORMATION CONTACT: Marilyn Nickerson, Realty Specialist, Great Divide Resource Area, Bureau of Land Management, 812 E. Murray St./P.O. Box 670, Rawlins, Wyoming 82301, 307-324-4841.

SUPPLEMENTARY INFORMATION: The purpose of the classification and application for lease and sale of these lands is for the University of Wyoming, Department of Physics and Astronomy

to construct, operate and maintain a visitor center, helipad, hiking trail, picnic/camping spots and future additional telescope sites for public recreation and education. The developments will include a gate to restrict unscheduled vehicle access from the visitor center to the observatory summit (¼ mile) to reduce vehicle-raised dust which is contaminating the very expensive telescope optics. A sign at the gate will describe procedures for tours. The existing road and the hiking trail will allow unimpeded foot travel to the summit; safety zones will be established around existing and proposed facilities restricting firearm use to protect life and property.

The lease and eventual sale will contain reservations to the United States for ditches, canals; and will be subject to all existing reservations and prior rights. The proposed lease and sale is consistent with the Great Divide Resource Management Plan. The land is not needed for Federal purposes.

Upon publication of this notice in the *Federal Register*, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act.

For a period of 45 days from the date of publication of this notice, interested persons may submit comments regarding the proposed lease/conveyance or classification of the lands to the District Manager, Rawlins District Office, P.O. Box 670, Rawlins, WY 82301. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice.

Date Signed: April 12, 1991.

Asghar Shariff,

Acting District Manager.

[FR Doc. 91-0152 Filed 4-17-91; 8:45 am]

BILLING CODE 4310-22-M

Minerals Management Service

Pacific Regional Technical Working Group Committee

AGENCY: Minerals Management Service, Interior.

ACTION: National Outer Continental Shelf Advisory Board, Pacific Regional Technical Working Group Committee; notice and agenda for meeting.

This notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Public Law 92-463.

The Pacific Regional Technical Working Group (RTWG) Committee of the National Outer Continental Shelf (OCS) Advisory Board is scheduled to meet May 29, 1991 from 8 a.m. to 3:30 p.m., at Fess Parker's Red Lion Resort, 633 East Cabrillo Boulevard, Santa Barbara, California 93103.

The tentative agenda for the meeting covers the following topics:

Draft Proposed Comprehensive Natural Gas and Oil Program for 1992-1997
Overview and Discussion of the Role of the RTWG
Hard Bottom Subcommittee Report and Actions on Recommendations
Implementation of Memorandum of Understanding with the Environmental Protection Agency on National Pollution Discharge Elimination System Permits
MMS Statutory Authority to Assess Penalties
Reports/Updates from RTWG Members
Public Comment Period

The purpose of the RTWG is to provide the Director of the MMS with advice on technical matters of regional concern regarding OCS activities.

The meeting is open to the public and time has been set aside for public comment; however, this is primarily a technical meeting and does not address issues dealing with MMS policy. Interested persons may make oral or written presentations to the committee.

Such requests should be made by May 21, 1991 to: External Affairs Coordinator, Pacific OCS Region, Minerals Management Service, 770 Paseo Camarillo, Camarillo, California 93010, (805) 389-7502.

Requests to make oral statements should be accompanied by a summary of the statement to be made.

Minutes of the meeting will be available for public inspection and copying at the following location: Pacific OCS Region, Minerals Management Service, 770 Paseo Camarillo, Camarillo, California 93010.

Dated: April 12, 1991.

J. Lisle Reed,

Regional Director, Pacific OCS Region.

[FR Doc. 91-9077 Filed 4-17-91; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Denali National Park and Preserve, Alaska

AGENCY: National Park Service, Interior.

ACTION: Prepare an Environmental Impact Statement in conjunction with the South Slope Development Concept Plan for Denali National Park and Preserve.

SUMMARY: In accordance with section 102(2)(c) of the National Environmental Policy Act of 1969, Public Law 91-190, the National Park Service, Denali National Park and Preserve, is preparing an environmental impact statement in conjunction with the south slope development concept plan. The purpose of the environmental impact statement is to evaluate the impact of expanded visitor activities and facilities on the south slope of the Alaska Range. A range of alternatives will be formulated in order to evaluate: (1) Providing visitor access to and within the park/preserve; and (2) providing visitor information and services.

Persons wishing to provide initial scoping comments on the plan and environmental impact statement should address such comments to the Superintendent, Denali National Park and Preserve, P.O. Box 9, Denali Park, Alaska 99755-0009. Comments should be received no later than 60 days from the publication date of this notice.

FOR FURTHER INFORMATION CONTACT:

Russ Berry, Superintendent, Denali National Park and Preserve, P.O. Box 9, Denali Park, Alaska 99755-0009. Phone (907) 683-2294.

SUPPLEMENTARY INFORMATION: The responsible official is Regional Director, Alaska Region, National Park Service. The draft plan and environmental statement are expected to be completed and available for public review by Winter, 1991-92. The final plan, environmental statement, and Record of Decision are expected to be completed approximately one year later.

Paul F. Haertel,

Acting Regional Director, Alaska Region.

[FR Doc. 91-9062 Filed 4-17-91; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-308 (Sub-No. 1)]

Central Michigan Railway Company—Abandonment—East of Ionia to West of Owosso—In Michigan; Findings

The Commission has found that the public convenience and necessity permit Central Michigan Railway Company to abandon its 41.3-mile line of railroad between milepost 80.7 west of Owosso and milepost 122.0 east of Ionia in Ionia, Clinton, and Shiawassee Counties, MI.

A certificate will be issued authorizing abandonment unless within 15 days after this publication the Commission also finds that: (1) A financially responsible person has

offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and served on the applicant no later than 10 days from publication of the notice. The following notation must be typed in bold face on the lower left-hand corner of the envelope: "Rail Section, AB-OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

Michigan Department of Natural Resources (DNR) seeks to acquire the right of way for trail use/rail banking. Applicant must notify the Commission and DNR within 10 days from publication of this Notice whether or not it is willing to negotiate a trails use agreement. Trail use procedures are contained in 16 U.S.C. 1247(d) and 49 CFR 1152.29.

Decided: April 10, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald. Commissioner McDonald, joined by Commissioner Simmons, dissented with a separate expression.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-0137 Filed 4-17-91; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging a Final Judgment by Consent Pursuant to the Clean Air Act

Notice is hereby given that on April 8, 1991 a proposed consent decree in *United States v. A.B. Hirschfeld, Press, Inc.* was lodged with the United States District Court for the District of Colorado. The decree pertains to alleged violations of the Clean Air Act ("Act") by A.B. Hirschfeld Press, Inc. ("Hirschfeld") in Denver, Colorado, for failure to respond in a timely manner to information requests issued under section 114 of the Act, 42 U.S.C. 7414, and for failure to timely comply with a Compliance Order regarding the information requests, issued under section 113(a) of the Act, 42 U.S.C. 7413(a).

The proposed consent decree requires Hirschfeld to pay the United States \$5,500.00 in civil penalties.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty

days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC, 20530, and should refer to *United States v. A.B. Hirschfeld Press, Inc.*, (D. Co.) and DOJ Ref. No. 90-5-2-1-1508. The proposed consent decree may be examined at the office of the United States Attorney, District of Colorado, 1961 Stout Street, suite 1200, Denver, Colorado, or at the office of the Environmental Protection Agency, region VIII, 999 18th Street, Denver, Colorado. A copy of the proposed consent decree may also be examined at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building, NW., Washington, DC 20004 (202-347-2072). A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004. In requesting a copy please enclose a check in the amount of \$1.75 (25 cents per page reproduction costs) payable to "Consent Decree Library".

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91-9098 Filed 4-17-91; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree; Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with section 122(d)(2)(B) of the Comprehensive Environmental Response, Compensation and Liability Act and with the Department of Justice policy, 28 CFR 50.7, notice is hereby given that on March 13, 1991, a proposed Consent Decree in *United States v. Allworth, Inc., et al.* Civil Action No. 91-30070/RV was lodged with the United States District Court for the Northern District of Florida. The proposed Consent Decree concerns the clean-up of the Dubose Oil Products Site (the "Site") located two miles west of Cantonment in Escambia County, Florida. The proposed Consent Decree requires the Defendants to perform all of the remedial work necessary to protect public health, welfare and the environment, and to reimburse the United States for all costs incurred or to be incurred. Under the Consent Decree, the defendants are required, at their own expense, to design, implement and complete all work in accordance with the Record of Decision (ROD). In the

event the defendants fail to perform the remedy in accordance with the ROD, Statement of Work and Consent Decree, the United States reserves the right to undertake, pursuant to CERCLA, removal and/or remedial actions and to recover all costs of those actions. The Consent Decree also provides for graduated stipulated penalties for the defendants' failure to comply with the terms of the Consent Decree. Depending on the classification and duration of the violation, the penalties range from \$500 to \$10,000 per day. Site. The major components of the selected remedy include: (1) Excavation of the contaminated soils, (2) bioremediation of contaminated soils, (3) installation of surface water runoff control, (4) groundwater monitoring, and (5) deed restrictions to preclude inappropriate use in the future.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Allworth, Inc., et al.*, D.J. Ref. 90-11-2-565.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Northern District of Florida, 114 East Gregory Street, Pensacola, Florida 32501-4916, and at the region IV, Office of the Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365. The proposed Consent Decree may be examined at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building, NW., Washington, DC 20004 (202-347-2072). A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004. In requesting a copy, please enclose a check in the amount of \$20.75 (25 cents per page reproduction cost) payable to the Treasurer of the United States.

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91-9099 Filed 4-17-91; 8:45 am]

BILLING CODE 4410-01-M

Consent Judgment in Action to Enjoin Violations of the Clean Air Act ("CAA")

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice

is hereby given that in *United States v. Hussmann Corp.*, (E.D. Mo.), Civil Action No. 89-1174C(1) an Order was entered and a Consent Decree was lodged with the United States District Court for the Eastern District of Missouri on April 10, 1991. The Order provides for penalties and a procedure for either a revision of the Missouri State Implementation Plan or through a plant process change. The Consent Decree requires Hussmann Corp. to comply with the federally enforceable site specific Missouri State Implementation Plan ("SIP") for its Bridgeton facility.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530 and should refer to *United States v. Hussmann Corporation*, DOJ Ref. No. 90-5-2-1-1255.

The proposed Consent Decree and the Order may be examined at the Offices of the United States Attorney, Eastern District of Missouri, 1114 Market Street, St. Louis, Missouri; at the Region VII Office of the Environmental Protection Agency ("EPA"), 726 Minnesota Avenue, Kansas City, Kansas; and the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building, NW., Washington, DC 20004. A copy of the proposed Consent Decree and the Order may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004. In requesting a copy of the Decree and Order, please enclose a check for copying costs in the amount of \$12.25 payable to Consent Decree Library.

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91-0100 Filed 4-17-91; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 91-22; Exemption Application No. D-8454, et al.]

Grant of Individual Exemptions; UBS Securities, Inc. (UBS), et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the *Federal Register* of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

- (a) The exemptions are administratively feasible;
- (b) They are in the interests of the plans and their participants and beneficiaries; and
- (c) They are protective of the rights of the participants and beneficiaries of the plans.

UBS Securities Inc. (UBS)
Located in New York, New York
[Prohibited Transaction Exemption 91-22;
Application No. D-8454]

Exemption

I. Transactions

A. Effective July 12, 1990, the restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to the following transactions involving trusts and certificates evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and an employee benefit plan (plan) when the sponsor, servicer, trustee or insurer of a trust, the underwriter of the certificates representing an interest in the trust, or an obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.A. (1) or (2). Notwithstanding the foregoing, section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 for the acquisition or holding of a certificate on behalf of an Excluded Plan by any person who has discretionary authority or renders investment advice with respect to the assets of that Excluded Plan.¹

B. Effective July 12, 1990, the restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(E) of the Code shall not apply to:

(1) The direct or indirect sale, exchange or transfer to certificates in the initial issuance of certificates between the sponsor or underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the certificates is (a) an obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the trust, or (b) an affiliate of a person described in (a); if:

- (i) The plan is not an Excluded Plan;
- (ii) Solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at

¹ Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) and regulation 29 CFR 2510.3-21(c).

least 50 percent of each class of certificates in which plans have invested is acquired by persons independent of the members of the Restricted Group and at least 50 percent of the aggregate interest in the trust is acquired by persons independent of the Restricted Group;

(iii) A plan's investment in each class of certificates does not exceed 25 percent of all of the certificates of that class outstanding at the time of the acquisition; and

(iv) Immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in certificates representing an interest in a trust containing assets sold or serviced by the same entity.² For purposes of this paragraph B.(1)(iv) only, an entity will not be considered to service assets contained in a trust if it is merely a subservicer of that trust;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates, provided that the conditions set forth in paragraphs B.(1)(i), (iii) and (iv) are met; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.B.(1) or (2).

C. Effective July 12, 1990, the restrictions of sections 406(a), 406(b) and 407(a) of that Act, and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a trust; provided:

(1) Such transactions are carried out in accordance with the terms of a binding pooling and servicing arrangement; and

(2) The pooling and servicing agreement is provided to, or described in all material respects in the prospectus or private placement memorandum provided to, investing plans before they purchase certificates issued by the trust.³

² For purposes of this exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

³ In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. In the

Notwithstanding the foregoing, section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act or from the taxes imposed by reason of section 4975(c) of the Code for the receipt of a fee by a servicer of the trust from a person other than the trustee or sponsor, unless such fee constitutes a "qualified administrative fee" as defined in section III.S.

D. Effective July 12, 1990, the restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by sections 4975 (a) and (b) of the Code by reason of sections 4975(c)(1) (A) through (D) of the Code, shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14) (F), (G), (H) or (I) of the Act or section 4975(e)(2)(F), (G), (H) or (I) of the Code), solely because of the plan's ownership of certificates.

II. General Conditions

A. The relief provided under part I is available only if the following conditions are met:

(1) The acquisition of certificates by a plan is on terms (including the certificate price) that are at least as favorable to the plan as they would be in an arm's-length transaction with an unrelated party;

(2) The rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust;

(3) The certificates acquired by the plan have received a rating at the time of such acquisition that is in one of the three highest generic rating categories from either Standard & Poor's Corporation (S&P's), Moody's Investors Service, Inc. (Moody's), Duff & Phelps Inc. (D & P) or Fitch Investors Service, Inc. (Fitch);

(4) The trustee is not an affiliate of any member of the Restricted Group. However, the trustee shall not be considered to be an affiliate of a servicer solely because the trustee has succeeded to the rights and responsibilities of the servicer pursuant to the terms of a pooling and servicing agreement providing for such succession upon the occurrence of one or more events of default by the servicer;

Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions.

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the sum of all payments made to and retained by the sponsor pursuant to the assignment of obligations (or interests therein) to the trust represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by the servicer represents not more than reasonable compensation for the servicer's services under the pooling and servicing agreement and reimbursement of the servicer's reasonable expenses in connection therewith; and

(6) The plan investing in such certificates is an "accredited investor" as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission under the Securities Act of 1933.

B. Neither any underwriter, sponsor, trustee, servicer, insurer, or any obligor, unless it or any of its affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire certificates, shall be denied the relief provided under part I, if the provision of subsection II.A.(6) above is not satisfied with respect to acquisition or holding by a plan of such certificates, provided that (1) such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of certificates, the trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in subsection II.A.(6) above.

III. Definitions

For purposes of this exemption:

A. "Certificate" means:

(1) A certificate

(a) That represents a beneficial ownership interest in the assets of a trust; and

(b) That entitles the holder to pass-through payments of principal, interest, and/or other payments made with respect to the assets of such trust; or

(2) A certificate denominated as a debt instrument—

(a) That represents an interest in a Real Estate Mortgage Investment Conduit (REMIC) within the meaning of section 860D(a) of the Internal Revenue Code of 1986; and

(b) That is issued by an issuer and obligor of a trust; with respect to certificates defined in (1) and (2) for which UBS or any of its affiliates is either (i) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent. For purposes of this exemption, references to "certificates representing an interest in a trust" include certificates denominated as debt which are issued by a trust.

B. "Trust" means an investment pool, the corpus of which is held in trust and consists solely of:

(1) Either

(a) Secured consumer receivables that bear interest or are purchased at a discount (including, but not limited to, home equity loans and obligations secured by shares issued by a cooperative housing association);

(b) Secured credit instruments that bear interest or are purchased at a discount in transactions by or between business entities (including, but not limited to, qualified equipment notes secured by leases, as defined in section III.T);

(c) Obligations that bear interest or are purchased at a discount and which are secured by single-family residential, multi-family residential and commercial real property, (including obligations secured by leasehold interests on commercial real property);

(d) Obligations that bear interest or are purchased at a discount and which are secured by motor vehicles or equipment, or qualified motor vehicle leases (as defined in section III.U);

(e) Guaranteed governmental mortgage pool certificates, as defined in 29 CFR 2510.3-101(i)(2);

(f) Fractional undivided interests in any of the obligations described in clauses (a)-(e) of this section B.(1);

(2) Property which has secured any of the obligations described in subsection B.(1);

(3) Undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are made to certificateholders; and

(4) Rights of the trustee under the pooling and servicing agreement, and rights under any insurance policies, third-party guarantees, contracts of suretyship and other credit support

arrangements with respect to any obligations described in subsection B.(1).

Notwithstanding the foregoing, the term "trust" does not include any investment pool unless: (i) The investment pool consists only of assets of the type which have been included in other investment pools, (ii) certificates evidencing interests in such other investment pools have been rated in one of the three highest generic rating categories by S&P's, Moody's, D&P, or Fitch for at least one year prior to the plan's acquisition of certificates pursuant to this exemption, and (iii) certificates evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this exemption.

C. "Underwriter" means:

(1) UBS;

(2) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with UBS; or

(3) Any member of an underwriting syndicate or selling group of which UBS or a person described in (2) is a manager or co-manager with respect to the certificates.

D. "Sponsor" means the entity that organizes a trust by depositing obligations therein in exchange for certificates.

E. "Master Servicer" means the entity that is a party to the pooling and servicing agreement relating to trust assets and is fully responsible for servicing, directly or through subservicers, the assets of the trust.

F. "Subservicer" means an entity which, under the supervision of and on behalf of the master servicer, services loans contained in the trust, but is not a party to the pooling and servicing agreement.

G. "Servicer" means any entity which services loans contained in the trust, including the master servicer and any subservicer.

H. "Trustee" means the trustee of the trust, and in the case of certificates which are denominated as debt instruments, also means the trustee of the indenture trust.

I. "Insurer" means the insurer or guarantor of, or provider of other credit support for, a trust.

Notwithstanding the foregoing, a person is not an insurer solely because it holds securities representing an interest in a trust which are of a class subordinated to certificates representing an interest in the same trust.

J. "Obligor" means any person, other than the insurer, that is obligated to make payments with respect to any obligation or receivable included in the trust. Where a trust contains qualified motor vehicle leases or qualified equipment notes secured by leases, "obligor" shall also include any owner of property subject to any lease included in the trust, or subject to any lease securing an obligation included in the trust.

K. "Excluded Plan" means any plan with respect to which any member of the Restricted Group is a "plan sponsor" within the meaning of section 3(16)(B) of the Act.

L. "Restricted Group" with respect to a class of certificates means:

- (1) each underwriter;
- (2) each insurer;
- (3) the sponsor;
- (4) the trustee;
- (5) each servicer;
- (6) any obligor with respect to

obligations or receivables included in the trust constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the trust, determined on the date of the initial issuance of certificates by the trust; or

(7) any affiliate of a person described in (1)-(6) above.

M. "Affiliate" of another person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

N. "Control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

O. A person will be "independent" of another person only if:

(1) Such person is not an affiliate of that other person; and

(2) The other person, or an affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

P. "Sale" includes the entrance into a forward delivery commitment (as defined in section Q below), provided:

(1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an

arm's length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the forward delivery commitment; and

(3) At the time of the delivery, all conditions of this exemption applicable to sales are met.

Q. "Forward delivery commitment" means a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificate from, the other party).

R. "Reasonable compensation" has the same meaning as that term is defined in 29 CFR 2550.408c-2.

S. "Qualified Administrative Fee" means a fee which meets the following criteria:

(1) The fee is triggered by an act or failure to act by the obligor other than the normal timely payment of amounts owing in respect of the obligations;

(2) The servicer may not charge the fee absent the act or failure to act referred to in (1);

(3) The ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the pooling and servicing agreement; and

(4) the amount paid to investors in the trust will not be reduced by the amount of any such fee waived by the servicer.

T. "Qualified Equipment Note Secured By A Lease" means an equipment note:

(a) Which is secured by equipment which is leased;

(b) Which is secured by the obligation of the lessee to pay rent under the equipment lease; and

(c) With respect to which the trust's security interest in the equipment is at least as protective of the rights of the trust as the trust would have if the equipment note were secured only by the equipment and not the lease.

U. "Qualified Motor Vehicle Lease" means a lease of a motor vehicle where:

(a) The trust holds a security interest in the lease;

(b) The trust holds a security interest in the leased motor vehicle; and

(c) The trust's security interest in the leased motor vehicle is at least as protective of the trust's rights as the trust would receive under a motor vehicle installment loan contract.

V. "Pooling and Servicing Agreement" means the agreement or agreements

among a sponsor, a servicer and the trustee establishing a trust. In the case of certificates which are denominated as debt instruments, "Pooling and Servicing Agreement" also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

Effective Date: This exemption will be effective for transactions occurring on or after July 12, 1990.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on January 29, 1991, at 56 FR 3277.

FOR FURTHER INFORMATION CONTACT: Paul Kelly of the Department, telephone (202) 523-8883. (This is not a toll-free number).

Smith Barney, Harris Upham and Company

Incorporated (Smith Barney)

Located in New York, NY

[Prohibited Transaction Exemption 91-23;

Exemption Application No. D-8608]

Exemption

I. Transactions

A. Effective November 1, 1985, the restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to the following transactions involving trusts and certificates evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and an employee benefit plan when the sponsor, servicer, trustee or insurer of a trust, the underwriter of the certificates representing an interest in the trust, or an obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition of disposition of certificates by a plan in the secondary market for such certificates; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.A. (1) or (2).

Notwithstanding the foregoing, section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 of the Act for the acquisition or holding of a certificate on behalf of an Excluded Plan by any person who has discretionary authority or renders investment advice with

respect to the assets of that Excluded Plan.⁴

B. Effective November 1, 1985, the restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1)(E) of the Code shall not apply to:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the certificates is (a) an obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the trust, or (b) an affiliate of a person described in (a); if:

(i) The plan is not an Excluded Plan;

(ii) Solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates in which plans have invested is acquired by persons independent of the members of the Restricted Group and at least 50 percent of the aggregate interest in the trust is acquired by persons independent of the Restricted Group.

(iii) A plan's investment in each class of certificates does not exceed 25 percent of all of the certificates of that class outstanding at the time of the acquisition; and

(iv) Immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in certificates representing an interest in a trust containing assets sold or serviced by the same entity.⁵ For purposes of this paragraph B.(1)(iv) only, an entity will not be considered to service assets contained in a trust if it is merely a subservicer of that trust;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such

⁴ Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) and regulation 29 CFR 2510.3-21(c).

⁵ For purposes of this exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

certificates, provided that the conditions set forth in paragraphs B.(1) (i), (iii) and (iv) are met; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.B. (1) or (2).

