Vol. 43—No. 230
11-29-78
PAGES
55741-56007

federal register

WEDNESDAY, NOVEMBER 29, 1978

highlights

SUNSHINE ACT MEETINGS 55837

See Table of Contents under specific agencies.

MIGRATORY CHILDREN

HEW/OE announces intent to revise regulations governing educational program 55801

ELEMENTARY AND SECONDARY EDUCATION

HEW/OE announces intent to publish proposed rules regarding Instructional Materials and School Library Resources Program, Improvement in Local Educational Practices Program, and Guidance, Counseling and Testing Program 55801

ADULT EDUCATION ACT

HEW/OE announces intent to develop proposed regulations.. 55801

WOMEN'S EDUCATIONAL EQUITY ACT

HEW/OE announces intent to develop regulations 55801

HEALTH PROFESSIONS EDUCATIONAL ASSISTANCE

HEW/PHS/HRA announces 1-5-79 as the closing date for applications for grants for physician assistants training programs, residency training in general internal medicine or general pediatrics, and for training of U.S. citizen foreign medical students (3 documents) 55823

HEW/PHS/HRA announces 1-19-79 as the closing date for applications for applications for allied health traineeship grants for advanced training for fiscal year 1979 55823

HEALTH CARE FACILITIES

HEW/HRA announces extension of time for public hearing to be held on proposed requirements for provision of services to persons unable to pay and for community services, hearing 12-5 and 12-6-78 55800

CHILD WELFARE SERVICES STATE GRANTS PROGRAM

HEW/HDSO publishes Federal shares and allotment percentages for States 55822

DRUGS

Justice/DEA establishes 1979 aggregate production quotas for Schedule I and II controlled substances 55828

BLACK LUNG TRUSTS

Treasury/IRS proposes regulations regarding the payment of benefits and excise taxes on acts of self-dealing and taxable expenditures; comments by 1-29-79; effective for taxable years beginning after 12-31-77 55798

CONTINUED INSIDE

AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR notice 41 FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/COAST GUARD	USDA/ASCS		DOT/COAST GUARD	USDA/ASCS
DOT/NHTSA	USDA/APHIS		DOT/NHTSA	USDA/APHIS
DOT/FAA	USDA/FNS		DOT/FAA	USDA/FNS
DOT/OHMO	USDA/FSQS		DOT/OHMO	USDA/FSQS
DOT/OPSO	USDA/REA		DOT/OPSO	USDA/REA
CSA	CSC		CSA	CSC
	LABOR			LABOR
	HEW/FDA			HEW/FDA

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.

Comments on this program are still invited. Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408

NOTE: As of August 14, 1978, Community Services Administration (CSA) documents are being assigned to the Monday/Thursday schedule.

federal register

Area Code 202 Phone 523-5240

Published daily, Monday through Friday (no publication on Saturdays, Sundays, or on official Federal holidays), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C., Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

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Public Briefings: "How To Use the Federal Register."	523-5235
Code of Federal Regulations (CFR)	523-3419 523-3517
Finding Aids	523-5227

PRESIDENTIAL PAPERS:

Executive Orders and Proclamations.	523-5233
Weekly Compilation of Presidential Documents.	523-5235
Public Papers of the Presidents	523-5235
Index	523-5235

PUBLIC LAWS:

Public Law dates and numbers	523-5266 523-5282
Slip Laws	523-5266 523-5282
U.S. Statutes at Large	523-5266 523-5282
Index	523-5266 523-5282
U.S. Government Manual	523-5230
Automation	523-3408
Special Projects	523-4534

HIGHLIGHTS—Continued

VOLUNTARY PRODUCT STANDARD PS 16-69
Commerce/NBS notifies intention to withdraw; comments by 12-29-78 55812

FUEL ECONOMY ADVERTISING FOR NEW AUTOMOBILES
FTC issues final interim guide amendment; effective 12-29-78. 55747

MINORITY GROUPS
FCC solicits public views on means for encouraging participation by in the part-time programming of existing broadcast stations; comments by 1-22 and 2-23-79 55804

SMALL BUSINESSES
GSA/PBS clarifies the duties, responsibilities, and procedures to be followed by contracting officers and Business Service Center personnel; effective 11-29-78 55761