C. Effective November 1, 1985, the restrictions of sections 406(a), 406(b) and 407(a) of the Act, and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a trust; provided:

(1) Such transactions are carried out in accordance with the terms of a binding pooling and servicing arrangement; and

(2) The pooling and servicing agreement is provided to, or described in all material respects in the prospectus or private placement memorandum provided to, investment plans before they purchase certificates issued by the trust.⁶

Notwithstanding the foregoing, section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act or from the taxes imposed by reason of section 4975(c) of the Code for the receipt of a fee by a servicer of the trust from a person other than the trustee or sponsor, unless such fee constitutes a "qualified administrative fee" as defined in section III.S.

D. Effective November 1, 1985, the restrictions of section 406(a) and 407(a) of the Act, and the taxes imposed by sections 4975 (a) and (b) of the Code by reason of sections 4975(c)(1) (A) through (D) of the Code, shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14)(F), (G), (H) or (I) of the Act or section 4975(e)(2) (F), (G), (H) or (I) of the Code), solely because of the plan's ownership of certificates.

II. General Conditions

A. The relief provided under part I is available only if the following conditions are met:

⁶ In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions.

(1) The acquisition of certificates by a plan is on terms (including the certificate price), that are at least as favorable to the plan as they would be in an arm's length transaction with an unrelated party;

(2) The rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust;

(3) The certificates acquired by the plan have received a rating at the time of such acquisition that is in one of the three highest generic rating categories from either Standard & Poor's Corporation (S&P's), Moody's Investors Service, Inc. (Moody's), Duff & Phelps Inc. (D&P) or Fitch Investors Service, Inc. (Fitch);

(4) The trustee is not an affiliate of any member of the Restricted Group. However, the trustee shall not be considered to be an affiliate of a servicer solely because the trustee has succeeded to the rights and responsibilities of the servicer pursuant to the terms of a pooling and servicing agreement providing for such succession upon the occurrence of one or more events of default by the servicer;

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the sum of all payments made to and retained by the sponsor pursuant to the assignment of obligations (or interests therein) to the trust represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by the servicer represents not more than reasonable compensation for the servicer's under the pooling and servicing agreement and reimbursement of the servicer's reasonable expenses in connection therewith; and

(6) The plan investing in such certificates is an "accredited investor" as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission under the Securities Act of 1933.

B. Neither any underwriter, sponsor, trustee, servicer, insurer, or any obligor, unless it or any of its affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire certificates, shall be denied the relief provided under part I, if the provision of subsection II.A.(6) above is not satisfied with respect to acquisition or holding by a plan of such certificates, provided that (1) such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a

private placement of certificates, the trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in subsection II.A.(6) above.

III. Definitions

For purposes of this exemption:

A. "Certificate" means:

(1) A certificate—

(a) That represents a beneficial ownership interest in the assets of a trust; and

(b) That entitles the holder to pass-through payments of principal, interest, and/or other payments made with respect to the assets of such trust; or

(2) A certificate denominated as a debt instrument—

(a) That represents an interest in a Real Estate Mortgage Investment Conduit (REMIC) within the meaning of section 860D(a) of the Internal Revenue Code of 1986; and

(b) That is issued by an is an obligation of a trust;

with respect to certificates defined in (1) and (2) for which Smith Barney or any of its affiliates is either (i) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent.

For purposes of this exemption, references to "certificates representing an interest in a trust" include certificates denominated as debt which are issued by a trust.

B. "Trust" means an investment pool, the corpus of which is held in trust and consists solely of:

(1) Either

(a) Secured consumer receivables that bear interest or are purchased at a discount (including, but not limited to, home equity loans and obligations secured by shares issued by a cooperative housing association);

(b) Secured credit instruments that bear interest or are purchased at a discount in transactions by or between business entities (including, but not limited to, qualified equipment notes secured by leases, as defined in section III.T);

(c) Obligations that bearing interest or are purchased at a discount and which

are secured by single-family residential, multi-family residential and commercial real property (including obligations secured by leasehold interests on commercial real property);

(d) Obligations that bear interest or are purchased at a discount and which are secured by motor vehicles or equipment, or qualified motor vehicle leases (as defined in section III.U);

(e) "Guaranteed governmental Mortgage pool certificates," as defined in 29 CFR 2510.3-101(i)(2);

(f) Fractional undivided interests in any of the obligations described in clauses (a)-(e) of this section B.(1);

(2) Property which had secured any of the obligations described in subsection B.(1);

(3) Undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are to be made to certificateholders; and

(4) Rights of the trustee under the pooling and servicing agreement, and rights under any insurance policies, third-party guarantees, contracts of suretyship and other credit support arrangements with respect to any obligations described in subsection B.(1).

Notwithstanding the foregoing, the term "trust" does not include any investment pool unless: (i) The investment pool consists only of assets of the type which have been included in other investment pools, (ii) certificates evidencing interests in such other investment pools have been rated in one of the three highest generic rating categories by S&P's, Moody's, D&P, or Fitch for at least one year prior to the plan's acquisition of certificates pursuant to this exemption, and (iii) certificates evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this exemption.

C. "Underwriter" means:

(1) Smith Barney;

(2) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with Smith Barney; or

(3) Any member of an underwriting syndicate or selling group of which Smith Barney or a person described in (2) is a manager or co-manager with respect to the certificates.

D. "Sponsor" means the entity that organizes a trust by depositing obligations therein in exchange for certificates.

E. "Master Servicer" means the entity that is a party to the pooling and servicing agreement relating to trust

assets and is fully responsible for servicing, directly or through subservicers, the assets of the trust.

F. "Subservicer" means an entity which, under the supervision of and on behalf of the master servicer, services loans contained in the trust, but is not a party to the pooling and servicing agreement.

G. "Servicer" means any entity which services loans contained in the trust, including the master servicer and any sub-servicer.

H. "Trustee" means the trustee of the trust, and in the case of certificates which are denominated as debt instruments, also means the trustee of the indenture trust.

I. "Insurer" means the insurer or guarantor of, or provider of other credit support for, a trust. Notwithstanding the foregoing, a person is not an insurer solely because it holds securities representing an interest in a trust which are of a class subordinated to certificates representing an interest in the same trust.

J. "Obligor" means any person, other than the insurer, that is obligated to make payments with respect to any obligation or receivable included in the trust. Where a trust contains qualified motor vehicle leases or qualified equipment notes secured by leases, "obligor" shall also include any owner of property subject to any lease included in the trust, or subject to any lease securing an obligation included in the trust.

K. "Excluded Plan" means any plan with respect to which any member of the Restricted Group is a "plan sponsor" within the meaning of section 3(16)(B) of the Act.

L. "Restricted Group" with respect to a class of certificates means:

(1) each underwriter;

(2) each insurer;

(3) the sponsor;

(4) the trustee;

(5) each servicer;

(6) any obligor with respect to obligations or receivables included in the trust constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the trust, determined on the date of the initial issuance of certificates by the trust; or

(7) any affiliate of a person described in (1)-(6) above.

M. "Affiliate" of another person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section

3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

N. "Control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

O. A person will be "independent" of another person only if:

(1) Such person is not an affiliate of that other person; and

(2) The other person, or an affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

P. "Sale" includes the entrance into a forward delivery commitment (as defined in section Q below), provided:

(1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the forward delivery commitment; and

(3) At the time of delivery, all conditions of this exemption applicable to sales are met.

Q. "Forward delivery commitment" means a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificate from, the other party).

R. "Reasonable compensation" has the same meaning as that term is defined in 29 CFR 2550.408c-2.

S. "Qualified Administrative Fee" means a fee which meets the following criteria:

(1) The fee is triggered by an act or failure to act by the obligor other than the normal timely payment of amounts owing in respect of the obligations;

(2) The servicer may not charge the fee absent the act or failure to act referred to in (1);

(3) The ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the pooling and servicing agreement; and

(4) The amount paid to investors in the trust will not be reduced by the

amount of any such fee waived by the servicer.

T. "Qualified Equipment Note Secured By A Lease" means an equipment note:

(a) Which is secured by equipment which is leased;

(b) Which is secured by the obligation of the lessee to pay rent under the equipment lease; and

(c) With respect to which the trust's security interest in the equipment is at least as protective of the rights of the trust as the trust would have if the equipment note were secured only by the equipment and not the lease.

U. "Qualified Motor Vehicle Lease" means a lease of a motor vehicle where:

(a) The trust holds a security interest in the lease;

(b) The trust holds a security interest in the leased motor vehicle; and

(c) The trust's security interest in the leased motor vehicle is at least as protective of the trust's rights as the trust would receive under a motor vehicle installment loan contract.

V. "Pooling and Servicing Agreement" means the agreement or agreements among a sponsor, a servicer and the trustee establishing a trust. In the case of certificates which are denominated as debt instruments, "Pooling and Servicing Agreement" also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on February 22, 1991 at 56 FR 7408.

Written Comments: The Department received one written comment to the notice of proposed exemption and no requests for a public hearing. The written comment, which was submitted by Smith Barney, requests a modification to the Summary of Facts and Representations. In particular, Smith Barney suggests that on page 7409, the second paragraph of item 10 should be amended to read as follows:

"In some cases, the originator and servicer of receivables to be included in a trust and the sponsor of the trust (though they themselves may be related) will be unrelated to Smith Barney. In other cases, however, affiliates of Smith Barney may originate or service receivables included in a trust, or may sponsor a trust."

Smith Barney represents that the substitute language is necessary to describe the receivables that may be included in a trust and it reflects the fact that Smith Barney has affiliates whose business consists of the origination or

servicing of receivables of the type described in the exemption. Moreover, Smith Barney explains that the substitute language is substantially similar to language which has been submitted in Prohibited Transaction Exemption 90-88, 55 FR 45683, 45688 (October 30, 1990), an exemption involving Citicorp.

Thus, after consideration of the entire record, including the comment submitted by Smith Barney, the Department has determined to grant the exemption.

Effective Date: This exemption is effective for transactions occurring on or after November 1, 1985.

FOR FURTHER INFORMATION CONTACT: Ms. Jan. D. Broady of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 12th day of April, 1991.

Ivan Strasfeld,

Director of Exemption Determinations,
Pension and Welfare Benefits Administration,
U.S. Department of Labor.

[FR Doc. 91-9043 Filed 4-17-91; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-7755, et al.]

Proposed Exemptions; Department of Veterans Affairs, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the notice of proposed exemption, within 45 days from the date of publication of this **Federal Register** notice. Comments and request for a hearing should state: (1) the name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESS: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, room N-5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each notice of proposed exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of

Labor, room N-5507, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the *Federal Register*. Such notice shall include a copy of the notice of proposed exemption as published in the *Federal Register* and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Department of Veterans Affairs

[Proposed Exemption; Exemption Application Number D-7755]

Proposed Exemption

I. Transactions—Retroactive Relief

A. Effective for trusts closed on or after June 29, 1988 and on or before (date of grant of this exemption), the restrictions of sections 406(a) and 407 of the Employee Retirement Income Security Act of 1974 (the Act) and the taxes imposed by section 4975 (a) and (b) of the Internal Revenue Code of 1986 (the Code) by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to the following transactions involving trusts and certificates evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and an employee benefit plan (plan) when the sponsor, servicer, trustee or insurer of a trust, or the underwriter of the certificates representing an interest in

the trust, is a party in interest with respect to such plan, provided that the plan pays no more than fair market value for such certificates, and provided further that the rights and interests evidenced by such certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates; and

(3) The continued holding of certificates acquired pursuant to subparagraph (1) or (2) above, by an employee benefit plan.

B. Effective for trusts closed on or after June 29, 1988 and on or before (date of grant of this exemption), the restrictions of sections 406(b) (1) and (2) and 407 of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1)(E) of the Code shall not apply to the following transactions involving trusts and certificates evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter of a trust and an employee benefit plan when the sponsor, servicer, trustee or insurer of such trust or the underwriter of the certificates representing an interest in the trust, is a fiduciary with respect to the plan assets invested in such certificates provided:

(a) Such sale, exchange or transfer is expressly approved by a fiduciary independent of the sponsor, servicer, trustee, insurer or underwriter who has authority to manage and control those plan assets being invested in such certificates;

(b) The plan pays no more for the certificates than would be paid in an arm's length transaction with an unrelated party;

(c) No investment management, advisory, or underwriting fee or sales commission or similar compensation is paid to the sponsor or underwriter with regard to such sale, exchange or transfer;

(d) The total value of certificates purchased by a plan does not exceed 25% of the amount of the issue; and

(e) At least 50% of the aggregate amount of the issue is acquired by persons independent of the pool sponsor, servicer, trustee, insurer or underwriter.

(C) Effective for trusts closed on or after June 29, 1988 and on or before (date of grant of the exemption), the restrictions of sections 406 (a) and (b) and 407 of the Act and the taxes

imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c) of the Code shall not apply to transactions in connection with the servicing, management, and operation of a trust provided that:

(1) Such transactions are carried out in accordance with the terms of a binding pooling and servicing agreement; and

(2) The pooling and servicing agreement is provided to, or described in all material respects in the prospectus provided to, investing plans before they purchase certificates issued by the trust.

(D) Effective for trusts closed on or after June 29, 1988 and on or before (date of grant of this exemption), the restrictions of sections 406(a) and 407 of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to any transactions to which such restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14) (F), (G), (H) or (I) of the Act or section 4975(e)(2) (F), (G), (H) or (I) of the Code), solely because of the plan's ownership of certificates.

II. General Conditions for Transactions Described in Part I

A. The relief provided under Part I, above, is available only if the following conditions are met:

(1) The sponsor and trustee for each trust must maintain a system for insuring or otherwise protecting the pooled mortgage loans and the property securing such loans, and for indemnifying certificateholders against reductions in pass-through payments due to defaults in loan payments or property damage. (The term "mortgage" is used herein to refer not only to mortgages but also to deeds of trust and installment contracts for the sale of real estate.) This system must provide such protection and indemnification up to an amount not less than the greater of one percent of the aggregate principal balance of all covered pooled mortgages, or the principal balance of the largest covered mortgage;

(2) The trustee for each trust must not be an affiliate of the servicer of such trust, provided, however, that the trustee shall not be considered to be an affiliate of the servicer solely because the trustee has succeeded to the rights and responsibilities of the servicer pursuant

to the terms of the pooling and servicing agreement providing for such succession upon the occurrence of one or more events of default by the servicer; and

(3) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the sum of all payments made to and retained by the sponsor pursuant to the assignment of obligations (or interests therein) to the trust represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by the servicer represents not more than reasonable compensation for the servicer's services under the pooling and servicing agreement and reimbursement of the servicer's reasonable expenses in connection therewith.

III. Transactions—Prospective Relief

A. Effective for trusts closed after (date of grant of this exemption), the restrictions of sections 406(a) and 407 of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to the following transactions involving trusts and certificates evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and an employee benefit plan (plan) when the sponsor, servicer, the trustee of a trust, or the underwriter of the certificates representing an interest in the trust or an obligor is a party-in-interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates; and

(3) The continued holding of certificates acquired by a plan pursuant to subparagraph (1) or (2).

B. Effective for trusts closed after (date of grant of this exemption), the restrictions of section 406(a) and (b) and 407 of the Act, and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a trust provided that:

(1) Such transactions are carried out in accordance with the terms of a binding pooling and servicing agreement; and

(2) The pooling and servicing agreement is provided to, or described in all material respects in the prospectus

provided to, investing plans before they purchase certificates issued by the trust.

Notwithstanding the foregoing, section III.B. does not provide an exemption from the restrictions of sections 406(b) and 407 of the Act or from the taxes imposed by reason of section 4975(c) of the Code for the receipt of a fee by a servicer of the trust from a person other than the trustee or sponsor, unless such fee constitutes a "qualified administrative fee" as defined in section V.O.

C. Effective for trusts closed after (insert date grant published in **Federal Register**), the restrictions of sections 406(a) and 407 of the Act, and the taxes imposed by sections 4975 (a) and (b) of the Code by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to any transactions to which such restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14) (F), (G), (H) or (I) of the Act or section 4975(e)(2) (F), (G), (H) or (I) of the Code), solely because of the plan's ownership of certificates.

IV. General Conditions for Transactions Described in Part III

A. The relief provided under part III is available only if the following conditions are met:

(1) The acquisition of certificates by a plan is on terms (including the certificate price) that are at least as favorable to the plan as they would be in an arm's-length transaction with an unrelated party;

(2) The rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust;

(3) The certificates acquired by the plan have received a rating at the time of such acquisition that is in one of the three highest generic rating categories from either Standard & Poor's Corporation (S&P's), Moody's Investors Service, Inc. (Moody's), Duff & Phelps, Inc. (D & P) or Fitch Investors Service, Inc. (Fitch);

(4) The trustee is not an affiliate of any member of the Restricted Group. However, the trustee shall not be considered to be an affiliate of the servicer solely because the trustee has succeeded to the rights and responsibilities of the servicer pursuant to the terms of a pooling and servicing agreement providing for such succession upon the occurrence of one or more events of default by the servicer; and

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution of certificates represents not more than reasonable compensation for underwriting the certificates; the sum of all payments made to and retained by the sponsor pursuant to the assignment of obligations (or interests therein) to the trust represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by the servicer represents not more than reasonable compensation for the servicer's under the pooling and servicing agreement and reimbursement of the servicer's reasonable expenses in connection therewith.

(6) The plan investing in such certificates is an "accredited investor" as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission under the Securities Act of 1933.

B. Neither any underwriter, sponsor, trustee or servicer, unless it or any of its affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire certificates, shall be denied the relief provided under part III, if the provision of subsection IV.A.(6) above is not satisfied with respect to the acquisition or holding by a plan of such certificates, provided that such condition is disclosed in the prospectus.

V. Definitions

For purposes of this exemption:

A. *Certificate* means:

(1) A certificate

(a) That represents a beneficial ownership interest in the assets of a trust; and

(b) That entitles the holder to pass-through payments of principal, interest, and/or other payments made with respect to the assets of such trust; or

(2) A certificate denominated as a debt instrument

(a) That represents an interest in a Real Estate Mortgage Investment Conduit (REMIC) within the meaning of section 860D(a) of the Code; and

(b) That is issued by and is an obligation of a trust; and

(3) With respect to the transactions described in part III, a certificate that represents an interest in obligations which are subject to a guaranty issued by the VA of all of the principal and interest due on the obligations.

For purposes of this exemption, references to "certificates representing an interest in a trust" include certificates denominated as debt which are issued by a trust.

B. VA guaranty means a guaranty by the VA of all or a portion of the principal and interest on the obligations contained in a trust as set forth in the loan sale agreement entered into by the VA and a trustee with respect to the obligations contained in the trust.

C. Trust means an investment pool, the corpus of which is held in trust and consists solely of:

(1) Obligations that bear interest and which are secured by first mortgages, deeds of trust or installment contracts on single-family, residential property;

(2) Property which had secured any of the obligations described in subsection (1);

(3) Undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are made to certificateholders; and

(4) Rights of the trustee under the pooling and servicing agreement and the loan sale agreement including rights under the VA guaranty with respect to any obligations described in subsection (1); and

(5) Fractional undivided interests in any of the obligations and other property listed in clauses (1) through (4).

Notwithstanding the foregoing, with respect to transactions described in part III, the term *trust* does not include any investment pool unless:

(i) The investment pool consists only of assets of the type which have been included in other investment pools,

(ii) Certificates evidencing interests in such other investment pools have been rated in one of the three highest rating categories by S & P's, Moody's, D & P or Fitch for at least one year prior to the plan's acquisition of certificates pursuant to this exemption, and

(iii) Certificates evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this exemption.

D. Underwriter means:

(1) any person designated by the VA to act as a managing or co-managing underwriter with respect to the certificates;

(2) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with a person described in (1); or

(3) Any member of an underwriting syndicate or selling group of which a person described in (1) or (2) is a manager or co-manager with respect to the certificates.

E. Sponsor means the United States Department of Veterans Affairs.

F. Servicer means the entity (i.e., master servicer) that is a party to the pooling and servicing agreement relating to trust assets and is fully responsible for servicing, directly or through sub-servicers, the assets of the trust. The term servicer includes sub-servicers which, under the supervision of and on behalf of the master servicer, service loans contained in the trust, but are not parties to the pooling and servicing agreement.

G. Trustee means the trustee of the trust, and in the case of certificates which are denominated as debt instruments, also means the trustee of the indenture trust.

H. Restricted Group with respect to a class of certificates means:

(1) Each underwriter;

(2) The sponsor;

(3) The trustee;

(4) Each servicer; and

(5) Any affiliate of a person described in (1)-(4) above.

I. Affiliate of another person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, partner, employee or relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

J. Control means the power to exercise a controlling influence over the management or policies of a person other than an individual.

K. A person will be *independent* of another person only if:

(1) Such person is not an affiliate of that other person; and

(2) The other person, or an affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any of the assets of such person.

L. Sale includes the entrance into a forward delivery commitment (as defined in paragraph M below) provided that:

(1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's-length transaction with an unrelated party;

(2) The prospectus is provided to an investing plan prior to the time the plan enters into the forward delivery commitment; and

(3) At the time of the delivery, all conditions of this exemption applicable to sales are met.

M. Forward delivery commitment means a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificates from, the other party).

N. Reasonable compensation has the same meaning as that term is defined in 29 CFR 2550.408c-2.

O. Qualified Administrative Fee means a fee which meets the following criteria:

(1) The fee is triggered by an act or failure to act by the obligor other than the making of normal timely payment of amounts owing in respect of the obligations;

(2) The servicer may not charge the fee absent the act or failure to act referred to in (1);

(3) The ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the pooling and servicing agreement; and

(4) The amount paid to investors in the trust will not be reduced by the amount of any such fee waived by the servicer.

P. Pooling and Servicing Agreement means the agreement or agreements among a sponsor, a servicer and the trustee establishing a trust. In the case of certificates which are denominated as debt instruments, "Pooling and Servicing Agreement" also include the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

Q. Loan Sale Agreement means the agreement between the VA and the Trustee under which the VA conveys legal title to the obligations to be contained in the trust in exchange for the net proceeds from the sale of the certificates issued pursuant to the related pooling and servicing agreement. The VA makes representations and warranties with respect to these obligations in the loan sale agreement.

R. Single-family, Residential Property means non-farm property comprising one to four dwelling units, and also includes condominiums.

Summary of Facts and Representations

1. The United States Department of Veterans Affairs ("the VA"), an Executive Branch Department of the United States acting through the Secretary of Veterans Affairs, seeks an exemption from certain provisions of the

Employee Retirement Income Security Act of 1974, as amended ("ERISA"), to facilitate the sale to employee benefit plans of certificates representing beneficial ownership interests in trusts which will be comprised of certain loans originated by the VA pursuant to its Vendee Loan Program described below ("vendee loans") and sold to the trusts by the VA.

2. Under the VA's Loan Guaranty Program, a fixed-rate residential mortgage loan may be made to any eligible veteran (a "GI loan") by an approved private sector mortgage lender. The VA guarantees to pay the holder of such a loan a fixed percentage of the loan indebtedness, up to a maximum dollar amount, in the event of default by the veteran borrower. When a delinquency is reported to the VA and no realistic alternative to foreclosure is developed by the loan holder or through the VA's supplemental servicing of the loan, the VA determines, through an economic analysis, whether it will (i) authorize the holder to convey the property securing the "GI loan" to the Secretary following termination of the loan or (ii) pay the loan guaranty amount to the holder who will retain title to the property. The decision as to disposition of properties securing defaulted GI loans is made on an individual case-by-case basis using the procedures set forth in 38 U.S.C. 1832(c). Under the vendee loan program, the VA provides purchase money financing for the sale of properties that it has acquired (i) from private lenders pursuant to its obligations under the VA loan guaranty program for veterans upon termination of GI loans and (ii) as a result of its enforcement of the security instruments covering properties securing vendee loans after default by the borrowers thereunder. The Budget Reconciliation Act of 1987 amended 38 U.S.C. 1816(d) to provide, in part, that vendee loans made by the VA may be sold "with or without recourse as determined by the [Secretary] * * * to be in the best interest of the effective functioning of the loan guarantee program * * *." Receipts and expenditures under the Loan Guaranty Program are made through the Loan Guaranty Revolving Fund (the "Revolving Fund") and the Guaranty and Indemnity Fund ("GIF") (together the "Funds"). To the extent that the obligations of the VA under a loan sale agreement are not satisfied through withdrawal of funds available in a reserve fund, these Funds are expected to be the sole source of any payments required to be made by the VA under any Loan Sale Agreement, including

pursuant to any VA guaranty as set forth therein. The VA's obligations under the VA guaranty constitute absolute and unconditional general obligations of the United States, for which the full faith and credit of the United States is pledged. The Funds obtain funds through fees paid by borrowers for GI Loans, the collection of principal and interest from, or proceeds from the sale of, vendee loans, proceeds of cash sales of the reacquired properties, loan closing fees collected by the VA in connection with vendee loans, amounts collected or offsets recovered on deficiencies, and Congressional appropriations.¹ Net proceeds from the sale of certificates will be contributed to the Funds.

Trust Assets

3. The trusts in question will consist of the following types of vendee loans: (1) Residential loans secured by mortgages and deeds of trust;² and (3) installment contracts for the sale of such real estate³ (collectively referred to herein

¹ The applicant represents that, although the Funds do not have authority to borrow from the Treasury Department, the legislation authorizing the Funds provides that there shall be appropriated from present and future appropriations funds necessary to meet the requirements of the Funds.

² The VA notes that PTE 83-1 [48 FR 895, January 7, 1983] a class exemption for mortgage pool investment trusts, would generally apply to trusts containing only single-family residential mortgages, provided that the applicable conditions of PTE 83-1 are met. The VA requests relief for single-family residential mortgages in this exemption because it would prefer one exemption for all trusts of similar structure. However, the VA has stated that it may still avail itself of the exemptive relief provided by PTE 83-1.

³ On July 29, 1988, a request for an advisory opinion was filed on behalf of American Housing Trust II regarding the availability of PTE 83-1 for certain transactions involving mortgage pool investment trusts containing VA mortgage loans and installment contracts for the sale of real estate. The advisory opinion sought related to whether installment contracts constituted "mortgages" within the meaning of PTE 83-1. Pursuant to a letter dated September 13, 1989, the Department stated that it was not prepared to issue such an opinion, but invited the applicant to request an administrative exemption under section 408(a) of ERISA for such pools. The Department stated that, pending final consideration of such exemption application, it would not assert a violation of sections 406 and 407 of ERISA in any enforcement proceeding with regard to the transactions described in PTE 83-1 solely because of the inclusion of installment contracts in pools, provided that the conditions of PTE 83-1 are otherwise satisfied. The Department reiterated its enforcement position concerning transactions involving subsequent trusts containing vendee loans in a letter dated February 9, 1989.

as obligations). Under the terms of an installment contract, the seller (the "lender") retains legal title to the property and contracts with the purchaser (the "borrower") for the payment of the purchase price, plus interest, over the term of the installment contract. Only after full payment under the contract is the lender obligated to convey title to the real estate to the borrower. During the term of the contract, the borrower is responsible for maintaining the property and for paying real estate taxes, assessments and hazard insurance premiums associated with the property. In general, the lender's procedures for obtaining possession and clear title under an installment contract are simpler, less time consuming and less costly than are the procedures for foreclosing and obtaining clear title to a mortgaged property.

The trust assets will also include property which had secured any of the obligations owned by the trust and undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are made to certificateholders. In addition, the trust assets may also include certificate insurance, a letter of credit or a guaranty which the VA will guarantee the payment of all or a portion of principal and interest payable with respect to the obligations owned by a trust (the "VA guaranty").

Trust Structure

4. Each trust is established before the date of the issuance of the related certificates pursuant to a declaration of trust which is superseded on or before the date of issuance of the related certificates by a pooling and servicing agreement between a master servicer and an independent entity selected by representatives of the underwriters to serve as trustee. On the closing date, the VA conveys legal title to the obligations to the trustee on behalf of the trust in exchange for the net proceeds from the sale of the certificates issued pursuant to the related pooling and servicing agreement. Such transfer and exchange of the obligations will be made pursuant to a loan sale agreement between the VA and the trustee for the trust.

In summary, the VA will warrant in the loan sale agreement that the information provided by the VA with respect to the mortgages is true and complete. If the trustee finds any documents with respect to any mortgage missing or defective in any material respect, the trustee is required to notify the VA and request that the VA correct

or cure the omission or defect. If the omission or defect is not cured within 60 days of such notice and the mortgage was sold rather than with full recourse to the VA, the VA will be obligated to repurchase the mortgage, or substitute another mortgage. If the mortgage loan was sold with full recourse to the VA, the VA may cure the defect by contributing cash to the trust in an amount adequate to protect investors fully. Files on each mortgage will be delivered to the trustee as soon as practicable after the closing date of a trust fund, and the trustee will conduct a limited review of the mortgage files within 90 days after receipt thereof.

The VA will also warrant in the loan sale agreement that each mortgage will have hazard insurance policies and flood insurance policies (if applicable) in place with respect to the properties securing the mortgage loans. In addition, the VA will further warrant that all mortgage loan documents required to be recorded will be submitted for recordation after the closing date of a trust and will be delivered to the trustee upon receipt by the VA from the recorder's office.

The VA will also make certain general representations and warranties to the trust funds to the effect that the VA has the power and authority to perform its obligations under the loan sale agreement. Further, the VA will represent and warrant as to each mortgage loan that only those loans that satisfy certain selection criteria will be eligible for sale to the trust fund. The prospectus will also specify the criteria for mortgage loan selection.

If a representation or warranty relating to a specific loan is materially breached and the loan is sold other than with full recourse to the VA, the VA will be required, within sixty days of its notification thereof by the trustee, at the VA's option either to (i) cure such breach, (ii) repurchase the loan for its unpaid principal balance plus accrued interest, or (iii) substitute a similar loan that conforms to the representations and warranties of the VA and has an interest rate at least equal to the interest rate of the defective loan it replaces and a final maturity date no more than six months after the final scheduled maturity of the defective mortgage loan, and, if possible, is secured by mortgage property in the same jurisdiction as the property securing the defective loan. If the mortgage loan was sold with full recourse to the VA, the VA may cure the defect by contributing cash to the trust in an amount adequate to protect investors fully. In transactions in which more than one class of certificates is

issued, the trust will generally elect to be taxed as a real estate mortgage investment conduit ("REMIC") under sections 860A-860G the Code. A REMIC election will limit the exercise of options (ii) and (iii) above by the VA.

The certificates issued by the trust may be issued in a single class or two or more classes and in each case represent fractional undivided interests in the trust assets. In certain transactions, the VA may elect to receive one or more classes of certificates rather than solely the net proceeds from the sale of certificates. The VA will select a financial institution, alone or together with other financial institutions, to act as underwriter with respect to the sale of the certificates. All of the public offerings of certificates made to date, and all of the public offerings of certificates presently contemplated, have been or are to be underwritten on a firm commitment basis.

Certificateholders are entitled to receive monthly, quarterly or semi-annual installments of principal and/or interest due on the obligations, adjusted to a specified rate—the pass-through rate—which may be fixed or variable.

5. Some of the certificates will be multi-class certificates. Exemptive relief is requested for two types of multi-class certificates: "strip" certificates and "fast-pay/slow-pay" certificates. Strip certificates are a type of security in which the stream of interest payments on obligations is split from the flow of principal payments and separate classes of certificates are established, each representing rights to disproportionate payments of principal and interest.⁴

"Fast-pay/slow-pay" certificates involve the issuance of classes of certificates having different distribution dates or the same final distribution dates with different distribution schedules. In transactions in which multiple classes of certificates are issued, interest and/or principal payments received on the underlying obligations are distributed to the class or classes of certificates then entitled to receive such distributions in accordance

⁴ It is the Department's understanding that where a plan invests in REMIC "residual" interest certificates to which this exemption applies, some of the income received by the plan as a result of such investment may be considered unrelated business taxable income to the plan, which is subject to income tax under the Code. Furthermore, holding a REMIC residual interest certificate would result in the holder of the certificate being eligible to be designated as the REMIC's "tax matters person" under Treasury Regulation section 1.860F-4T(d). The Department believes that the prudence requirement of section 404(a)(1)(B) of the Act would require plan fiduciaries to carefully consider these and other tax consequences to causing plan assets to be invested in certificate pursuant to this exemption.

with the provisions of the pooling and servicing agreement as described in the prospectus and prospectus supplement.

In such transactions, the division of senior certificates ("senior" certificates are senior in right to payments of principal and/or interest to any subordinate certificates in a trust structure) into sub-classes may have the result that certain sub-classes receive payments of principal from mortgage loans in the related mortgage loan group before other sub-classes. Classes or sub-classes of senior certificates entitled to receive distributions after distributions have been made on other sub-classes are not subordinate to such other classes or sub-classes of senior certificates. However, in the absence of a full VA guaranty, when principal is distributed sequentially, classes or sub-classes which receive distributions later than other classes or sub-classes would be more likely than those receiving distributions at earlier points in time to bear any losses which result from special hazard mortgage loan losses or other liquidated loan losses. Such relatively higher risk of loss borne by classes or sub-classes entitled to receive distributions later than other classes or sub-classes does not, however, constitute subordination for purposes of the conditions set forth in parts I through IV of the proposed exemption.⁵

6. For tax reasons, the trust must be maintained as an essentially passive entity. Therefore, the sponsor's, trustee's and the servicer's discretion with respect to assets included in a trust are severely limited. As mentioned above, loan sale agreements and applicable tax rules permit the substitution of obligations by the VA, as the Seller, only within a short time after the issuance of trust certificates. Any obligation so substituted is required to have characteristics substantially similar to the replaced obligation and, if sold other than with full recourse to the VA, will be at least as creditworthy as the replaced obligation. In some cases, the affected obligation would be repurchased, with the purchase price applied as a payment on the affected obligation and passed through to certificateholders. Where the obligation was sold with full recourse to the VA, the VA may contribute cash to the trust in an amount sufficient to protect investors fully.

⁵ If a trust issues subordinated certificates, holders of such subordinated certificates may not share in the amount distributed on a pro rata basis. The Department notes that the exemption does not provide relief for plan investment in such subordinated certificates.

Parties to Transactions

7. The originator of an obligation is the VA, which is the entity that initially lends money to a borrower (obligor).

8. The sponsor will be the VA. The VA's role will generally be limited to acquiring the obligations to be included in the trust, assigning the obligations to the trust and representing the accuracy of the information about the obligations.

9. The managing underwriters will be selected by the VA. The underwriters are obligated to purchase all of the senior certificates at the price specified in the underwriting agreement with the trustee of the related trust, subject to standard "market out" clauses. In the event of default by any underwriter, the underwriting agreement provides that, in certain circumstances, the purchase commitments of non-defaulting underwriters may be increased or the underwriting agreement may be terminated.

The managing underwriters act as representatives of all of the underwriters and assist the VA and its financial advisor in negotiating with credit enhancement providers, establishing the trust, structuring the flow of funds to certificateholders, and dealing with rating agency requirements. In addition, the underwriters, or the VA, in consultation with its financial advisor, select the master servicer, the trustee and other contractors for services to the trust.

10. The trustee of a trust is the legal owner of the obligations in the trust. The trustee is also a party to or beneficiary of all the documents and instruments deposited in the trust, and as such is responsible for enforcing all the rights created thereby in favor of certificateholders.

The trustee will be an independent entity selected by the underwriter and will be unrelated to the VA, the underwriter (or members of the underwriting group), or the servicer. The trustee will be a substantial financial institution or trust company experienced in trust activities. The trustee receives a fee for its services, which will be paid by the servicer, sponsor or the trust as specified in the pooling and servicing agreement. The method of compensating the trustee will be disclosed in the prospectus relating to the offering of the certificates. In general, the master servicer may remove the trustee and appoint a successor trustee if the trustee ceases to be eligible to continue as trustee under the related pooling and servicing agreement, if the trustee becomes incapable of acting as trustee, if the trustee is adjudged as bankrupt or becomes insolvent, or if a receiver of the

trustee or its property is appointed, or if any public officer takes control of the trustee or its property for the purpose of rehabilitation, conservation or liquidation.

The trustee may also be removed at any time by the holders of specified percentages of all classes of certificates in the trust.

11. Under the pooling and servicing agreement, the servicer of a trust ("master servicer") has the responsibility of administering the obligations on behalf of the certificateholders. The master servicer's functions typically involve, among other things, notifying borrowers of amounts due on obligations, maintaining records of payments received on obligations and instituting foreclosure or similar proceedings in the event of default. The master servicer has the authority to appoint other entities to service the obligations on its behalf ("sub-servicers") but remains liable to the extent that any sub-servicer it may appoint fails to exercise a degree of skill and care that is (i) generally in compliance with Federal National Mortgage Association (FNMA) or Federal Home Loan Mortgage Corporation (FHLMC) standards or (ii) is otherwise consistent with prudent residential mortgage loan servicing standards generally accepted within the servicing industry. The master servicer is required to service and administer the obligations generally in accordance with the standards of FNMA or the FHLMC, with variations from such standards as may be consistent with prudent residential mortgage loan servicing standards generally accepted within the servicing industry. The master servicer is also required to establish and administer the account containing payments made on the obligations owned by the trust and to administer the trust fund in accordance with REMIC requirements, where applicable.

In general, an event of default by the master servicer under the pooling and servicing agreement will occur (i) if the master servicer fails to remit to the trustee any required payment due to the certificateholders, (ii) if the master servicer fails to duly observe or perform in any material respect any of its covenants contained in the pooling and servicing agreement, (iii) upon the happening of certain events of insolvency, readjustment of debt, marshalling of assets and liabilities or similar proceedings regarding the master servicer and certain actions by the master servicer indicating it is insolvent or unable to pay its obligations, and (iv) if the master servicer gives notice that it

is unable to make an advance or fails to deposit an advance on the day required.

In the event of a default which remains unremedied, the trustee is authorized to terminate the rights and obligations of the master servicer, in which case the trustee shall succeed to all the responsibilities, duties and liabilities of the master servicer under the pooling and servicing agreement or shall promptly appoint a qualified successor to the master servicer. In addition, under certain circumstances the holders of specified percentages of any class of certificates, or the VA acting alone, may remove the master servicer in the event of a default and cause another master servicer to be appointed by the trustee.

In most cases, the servicer of obligations to be included in a trust will be unrelated to the underwriters. In some cases, however, affiliates of the underwriters may service obligations included in a trust.

Certificate Price, Pass-Through Rate and Fees

12. As compensation for the obligations transferred to the trust, the VA receives the proceeds of the sale of certificates representing the entire beneficial interest in the trust. In some transactions, the VA may retain a portion of the certificates for its own account. The transfer of the obligations to the trust by the VA, the issuance of the certificates, the sale of certificates to investors, and the receipt of the cash proceeds by the VA generally take place simultaneously.

13. The price of the certificates, both in the initial offering and in the secondary market, is affected by market forces including investor demand, the pass-through interest rate on the certificates in relation to the rate payable on investments of similar types and quality, expectations as to the effect on yield resulting from prepayment of underlying obligations, and expectations as to the likelihood of timely payment.

The pass-through rate for certificates (or the weighted average of pass-through rates if certificates of different classes have different pass-through rates) is a function of the interest rate on obligations included in the trust minus a specified servicing fee. This rate is generally determined by the same market forces that determine the price of a certificate. The price of a certificate and its pass-through, or coupon, rate together determine the yield to investors. If an investor purchases a certificate at less than par, that discount augments the stated pass-through rate; conversely, a certificate purchased at a

premium yields less than the stated coupon.

14. As compensation for performing its servicing duties, the master servicer will retain the difference between payments received on the obligations in the trust and payments payable (at the pass-through rate) to certificateholders, except that in some cases a portion of the payments on obligations may be paid to a third party, such as a fee paid to a provider of credit support. (It is anticipated that no fees will be paid to a credit support provider in trusts formed subsequent to the effective date of the prospective portion of the proposed exemption as a VA guaranty of the obligations owned by such trusts will be in place.) The master servicer may receive additional compensation by having the use of the amounts paid on the obligations between the time they are received by the servicer and the time they are required to be distributed to the certificateholders (which time is set forth in the pooling and servicing agreement). The master servicer will be required to pay the administrative expenses of servicing the trust, including, in some cases, the trustee's fee, out of its servicing compensation.

In trusts containing obligations that are not subject to a complete or partial VA guaranty, the master servicer or an affiliate is also compensated to the extent it may provide credit enhancement to the trust or otherwise arrange to obtain credit support from another party. This "credit support fee" may be aggregated with other servicing fees, and is either paid out of the interest income received on the obligations in excess of the pass-through rate or paid in a lump sum at the time the trust is established.

15. The master servicer may be entitled to retain certain administrative fees paid by a third party, usually the obligor. These administrative fees fall into three categories: (a) Prepayment fees; (b) late payment and payment extension fees; and (c) fees and charges associated with foreclosure or repossession, or other conversion of a secured position into cash proceeds, upon default of an obligation.

Compensation payable to the master servicer will be set forth or referred to in the pooling and servicing agreement and described in reasonable detail in the prospectus relating to the certificates.

16. Payments on obligations may be made by obligors to the servicer at various times during the period preceding any date on which pass-through payments are due to be distributed to certificateholders. In most cases, the master servicer is entitled to investment income earned while

payments on the obligations are on deposit and prior to the time such payments are required to be distributed.

The master servicer generally will establish and maintain a separate account or accounts with respect to each trust fund for the collection of payments on the related mortgage loans. This separate account will be either an account maintained with a depository institution or a trust account maintained by the trustee. Furthermore, in general, the master servicer will be obligated to cause the institution with which the separate account is maintained or the trustee to invest the funds held therein pending distribution in short term investments of a type which is described in the related prospectus and prospectus supplement which will mature not later than the business day preceding the date such funds are required to be distributed to certificateholders (which time is set forth in the pooling and servicing agreement). The servicer may receive additional compensation by receiving all income realized from such investments. Any losses incurred as a result of such investments must be made up by the servicer by deposit into the separate account out of its own funds immediately after the losses are incurred. Unless otherwise specified in the related prospectus or prospectus supplement, the master servicer is required to deposit or cause to be deposited into the separate account on a daily basis all payments and collections received in connection with the obligations owned by the trust.

However, in some cases, the pooling and servicing agreement may not require the daily deposit of payments into a separate account and may permit the servicer to place these payments in non-interest bearing accounts in itself or to commingle such payments with its own funds prior to the distribution dates. Commingled payments may not be protected from the creditors of the servicer in the event of the servicer's bankruptcy or receivership. However, such an arrangement will only be permitted if the relevant rating agency is satisfied that the risk of such an occurrence is not inconsistent with the required rating on the certificates. In those instances when payments on receivables are held in non-interest bearing accounts or are commingled with the servicer's own funds, the servicer is required to deposit these payments by a date specified in the pooling and servicing agreement into a separate account from which the trustee makes payments to certificateholders.

17. The underwriter (or underwriting group) will receive a fee in exchange for its services in connection with the

securities underwriting of certificates. In a securities underwriting, this fee would normally consist of the difference between what the underwriter receives for the certificates that it distributes and what it pays the trust for those certificates.

Purchase of Obligations by the Servicer

18. The applicant represents that because the servicing fee is based upon the outstanding principal amount of the obligations, as the principal amount of the obligations in a trust is reduced by payment, the dollar amount of the servicing fee is reduced while the cost of administering the trust generally remains the same, making the servicing of the trust uneconomic at some point. Consequently, the pooling and servicing agreement generally provides that the master servicer may purchase the obligations remaining in the trust when the aggregate unpaid balance on the obligations is reduced to a specified percentage (usually 5 to 10 percent) of the initial aggregate unpaid balance.

The purchase price of the obligations is specified in the pooling and servicing agreement and will be at least equal to the unpaid principal balance on the obligations plus accrued interest, less any unreimbursed advances of principal and interest made by the master servicer.

Certificate Ratings

19. The certificates will have received one of the three highest ratings available from either S&P, Moody's, D & P or Fitch. Insurance or other credit support (such as surety bonds, letters of credit, the VA guaranty or the creation of a class of certificates with subordinated cash flow) will be utilized to the extent necessary for the certificates to attain the desired rating. The amount of this credit support is set by the rating agencies at a level that is a multiple of the worst historical net credit loss experience for the type of obligations included in the issuing trust.

In recent trusts sponsored by the VA, the VA has issued a guaranty of the obligations owned by the trust which will in all cases cover all principal and interest due on the obligations contained in each trust. The VA guaranty will be considered by the rating agencies in rating the certificates as one of a combination of factors, including the ability of the master servicer to make timely advances of delinquent principal and interest and the ability of the trustee to make such advances if the master servicer fails to do so.

Timeliness

20. In general, (to the extent provided in the related prospectus), the master servicer will be obligated to make advances on each distribution date in an amount sufficient to ensure that all scheduled payments of principal and interest are made to certificateholders. Funds advanced will be reimbursable to the master servicer out of liquidation proceeds, receipts in connection with mortgage loans and from credit support providers or amounts paid pursuant to a VA guaranty. The Master Servicer will also be obligated to make advances to cover taxes and insurance premiums not paid by mortgagors on a timely basis. These advances will also be reimbursable from providers of credit support, payments made by the related mortgagor, insurance proceeds, liquidation proceeds, or from amounts in a separate account. The trustee will be required by the related pooling and servicing agreement to make advances in the event the master servicer fails to do so by the date specified in such agreement. The trustee is entitled to reimbursement for advances made by the trustee in the same manner as is the master servicer.

In some cases, the VA will establish a "reserve fund" which will be available to provide a source of reimbursement to the master servicer or the trustee for any advances. Any reserve fund established will not be a part of the trust funds and will not be available to make distributions to certificateholders or to satisfy any claims of certificateholders.

21. With respect to earlier trusts sponsored by the VA, credit support was provided by third party insurance, a VA guaranty, subordination of a class of certificates or a combination of such methods.

With respect to trusts sponsored in the future by the VA, the credit support will take the form of a guaranty by the VA of all of the principal and interest due on the obligations owned by each trust.

In some cases, the master servicer, or an affiliate of the master servicer, may provide credit support to the trust (i.e., act as an insurer). In such transactions, the master servicer or its affiliate would be called upon to provide funds to cover defaulted payments to the full extent of its obligations as insurer. When the servicer or an affiliate is the provider of the credit support and provides its own funds to cover defaulted payments, it will do so either on the initiative of the trustee, or on its own initiative on behalf of the trustee, but in either event it will provide such funds to cover payments to the full extent of its obligations under

the credit support mechanism which has been determined by the relevant rating agency to be adequate to permit the certificates to obtain the desired ratings.

If the master servicer fails to advance funds, fails to call upon the credit support mechanism to provide funds to cover defaulted payments, or otherwise fails in its duties, the trustee would be required and would be able to enforce the certificateholders' rights, as both a party to the pooling and servicing agreement and the owner of the trust estate, including rights under the credit support mechanism. Therefore, the trustee, who is independent of the servicer, will have the ultimate right to enforce the credit support arrangement.