TRUTH IN LENDING
FRS suspends effective date of staff interpretation on consumer leasing disclosure requirements and disclosure of unpaid balances; comments by 12-29-78 55746

INCOME TAXES
Treasury/IRS proposes regulations relating to the treatment of certain option income of exempt organizations; comments by 1-29-79 55796
Treasury/IRS amends proposed regulations regarding the exemption of certain cemetery companies and crematoria; comments by 1-29-79; effective for taxable years ending after 11-29-78 55797

TAXES
Treasury/IRS issues regulations relating to disclosures of returns and return information to and by Justice Department attorneys in preparation for tax administration proceedings or investigations and to delete certain obsolete regulations; effective 11-29-78 55759

EQUITY SECURITIES
SEC amends rule expanding the classes of persons required to disclose beneficial ownership; effective 12-29-78 55751

FOOD ADVERTISING
FTC publishes staff report on proposed trade regulation rule.. 55771

LOANS
USDA/FmHA redesignates and revises regulations involving certain types and amends regulations relating to insured Farmer Programs; effective 11-29-78; comments by 1-29-79 (Part II of this issue) 55882

GRAIN RESERVE PROGRAM
USDA/CCC issues rules authorizing entrance of eligible 1978-crop corn, providing storage payments on grain exceeding approved reserve loan amount, and limiting emergency release when in-line storage exists for wheat, sorghum, and barley; effective 11-24-78 55741

CROP SUGAR LOANS
USDA/CCC sets forth the terms and conditions under which the maturity dates may be extended; effective 11-24-78 55742

SQUID FISHERIES
Commerce/NOAA proposes amendment to preliminary fishery management plan affecting Northwestern Atlantic; comments by 12-14-78 55809

NATIONAL ENVIRONMENTAL POLICY ACT
CEQ establishes uniform procedures for implementing procedural provisions to reduce paperwork, delays, and produce better decisions; effective 7-30-79 (Part VI of this issue) 55978

ENERGY
DOE/ERA clarifies amendment to interim rule to permit classification of certain powerplants and installations as existing facilities; effective 11-24-78 55745

NATURAL GAS

DOE/FERC amends regulations relating to independent producer filing requirements 55756

BEDDING PRODUCTS AND COMPONENTS

Commerce/NBS notifies circulation of recommended voluntary product standard; comments by 1-15-79 55813

STANDARD METROPOLITAN STATISTICAL AREAS

Commerce/Office of Federal Statistical Policy and Standards proposes revised classification criteria (Part V of this issue) 55954

NATIONAL SECURITY INFORMATION

State revises regulations; effective 12-1-78; comments on or before 12-31-78 (Part IV of this issue) 55942

CUSTOMS

Treasury/Customs proposes to amend regulations concerning entry of merchandise and liquidation of entries; comments by 12-27-78 55774

IMPORTED COMMODITIES FROM JAPAN

ITC determines injury from importation of steel wire strand for prestressed concrete to domestic industry 55826

IMPORTED COMMODITIES FROM THE REPUBLIC OF KOREA

CITA lifts embargo on certain wool textile products; effective 11-29-78 55814

PRIVACY ACT OF 1974

Presidential Commission on World Hunger proposes the establishment of procedures to determine if records exist on a particular individual and to govern access; comments by 12-20-78 55770

HEARINGS—

CPSC: Brake-Clutch Reliability and Safety, 12-11-78 55771
HEW/OE: Presidents' Commission on Foreign Language and International Studies; 12-12-78 55824
Justice/U.S. Parole Commission: Paroling policy guidelines; 12-4, 12-5, 12-7, and 12-8-78 55800

CANCELLED MEETINGS—

Commerce/NOAA: Gulf of Mexico Fishery Management Council, 11-7-78 55813
Federal Prevailing Rate Advisory Committee, 11-30-78 55820