22. In transactions in which the VA elects to issue the VA guaranty, the guaranty by the VA will cover all or a portion of the principal and interest on the obligations. With respect to all future trusts, the guaranty will cover all such principal and interest. The VA guaranty will be set forth in the loan sale agreement and will provide for the VA to repurchase liquidated obligations and certain modified obligations to the extent described below for a purchase price equal to the guaranty purchase price. If the VA guaranty covers 100% of the obligations, the VA is obligated to make payments with respect to all such modified or liquidated obligations. If the VA guaranty covers only a portion of the obligations, the VA is obligated to make payments with respect to all such modified or liquidated obligations until the amount of the guaranty is exhausted. The coverage provided by a limited VA guaranty may be "stepped-down" to an amount acceptable to the relevant rating agencies. The amount of coverage for special hazard losses (which are not generally covered by hazard insurance) may be limited. Unless otherwise specified in the offering document, a modified obligation is an obligation as to which (i) the related interest rate has been reduced below an interest rate specified in the offering document, (ii) the principal balance has been reduced, or (iii) the final maturity date has been extended beyond a specified date set forth in the offering document in each case pursuant to a plan which was confirmed by a court or other appropriate entity at least 90 days earlier in connection with a bankruptcy or similar proceeding.

In the case of a liquidated obligation, the guaranty purchase price is equal to the amount, if any, by which the outstanding principal balance thereof together with interest accrued and unpaid thereon at the net mortgage

rate^{*} is in excess of related net liquidation proceeds, plus an amount of interest at the related net mortgage rate equal to the amount that would have been payable on such obligation from the date of liquidation to the end of the month preceding the distribution date on which such proceeds are to be distributed to certificateholders. In the case of a modified obligation described in clauses (i) and (iii) of the definition thereof, the guaranty purchase price is the principal balance thereof plus accrued interest. Modified obligations as to which the scheduled maturity date has been extended beyond a specified date set forth in the offering document are not required to be repurchased prior to such specified date unless otherwise specified in the loan sale agreement. Unless otherwise specified in the related offering document, the amount to be paid by the VA under the VA guaranty in respect of a modified obligation as to which the principal balance has been reduced is equal to the amount of such reduction plus interest at the related net rate on such amount from the date such reduction is effective to the end of the month preceding the distribution date on which such amount is to be distributed to certificateholders. Under the terms of the VA guaranty, the VA agrees to pay to the trustee (i) the aggregate guaranty purchase price in respect of liquidated obligations and modified obligations that the VA is obligated to purchase and (ii) the amount described above with respect to those modified obligations as to which the principal balance has been reduced.

All proceeds of the VA guaranty deposited in the separate account by the determination date in any month (net of any portion used to reimburse the master servicer for master servicer advances) will be included in the distribution amount for the related distribution date. Unless otherwise specified in the offering document, VA guaranty proceeds with respect to a particular liquidated or modified obligation will be included in the distribution amount no later than the distribution date in the month following the month in which a claim with respect to such obligation is made under the VA guaranty.

VA guaranty proceeds are payable out of its loan guaranty revolving fund or guaranty and indemnity fund and will be taken from amounts in the reserve

^{*} The net mortgage rate is the interest rate on the underlying loan after deduction from such interest payments of the aggregate servicing fees and other amounts, if any, described in the related prospectus supplement.

fund established by the VA, where such a fund exists. (See representation 20.) On the closing date with respect to transactions involving a VA guaranty, the trust fund will receive an opinion of the General Counsel of the VA to the effect that the VA's obligations under the VA guaranty constitute absolute and unconditional general obligations of the United States, for which the full faith and credit of the United States is pledged.

Disclosure

23. In connection with the original issuance of certificates, the prospectus will be furnished to investing plans. The prospectus will contain information material to a fiduciary's decision to invest in the certificates, including:

- (a) Information concerning the payment terms of the certificates, the rating of the certificates, and any material risk factors with respect to the certificates;
- (b) A description of the trust as a legal entity and a description of how the trust was formed;
- (c) Identification of the independent trustee for the trust;
- (d) A description of the obligations contained in the trust (including the diversification of the obligations), their principal terms, and their material legal aspects;
- (e) A description of the sponsor (the VA), the trustee and the master servicer;
- (f) A description of the loan sale agreement, including a description of the VA's principal representations and warranties as to the trust assets and the trustee's remedy for any breach thereof;
- (g) A description of the pooling and servicing agreement, including procedures for collection of payments on obligations and for making distributions to investors, and a description of the accounts into which such payments are deposited and from which such distributions are made;
- (h) Identification of the servicing compensation and any fees for credit enhancement that are deducted from payments on obligations before distributions are made to investors; a description of periodic statements provided to the trustee, and provided to or made available to investors by the trustee; and a description of the events that constitute events of default under the pooling and servicing agreement and a description of the trustee's and the investors' remedies incident thereto;
- (i) A description of the credit support;
- (j) A general discussion of the principal federal income tax consequences of the purchase, ownership and disposition of the pass-through securities by a typical investor;

(k) A description of the underwriters' plan for distributing the pass-through securities to investors; and

(1) Information about the scope and nature of the secondary market, if any, for the certificates.

24. Reports indicating the amount of payments of principal and interest are provided to certificateholders at least as frequently as distributions are made to certificateholders. Certificateholders will also be provided with periodic information statements setting forth material information concerning the underlying assets, including, where applicable, certain information as to the amount and number of delinquent and defaulted obligations.

25. The trustee will file such periodic reports as may be required to be filed under the Securities Exchange Act of 1934. Although some trusts will file quarterly reports on Form 10-Q and annual reports on Form 10-K, many trusts obtain, by application to the Securities and Exchange Commission, a complete exemption from the requirement to file quarterly reports on Form 10-Q and a modification of the disclosure requirements for annual reports on Form 10-K. If such an exemption is obtained, these trusts normally would continue to have the obligation to file current reports on Form 8-K to report material developments concerning the trust and the certificates. While the Securities and Exchange Commission's interpretation of the periodic reporting requirements is subject to change, periodic reports concerning a trust will be filed to the extent required under the Securities Exchange Act of 1934.

26. At or about the time distributions are made to certificateholders, a report will be delivered to the trustee as to the status of the trust and its assets, including underlying obligations. Such report will typically contain information regarding the trust's assets, payments received or collected by the servicer, the amount of prepayments, delinquencies, servicer or trustee advances, and the amount of such advances which have been reimbursed, defaults and foreclosures, the amount of any payments made pursuant to any credit support, and the amount of compensation payable to the servicer. Such report may be delivered to or made available to the rating agency or agencies that have rated the trust's certificates.

In addition, promptly after each distribution date, certificateholders will receive a statement prepared by the trustee summarizing information regarding the trust and its assets. Such statement will include information

regarding the trust and its assets, including underlying obligations. Such statement will typically contain information regarding payments and prepayments, delinquencies, the remaining amount of the VA guaranty or other credit support and a breakdown of payments between principal and interest.

Further, the master servicer is required to deliver to the trustee annually a certificate of an executive officer of the master servicer stating that a review of the servicing activities has been made under such officer's supervision and either stating that the master servicer has fulfilled all of its obligations under the pooling and servicing agreement or, if the master servicer has defaulted under any of its obligations, specifying any such default. The servicing of the obligations or other similar obligations serviced by the master servicer is reviewed at least annually by independent accountants in accordance with the statement of annual procedures, a form of which is a exhibit to each pooling and servicing agreement. The results of the independent accountants' review are delivered to the trustee.

Secondary Market Transactions

27. It is VA's intention to attempt to select underwriters which will make a market for any certificates for which such underwriter is lead or co-managing underwriter.

Retroactive Relief

28. The VA represents that it has engaged in transactions related to mortgage-backed securities based on the existing provisions of PTE 83-1, the existing plan assets exemptions contained in the plan assets regulation (29 CFR 2510.3-101) and the letters from the Department of Labor (the Department), more fully described in footnote 3 above. However, it is possible that some transactions may have occurred that would be prohibited. For example, because many certificates are held in street or nominee name, it is not always possible to identify whether the percentage interest of plans in a trust is or is not "significant" for purposes of the Department's regulation relating to the definition of plan assets (29 CFR 2510.3-101(f)). These problems are compounded as transactions occur in the secondary market. In addition, with respect to the "publicly-offered security" exception contained in that regulation (29 CFR 2510.3-101(b)), it is difficult to determine whether each purchaser of a certificate is independent of all other purchasers.

Therefore, the VA requests retroactive relief for transactions which have occurred on or after June 29, 1988, the closing date for the initial offering of certificates representing interests in trusts containing vendee loans.⁷

Summary

29. In summary, the applicant represents that the transactions for which exemptive relief is requested satisfy the statutory criteria of section 408(a) of the Act due to the following:

(a) The trusts contain "fixed pools" of assets. There is little discretion on the part of the trust or the VA as seller to substitute obligations contained in the trust once the trust has been formed;

(b) Certificates in which plans invest will have been rated in one of the three highest rating categories by S&P, Moody's, D & P or Fitch. Credit support will be obtained to the extent necessary to attain the desired rating;

(c) All transactions for which the VA seeks exemptive relief will be governed by the pooling and servicing agreement, which is made available to plan fiduciaries for their review prior to the plan's investment in certificates; and

(d) Underwriters of certificates have made, and the VA anticipates that such underwriters will continue to make, a secondary market in such certificates.

FOR FURTHER INFORMATION CONTACT: Deborah Hobbs of the Department of Labor at (202) 523-7901. (This is not a toll-free number.)

Graham J. Newstead, M.D., Inc. Pension Plan (the Plan) Located in Providence, Rhode Island

[Application No. D-8449]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedure set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1985). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions from the application of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed purchase of property by the Plan from Graham and Gillian Newstead, parties in interest with respect to the Plan, provided that the Plan pays no more than the fair market value for the Property.

⁷ The department notes that it is proposing retroactive relief for the VA trusts which is consistent with the relief provided by PTE 83-1. In this regard, see the discussion in footnote 3 above.

Summary of Facts and Representations

1. The Plan is a defined contribution plan with three (3) participants and was established in 1974 as a retirement plan for Graham J. Newstead, M.D., Inc. Dr. Graham Newstead is the trustee for the Plan. As of October 23, 1990, the fair market value of the Plan's assets equaled \$2,766,469 and the Plan's asset allocation was as follows: 59% equity; 25% fixed treasuries; 4% real estate and mortgages and 12% in cash.

2. The Plan proposes to purchase the property located at 136 Transit Street in Providence, Rhode Island (the Property) for a purchase price of \$210,000. This investment represents less than 10% of the Plan's assets. The property contains three (3) units which are leased and provide rental income to the owner of the Property.

3. On June 13, 1990, the property was appraised by Mary E. Mulhearn, a qualified and independent real estate appraiser of the firm, Schaeffer, Bates, and McDonough, Inc. located in Providence, Rhode Island. The fair market value of the property was calculated to be \$210,000. Ms. Mulhearn represents that the methodology used to calculate the fair market value was the direct sales comparison approach as this approach is most applicable to small income producing properties like the property. The appraisal will be updated at the time of the proposed transaction to ensure that the Plan pays no more than fair market value.

4. Sally Lapides of Residential Properties, Ltd. will serve as independent fiduciary on behalf of the Plan with respect to the proposed transaction. Residential Properties, Ltd. is a full service real estate agency specializing in historic properties. Ms. Lapides is the president of Residential Properties, Ltd. and has fifteen years experience in the real estate business. Ms. Lapides represents that she is independent and has no relationship with Dr. Newstead. Lamoriello & Co., Inc., a company which specializes in administering pension plans and providing financial advice, apprised Ms. Lapides of her fiduciary duties under the Act, and Ms. Lapides represents that she understand her fiduciary responsibility with respect to the proposed transaction. Ms. Lapides has reviewed the Plan's investment objectives which are: (1) Long term growth; (2) preservation of principal and (3) a return in excess of inflation. She represents that the purchase of the Property meets the Plan's investment objectives and provides diversity with respect to the Plan's overall investment portfolio. She states that the property represents a

good long term investment for the Plan because it is in excellent condition, and is highly desirable due to its certified historic status and location in Providence, Rhode Island.

5. In summary, it is represented that the proposed transaction will satisfy the statutory criteria for an exemption under section 408(a) of the Act because: (a) The purchase of the Property by the Plan will be a one-time transaction for cash; (b) the Plan will pay no more than the fair market value of the Property nor pay any real estate fees or commissions associated with the purchase of the Property; (c) the independent fiduciary represents that she has determined that the purchase of the Property is a good investment for the Plan and is in the best interest of the participants and beneficiaries.

FOR FURTHER INFORMATION CONTACT: Allison Padams, of the U.S. Department of Labor, telephone (202) 523-7901.

Individual Retirement Account of Harold L. Campbell (the IRA), Located in La Jolla, California

[Application No. D-8452]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedure set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the sale of 48,600 shares of First National Corporation (the Shares), by the IRA to Mr. Harold Campbell (Mr. Campbell) for a price not less than the fair market value of the common stock of First National Corporation as determined by its closing market price on the date of the sale.⁸

Summary of Facts and Representations

1. The IRA is a self-directed IRA described in section 408(a) of the Code. First National Bank of La Jolla, California is the trustee and custodian of the IRA. The IRA was established on March 27, 1989 by Mr. Campbell as a rollover from a terminated plan of which Mr. Campbell was a participant. Mr. Campbell is a Director of First National Corporation.

⁸ Because the IRA meets the conditions described in 29 CFR 2510.3-2(d), there is no jurisdiction under title I of the Act. However, there is jurisdiction under title II of the Act pursuant to section 4975 of the Code.

2. As of June 1990, the IRA held the Shares, a trust deed note, seven certificates of deposit and \$56,000 in cash. The Shares produce little income since they provide an annual dividend of 20 cents per share. In this regard, Mr. Campbell wants to sell the Shares and replace them with a higher income producing asset. Mr. Campbell will pay the IRA cash for the Shares and the IRA will not pay any sales commission. The price for the Shares will be determined by First National Corporation's closing market price on the day of the transaction. The stock of the First National Corporation is traded on the American Stock Exchange (AMEX), and on April 5, 1991, the stock traded at 13 1/8.

3. In summary, it is represented that the proposed transaction will satisfy the statutory criteria for an exemption under section 4975(c)(2) of the Code because: (a) The sale will be a one-time transaction for cash; (b) the IRA will pay no commission upon the sale; (c) the price of the Shares will be determined by First National Corporation's closing price on the AMEX on the day of the transaction as traded; and (d) the IRA will be able to divest itself of an asset which produces little income.

NOTICE TO INTERESTED PERSONS:

Because Mr. Campbell is the only participant in the IRA, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a public hearing are due 30 days after the publication of this notice in the **FEDERAL REGISTER**.

FOR FURTHER INFORMATION CONTACT:

Allison Padams of the Department, (202) 523-7901. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does

it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 12th day of April, 1991.

Ivan Strasfeld,

Director of Exemption Determinations,
Pension and Welfare Benefits Administration,
U.S. Department of Labor.

[FR Doc. 91-9044 Filed 4-17-91; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL COMMISSION ON CHILDREN

Hearing

Background

The National Commission on Children was created by Public Law 100-203, December 22, 1987 as an amendment to the Social Security Act. The purpose of the law is to establish a nonpartisan Commission directed to study the problems of children in the areas of health, education, social services, income security, and tax policy.

The powers of the Commission are vested in Commissioners consisting of 36 voting members as follows:

1. Twelve members appointed by the President
2. Twelve members appointed by the Speaker of the House of Representatives
3. Twelve members appointed by the President pro tempore of the Senate.

This notice announces a Meeting of the National Commission on Children to be held in Chicago, Illinois.

Meeting

Time: 9 a.m.-6 p.m., Tuesday, April 30, 1991, 9 a.m.-4 p.m., Wednesday, May 1, 1991.

Place: Harrison Conference Center, Green Bay Road, Lake Bluff, Illinois 60044.

Status: Open to the public.

Agenda: Commission Meeting.

Contact: Jeannine Atalay; (202) 254-3800.

Dated: April 15, 1991.

John D. Rockefeller IV,

Chairman, National Commission on Children.

[FR Doc. 91-9151 Filed 4-17-91; 8:45 am]

BILLING CODE 6820-37-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Humanities, NFAH.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Comments on this information collection must be submitted on or before May 20, 1991.

ADDRESSES: Send comments to Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., room 310, Washington, DC 20506, (202) 786-0494, and Mr. Daniel Chenok, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., room 3002, Washington, DC 20503, (202) 395-7316.

FOR FURTHER INFORMATION CONTACT:

Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., room 310, Washington, DC 20506, (202) 786-0494, from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, extensions, or reinstatements. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what the form will be used for; (6) an estimate of the number of responses; (7) the

frequency of response; (8) an estimate of the total number of hours needed to fill out the form; (9) an estimate of the total annual reporting and recordkeeping burden. None of these entries is subject to 44 U.S.C. 3504(h).

Category: New

Title: NEH Study Grants for College and University Teachers.

Form Number: NA.

Frequency of Collection: Annual.

Respondents: University and college faculty.

Use: The application instructions provide direction for preparing narrative and budgetary parts of applications for grant funds.

Estimated Number of Respondents: 2,234.

Frequency of Response: Once.

Estimated Hours for Respondents to Provide Information: 3.55 per respondent.

Estimated Total Annual Reporting and Recordkeeping Burden: 7,964.20 hours.

Thomas S. Kingston,

Assistant Chairman for Operations.

[FR Doc. 91-9139 Filed 4-17-91; 8:45 am]

BILLING CODE 7536-01-M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Design and Manufacturing Systems; Meeting

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review and evaluate proposals and provide advice and recommendations as part of the selection process for awards. Because the proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meetings are closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Name: Special Emphasis Panel in Design and Manufacturing Systems.

Dates/Times: May 3, 1991—8:30 a.m. to 5 p.m.

Place: Room 1128, National Science Foundation, 1800 G Street, NW., Washington, DC.

Type of Meeting: Closed.

Agenda: Review and evaluate Engineering Faculty Internships Initiative proposals.

Contact: Drs. Thom Hodgson or Louis Martin-Vega, Program Directors, Design and Manufacturing Division, National Science Foundation, rm. 1228, Washington, DC 20550 (202-357-5167).

Dated: April 11, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91-9042 Filed 4-17-91; 8:45 am]

BILLING CODE 7556-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-029]

Yankee Atomic Electric Company, Yankee Nuclear Power Station; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-3 issued to Yankee Atomic Electric Company (the licensee) for operation of the Yankee Nuclear Power Station (YNPS) located in Franklin County, Massachusetts.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would revise the Technical Specifications (TS) to allow YNPS to operate with fewer detector thimbles while maintaining sufficient data collection capability to ensure that operation of the YNPS core remains within licensed limits. The current Technical Specification governing operability of the Incore Instrumentation System requires that a minimum of 12 neutron detector thimbles be operable with at least two per core quadrant whenever the system is used for core power distribution measurements. This change reduces the minimum number of thimbles to nine and reduces the minimum number of thimbles per quadrant to one.

The proposed action is in accordance with the licensee's application for amendment dated January 28, 1991, as supplemented February 28, 1991.

The Need for the Proposed Action

At the end of Yankee Cycle 18, 13 movable detector thimbles were operable. During the Cycle 18/19 refueling outage, fixed detector strings were installed in six thimbles, increasing the total number of detector locations to 18. The performance of the fixed detectors was verified during

Cycle 19 operation and licensed by the Commission for use in Cycle 20. At that time, Yankee's goal was transition to increased use of the Fixed Detector System, with the ultimate goal to full conversion to fixed incore detectors. Plans for the Fixed Detector System have been delayed for two reasons: (1) Suspected leakage in the primary seal of the fixed detectors; and (2) questions on the viability of installing detectors into the present instrumentation spire which may have a remaining useful life, which is considerably shorter than the expected life of the fixed detectors. Yankee is continuing to work in these areas and is progressing towards a goal of a full Fixed Incore Detector System.

During the recent Cycle 10/21 outage, four movable incore detector thimbles were isolated, and two fixed detectors were required to be removed from service during spire repairs resulting in 12 detector thimbles available for meeting surveillance requirements. This corresponds to the minimum Technical Specification requirement for operability of that system.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revisions to the TS. The proposed changes do not increase the probability or consequences of any accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure.

Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed change to the TS involves systems located within the restricted area as defined in 10 CFR part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of the Amendment and Opportunity for Hearing in connection with this action was published in the Federal Register on February 19, 1991 (56 FR 6692). No request for hearing or petition for leave to intervene was filed following this notice.

Alternative to the Proposed Action

Since the Commission concluded that there are not significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in not meeting NRC requirements.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in previous reviews for the Yankee Nuclear Power Station. The plant was licensed prior to the requirement for issuance of a Final Environmental Statement.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and not consult other agencies or persons.

Finding of no Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated January 28, 1991, and supplemented February 28, 1991, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Dated at Rockville, Maryland, this 11th day of April 1991.

For the Nuclear Regulatory Commission,
Richard H. Wessman,
*Director, Project Directorate I-3, Division of
Reactor Projects I/II, Office of Nuclear
Reactor Regulation.*

[FR Doc. 91-9143 Filed 4-17-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-213]

**Connecticut Yankee Atomic Power
Company, Haddam Neck Plant; Denial
of Amendment to Facility Operating
License and Opportunity for Hearing**

The U.S. Nuclear Regulatory Commission (the Commission) has denied a request by Connecticut Yankee Atomic Power Company (licensee) for

an amendment to Facility Operating License No. DPR-61, issued to the licensee for operation of the Haddam Neck Plant, located in Middlesex County, Connecticut. Notice of Consideration of Issuance of this amendment was not published in the *Federal Register*.

The purpose of the licensee's amendment request was to revise Technical Specification 5.3, "Reactor Core Fuel Assemblies," to allow the use of zircaloy clad fuel in the reactor core.

The NRC staff has concluded that the licensee's request cannot be granted as submitted. The licensee has proposed to resubmit this request at a later date when the nuclear and safety analysis has been completed. The licensee was notified of the Commission's denial of the proposed change by a letter dated.

By May 20, 1991, the licensee may demand a hearing with respect to the denial described above. Any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, by the above date.

A copy of any petitions should also be sent to the Office of the General Counsel—Rockville, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Garfield, Esquire, Day, Berry and Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendment dated March 4, 1991, and (2) the Commission's letter to the licensee dated.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555 and at the Russell Library, 123 Broad Street, Middletown, Connecticut 06457. A copy of item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Document Control Desk.

Dated at Rockville, Maryland, this 11th day of April 1991.

For the Nuclear Regulatory Commission.

Albert DeAgazio,
*Acting Director, Project Directorate I-4,
Division of Reactor Projects—I/II, Office of
Nuclear Reactor Regulation.*

[FR Doc. 91-9142 Filed 4-17-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-219]

**GPU Nuclear Corporation Issuance of
Amendment to Provisional Operating
License**

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 151 to Provisional Operating License No. DPR-16 issued to GPU Nuclear Corporation (the licensee), which revised the Technical Specifications for operation of the Oyster Creek Nuclear Generating Station located in Ocean County, New Jersey. The amendment is effective as of the date of issuance.

The amendment revised Technical Specification (TS) 3.3 of the Oyster Creek Nuclear Generating Station TS. Specifically, the amendment revised TS Section 3.3.A, pressure/temperature (P/T) limits of the reactor coolant system for operation up to 17 effective full power years. The amendment also revised TS Section 3.3.B to provide a new reactor vessel temperature limit for full tensioning of the reactor vessel closure head studs.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the *Federal Register* on February 11, 1991 (56 FR 5431). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendment dated January 11, 1991, as

supplemented March 12, 1991, (2) Amendment No. 151 to License No. DPR-16, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room, Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—I/II.