MEETINGS—

Administrative Conference of the United States: Committee on Grants, Benefits and Contracts; 12-14-78 55810
Committee on Informal Action; 12-14-78 55810
USDA/FS: Prescott National Forest Grazing Advisory Board; 12-20-78 55810
Tonto National Forest Grazing Advisory Board, 1-5-79 55810
Commerce/ITA: Computer Systems Technical Advisory Committee; 12-19-78 55812
Subcommittee on Export Administration of the President's Export Council; 12-13-78 55811
Commerce/NOAA: Gulf of Mexico Fishery Management Council; 12-21-78 55813
DOE: National Petroleum Council, Refinery Capability Task Group of the Committee on Refinery Flexibility; 12-12-78 and 1-10-79 (2 documents) 55815
EPA: Environmental Health Advisory Committee of the Science Advisory Board; 12-19-78 55819
FRS: Consumer Advisory Council, 12-6 and 12-7-78 55822
HEW/SSA: Advisory Council on Social Security; 12-11 and 12-12-78 55825
NSF: Advisory Committee for Policy Research and Analysis and Science Resources Studies; 12-15 and 12-16-78 55828

SEPARATE PARTS OF THIS ISSUE

Part II, USDA/FmHA 55882
Part III, HEW/SSA 55936
Part IV, State 55944
Part V, Commerce/Office of Federal Statistical Policy and Standards 55954
Part VI, CEQ 55978

contents

ADMINISTRATIVE CONFERENCE OF UNITED STATES
Notices
Meetings:
Grants, Benefits and Contracts Committee 55810
Informal Action Committee ... 55810

AGRICULTURE DEPARTMENT
See Commodity Credit Corporation; Farmers Home Administration; Forest Service; Soil Conservation Service.

CIVIL AERONAUTICS BOARD
Notices
Meetings; Sunshine Act 55837

COMMERCE DEPARTMENT
See Economic Development Administration; Federal Statistical Policy and Standards Office; Foreign-Trade Zones Board; Industry and Trade Administration; National Bureau of Standards; National Oceanic and Atmospheric Administration; National Technical Information Service.

COMMODITY CREDIT CORPORATION
Rules
Loan and purchase programs:
Grain, etc 55741
Sugar 55742

CONSUMER PRODUCT SAFETY COMMISSION
Proposed Rules
Lawn mower, power; brake-clutch reliability and safety; extension of time and hearing 55771
Space heaters, unvented gas-fired; ban; withdrawal 55772

COUNCIL ON ENVIRONMENTAL QUALITY
See Environmental Quality Council.

CUSTOMS SERVICE
Rules
Vessels in foreign and domestic trades, etc.:
Implementation of statutory requirements; correction 55758
Proposed Rules
Articles conditionally free, subject to reduced rates, etc.:
Merchandise, entry of and liquidation of entries 55774

DRUG ENFORCEMENT ADMINISTRATION
Notices
Schedules of controlled substances; production quotas:
Schedules I and II, 1979 aggregate production quotas 55828

ECONOMIC DEVELOPMENT ADMINISTRATION
Notices
Import determination petitions:
U.S. Knitting Mills, Inc., et al 55811

ECONOMIC REGULATORY ADMINISTRATION
Rules
Petroleum price regulations, mandatory:
Retail gasoline sales; pass-through for costs of vapor recovery systems and increased rents; effective date suspended 55744
Powerplant and industrial fuel use:
Transitional facilities; clarification 55745

EDUCATION OFFICE
Proposed Rules
Adult education programs, State; advance notice 55801
Libraries:
Learning resources; instructional materials, guidance, counseling, and testing, etc.; advance notice 55801
Migratory children, special educational needs; grants to State educational agencies; advance notice 55801
Women's Educational Equity Act program; advance notice 55801

ENERGY DEPARTMENT
See also Economic Regulatory Administration; Federal Energy Regulatory Commission; Hearings and Appeals Office, Energy Department.
Notices
Meetings:
National Petroleum Council (2 documents) 55815

ENVIRONMENTAL PROTECTION AGENCY
Notices
Meetings:
Science Advisory Board 55819

ENVIRONMENTAL QUALITY COUNCIL
Rules
National Environmental Policy Act; implementation; procedural provisions 55978

FARMERS HOME ADMINISTRATION
Rules
Loan and grant making:
Operating loans, farm ownership, soil and water and recreation; policies, procedures, and administration 55882
Loan and grant programs (individual):
Farmer loans; emergency loans 55882

FEDERAL COMMUNICATIONS COMMISSION
Rules
Industrial radio services:
Business radio service, frequency assignment; Dallas/Fort Worth, Tex 55769
Organization and functions:
Field Operations Bureau, field installation locations 55764
Radio broadcast services:
Reregulation of television and radio broadcasting; correction 55769
Proposed Rules
Radio broadcast services:
Minority groups, part-time programming of existing stations by; petition by NTIA; inquiry 55804
Telephone companies:
Jurisdictional separation; integration of rates and services 55803
Notices
Rulemaking proceedings filed, granted, denied, etc.; petitions by various companies 55820