Dated at Rockville, Maryland this 11th day of April, 1991.

John F. Stolz,

Director, Project Directorate I-4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91-0144 Filed 4-17-91; 8:45 am]

BILLING CODE 7600-01-M

PENNSYLVANIA AVENUE DEVELOPMENT CORPORATION

Public Information Collection Requirements Submitted to OMB for Review

PADC has submitted the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511 (44 U.S.C. ch. 35). Copies of the submission may be obtained by calling the PADC clearance officer listed. Send comments to the OMB reviewer listed and to the PADC clearance officer.

Pennsylvania Avenue Development Corporation

OMB Number: 3208-.

Form Number: No form number available; information requested in the Invitation for Proposals for the development of Parcel 457-C, Square 457, in Washington, DC.

Title: Development Prospectus (Invitation for Proposals).

Description: Under the authority of the Pennsylvania Avenue Development Corporation Act, as amended (Public Law 92-578), PADC has prepared an Invitation for Proposals for the development of Parcel 457-C, Square 457, in Washington, DC, which will require offerors to submit information concerning financial investment in the project, past experience and capability of members of each offeror's development team, development

program, architecture, urban design, historic preservation and affirmative action program for the project.

Respondents: Real Estate Developers; Construction firms; Architect firms; Financial firms.

Clearance Officer: Talbot J. Nicholas II, Attorney, (202) 724-9055, PADC, suite 1220 North, 1331 Pennsylvania Avenue, NW., Washington, DC 20004.

OMB Reviewer: Adam Diamond, (202) 395-7340, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Washington, DC 20503.

Dated: April 10, 1991.

M. J. Brodie,

Executive Director.

[FR Doc. 91-0065 Filed 4-17-91; 8:45 am]

BILLING CODE 7630-01-M

RAILROAD RETIREMENT BOARD

Privacy Act of 1974; Proposed Changes to Systems of Records

AGENCY: Railroad Retirement Board.

ACTION: Notice of proposed change to systems of records.

SUMMARY: The purpose of this document is to give notice of one proposed routine use in four systems of records.

DATES: The systems of records for which a new routine use is proposed shall be amended as proposed without further notice 30 calendar days from the date of this publication (May 18, 1991) unless comments are received before this date which would result in a contrary determination.

ADDRESSES: Send comments to Beatrice Ezerski, Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: LeRoy Blommaert, Privacy Act/FOIA Officer, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751-4548 (FTS 386-4548).

SUPPLEMENTARY INFORMATION: The proposed routine use for inclusion in four systems of records (RRB-20, "v"; RRB-22, "nn"; RRB-25, "d"; and RRB-26, "e") would permit the RRB to disclose to the Health Care Financing Administration (HCFA) identifying information about railroad beneficiaries who may be working. HCFA would use that information to contact such beneficiaries to determine whether they have employer group health insurance benefits. If they do, under law Medicare is the secondary payer to the employer group health insurance plan. The Railroad Retirement Board has

determined that this proposed routine use meets the compatibility requirement because it is a necessary and proper use.

By authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

RRB-20

SYSTEM NAME:

Health Insurance and Supplementary Medical Insurance Enrollment and Premium Payment System (MEDICARE)—RRB.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A new paragraph "v" is added to read as follows:

* * * * *

v. Identifying information about Medicare-entitled beneficiaries who may be working may be disclosed to the Health Care Financing Administration for the purposes of determining whether Medicare should be the secondary payer of benefits for such individuals.

* * * * *

RRB-22

SYSTEM NAME:

Railroad Retirement, Survivor, and Pensioner Benefit System—RRB.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

New paragraph "nn" is added to read as follows:

* * * * *

nn. Identifying information about Medicare-entitled beneficiaries who may be working may be disclosed to the Health Care Financing Administration for the purposes of determining whether Medicare should be the secondary payer of benefits for such individuals.

* * * * *

RRB-25

SYSTEM NAME:

Research Master Record for Survivor Beneficiaries Under the Railroad Retirement Act—RRB.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

New paragraph "d" is added to read as follows:

* * * * *

d. Identifying information about Medicare-entitled beneficiaries who may be working may be disclosed to the Health Care Financing Administration for the purposes of determining whether Medicare should be the secondary payer of benefits for such individuals.

* * *

RRB-26

SYSTEM NAME:

Research Master Record for Retired Railroad Employees and their Departments—RRB

* * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

New paragraph "e" is added to read as follows:

* * *

e. Identifying information about Medicare-entitled beneficiaries who may be working may be disclosed to the Health Care Financing Administration for the purposes of determining whether Medicare should be the secondary payer of benefits for such individuals.

[FR Doc. 91-0088 Filed 4-17-91; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration (Designatronics Incorporated, Common Stock, 4¢ Par Value) File No. 1-8543

April 12, 1991.

Designatronics Incorporated ("Company") has filed an application with the Securities and Exchange Commission ("Commission") pursuant to section 12(d) of the Securities Exchange Act of 1934 and rule 12d2-2(d) promulgated thereunder to withdraw its Common Stock from listing and registration on the Pacific Stock Exchange, Inc. ("PSE").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

The Board of Directors authorized a voluntary delisting of the Company's Common Stock, 4¢ Par Value from the PSE, based upon the present dual listing of the shares on both the American Stock Exchange, Inc. ("Amex"), and the PSE. In reaching its decision, the Board of Directors took into account the cost associated with listing on the PSE and the sparse annual trading of the Company's shares on the PSE.

Any interested person may, on or before May 3, 1991 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Amex and/or PSE and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 91-0120 Filed 4-17-91; 8:45 am]

BILLING CODE 8010-01-M

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (Penril Corp., Common Stock, \$.01 Par Value) File No. 1-7886

April 12, 1991.

Penril Corp. ("Company") has filed an application with the Securities and Exchange Commission ("Commission") pursuant to section 12(d) of the Securities Exchange Act of 1934 and rule 12d2-2(d) promulgated thereunder to withdraw the above specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

The Board of Directors of the Company (the "Board") unanimously approved resolutions on December 5, 1990 to withdraw the Company's Common Stock from listing on the Amex and, instead, list such Common Stock on the National Association of Securities Dealers Automated Quotations National Market System ("NASDAQ/NMS"). The decision of the Board followed a lengthy study of the matter, and was based upon the belief that listing of the Common Stock on NASDAQ/NMS will be more beneficial to its stockholders than the present listing on the Amex for the reasons set forth below.

First, the Company believes that the NASDAQ/NMS system of competing market makers will result in increased visibility and sponsorship for its Common Stock than is presently the case with the single specialist on the Amex.

Second, the company believes that the NASDAQ/NMS system will offer the Company's stockholders more liquidity than is presently available on the Amex and will offer the Company the opportunity to secure its own group of market makers and expand the capital base available for trading in its Common Stock.

Finally, the Company believes the number of firms providing institutional research and advisory reports concerning the Company will increase as a result of its listing on the NASDAQ/NMS, a result that the Company has been seeking to accomplish without success while listed on the Amex.

Any interested person may, on or before May 3, 1991, submit by letter to the Secretary of the Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 91-0121 Filed 4-17-91; 8:45 am]

BILLING CODE 8010-01-M

Issuer Delisting; Notice of Application To Withdraw from Listing and Registration (Ronson Corporation, Common Stock, \$1.00 Par Value; 12% Cumulative Convertible Preferred Shares, No Par Value) File No. 1-1031

April 12, 1991

Ronson Corporation ("Company") has filed an application with the Securities and Exchange Commission ("Commission") pursuant to section 12(d) of the Securities Exchange Act of 1934 and rule 12d2-2(d) promulgated thereunder to withdraw the above specified securities from listing and registration on the Philadelphia Stock Exchange, Inc. ("Phlx").

The reasons alleged in the application for withdrawing these securities from listing and registration include the following:

The Board of Directors of the Company has determined that it is in the Company's best interest to have its

securities trade on the Over-the-Counter ("OTC") Bulletin Board Display Service (the "Bulletin Board"). The securities are not eligible for trading on the Bulletin Board if they trade on an exchange or on the National Association of Securities Dealers Automated Quotation System ("NASDAQ"). Therefore, the Company seeks to withdraw its securities from listing and registration on the Phlx.

Any interested person may, on or before May 3, 1991, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary

[FR Doc. 91-9122 Filed 4-17-91; 8:45 am]

BILLING CODE 8010-01-M

TENNESSEE VALLEY AUTHORITY

Union City-New Madrid 161-kV Transmission Line; Wetlands Notice

AGENCY: Tennessee Valley Authority.

ACTION: Notice of no practical alternative to impacting wetlands.

SUMMARY: The Tennessee Valley Authority (TVA) and Associated Electric Cooperative, Inc. (AECI), are proposing to construct a 161-kV electric power transmission interconnection between TVA's Union City, Tennessee substation and AECI's New Madrid Generating Plant switchyard in Missouri. An Environmental Assessment, in accordance with the National Environmental Policy Act, is being prepared. This proposal will result in the disturbance of about 4 acres of wetlands; however, it has been determined that no practicable alternative exists. TVA and AECI are requesting public comment on the impact to wetlands.

DATES: TVA and AECI will consider all relevant comments received by May 2, 1991 before a final decision is made on the proposal.

ADDRESSES: Any comments on this proposal should be addressed to M. Paul

Schmierbach, Manager, Environmental Quality Staff, Tennessee Valley Authority, 400 W. Summit Hill Drive, SPB 2P, Knoxville, Tennessee, 37902-1499.

FOR FURTHER INFORMATION CONTACT: For additional information on this action, call M. Paul Schmierbach, Manager, Environmental Quality Staff, Tennessee Valley Authority at (615) 632-6578.

SUPPLEMENTARY INFORMATION: AECI is responsible for the transmission line segment from the New Madrid Generating Plant to the first structure east of the Mississippi River which involves about 9.5 miles of new transmission line in Missouri and the river crossing. TVA is responsible for the transmission line from Union City to Tiptonville and on to the first structure east of the river. Of the total approximate 36 miles of new transmission line on this latter segment, 9 miles will utilize existing line. It is anticipated the transmission line will be constructed using either wood- or steel-pole H-frame or single-pole steel structures on both sides of the river.

Working with AECI, TVA evaluated suitable river crossings and determined that a crossing near Mississippi River mile 875 or 876 was the most advantageous for several reasons, one of which was lesser impact on wetlands. With the river crossing identified, TVA evaluated two possible routes to the crossing, both of which impacted wetlands; the route selected resulted in lesser impacts. Of the three alternative corridors evaluated in Missouri, the preferred corridor crosses mostly nonwetland areas and would impact the smallest amount of wetlands of any of the three alternatives. The Tennessee route to the river crossing was substantially preferred to other alternatives based on wetland areas traversed and line length.

TVA and AECI have concluded there is no practicable alternative to impacting wetlands totaling about 4 acres. Of this total, 1 acre or less is associated with the transmission line in Missouri and about 3 acres in Tennessee. The areas along the eastern portion of the Tennessee route to be cleared are small, and because of the limited amount of clearing, it was concluded that no significant adverse impacts would result.

The two wetland areas near the Mississippi River to be cleared could cause adverse impact because of the removal of trees necessary to allow construction and operation of the transmission line. There are no feasible alternative routes which would avoid

these or similar areas. In order to minimize impacts, TVA and AECI will take the following steps:

- (1) For those areas identified as wetlands, streams and drainageways will not be modified so as to change the natural hydrological patterns;
- (2) Areas of naturally occurring hydric soils will not be removed or disturbed in any way that would destroy or alter their hydrological properties;
- (3) Areas of identified forested wetlands will be hand-cleared only to the extent necessary to allow the construction and safe operation of the transmission line;
- (4) Where trees are removed and cut, within identified wetland areas or along streams, remaining stumps will not be uprooted or removed;
- (5) Future right-of-way maintenance will avoid the use of heavy equipment or chemicals and will be conducted during dry periods whenever possible.

Dated: April 12, 1991.

Michael Hines,
Manager, Environmental Compliance.
[FR Doc. 91-9078 Filed 4-17-91; 8:45 am]
BILLING CODE 8120-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Security Advisory Committee; Meeting

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of Aviation Security Advisory Committee Meeting.

SUMMARY: Notice is hereby given of a meeting of the Aviation Security Advisory Committee.

DATES: The meeting will be held May 10, 1991, from 9 a.m. to 4 p.m.

ADDRESSES: The meeting will be held in the MacCracken Room, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: The Office of the Assistant Administrator for Civil Aviation Security, ACS, 800 Independence Avenue, SW., Washington, DC 20591, telephone 202-267-9863.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. app. II), notice is hereby given of a meeting of the Aviation Security Advisory Committee to be held May 10, 1991, in the MacCracken Room, Federal Aviation Administration, 800

Independence Avenue, SW.,
Washington, DC.

The agenda for the meeting is to allow the subcommittee chairs to present subcommittee actions that have occurred since the March 8, 1991, committee meeting. The FAA will also provide a status report on current rulemaking actions. Attendance at the May 10, 1991, meeting is open to the public but limited to space available. Members of the public may address the committee only with the written permission of the chair, which should be arranged in advance. The chair may entertain public comment if, in its judgment, doing so will not disrupt the orderly progress of the meeting and will not be unfair to any other person. Members of the public are welcome to present written material to the committee at any time.

Persons wishing to present statements or obtain information should contact the Office of the Assistant Administrator for Civil Aviation Security, 800 Independence Avenue, SW., Washington, DC 20591, telephone 202-267-9863.

Issued in Washington, DC on April 12, 1991.

O. K. Steele,

Assistant Administrator for Civil Aviation Security.

[FR Doc. 91-9091 Filed 4-17-91; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement: Baltimore City, MD

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a supplemental environmental impact statement will be prepared for a proposed highway project in Baltimore City Maryland.

FOR FURTHER INFORMATION CONTACT:

Herman Rodrigo, the Planning, Research, Environment and Safety Engineer, Federal Highway Administration, suite 220, 711 West 40th Street, Baltimore, MD 21211, Telephone: (301) 962-4440.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Maryland Department of Transportation and the Interstate Division for Baltimore City will prepare an environmental impact statement supplement on a proposal to improve Boston Street in Baltimore City, Maryland. This document supplements FEIS #FHWA MD-EIS-74-02-03-09-F, approved

August 1, 1983. The selected alternative was broken down into three distinct segments: Lower Jones Falls; Fells Point; and Canton. The selected alternative, an at-grade boulevard in the Lower Jones Falls has been constructed. The Fells Point selected alternative, improving the existing streets, has been partly completed and the remaining improvements are in final design stage. The Canton segment was composed of two distinct alternatives, one each for the western and eastern sections. The selected alternative for the western section, Alternative A, consisted of four lanes with a fifth center lane and median provided to accommodate left turns and a rail line. The selected alternative in the eastern section, Alternative D, consisted of four lanes with a local access road. Location and Design approval for the selected alternative in each segment was granted in September 1983. The purpose of this Supplement is to address a new six-lane alternative in the Canton segment, proposed as a result of traffic demand increase within this corridor, commonly known as Boston Street.

Improvements to the corridor are considered necessary to provide for the existing and projected traffic demand. Alternatives under consideration include (1) taking no action; (2) Transportation Systems Management (TSM Improvements); (3) widening the existing roadway initially to 6 lanes; and (4) 4/6 lanes widening the existing roadway to four lanes with parking bays and ultimately to 6 lanes (when traffic increases warrant).

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A series of public meetings began in September, 1990, and will continue until June, 1991. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The draft EIS supplement will be available for public and agency review and comment prior to the public hearing. No formal scoping meeting is planned at this time.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments, and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above. (Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and

Construction. The regulations implementing Executive Order 12372 activities apply to this program.) Issued on: April 1, 1991.

A. Porter Barrows,

Division Administrator, Baltimore, Maryland.

[FR Doc. 91-9096 Filed 4-17-91; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

[Docket No. 91-14; Notice 1]

Mosler Auto Care Center, Inc.; Receipt of Petition for Temporary Exemption From Standard No. 208

Mosler Auto Care Center, Inc. of Riviera Beach, Fla., dba Consulier Industries, has petitioned for a temporary exemption for its Consulier GTP passenger car from the passive restraint requirements of Federal Motor Vehicle Safety Standard No. 208 Occupant Crash Protection. The basis of the petition is that compliance would cause its substantial economic hardship.

On March 31, 1990, Consulier Industries, Inc., of Riviera Beach, Fla., sold its automobile manufacturing business to Mosler and changed its name to Consulier Engineering, Inc. Doing business as Consulier Industries, Mosler became the manufacturer of the Consulier GTP. At that time, Consulier's petition for temporary exemption from the passive restraint requirements was pending before NHTSA; two days later, it was granted, and notice of the grant appeared in the *Federal Register* on April 6, 1990 (55 FR 12982). That exemption expired October 1, 1990.

Consulier was organized in June 1985, and was in the research and development stage of the GTP until June 30, 1989. Between April 1 and October 1, 1990, it produced only 15 vehicles. Before September 1, 1989, it had manufactured four production cars, and one has been completed since that date. Mosler believes that the GTP meets all applicable Federal motor vehicle safety standards, except for the automatic restraint requirements of Standard No. 208. It has asked for a year's exemption from the standard.

Mosler/Consulier submitted that it had made a good faith effort to comply with the passive restraint requirements. It has been engaged since 1988 in researching and prototyping such a system, but determined that the develop and engineer its own system was beyond its financial and technical capabilities. A change in the existing front seat belt system would have required a complete redesign of the door

frame configuration. As an all-composite body/chassis is used in the GTP, an extensive modification of existing molds would have been required. Accordingly, Consulier negotiated with Chrysler Corporation to purchase air bag assemblies for adaptation and use in the GTP. The necessary components were not delivered within the time frame that Consulier expected, and when it obtained its exemption, it anticipated that the parts would be shipped from Chrysler in the near future and that its vehicles would be in full compliance by October 1, 1990. Such, however, was not the case. Mosler complains of continuing difficulties in obtaining necessary parts from Chrysler, and has obtained only three air bag systems of those contracted for (which were delivered in February 1990). For the six month period ending June 30, 1990, Mosler had a net loss of slightly more than \$432,000.

Mosler argues that an exemption would be in the public interest, and consistent with the objectives of the National Traffic and Motor Vehicle Safety Act. It is a pioneer in the construction of composite foam-cored monocoque automobile bodies, which can be recycled, and, because of its light weight, enhances fuel economy. Its technology is also part of the "Green Car" concept being developed in Florida, using a hydrogen fuel cell in the Consulier body. During the exemption period, the vehicles produced will be equipped with a manual restraint system that complies with the previous requirements of Standard No. 208.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above, will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the *Federal Register* pursuant to the authority indicated below.

Comment closing date: May 20, 1991.

(15 U.S.C. 1410; delegations of authority at 49 CFR 1.50, and 501.8)

Issued on April 12, 1991.

Barry Felrice,
Associate Administrator for Rulemaking.
[FR Doc. 91-9071 Filed 4-17-91; 8:45 am]
BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Supplement to Department Circular—
Public Debt Series—No. 11-91]

Treasury Notes, Series F-1998

Washington, April 11, 1991.

The secretary announced on April 10, 1991, that the interest rate on the notes designated Series F-1998, described in Department Circular—Public Debt Series—No. 11-91 dated April 4, 1991, will be 7½ percent. Interest on the notes will be payable at the rate of 7½ percent per annum.

Gerald Murphy,
Fiscal Assistant Secretary.
[FR Doc. 91-9063 Filed 4-17-91; 8:45 am]
BILLING CODE 4810-40-M

Senior Executive Service Combined Performance Review Board (PRB)

AGENCY: Treasury Department.

ACTION: Notice of members of Combined PRB.

SUMMARY: Pursuant to 5 U.S.C. 4313(c)(4), this notice announces the appointment of members of the Combined PRB for the Bureau of Engraving and Printing, the Financial Management Service, the United States Mint, the Bureau of the Public Debt, and the United States Savings Bonds Division. This Board reviews the performance appraisals of career senior executives below the level of bureau head and principal deputy in the five bureaus, and makes recommendations regarding ratings, bonuses, and other personnel actions. Three voting members constitute a quorum. The names and titles of the Combined PRB members are as follows:

Primary Members

L. Paul Blackmer, Jr., Assistant Director (Administration), E&P
Michael T. Smokovich, Assistant Commissioner, Federal Finance, FMS
Diane E. Clark, Assistant Commissioner, Administration, FMS
Andrew Cosgarea, Jr., Associate Director for Operations, Mint
Kenneth W. Rath, Assistant Commissioner (Administration), PD
Leland L. Coggan, Executive Director, SBD

Alternate Members

Carl V. D'Alessandro, Assistant Director (Operations), E&P
Michael D. Serlin, Assistant Commissioner, Field Operations, FMS
Bland T. Brockenborough, Assistant Commissioner, Headquarters Operations, FMS
David Pickens, Associate Director for Marketing, Mint
Eleanor J. Holsopple, Assistant Commissioner (Securities and Accounting Services), PD
Richard J. Schneebeli, Deputy Executive Director for Marketing and Sales, SBD

DATES: Membership is effective on the date of this notice.

FOR FURTHER INFORMATION CONTACT:
Leland L. Coggan, Executive Director,
U.S. Savings Bonds Division, 1111 20th St., NW, Washington, DC 20226;
telephone (202) 634-5350. This notice does not meet the Department's criteria for significant regulations.

Dated: April 10, 1991.

Leland L. Coggan,
Executive Director.
[FR Doc. 91-9119 Filed 4-17-91; 8:45 am]
BILLING CODE 4810-41-M

Office of Thrift Supervision

Security Federal Savings and Loan Association; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2)(B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Security Federal Savings and Loan Association, Waterbury, Connecticut, on April 12, 1991.

Dated: April 12, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,
Corporate Secretary.
[FR Doc. 91-9041 Filed 4-17-91; 8:45 am]
BILLING CODE 6720-01-M

Security Savings and Loan Association; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(C) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Security Savings and Loan Association, Waterbury, Connecticut (OTS No. 7792), on April 12, 1991.

By the Office of Thrift Supervision.

Dated: April 12, 1991.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-9039 Filed 4-17-91; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-16]

**First Federal Savings Bank of West
Texas, Lubbock, TX; Final Action,
Denial of Voluntary Supervisory
Conversion Application**

April 12, 1991.

Notice is hereby given that on April 11, 1991, the Director of the Office of Thrift Supervision denied the application of First Federal Savings Bank of West Texas, Lubbock, Texas, to convert to the stock form of organization through a voluntary supervisory conversion involving a proposed public offering of \$10 million of its common stock.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-9040 Filed 4-17-91; 8:45 am]

BILLING CODE 6720-01-M

Sunshine Act Meetings

Federal Register

Vol. 56, No. 75

Thursday, April 18, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NUMBER: 91-8641.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, April 18, 1991; 10:00 a.m.

The following item was rescheduled for the meeting of April 25, 1991:

Advisory Opinion 1991-5:

Todd Campbell for Tennessee Democratic Party

DATE AND TIME: Tuesday, April 23, 1991, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, April 25, 1991, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Advisory Opinions:

1991-6: Lance H. Olson on behalf of the California Democratic Party (continued from April 11, 1991)

1991-5: Todd Campbell for Tennessee Democratic Party (continued from April 11, 1991)

1991-7: Bill Cross on behalf of the Democratic National Committee

1991-8: Senator Thomas A. Daschle

Administrative Matters

PERSON TO CONTACT FOR INFORMATION:

Mr. Fred Eiland, Press Officer,
Telephone: (202) 376-3155.

Delores Harris,

Administrative Assistant, Office of the Secretariat.

[FR Doc. 91-3275 Filed 4-16-91; 2:35 pm]

BILLING CODE 6715-01-M

FEDERAL MARITIME COMMISSION

"FEDERAL REGISTER" CITATION OF

PREVIOUS ANNOUNCEMENT: 56 FR 14976.

PREVIOUSLY ANNOUNCED DATE AND TIME OF THE MEETING: April 17, 1991-10 a.m.

CHANGE IN THE MEETING: The meeting has been rescheduled for Tuesday, April 18, 1991 at 3 p.m.

CONTACT PERSON FOR MORE

INFORMATION: Joseph C. Polking, Secretary, (202) 523-5725.

Joseph C. Polking, Secretary.

[FR Doc. 91-8187 Filed 4-15-91; 4:23 pm]

BILLING CODE 6730-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

April 11, 1991.

TIME AND DATE: 10:00 a.m., Tuesday, April 16, 1991.

PLACE: Room 600, 1730 K Street, NW., Washington, D.C.

STATUS: Closed [Pursuant to 5 U.S.C. § 552b(c)(10)].

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Beth Energy Mines, Inc., et al.*, Docket No. PENN 88-149-R, etc. (Issues include whether the judge erred in finding that Beth Energy violated 30 CFR § 75.303(a), that three of its supervisors knowingly authorized the violation, and that the violation was the result of unwarrantable failure.)

It was determined by a unanimous vote of Commissioners that this item be heard in closed session and that no earlier announcement of the meeting was possible.

CONTACT PERSON FOR MORE

INFORMATION: Jean Ellen (202) 653-5629/ (202) 708-9300 for TDD Relay, 1-800-877-8339 (Toll Free).

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 91-9318 Filed 4-16-91; 3:40 pm]

BILLING CODE 6735-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10 a.m., Wednesday, April 24, 1991.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE

INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: April 16, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-9308 Filed 4-16-91; 3:33 pm]

BILLING CODE 6210-01-M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Reauthorization Committee Meeting, Amendment of Agenda

"FEDERAL REGISTER CITATION OF

PREVIOUS ANNOUNCEMENT: 56 FR 13363, April 1, 1991.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: April 20, 1991, commencing at 9 a.m.

EXPLANATION OF CHANGE: The meeting of April 20, 1991 may continue, following a recess, on April 28, 1991, commencing at 5:00 p.m., should the transaction of business not be completed on April 20, 1991. The April 28, 1991 meeting, if held, will take place at The Madison Hotel, 15th and "M" Streets, N.W., Washington, D.C. 20005 (202) 862-1600, in the Executive Chambers.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda.

2. Consideration of Public Comment and Possible Recommendation to the Board of Directors Regarding the Reauthorization of the Legal Services Corporation.

CONTACT PERSON FOR INFORMATION:

Patricia D. Batie, Executive Office, (202) 863-1839.

Date Issued: April 16, 1991.

Patricia D. Batie,

Corporation Secretary.

[FR Doc. 91-9319 Filed 4-16-91; 3:44 pm]

BILLING CODE 7050-01-M

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Notice of a Meeting

The Board of Governors of the United States Postal Service, pursuant to its

Bylaws (39 C.F.R. Section 7.5) and the Government in the Sunshine Act (5 U.S.C. Section 552b), hereby gives notice that it intends to hold a meeting at 1:00 p.m. on Monday, April 29, 1991, and at 8:30 a.m. on Tuesday, April 30, 1991, in Washington, D.C. The April 29 meeting, at which the Board will consider 1) an anticipated Postal Rate Commission Opinion and Recommended Decision in Docket No. R90-1 and 2) the adjustment of rates for nonprofit mail, is closed to the public (see 56 FR 14287, April 8, 1991).

The April 30 meeting is open to the public and will be held in the Benjamin Franklin Room on the 11th floor of U.S. Postal Service Headquarters, 475 L'Enfant Plaza, West, S.W. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268-4800.

AGENDA

Monday Session

April 29—1:00 p.m. (Closed)

1. Consideration of an anticipated Postal Rate Commission Opinion and Recommended Decision in Docket No. R90-1.
2. Consideration of Adjustment to Nonprofit Rates.

Tuesday Session

April 30—8:30 p.m. (Open)

1. Minutes of the Previous Meeting, April 1-2, 1991.
2. Remarks of the Postmaster General. (Anthony M. Frank)
3. Report on Finance Group Programs. (Comer S. Coppie, Senior Assistant Postmaster General, Finance Group)
4. Quarterly Report on Service Performance. (Ann McK. Robinson, Consumer Advocate)
5. Quarterly Report of Financial Performance. (Mr. Coppie)
6. Consideration of Deviation Request on Funding for the Technical Training Center in Norman, Oklahoma.
7. Tentative Agenda for June 3-4, 1991, meeting in Louisville, Kentucky.

David F. Harris,

Secretary.

[FR Doc. 91-9282 Filed 4-16-91; 2:34 pm]

BILLING CODE 7710-M-M

SECURITIES AND EXCHANGE COMMISSION Agency Meeting.

"FEDERAL REGISTER" CITATION OF
PREVIOUS ANNOUNCEMENT: [56 FR 15115
April 15, 1991].

STATUS: Closed meeting.

PLACE: 450 Fifth Street, N.W.,
Washington, D.C.

DATE PREVIOUSLY ANNOUNCED:
Wednesday, April 10, 1991.

CHANGE IN THE MEETING: Rescheduling.

A closed meeting scheduled for Tuesday, April 16, 1991, at 2:30 p.m., has been rescheduled for Thursday, April 18, 1991, at 9:30 a.m., to consider the following items:

- Institution of injunctive actions.
- Settlement of injunctive actions.
- Formal order of investigation.
- Institution of administrative proceedings of an enforcement nature.
- Settlement of administrative proceedings of an enforcement nature.

Commissioner Roberts, as duty officer, determined that Commission business required the above changes and that no earlier notice thereof was possible.

At times, changes in Commission priorities required 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: Stephen Young at (202) 272-2300.

Dated: April 16, 1991.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-9273 Filed 4-16-91; 2:32 pm]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of April 22, 1991.

An open meeting will be held on Tuesday, April 23, 1991, at 9:30 a.m., in Room 6143, followed by a closed meeting. A closed meeting will be held on Tuesday, April 23, 1991, at 2:30 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Roberts, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the open meeting scheduled for Tuesday, April 23, 1991, at 9:30 p.m., will be:

The Commission will hear oral argument in proceedings under Rule 2(e) of the

Commission's Rules of Practice on the petition of respondents, David J. Checkosky and Norman A. Aldrich, for review of an initial decision of an administrative law judge. For further information, please contact Dan Gray at (202) 272-2300.

The subject matter of the closed meeting scheduled for Tuesday, April 23, 1991, following the 9:30 a.m. open meeting, will be:

Post oral argument discussion.

The subject matter of the closed meeting scheduled for Tuesday, April 23, 1991, at 2:30 p.m., will be:

- Institution of injunctive actions.
- Formal orders of investigation.
- Institution of administrative proceedings of an enforcement nature.
- Settlement of injunctive actions.

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: Jonathan Gottlieb at (202) 272-2200.

Dated: April 16, 1991.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-9274 Filed 4-16-91; 2:32 p.m.]

BILLING CODE 8010-01-M

UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES

Meeting Notice

TIME AND DATE: 8 a.m., April 30, 1991.

PLACE: Uniformed Services University of the Health Sciences, Room D3-001, 4301 Jones Bridge Road, Bethesda, Maryland 20814-4799.

STATUS: Open—under "Government in the Sunshine Act" (5 U.S.C. 552b(e)(3)).

MATTERS TO BE CONSIDERED: 8:00 a.m.
Meeting—Board of Regents

(1) Approval of Minutes—February 11, 1991; (2) Approval of Graduates; (3) Report—Admissions; (4) Financial Report; (5) Report—Dean, Military Medicine Education Institute; (6) Report—Deputy Dean, USUHS; (7) Comments—Members, Board of Regents; (8) Comments—Chairman, Board of Regents; (9) Review of Search Committee Progress

New Business

CONTACT PERSON FOR MORE

INFORMATION: Charles R. Mannix,
Executive Secretary of the Board of
Regents, 301/295-3208.

Dated: April 15, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison
Officer, Department of Defense.

[FR Doc. 91-9234 Filed 4-16-91; 12:29 pm]

BILLING CODE 3810-01-M

Registered Federal Land

**Thursday
April 18, 1991**

Part II

Department of the Interior

Bureau of Indian Affairs

**Land Records for Indian-Owned Lands
Under the Jurisdiction of the Sacramento
Area; Notice**

DEPARTMENT OF THE INTERIOR**Bureau of Indian Affairs****Land Records for Indian-Owned Lands
under the Jurisdiction of the
Sacramento Area Office**

April 3, 1991.

AGENCY: Bureau of Indian Affairs,
Interior.

ACTION: Notice; transfer of custody.

SUMMARY: This notice is published in
accordance with 25 CFR part 150 and in

exercise of authority delegated by the
Secretary of the Interior to the Assistant
Secretary—Indian Affairs under 209 DM
8.1. As of May 13, 1991, the official
custody of all land records and title
documents pertaining to Indian-owned
trust or restricted lands under the
jurisdiction of the Sacramento Area
Office, Bureau of Indian Affairs,
Sacramento, California, is transferred
from the Land Titles and Records Office,
Portland Area Office, Portland, Oregon,
to the Land Titles and Records Section,
Sacramento Area Office, Bureau of
Indian Affairs, 2800 Cottage Way,
Sacramento, California 95825. The Land

Titles and Records Section, Sacramento
Area Office, is thereafter the official
office of record for the recording and
maintenance of these records.

EFFECTIVE DATE: May 13, 1991.

FOR FURTHER INFORMATION CONTACT:
Quentin M. Jones, Land Records Officer,
Division of Real Estate Services, Bureau
of Indian Affairs, 1849 C Street, NW.,
Washington, DC 20240.

Eddie F. Brown,

Assistant Secretary—Indian Affairs.

[FR Doc. 91-9130 Filed 4-17-91; 8:45 am]

BILLING CODE 4310-02-M

Food and Agriculture Administration

**Thursday
April 18, 1991**

Part III

Department of Agriculture

Commodity Credit Corporation

**7 CFR Parts 1497 and 1498
Food, Agriculture, and Trade Act;
Implementation; Final Rule**

DEPARTMENT OF AGRICULTURE**Commodity Credit Corporation****7 CFR Parts 1497 and 1498****Food, Agriculture, Conservation, and Trade Act; Implementation**

AGENCY: Commodity Credit Corporation and Agricultural Stabilization and Conservation Service, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this final rule is to adopt as final, with certain changes, the proposed rule published in the *Federal Register* on February 28, 1991 (56 FR 8287). This final rule sets forth at 7 CFR part 1497 the regulations which will be used in limiting the making of specified payments. This final rule also sets forth at 7 CFR part 1498 the regulations which will be applied in determining whether a foreign individual or entity is eligible to receive certain payments, loans, and benefits. These regulations are issued as required by several acts, including the Food, Agriculture, Conservation, and Trade Act of 1990 (the 1990 Act), enacted on November 28, 1990, which amended the Food Security Act of 1985. These regulations are issued to make technical changes to 7 CFR parts 1497 and 1498 for clarity. The preamble to the final rule also sets forth additional examples for new programs that are effected by these rules.

EFFECTIVE DATE: April 18, 1991.

FOR FURTHER INFORMATION CONTACT:

William E. Penn, Assistant Deputy Administrator, State and County Operations, ASCS, USDA, P.O. Box 2415, Washington, DC 20013 (202) 447-8513.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedures implementing Executive Order 12291 and Departmental Regulation 1512-1 and has been classified "not major". It has been determined that this rule will not result in: (1) An annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It has been determined by an environmental evaluation that this action will not have a significant impact on the quality of the human

environment. Therefore, neither an environmental assessment nor an environmental impact statement is needed.

This program/activity is not subject to the provisions of Executive order 12372 which requires 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).

The titles and numbers of the Federal assistance programs 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; National Wool Act Payment—10.059; Agricultural Conservation Program—10.063; Forestry Incentives Program—10.064; Rice Production Program—10.065; Emergency Livestock Assistance—10.066; Grain Reserve Program—10.067; Conservation Reserve Program—10.069, as found in the Catalog of Federal Domestic Assistance.

The Office of Management and Budget has approved the information collection requirements contained in these regulations under the provisions of 44 U.S.C. chapter 35 and OMB Number 0560-0096 has been assigned.

Public reporting for the information collections required by this rule are estimated to vary from 30 minutes to 16 hours per response, including time for reviewing instructions, searching existing sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Discussion of Comments and Changes

In response to the proposed rule issued on February 28, 1991, 70 timely filed letters containing 159 comments were received. Respondents included the following: 24 individuals, 8 attorneys and business professionals, 9 corporations, 1 general partnership, 22 commodity groups and associations, 1 Farm Bureau, and 2 Members of Congress. Several letters were received from representatives of the same association. Comments were received from the following States: Alabama, Arizona, Colorado, Indiana, Kansas, Louisiana, Montana, Nebraska, New Mexico, South Dakota, Texas, Utah, Washington, Wyoming, and District of Columbia.

Comments were received from three respondents who felt the 15-day comment period on the proposed rule was too short and should be extended. Such an extension would have made it impossible to assure completion of the final rule by the end of the sign-up

period for USDA commodity and Conservation Reserve Programs. Because of the relatively limited scope of the proposed rule, which for the most part only modifies pre-existing rules, USDA determined that a longer period would have been contrary to the public interest.

A comment was received from one respondent who felt that organizations should be given the opportunity to place themselves on a list of those who would be directly notified of proposed or final rule changes in all USDA or ASCS matters. The proposed rule process is the method by which the public is informed of rule changes. To inform only certain individuals or organizations of changes would not be appropriate. Accordingly, this proposal was not adopted.

Another respondent felt that USDA should be required to issue regulations not later than 3 months prior to the status determination deadline. It is a goal of ASCS and CCC to issue regulations on a timely basis. However, since laws are subject to change by Congress, changes in those regulations may be required. In addition, whenever ASCS and CCC determine that the effectiveness of their programs may be improved, necessary regulations are issued.

One respondent expressed concern whether local ASCS interpretation of rules would be consistent with the provisions set forth in the final rule.

To ensure that consistent local interpretation of the rules occurs, training was provided to all state and county ASCS employees before implementation of the proposed rule. In addition, fact sheets, brochures, radio and television spots, new releases and other media material have been developed to inform producers. Accordingly, adequate information concerning these regulations has been provided.

Subpart A—General Provisions

The discussion that follows is organized in the same sequence as the final rule.

Section 1497.1 Applicability

The proposed rule added new programs subject to this part. One respondent felt that there should not be any limitation on wool payments. Three respondents approved of the provision made for inherited land enrolled in the Conservation Reserve Reserve Program.

The 1990 Act provided the limitations on specified payments, including wool

price support programs. The proposed rule reflects the intent of Congress to establish a limitation on wool and mohair payments in order to conform with statutory requirements. Paragraph (a)(2) has been revised to include loan deficiency payments.

Section 1497.2 Administration

The proposed rule added provisions for initial determinations required to be made by the State ASCS office. Six respondents felt that the State office should only make initial determinations for joint operations with more than five members and not for farms with more than five payees. Three respondents felt that county committees should provide recommendations for determinations required to be made by State offices. One respondent felt that the present system for making determinations was adequate and it was not necessary to undermine the authority of the county office. Respondents expressed concerns about delays in processing determinations at the State office.

The 1990 Act requires State offices to make the initial determinations of persons and actively engaged in farming for farm operations consisting of more than 5 persons. In order to assure that State offices review cases most likely to involve schemes or devices to circumvent the payment limitation, it has been determined that State offices shall also make initial determinations for any farm operating plan that involves a farm on which more than 5 persons earn program payment and where the expected total payments on the farm exceed \$50,000.

Section 1497.3 Definitions

The proposed rule provided definitions of terms applicable to this part, including revised definitions of the terms "capital," "irrevocable trust," and "payment." One respondent felt that a change should be made to exclude Conservation Reserve Program payments from the definition of payments for husband and wife provisions or relax the term "farm program payment" to mean payments that fall under the same program.

The 1990 Act requires that if a spouse holds, directly or indirectly, a substantial beneficial interest in more than one entity (including the spouses themselves) that also receives farm program payments, the spouses are combined as one person. Therefore, there is no authority to accept the suggested option.

One respondent felt that definition of capital should be revised to include the market value of livestock instead of the rental value of livestock. It would be

inappropriate to use the full market value of livestock as a capital contribution. The value of any contribution to the farming operation is the value of that contribution for the program year. However, a determination of rental value may not be applicable to all livestock.

The term "rental value" was adopted since determination of the full value of the livestock is not appropriate as a contribution to the farming operation for the program year. However, if rental value cannot be determined for livestock, the market or sale value of the livestock, prorated by the average production life of the livestock, may be used to determine the value of the contribution to the farming operation.

Section 1497.4 Timing for Determining Status of Persons

The proposed rule provided for establishment and use of a status date. Forty-five of the respondents felt that an April 1 status date should not be applicable to wool and mohair producers. Forty-three of the respondents felt that the status date for wool and mohair should be December 1. Two of the respondents felt that the status date for wool and mohair should be December 31. One respondent felt that the status date should not be later than the signup deadline. Another respondent protested the provision that actions taken after the status date cannot result in an increase in persons but can result in a decrease in persons. The respondent suggested that once a determination is made, it should not be reduced for that year.

To establish different status dates for different programs could result in different determinations for the same year and would require producers to file different form CCC-502's for each program. To allow producers to take an action after the date on which person determinations are made which would increase the number of persons would lead to program abuse.

Therefore, for 1992 and subsequent years, it has been determined that the status date will be January 1 of the program year. However, in order to provide producers with requirements which are fair and equitable for all programs, each program will have a date by which corporations, trust, and general partnerships must be created in order to be eligible for benefits under that program.

Section 1497.6 Scheme or Device

The proposed rule set forth provisions relating to adoption of a scheme or device which is designed to evade this part or which has the effect of evading

this part. One respondent felt this section was a good provision that would hopefully prevent abuse.

Section 1497.9 Equitable Adjustments

The proposed rule set forth provisions relating to acceptance of actions taken by a producer in good faith on action or advice of an authorized representative of the Deputy Administrator as meeting the requirements of this part. Forty-four respondents felt that the substantive change rule should be clarified as not applying to wool and mohair prior to a status date of December 1 or December 31.

The 1987 Act provided authority for equitable adjustments for a transition from the regulations at 7 CFR part 795 to the rules at 7 CFR part 1497. However, Congress did not provide similar authority when making wool and mohair programs subject to the rules of this part. Accordingly, there is no legal authority for such a provision.

Subpart B—Person Determinations

Section 1497.10 Limited Partnerships, Corporations and Other Similar Entities

The proposed rule set forth provisions relating to person determinations for limited partnerships, corporations and other similar entities. Three respondents felt that a husband and wife should be allowed to organize in any fashion that they wish and still qualify for two payments. The respondents also felt that consideration should be made for entities such as family farm corporations and limited partnerships to allow the stockholders to qualify as separate persons.

The requirements for husbands and wives to be considered separate persons is provided in section 1497.104 *Husband and wife*. This section provides that, at the option of the Secretary, husbands and wives may be considered to be separate persons if the spouses do not hold, directly or indirectly, a substantial beneficial interest in more than one entity (including the spouses themselves) engaged in farm operations that also receives farm program payments as separate persons and if each spouse meets the other requirements to be considered a separate person. The statute specifically defines entities such as corporations, joint stock companies, limited partnerships, charitable organizations, or other similar entities as "persons". Accordingly, there is no legal authority to determine stockholders and similar members of an entity to be separate persons.

Section 1497.103 Estates

The proposed rule provided that an heir would be considered to be one person with an estate if the heir would have been considered to be one person with the deceased individual. One respondent proposed that the rule be revised to provide that the estate shall be combined as one person with an heir if the heir would have been combined with the deceased individual should he or she lived.

The proposed rule is amended to adopt the suggestion that an heir to an estate is combined as one person with the estate if the heir would have been combined with the deceased individual if the deceased individual was still living.

Accordingly under the final rule, the following determinations would be made:

Example 1. Widow P owns a farm and meets the requirements to be actively engaged in farming under the landowner provision. In addition, Widow P is an heir of the estate of her late husband, Husband Q, who died in the previous year. The estate also owns land and meets the requirements to be actively engaged in farming under the landowner provision. Neither Widow P nor the estate of her late husband, Husband Q, has a substantial beneficial interest in any other entity.

Determination. Widow P and the estate of Husband Q are considered to be actively engaged in farming and separate "persons" for payment limitation purposes since Widow P and Husband Q would have met the requirements to be considered separate "persons" if Husband Q was still alive.

Section 1497.104 Husband and Wife

The proposed rule set forth provisions relating to person determinations involving husbands and wives including the revised provision allowing husbands and wives to be separate if certain requirements are met. One respondent felt that it was inappropriate to deviate from the wording of the law concerning the requirements that spouses not hold, directly or indirectly, a substantial beneficial interest in more than one entity engaged in farm operations that also receives farm program payments in order to be considered separate persons. Three respondents felt that the rule discriminated against spouses. Three respondents felt that a husband and wife should be allowed to organize in any fashion that they wish and still qualify for two payments. One respondent felt that provision should be made which would allow a spouse to have an interest in an estate and not

have that estate considered as a substantial beneficial interest which would combine the spouses as one person.

The 1990 Act amendments provided that, at the option of the Secretary, husbands and wives could be considered as separate persons if the spouses do not hold, directly or indirectly, a substantial beneficial interest in more than one entity (including the spouses themselves) engaged in farm operations that also receives farm program payments as separate persons and if each spouse meets the other requirements to be considered a separate person. Based upon a review of the comments received, it has been determined that the death of an individual should not result in combination of spouses who would otherwise qualify as separate persons. Accordingly, the proposed rule is amended to adopt the suggestion that an interest in an estate will not be considered as an interest in an entity for purposes of determining persons for 2 years after the formation of the estate.

The 1985 Act, as amended, specifically defined entities such as corporations, joint stock companies, limited partnerships, charitable organizations, or other similar entities as "persons". Accordingly, there is no legal authority to allow husbands and wives to organize in any manner they wish and still qualify for two payments.

Under the final rule, the following determinations would be made:

Example 1. Husband A and Wife B have a joint farming operation comprised of 500 acres of owned land. In addition, Wife B has 25 percent interest in Corporation X, which is participating in the Conservation Reserve Program and earning annual payments. Husband A and Wife B jointly own all the equipment and provide all the capital. Husband A contributes at least 50 percent of A's commensurate share of active personal labor and contributes a significant contribution of active personal management. Wife B provides a significant contribution of active personal management. In this situation, Husband A's and Wife B's share of the profits or losses from the farming operation are commensurate with their contributions to the farming operation and the contributions are at risk.

Determination. Husband A and Wife B are considered to be "actively engaged in farming." However, Husband A and Wife B are considered one "person" for payment limitation purposes because they receive payments indirectly through Corporation X.

Example 2. Husband X and Wife Y have a joint farming operation comprised of 500 acres of owned land. In addition, Husband X and Wife Y have combined interest of 33 percent in Corporation Z, which produces vegetables and does not earn USDA benefits. Husband X and Wife Y jointly own all the equipment and provide all the capital on the joint farming operation. Husband X contributes at least 50 percent of X's commensurate share of active personal labor and contributes a significant contribution of active personal management. Wife Y provides a significant contribution of active personal management. In this situation, Husband X's and Wife Y's share of the profits or losses from the farming operation are commensurate with their contributions to the farming operation and the contributions are at risk.

Determination. Husband X and Wife Y are considered to be "actively engaged in farming" and separate "persons" for payment limitation purposes.

Example 3. Husband M and Wife N have a joint farming operation comprised of 500 acres of owned land. In addition, Wife N is an heir of the estate of her father who died in the previous year. Husband M and Wife N jointly own all the equipment and provide all the capital on the joint farming operation. Husband M contributes at least 50 percent of M's commensurate share of active personal labor and contributes a significant contribution of active personal management for the joint operation. Wife N provides a significant contribution of active personal management for the joint operation. The estate of which Wife N is an heir owns land and meets the requirements to be considered actively in farming under the landowner provision. In this situation, Husband M's and Wife N's share of the profits or losses from the farming operation are commensurate with their contributions to the farming operation and the contributions are at risk.

Determination. Husband M, Wife N and the estate are considered to be actively engaged in farming and separate "persons" for payment limitation purposes.

Section 1497.108 Changes in Farming Operations

The proposed rule set forth provisions relating to recognizing an increase in the number of persons in a farming operation. Three of the respondents noted that reference was not made to the revised person determination rules

for spouses and recommended that § 1497.104(b) be included in this section as a substantive change. Forty-four respondents felt that the substantive rule change should be clarified as not applying to wool and mohair prior to a status date of December 1 or December 31.

As provided in § 1497.108(g), other bona fide changes may be determined to be substantive by the Deputy Administrator. It has been determined that the substantive rule is not required to be met for 1991 if the increase in persons is due to the revised person determination rule for husbands and wives. The 1987 Act provided authority for equitable adjustments for a transition from the regulations at 7 CFR part 795 to the rules at 7 CFR part 1497. However, Congress did not provide similar authority when making wool and mohair programs subject to the rules of this part. Accordingly, there is no legal authority to exempt wool and mohair producers from the requirements of this section.

Section 1497.109 Honey Producers

No comments which pertained specifically to this section were received. Under the final rule, the following determinations would be made:

Example 1. In 1991, Zee Honey, Inc. produces enough honey to receive \$300,000 in loan deficiency payments. Zee has two 50 percent stockholders, A and B. A also produces enough honey as an individual to receive \$250,000 in loan deficiency payments. B has no other honey interests. Zee's contributions to its farming operation are commensurate with its share of the profits and losses and are at risk. A's contributions to her farming operation are commensurate with her share of the profits and losses and are at risk. Neither Zee nor A or B are combined as one person with any other individual or entity.

Determination. In 1991 each person is limited to \$200,000 in loan deficiency payments. \$100,000 of Zee's payment would be denied since it exceeds the statutory limitation of \$200,000. Of the remaining \$200,000 earned by Zee, \$100,000 is attributed to A and \$100,000 is attributed to B. Therefore \$150,000 of A's individual payment is also denied.

Subpart C—Actively Engaged in Farming Determinations

Section 1497.201 General Provisions for Determining Whether an Individual or Entity is Actively Engaged in Farming

The proposed rule set forth general provisions for determining whether a

producer is actively engaged in farming. One respondent felt that the requirements of this section were too restrictive and proposed that it should be changed to allow 25–33 percent of the individuals or entities involved in an operation to be considered actively engaged if all they supply is capital. Another respondent felt that ownership of sheep or goats should be sufficient for a producer to be considered actively engaged in farming without providing active personal labor or active personal management.

The 1985 Act, as amended, requires each individual or entity to be actively engaged in farming. As a part being considered actively engaged in farming, that individual or entity must provide a significant contribution to the farming operation of capital, equipment, or land or a combination thereof, as well as active personal labor or active personal management or a combination thereof. Exceptions to these general requirements are made for landowners, family members and sharecroppers. If an entity is not the landowner, members holding at least 50 percent interest of that entity collectively must make a significant contribution of active personal labor or active personal management. Accordingly, the Act does not allow 25–33 percent of the individuals or entities involved in any operation to be considered actively engaged in farming if all they supply is capital. In addition, the statute does not allow ownership of sheep or goats to be considered actively engaged in farming. However, the definition of capital has been revised to include the rental value of livestock as a contribution of capital.

Section 1497.202 Individuals

No comments which related specifically to this section were received. Under the final rule, the following determinations would be made:

Example 1. Individual Z, a wool producer, grazes sheep on owned land. Individual Z also owns the shearing equipment, contributes at least 50 percent of Z's commensurate share of active personal labor, and contributes 100 percent of the farming operation's management. In this situation, Individual Z's share of the profits or losses from the farming operation are commensurate with Individual Z's contributions to the farming operation and the contributions are at risk.

Determination. Individual Z is considered to be actively engaged in farming under the general provisions.

Example 2. Individual I, a wool producer, grazes sheep on land that is

gifted to Individual I by the Indian Tribal Venture. Individual I owns livestock and the shearing equipment and contributes at least 50 percent of the producer's commensurate share of active personal labor and contributes 100 percent of the active personal management to the farming operation. In this situation, Individual I's share of the profits or losses from the farming operation are commensurate with Individual I's contributions to the farming operation and the contributions are at risk.

Determination. Individual I is considered to be actively engaged in farming under the general provisions.

Example 3. Individual H, a minor who is a wool producer, raises a sheep and produces the wool from that sheep as a 4-H project. The sheep has been gifted to Individual H by Q, and gift tax, as applicable has been paid. Individual H owns no equipment or land but instead uses Q's at no charge. Individual H contributes at least 50 percent of the producer's commensurate share of active personal labor and contributes 100 percent of the active personal management to the farming operation. In this situation, Individual H's share of the profits or losses from the farming operation are commensurate with Individual H's contributions to the farming operation and the contributions are at risk. Q is H's father and H lives in Q's house.

Determination. Individual H is considered to be actively engaged in farming under the general provisions and is combined as one "person" for payment limitation purposes with Individual H's parents.

Section 1497.203 Joint Operations

No comments which pertained specifically to this section were received. Under the final rule, the following determinations would be made:

Example 1. Joint Venture X consists of 2 members who are Member N and Member M. Each of the members claim a 50 percent share of the joint venture. Member N provides a significant amount of capital through the contribution of sheep to the farming operation, owned pasture land, a significant amount of owned equipment used for production of wool and mohair, and a significant amount of Active Personal management. Member M contributes sheep to the farming operation, the value of which provides a significant contribution of capital and provides 100 percent of the labor used in the joint venture. Member M informed the county ASC committee that Member N had provided a

noninterest bearing loan to Member M, so that Member M could purchase the sheep. In this situation, Member N's and Member M's share of the profits or losses from the farming operation are commensurate with their contributions to the farming operation and the contributions are at risk.

Determination. Member N is considered actively engaged in farming because of N's significant contributions of capital, land, equipment, and active personal management and because N's claimed shares of the joint venture are at least commensurate with N's contributions and are at risk. The loan which member N made to member M was not at the prevailing interest rate and was, therefore, not a contribution by member M. Member M is not actively engaged in farming because Member M did not provide a significant contribution of capital, land or equipment.

Section 1497.205 Trusts

The proposed rule set forth provisions for a trust to be considered actively engaged in farming. One respondent felt that the trustee should be allowed to contribute management and labor. Nine respondents commented on the requirement in the proposed rule for a trust to provide a tax identification number to the county committee in order for the trust to be considered actively engaged in farming. The respondents felt there was no reason to require a revocable trust to obtain a federal identification number. They stated that the creation of a revocable trust does not change the tax paying status of the individual and that requiring a tax identification number for a revocable trust was in conflict with the income tax code.

The 1987 Act amendments to the 1985 Act intended to limit program payments to persons who were actively engaged in farming. In a trust, the income beneficiaries are the ultimate recipients of the payments, therefore, the income beneficiaries should be the individuals who must provide the required contributions of active personal labor or active personal management to qualify the trust as "actively engaged in farming." The income beneficiaries are also the individuals that select the trust as a "permitted entity" for payment purposes. To allow the trustee to provide the contributions of active personal labor or active personal management would leave the payment limitation provisions open to abuse, because an individual that was attempting to evade the payment limitation could establish a trust that would farm a portion of the individual's

original farming operation. As trustee, the individual could continue to provide the active personal labor and active personal management needed to farm the land and would not be required to select the trust as one of the individual's three permitted entities. Therefore, while still "farming" the land, the trust would be able to establish an entity earning payments that would have otherwise been limited.

It should be noted that the majority of trusts that are earning farm program benefits have land as the corpus of the trust and, therefore, the trust can qualify as "actively engaged in farming" under the landowner provision. Accordingly, the final rules does not adopt the suggestion.

The final rule adopts the suggestion that a separate tax identification number shall not be required for a revocable trust if the grantor is the sole income beneficiary.

The proposed rule provided that all trusts must provide a copy of the trust agreement to the county committee to be considered actively engaged in farming. This has been determined as being too restrictive. Therefore, the final rule provides that a revocable trust does not need to provide a copy of the trust agreement to the county committee.

Section 1497.213 Military Personnel for Operation Desert Storm

This section has been added and will be applied to individuals who are called to active duty in the military because of Operation Desert Storm. If an individual is called to active duty before a determination is made that the individual is actively engaged in farming, the determining authority must be provided information that verifies 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 being called to active duty in the military. If an individual is called to active military duty after being determined to be actively engaged in farming, such determination shall be in effect for the program year.

Subpart E—Cash Rent Tenants

Section 1497.401 Cash Rent Tenants

The proposed rule provided requirements for a cash rent tenant to be eligible to receive payment. One respondent felt that the cash rent tenant provisions had no applicability to the wool and mohair industry and that the wool and mohair programs should therefore be exempt from the cash rent tenant provisions. The 1990 Act specifically provided the sections of the

1985 Act which were to be applicable to wool and mohair programs. The referenced sections include the cash rent tenant provisions. Accordingly, there is no legal authority for such an exemption under the 1990 Act.

Part 1498—Foreign Persons Ineligible for Program Benefits

This part set forth provisions relating to ineligibility of foreign persons for certain program benefits. Two respondents felt that foreign persons should be ineligible for wool and mohair payments. However, the 1990 Act did not amend the 1985 Act to make the person provisions applicable to wool and mohair programs.

List of Subjects

7 CFR Part 1497

Price support programs.

7 CFR Part 1498

Aliens, Loan programs—agriculture, Grant programs—agriculture.

Accordingly, 7 CFR chapter XIV is amended as follows:

1. Part 1497 is revised to read as follows:

PART 1497—PAYMENT LIMITATION

Subpart A—General Provisions

Sec.

- 1497.1 Applicability.
- 1497.2 Administration.
- 1497.3 Definitions.
- 1497.4 Timing for determining status of persons.
- 1497.5 Indian tribal ventures.
- 1497.6 Scheme or device.
- 1497.7 Commensurate contributions.
- 1497.8 Joint and several liability.
- 1497.9 Equitable adjustments.
- 1497.10 Appeals.
- 1497.11 Paperwork Reduction Act assigned number.

Subpart B—Person Determinations

- 1497.101 Limited partnerships, corporations and other similar entities.
- 1497.102 Trusts.
- 1497.103 Estates.
- 1497.104 Husband and wife.
- 1497.105 Minor children.
- 1497.106 States, political subdivisions, and agencies thereof.
- 1497.107 Charitable organizations.
- 1497.108 Changes in farming operations.
- 1497.109 Honey producers.

Subpart C—Actively Engaged in Farming Determinations

- 1497.201 General provisions for determining whether an individual or entity is actively engaged in farming.
- 1497.202 Individuals.
- 1497.203 Joint operations.
- 1497.204 Limited partnerships, corporations and other similar entities.

- 1497.205 Trusts.
 1497.206 Estates.
 1497.207 Landowners.
 1497.208 Family members.
 1497.209 Sharecroppers.
 1497.210 Incapacitated individuals.
 1497.211 Persons not considered to be actively engaged in farming.
 1497.212 Hybrid seed producers.
 1497.213 Military personnel for Operation Desert Storm.

Subpart D—Permitted Entities

- 1497.301 Limitation on the number of entities through which an individual or entity may receive a payment and required notification.

Subpart E—Cash Rent Tenants

- 1497.401 Cash rent tenants.

Authority: 7 U.S.C. 1308, 1308-1, and 1308-2; 16 U.S.C. 3834.

Subpart A—General Provisions

§ 1497.1 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 annual price support and production adjustment programs for the 1989 and subsequent crops of wheat, feed grains, upland cotton, extra long staple cotton, rice, and oilseeds;

(2) Any program authorized by the Agricultural Act of 1949 under which a gain is realized by the repayment of a loan for a crop of any commodity (other than honey) at a level lower than the original loan level or a loan deficiency payment is made (other than honey);

(3) The Wool and Mohair Price Support Programs authorized by the National Wool Act of 1954;

(4) The Conservation Reserve Program authorized by subchapter B of chapter 1 of subtitle D of title XII of the Food Security Act of 1985;

(i) This part is applicable to rental payments made in accordance with a Conservation Reserve Program contract entered into on or after August 1, 1988. For Conservation Reserve Program

contracts entered into before August 1, 1988, the person may elect to have the provisions of this part apply to such a 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 shall be applicable to Conservation Reserve Program contracts entered into prior to December 22, 1987, and to Conservation Reserve Program 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)(4)(i) of this section.

(iii) This part is not applicable to rental payments made in accordance with a Conservation Reserve Program 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 Conservation Reserve Program contract if such payments are made to an individual heir who has succeeded to such contract. Such land must have been subject to the Conservation Reserve Program contract at the time it is inherited by the individual.

(b) The provisions in subparts A and B are the only subparts applicable to the following programs; other programs may be subject to these subparts as provided for in individual program regulations:

(1) Any program authorized by the Agricultural Act of 1949 for a crop of honey under which a gain is realized by the repayment of a loan at a level lower than the original loan level or a loan deficiency payment is made, and any loan forfeiture limitation provisions set forth in such act;

(2) The Agricultural Conservation Program authorized under the Soil Conservation and Domestic Allotment Act;

(3) The Forestry Incentives Program;

(4) The Wetlands Reserve Program authorized by subchapter C of chapter 1 of subtitle D of title XII of the Food Security Act of 1985;

(5) The Agricultural Water Quality Incentives Program authorized by chapter 2 of subtitle D of title XII of the Food Security Act of 1985;

(6) The Livestock Feed Program authorized by the Agricultural Act of 1949.

(c) This part shall be applied to the programs specified in paragraphs (a) (1) and (2) and (b) (1) and (6) of this section on a crop year basis; with respect to the program specified in paragraph (a)(3) of this section on a marketing year basis; and with respect to the programs specified in paragraphs (a)(4) and (b) (2) through (5) of this section on a fiscal year basis.

(d) This part shall be used to determine whether certain individuals or legal entities are to be treated as one person or as separate persons for the purpose of applying the payment limitation provisions which are applicable to the programs specified in this section and to any other programs as may be provided for 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 made to public schools with respect to land which is owned by a public school district and payments made to a State with respect to land owned by a State which is used to maintain a public school shall not be subject to the payment limitations.

(g) The following amounts are the limitation on payments per person per applicable period for each payment or combination of payments specified.

Payment Type	Limitation				
	1991	1992	1993	1994	1995
● Deficiency.....	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000
● Diversion					
● Marketing loan gain	75,000	75,000	75,000	75,000	75,000
● Findley					
● Loan deficiency					
● Deficiency.....	250,000	250,000	250,000	250,000	250,000
● Diversion					
● Resource adjustment					
● Disaster Marketing loan gain					
● Findley					
● Loan deficiency					
● Inventory reduction					
● Wool.....	200,000	175,000	150,000	125,000	125,000
● Mohair	200,000	175,000	150,000	125,000	125,000

Payment Type	Limitation				
	1991	1992	1993	1994	1995
● CRP.....	50,000	50,000	50,000	50,000	50,000
● Honey marketing loan gain.....	200,000	175,000	150,000	125,000	125,000
● Honey loan deficiency.....					
● Honey loan forfeiture.....	200,000	175,000	150,000	125,000	125,000
● ACP cost share.....	3,500	3,500	3,500	3,500	3,500
● FIP cost share.....	10,000	10,000	10,000	10,000	10,000
● WRP cost share*.....	50,000	50,000	50,000	50,000	50,000
● AWQIP incentive payments.....	3,500	3,500	3,500	3,500	3,500
● AWQIP.....	1,500	1,500	1,500	1,500	1,500
LFP cost share.....	50,000	50,000	50,000	50,000	50,000
LFP gain.....					

*Note: This limitation is on a per contract basis rather than a per person basis.

§ 1497.2 Administration.

(a) The regulations in this part will be administered under the general supervision and direction of the Executive Vice President, CCC, and the Administrator, ASCS. In the field, the regulations in this part will be administered by the Agricultural Stabilization and Conservation 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 which is not in accordance with this part; or
 - (2) Require a county committee to withhold taking any action which 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, ASCS, 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 which reflects the determination sought by the producer unless the Deputy Administrator determines that the producer did not follow the farm operating plan which was presented to

the county or State committee for such year.

(f)(1) Initial determinations concerning the provisions of this part shall not be made by a county ASCS office with respect to any farm operating plan that is for a:

- (i) Joint operation with more than 5 members;
- (ii) Farm, as defined in 7 CFR part 719, on which more than 5 persons earn program payments specified in § 1497.1 and where expected total payments on the farm exceed \$50,000.

(2) Additional criteria for determining plans covered by this paragraph may include, as deemed relevant by CCC and ASCS, any of the following:

- (i) The recent addition of a new person;
 - (ii) A recent farm reconstitution or reorganization;
 - (iii) A small proportion of financially fixed farm assets; or
 - (iv) Any other criteria deemed appropriate by the Deputy Administrator.
- (3) Priority will be given to operations with payments exceeding \$40,000 in payments.
- (g) Data furnished by the producers will be used to determine eligibility for program benefits. Furnishing the data is voluntary; however, without it, program benefits will not be provided.

§ 1497.3 Definitions.

(a) The terms defined in part 719 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 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 or conserving use 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 any of the following:

(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 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; or

(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.

Capital. Capital consists of the funding and the rental value of livestock 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 which is contributed to the farming operation. 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 1497.201(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 which has an interest in such farming operation.

(C) Any other individual, joint operation, or entity in whose farming operation such individual, joint operation, or entity has an interest.

(ii) Sections 1497.7 and 1497.201(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 provided 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 capital is contributed by such joint operation such capital contributed to meet the requirements of:

(i) Section 1497.201(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 which 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 which has an interest in such farming operation.

(C) Any individual, entity, or other joint operation in whose farming operation such joint operation has an interest.

(ii) Sections 1497.7 and 1497.201(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) Livestock may be leased from any source. If livestock are leased from another individual or entity with an interest in the farming operation, the livestock must be leased at a fair market value.

Entity. An entity is a corporation, joint stock company, association, limited partnership, 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 conservation cover crops or conservation use acreages and those needed to conduct livestock operations.

(1) With respect to a farming operation conducted by an individual, a joint operation in which the equipment is contributed by a member of the joint operation or entity, such equipment contributed to meet the requirements of:

(i) Section 1497.201(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 which has an interest in such farming operation.

(C) Any other individual, joint operation, or entity in whose farming operation such individual, joint operation, or entity has an interest.

(ii) Sections 1497.7 and 1497.201(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 provided 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 1497.201(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 which 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 which has an interest in such farming operation.

(C) Any individual, entity, or other joint operation in whose farming operation such joint operation has an interest.

(ii) Sections 1497.7 and 1497.201(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 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 family members 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 which is operated by an individual, entity, or joint operation which is eligible to receive payments, directly or indirectly, under one or more of the programs specified in § 1497.1. 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.

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 which:

(1) May not be modified or terminated by the grantor;

(2) The grantor does not have any future, contingent or remainder interest in the corpus of the trust; and

(3) For trusts established after January 1, 1987, 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 the remainder beneficiary achieving at least the age of majority or is contingent upon 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 consisting of cropland, pastureland, wetland, or rangeland which 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 entity, such land contributed to meet the requirements of:

(i) Section 1497.201(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 which has an interest in such farming operation.

(C) Any other individual, joint operation, or entity in whose farming operation such individual, joint operation, or entity has an interest.

(ii) Sections 1497.7 and 1497.201(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 provided 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 land is contributed by such joint operation such land contributed to meet the requirements of:

(i) Section 1497.201(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 which 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 which has an interest in such farming operation.

(C) Any individual, entity, or other joint operation in whose farming operation such joint operation has an interest.

(ii) Sections 1497.7 and 1497.201(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) With respect to the programs specified in § 1497.1(a) (1) and (2):

(i) Deficiency payments;

(ii) Land Diversion payments;

(iii) Resource adjustment payment which is any part of any payment that is determined by the Deputy Administrator to represent compensation for resource adjustment (excluding land diversion payments) or public access for recreation;

(iv) Disaster payment which is any disaster payment made under one or more of the annual programs established for a crop of wheat, feed grains, cotton, rice, and oilseeds under the Agricultural Act of 1949;

(v) Marketing loan gain which is any gain realized by a producer from repaying a loan for a crop of any commodity (other than honey) at a lower level than the original loan level established under the Agricultural Act of 1949;

(vi) Findley payment which is any deficiency payment received for a crop of wheat or feed grains under sections 107B(c)(1) or 105B(c)(1), respectively, of the Agricultural Act of 1949 as the result of a reduction of the loan level for such crop under sections 107B(a)(3) or 105B(a)(3) of the Agricultural Act of 1949;

(vii) Loan deficiency payment which is any loan deficiency payment received for a crop of wheat, feed grains, upland cotton, rice, or oilseeds under sections 107B(b), 105B(b), 103B(b), 101B(b), or 205(e), respectively, of the Agricultural Act of 1949;

(viii) Inventory reduction payment which is an inventory reduction payment received for a crop of wheat, feed grains, upland cotton, or rice under sections 107B(f), 105B(f), 103B(f), or 101B(f), respectively, of the Agricultural Act of 1949;

(2) With respect to the Wool and Mohair Programs:

(i) Annual wool payments; and

(ii) Annual mohair payments.

(3) With respect to the Conservation Reserve Program, annual rental payments;

(4)(i) With respect to any program authorized by the Agricultural Act of 1949 for a crop of honey under which a gain is realized by the repayment of a loan at a level lower than the original loan level or a loan deficiency payment is made:

(A) The honey marketing loan gain which is the amount of the gain; and

(B) The honey loan deficiency payment which is amount of the loan deficiency payment; and

(ii) With respect to any loan forfeiture limitation provision of such act, the value of the loan forfeiture.

(5) With respect to the Agricultural Conservation Program, the cost share payment;

(6) With respect to the Forestry Incentives Program, the cost share payment;

(7) With respect to the Wetlands Reserve Program, annual easement payments;

(8) With respect to the Agricultural Water Quality Incentives Program:

(i) Annual incentive payments; and

(ii) Cost share payments;

(9) With respect to the Livestock Feed Program:

(i) LFP cost share which is any cost share payment; and

(ii) LFP gain which is any gain realized as a result of a producer buying or receiving Commodity Credit Corporation inventory at a level lower than the market price; and

(10) With respect to other programs as designated in individual program regulations, any payments designated in such regulations.

Permitted entity. A permitted entity is an entity designated annually by an individual which is to receive a payment, loan, or benefit under a program specified in § 1497.1(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, irrevocable trust, revocable trust 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 who 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 who 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 with respect to the commodities so marketed for producers shall not be considered to be a person.

Public school. A public school is a primary, elementary, secondary school, college, or university which is directly administered under the authority of a governmental body or which 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 which has a value which is equal to at least 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 which is 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 which would be required to conduct a farming

operation which 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 which 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 meets the requirements of paragraphs (2) and (3) of this definition, a combination of active personal labor and active personal management when viewed together which 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 beneficial interest. A substantial beneficial interest in any 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 which are owned by an individual or entity directly or indirectly through such means as ownership of a corporation which 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 which is 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.

§ 1497.4 Timing for determining status of persons.

(a) Except as otherwise set forth in this part, the status of an individual or entity on April 1 of the current year, or such other date as may be determined and announced by the Deputy Administrator, shall be the basis on which determinations are made in accordance with this part for the year in which the determination is made.

(b) Actions taken by an individual or entity after April 1, or such other date as may be determined and announced by the Deputy Administrator, but on or before the final harvest date of the last

program crop 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 current year. Actions taken by a person after April 1, or such other date as may be determined and announced by the Deputy Administrator, but on or before the harvest of the last program crop in the area, shall be used to determine whether there has been a decrease in the number of persons for the current year.

§ 1497.5 Indian tribal ventures.

Individual American Indians which receive payments through other than an Indian tribal venture are 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 § 1497.1.

§ 1497.6 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 which is designed to evade this part or which has the effect of evading this part. Such acts shall include, but are not limited to:

(1) Concealing information which 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 any 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 Food Security Act of 1985 such person shall be ineligible to receive payments under the programs specified in § 1497.1 with respect to the year for which such scheme or device was adopted and the succeeding year.

§ 1497.7 Commensurate contributions.

In order to be considered eligible to receive payments under the programs specified in § 1497.1 an individual or entity specified in §§ 1497.202 through 1497.210 must have:

(a) A share of the profits or losses from the farming operation which is commensurate with the individual's or entity's contribution to the operation; and

(b) Contributions to the farming operation which are at risk.

§ 1497.8 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 which arises therefrom. The provisions of this section shall be applicable in addition to any liability which arises under a criminal or civil statute.

§ 1497.9 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 in order to provide fair and equitable treatment to such individual or entity.

§ 1497.10 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) of this section 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 which 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 which was presented initially to the county committee for the year which is the subject of the appeal.

(d) An appellant may waive the provisions of paragraphs (a) and (b) of this section.

§ 1497.11 Paperwork Reduction Act assigned number.

The information collection requirements contained in this part have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB control number 0560-0096. Public reporting burden for these collections is estimated to vary from 30 minutes to 16 hours per response, including time for reviewing instructions, searching existing sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, room 404-W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0560-0096), Washington, DC 20503.

Subpart B—Person Determinations**§ 1497.101 Limited partnerships, corporations and other similar entities.**

(a) A limited partnership, 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, corporation, or other similar entity in which more than 50 percent of the interest in such limited partnership, 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, corporations, or other similar entities shall be considered to be one person.

(c) The percentage share of the interest in a limited partnership, corporation, or other similar entity which is owned by an individual or other entity shall be determined as of April 1, or such other date as may be determined and announced by the Deputy Administrator. 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 program crop in the area is 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, 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 which are attributed to each such class.

§ 1497.102 Trusts.

(a) A trust shall be considered to be a person separate from the individual income beneficiaries of the trust except that a trust which 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.

§ 1497.103 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.

§ 1497.104 Husband and wife.

With respect to any married couple, the husband and wife shall be considered to be one person except that a husband and wife, who:

(a) 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

(b) Except as provided in paragraphs (c) and (d) of this section, do not hold, directly or indirectly, a substantial beneficial interest in more than one entity (including themselves) engaged in farm operations that also receive farm program payments, 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.

(c) With respect to any payments received under any program authorized by the Agricultural Act of 1949 for a crop of honey under which a gain is realized by the repayment of a loan at a level lower than the original loan level or a loan deficiency payment is made, and with respect to any loan forfeiture provision of such act a husband and wife may hold, directly or indirectly, a substantial beneficial interest in an unlimited number of entities engaged in farm operations that also receive such payments.

(d) With respect to any interest in an estate, for two 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 for purposes of determining persons.

§ 1497.105 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 it must be determined that the minor:

(1) Has established and maintains 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) Does not live in the same household as such minor's parent and:

(i) Is represented by a court-appointed guardian or conservator who is responsible for the minor; and

(ii) Ownership of the farm is 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.

§ 1497.106 States, political subdivisions, and agencies thereof.

A State, political subdivision and agencies thereof shall be considered to be one person.

§ 1497.107 Charitable organizations.

Charitable organizations, 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 which exercises control or authority over such organizations.

§ 1497.108 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 § 1497.208, except that such an addition will not affect the status of any other individual or entity which 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 land 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 crop acreage bases which are 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 bona fide and substantive only if the transferred amount of such land is commensurate with the new individual's or entity's share of the farming operation.

(f) An increase through the acquisition of livestock not previously involved in the farming operation of approximately 20 percent or more in the total livestock involved in the farming operation.

(g) The Deputy Administrator may determine other bona fide changes to be substantive.

§ 1497.109 Honey producers.

(a) Any gain realized by an entity or individual from repaying a loan for a crop of honey at a lower level than the original loan level and any loan deficiency payment received, directly or indirectly, by an entity or individual under the program specified in § 1497.1(b)(1) shall be limited to the maximum payment limitation amount applicable to a crop as specified in § 1497.1(g). A payment made to an entity shall be attributed to each member of the entity in an amount determined by the Deputy Administrator, or a designee, to be representative of the percentage interest of the entity which is owned by such member.

(b) The total value of honey forfeited to CCC in satisfaction of a price support loan by an entity or individual shall be limited to the maximum amount applicable to a crop as specified in § 1497.1(g). A forfeiture by an entity shall be attributed to each member of the entity in an amount determined by the Deputy Administrator, or a designee, to be representative of the percentage interest of the entity which is owned by such member.

Subpart C—Actively Engaged in Farming Determinations

§ 1497.201 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 which is 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 §§ 1497.202 through 1497.210 must have:

(1) A share of the profits or losses from the farming operation which is commensurate with the individual's or entity's contribution to the operation; and

(2) Contributions to the farming operation which are at risk.

§ 1497.202 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.

§ 1497.203 Joint operations.

(a) A member 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 § 1497.201(d), the members of the joint operation who make a significant contribution of active

personal labor, 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.

§ 1497.204 Limited partnerships, corporations and other similar entities.

A limited partnership, 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.

§ 1497.205 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; and

(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; and

(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.

(d) The trust has provided a copy of the trust agreement to the county committee unless the trust is a revocable trust.

§ 1497.206 Estates.

(a) For two 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.

§ 1497.207 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 when the joint operation holds title to land in the name of the joint operation 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 a member of such joint operation.

§ 1497.208 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.

§ 1497.209 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.

§ 1497.210 Incapacitated individuals.

The determining authority shall take into consideration the circumstances

involving individuals who have died or become incapacitated during the program year. 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 that verifies 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. 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.

§ 1497.211 Persons not considered to be actively engaged in farming.

An individual or entity who does not meet any of the provisions of sections 1497.202 through 1497.210 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.

§ 1497.212 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, all other provisions of this part must be met by such producer.

§ 1497.213 Military personnel for Operation Desert Storm.

If an individual is called to active duty in the military because of Operation Desert Storm before a determination is made that the individual is actively engaged in farming, the individual may be considered to be actively engaged in farming if the determining authority determines that such individual did make a conscious effort to and would have been determined to be actively engaged in farming if the individual had not been called to active duty in the military because of Operation Desert Storm. If the individual is called to active duty in the military because of Operation Desert Storm after being determined to be actively engaged in farming, such determination shall be in effect for that program year.

Subpart D—Permitted Entities

§ 1497.301 Limitation on the number of entities through which an individual or entity may receive a payment and required notification.

(a) An individual shall receive a payment under a program specified in § 1497.1(a) either directly or indirectly from no more than three permitted entities. An individual which 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 shall 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 § 1497.1(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 each county in which they conduct a farming operation, in writing 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) of this section.

Subpart E—Cash Rent Tenants

§ 1497.401 Cash rent tenants.

(a) Effective for the 1989 crops, except as provided in paragraph (b) of this section, any tenant that is actively engaged in farming under the provisions of subpart C and conducts a farming operation in which the tenant rents that land for cash or a crop share guaranteed as to the amount of the commodity and receives benefits, including planted history credit under part 1413 of this chapter, with respect to such land under a program specified in § 1497.1(a) shall be considered to be the same person as the landlord unless the tenant makes a significant contribution to the farming operation of:

- (1) Active personal labor and capital, land or equipment; 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.

(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 which 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) Any cash rent tenant that because of any act or failure to act would not meet the provisions of either paragraph (a) (1) or (2) of this section and would therefore be considered to be the same person as the landlord under the provisions in paragraph (a) of this

section shall not be considered the same person if the county committee had previously determined the tenant and landlord to be separate persons, and the landlord did not consent to or knowingly participate in the tenant's failure to meet the provision of either paragraph (a) (1) or (2) of this section.

(c) Any cash rent tenant that would be considered to be the same person as the landlord except for the provisions of paragraph (b) of this section shall be eligible to receive payments with respect to such cash rented land only to the extent that the cash rent tenant would have received such payments if the provisions of paragraph (b) of this section did not apply.

(d) Effective for the 1990 through 1995 crops, any tenant that is actively engaged in farming under the provisions of subpart C and conducts a farming operation in which the tenant rents the land for cash or a crop share guaranteed as to the amount of the commodity and receives benefits, including planted history credit under part 1413 of this chapter, with respect to such land under a program specified in § 1497.1(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 and capital, land or equipment; 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.

(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 which 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.

PART 1498—FOREIGN PERSONS INELIGIBLE FOR PROGRAM BENEFITS

2. The authority citation for 7 CFR part 1498 continues to read as follows:

Authority: 7 U.S.C. 1308, et seq.

3. Section 1498.1 is revised to read as follows:

§ 1498.1 Applicability.

This part is applicable to any type of payment, loan and benefit made with respect to 1991 to 1995 crops. This part is not applicable to any payment, loan and

benefit which is made with respect to the production of a crop of a commodity planted, or commodity program or Conservation Reserve Program contract approved before December 22, 1987.

4. In § 1498.3, paragraph (a) is revised, paragraph (b) is redesignated as (c) and a new paragraph (b) is added, and in redesignated paragraph (c), the definitions of "Active personal labor", "Capital", "Entity", "Land", and "Person" are removed.

§ 1498.3 Definitions.

(a) The terms defined in part 719 of this chapter shall be applicable to this part and all documents issued in accordance with this part, except as otherwise provided in part 1497 or this section.

(b) The terms defined in part 1497 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.

* * * * *

Signed this 11th day of April 1991 in Washington, DC.

Keith D. Bjerke,

Executive Vice President, Commodity Credit Corporation Administrator, ASCS.

[FR Doc. 91-9038 Filed 4-15-91; 8:45 am]

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Reader Aids

Federal Register

Vol. 56, No. 75

Thursday, April 18, 1991

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-3447

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230
---------------------	----------

Other Services

Data base and machine readable specifications	523-3408
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the hearing impaired	523-5229

FEDERAL REGISTER PAGES AND DATES, APRIL

13261-13390.....	1
13391-13574.....	2
13575-13748.....	3
13749-14008.....	4
14009-14186.....	5
14187-14302.....	8
14303-14458.....	9
14459-14632.....	10
14633-14836.....	11
14837-15032.....	12
15033-15270.....	15
15271-15480.....	16
15481-15798.....	17
15799-15978.....	18

CFR PARTS AFFECTED DURING APRIL

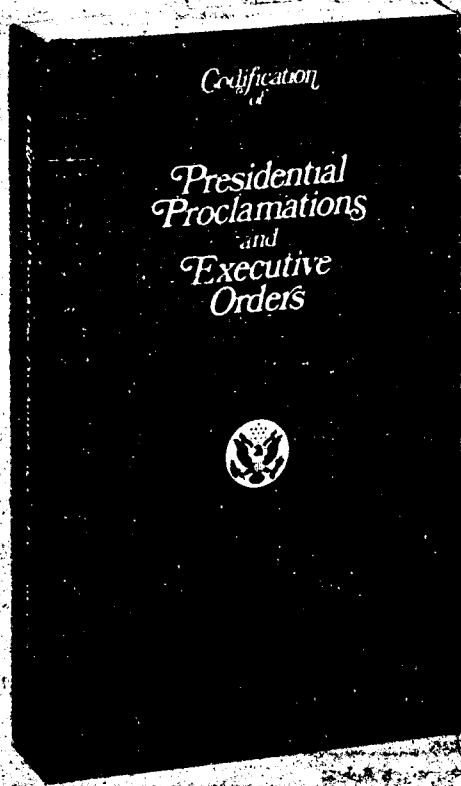
At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1965.....	15813
1980.....	15748
3 CFR	
Proclamations:	
6266.....	13391
6267.....	14185
6268.....	15271
6269.....	15481
6270.....	15799
Executive Orders:	
12154 (Amended by EO 12758).....	14631
12758.....	14631
Administrative Orders:	
Presidential Determinations:	
No. 91-24 of March 11, 1991.....	13261
No. 91-25 of March 21, 1991.....	13263
5 CFR	
315.....	13575
316.....	13575
317.....	15273
532.....	15274
575.....	14290
Proposed Rules:	
950.....	15158
7 CFR	
2.....	14009, 14837
51.....	15801
52.....	13854
68.....	15481
273.....	14289
301.....	14459
320.....	14837
330.....	14837
352.....	14837
354.....	14837
401.....	13576
800.....	15803
916.....	13710
917.....	13710, 14633
925.....	15804
958.....	13710
982.....	15805
1001.....	13393
1002.....	13393
1007.....	13577
1205.....	14634
1210.....	15807
1220.....	15809
1421.....	15812
1425.....	14846
1497.....	15964
1498.....	15964
1924.....	15964
1948.....	13265
1955.....	15813
1956.....	14187
1962.....	15813
Proposed Rules:	
15d.....	15302
29.....	15845
51.....	14027
68.....	14213
271.....	13601
278.....	13601
800.....	13420
810.....	13420
907.....	13290
908.....	13290
921.....	14318
922.....	14318
923.....	14318
924.....	14318
929.....	15845
1001.....	13603
1002.....	13603
1004.....	13603
1005.....	13603
1006.....	13603
1007.....	13603
1011.....	13603
1012.....	13603
1013.....	13603
1030.....	13603
1032.....	13603
1033.....	13603
1036.....	13603
1040.....	13603
1044.....	13603
1046.....	13603
1049.....	13603
1050.....	13603
1064.....	13603
1065.....	13603
1068.....	13603
1075.....	13603
1076.....	13603
1079.....	13603
1093.....	13603
1094.....	13603
1096.....	13603
1097.....	13603
1098.....	13603
1099.....	13603
1106.....	13603
1108.....	13603
1120.....	13603
1124.....	13603
1126.....	13603
1131.....	13603
1132.....	13603
1134.....	13603
1135.....	13603
1137.....	13603
1138.....	13603
1139.....	13603
1205.....	14482
1413.....	13787

1728.....14217	71.....13712, 14223, 14320,	201.....14021	7.....14643
1755.....14217	14424, 14425, 14487, 14668-	203.....14021	8.....14643
1773.....14154	14671	207.....13280	9.....14643
1866.....14424	107.....13552	234.....14021	10.....14643
1951.....14424	108.....13552	255.....14642	11.....14643
3015.....14654	121.....14446	905.....15170	12.....14643
3051.....14654	135.....14446	941.....13280, 15170	13.....14643
9 CFR	15 CFR	965.....15170	14.....14643
11.....13749	770.....13265	968.....15170	15.....14643
78.....13750, 14460	771.....13265	Proposed Rules:	16.....14643
92.....15486	773.....13265	14.....13984	17.....14643
113.....15033	774.....13265	25.....13984	18.....14643
Proposed Rules:	16 CFR	202.....13984	19.....14643
317.....13564	305.....15274	203.....13996	20.....14643
381.....13564	Proposed Rules:	291.....13996	21.....14643
10 CFR	1500.....15672, 15705	888.....14732	22.....14643
2.....14151	17 CFR	901.....15712	23.....14643
Proposed Rules:	1.....14306	25 CFR	24.....14643
71.....14870	15.....14191	175.....15136	25.....14643
170.....14870	16.....14191	176.....15136	26.....14643
171.....14870	19.....14191	177.....15136	27.....14643
11 CFR	30.....14017	244.....14836	28.....14643
Proposed Rules:	150.....14308	700.....13396	29.....14643
107.....14319	249.....14467	26 CFR	30.....14643
114.....14319	Proposed Rules:	1.....14851	31.....14643
9008.....14319	5.....14896	31.....13400, 15040	32.....14643
12 CFR	15.....14896	301.....13584, 14023, 15040	33.....14643
202.....14461	33.....14896	602.....15040	34.....14643
204.....15493	270.....14901	Proposed Rules:	35.....14643
226.....13751	403.....15529	1.....13366, 14034-14040,	36.....14643
326.....13579	18 CFR	14425, 15540, 15570	37.....14643
701.....15034	284.....14848	20.....14321	38.....14643
Proposed Rules:	381.....15495	25.....14321	39.....14643
204.....15522	Proposed Rules:	31.....14487, 14488	58.....15281
334.....13290	Ch. I.....15532	301.....14040, 14041, 14321	164.....15499
545.....15303	401.....15850	602.....15540, 15570	192.....15499
561.....15303	19 CFR	29 CFR	195.....15499
563.....15303	4.....13394, 14467	801.....14469	196.....15499
567.....15303	12.....15181	1601.....14469	199.....13758
571.....15303	24.....15036	1910.....15832	204.....15499
607.....13424	20 CFR	2570.....14860	206.....15499
612.....15311	416.....13266, 13365	2610.....15044	207.....15499
618.....13424	Proposed Rules:	2622.....15044	209.....15499
701.....15053	367.....13788	2644.....15045	210.....13264
13 CFR	21 CFR	2676.....15046	255.....15499
107.....13582	10.....13757	Proposed Rules:	275.....15499
14 CFR	175.....14315	92.....13299	299.....15047
25.....14450	177.....15275	1602.....13790	626.....13759
39.....14010-14014, 14187,	510.....14019, 14641	30 CFR	852.....13589
14303-14307, 14462, 14463,	522.....14020, 14641	56.....14470	Proposed Rules:
14635, 14637	520.....13395	57.....14470	199.....14042
71.....13526, 13583, 14015,	558.....14019, 14020, 15498	917.....15279	33 CFR
14016, 14189, 14190, 14424,	878.....14620	Proposed Rules:	53.....13404
14639, 14640, 14847, 14848	1308.....13854	7.....13404, 14151	100.....13759, 14024, 14196
75.....14016	Proposed Rules:	70.....13404, 14151	110.....13762
91.....15030	316.....14150	75.....13404, 14151	117.....13285, 14643
97.....14464	357.....13295, 14730	913.....13300	161.....14316
121.....13756, 14290	22 CFR	920.....15311	165.....13762, 14196-14199,
125.....14290	601.....13266	950.....14041	14644-14647
135.....14290	Proposed Rules:	31 CFR	207.....13763
1205.....14191	47.....14032	515.....13283	Proposed Rules:
Proposed Rules:	23 CFR	575.....13584	1.....13520
Ch. I.....14660	771.....13269	32 CFR	100.....14224
21.....15847	777.....14195	1.....14643	110.....14902
25.....14446, 15847	24 CFR	2.....14643	117.....15313
39.....14031, 14219-14222,	35.....15170	3.....14643	140.....15314
14661-14668		4.....14643	142.....15314
61.....14282		5.....14643	143.....15314
63.....14282		6.....14643	144.....15314
65.....14282			145.....15314

34 CFR	6844.....14476	226.....15162
215.....14980	6845.....14865	230.....15162
441.....13522	6846.....14865	231.....15162
	6847.....15505	237.....15162
36 CFR		252.....15162
242.....15134	44 CFR	515.....13301
1228.....14025, 15134	64.....15505	543.....13301
Proposed Rules:	65.....14649, 14651	552.....13301, 14675, 14676
242.....15402	67.....15506	570.....14676
1280.....14048	Proposed Rules:	1801.....15134
	67.....14672, 15571	
37 CFR		49 CFR
1.....14648	45 CFR	1.....13772
Proposed Rules:	60.....13388	107.....15510
2.....15059		533.....13773, 15839
	46 CFR	571.....13784, 15290-15295, 15510
38 CFR	98.....13597	
1.....15833	580.....14207	Proposed Rules:
6.....15285	581.....14207	27.....13856
8.....15285	583.....14207	37.....13856, 14341
21.....14648, 15835	Proposed Rules:	71.....13609
	Ch. IV.....14289	571.....14342, 14495, 14909, 15315
39 CFR	15.....13854	
Proposed Rules:	16.....13854	50 CFR
111.....15571	383.....14905	17.....13598
	502.....15580	100.....15134
40 CFR		285.....13415
52.....14861, 14862, 15286, 15499, 15500	47 CFR	611.....13365
60.....13589	1.....13413	644.....13416
61.....13589	22.....14317, 14866	661.....15517
80.....13767	63.....12413	662.....15299
131.....13592	73.....13414, 13415, 14026, 14212, 14479, 14480, 15051, 15509, 15510	663.....13365
147.....14150	80.....14150	672.....13418, 13786, 14480, 14652, 15518
180.....13593, 13594, 14471, 15501	95.....13289, 15836	675.....15051
186.....14472	Proposed Rules:	685.....14866, 15842
261.....13406, 14200	64.....14049-14052, 14225	
271.....13411, 13595, 14203, 14474, 15503	68.....14052, 14225	Proposed Rules:
721.....15784	73.....13445, 14052-14054, 14226, 14227, 14495, 15062, 15581	17.....14055, 14677, 14678, 14910
Proposed Rules:	90.....13791, 15314	23.....15318
Ch. I.....13790, 14341		100.....15402
52.....13605, 14904	48 CFR	222.....14055
61.....13368	501.....15287	285.....13610
86.....13301	1401.....15837	625.....13303
180.....13607	Proposed Rules:	646.....14496
186.....13607	Ch. 53.....13608	675.....15063
261.....15020	1.....15142	685.....13611
268.....15020	5.....15142	
271.....15020	8.....15142	LIST OF PUBLIC LAWS
435.....14049	9.....15142	
600.....13301	10.....15142	Note: No public bills which
	14.....15142	have become law were
41 CFR	15.....15142	received by the Office of the
Ch. 132.....13286	16.....15142	Federal Register for inclusion
101-47.....15048	17.....15142	in today's List of Public
302-1.....15049	19.....15142	Laws.
	25.....15142	
42 CFR	27.....15142	Last List April 15, 1991
57.....13768, 14730	31.....14302, 15142	
Proposed Rules:	32.....14302	
412.....15060	35.....15142	
493.....13430	36.....15142	
	42.....15142	
43 CFR	43.....15142	
Proposed Rules:	44.....15142	
3160.....15061	45.....15142	
Public Land Orders:	47.....14298	
2344 (Amended by	49.....15142	
PLO 6839).....13413	52.....14298, 15142	
6839.....13413	214.....15162	
6841.....14206	215.....15162	
6842.....14475	219.....15162	
6843.....14476	225.....15162	

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