FEDERAL ENERGY REGULATORY COMMISSION
Rules
Natural gas companies:
Certificates of public convenience and necessity and abandonment, etc.; independent producer filing requirements 55756
Notices
Hearings, etc.:
Columbia Gas Transmission Corp. et al 55816
Columbia Gulf Transmission Corp 55817
Gas Gathering Corp 55817
Mid Louisiana Gas Co 55817
Mountain Fuel Resources, Inc 55817
National Fuel Gas Supply Corp 55818
Public Service Co. of Indiana, Inc. (2 documents) 55818
United Gas Pipe Line Co 55818

FEDERAL PREVAILING RATE ADVISORY COMMITTEE
Notices
Meetings; cancellation 55820

FEDERAL RESERVE SYSTEM
Rules
Truth-in-lending:
Credit sale disclosures; official staff interpretations; effective date suspended 55746
Notices
Applications, etc.:
Alaska Bancorporation 55820
Capital Management, Inc 55821
Jacomo Banchares, Inc 55821
Lamb's Bancorporation, Ltd .. 55821
Savings Bank Shares, Inc 55821
West Plains Bancshares, Inc... 55821
Federal Open Market Committee:
Domestic open market operations, authorization 55822

Meetings:
Consumer Advisory Council ... 55822
Sunshine Act ... 55837

FEDERAL STATISTICAL POLICY AND STANDARDS OFFICE
Notices
Standard metropolitan statistical classification, proposed criteria for establishment ... 55954

FEDERAL TRADE COMMISSION
Rules
Trade practice rules, various industry guides:
Fuel economy advertising guide for new automobiles .. 55747
Proposed Rules
Food advertising; staff report; issuance ... 55771

FOREIGN LANGUAGE AND INTERNATIONAL STUDIES, PRESIDENT'S COMMISSION
Notices
Hearing ... 55824

FOREIGN-TRADE ZONES BOARD
Notices
Foreign-trade zone applications:
Greater Cincinnati, Ohio ... 55811

FOREST SERVICE
Notices
Meetings:
Prescott National Forest Grazing Advisory Board ... 55810
Tonto National Forest Grazing Advisory Board ... 55810

GENERAL SERVICES ADMINISTRATION
See Public Buildings Service.

HEALTH, EDUCATION, AND WELFARE DEPARTMENT
See Education Office; Health Care Financing Administration; Health Resources Administration; Human Development Services Office; Public Health Service; Social Security Administration.

HEALTH CARE FINANCE ADMINISTRATION
Rules
Professional standards review:
Area designations; California.. 55936
Notices
Professional Standards Review Organizations; nominations, designations, etc.:
California ... 55937

HEALTH RESOURCES ADMINISTRATION
Proposed Rules
Health planning and resources development:
Community service and provisions of services for persons unable to pay; hearings ... 55800
Notices
Advisory committee reports, annual; availability ... 55823
Grants; availability:
Allied health personnel, advanced training traineeships ... 55823
Physician assistant training programs ... 55823
Residency training in general internal medicine or general pediatrics ... 55824
Training U.S. citizen foreign medical students ... 55824

HEARINGS AND APPEALS OFFICE, ENERGY DEPARTMENT
Notices
Applications for exception and stay:
Atlantic Richfield Co. et al.; hearing ... 55819

HUMAN DEVELOPMENT SERVICES OFFICE
Notices
Child welfare services State grants; allotments, fiscal years 1980 and 1981 ... 55822

INDIAN AFFAIRS BUREAU
Rules
Fiscal and financial affairs:
Osage Tribe judgment funds, expenditure for education and socioeconomic programs; correction ... 55759

INDUSTRY AND TRADE ADMINISTRATION
Notices
Meetings:
Computer Systems Technical Advisory Committee ... 55812
President's Export Council ... 55811

INTERIOR DEPARTMENT
See Indian Affairs Bureau; Land Management Bureau.

INTERNAL REVENUE SERVICE
Rules
Procedure and administration:
Returns and return information disclosure; Justice Department attorneys and employees ... 55759
Proposed Rules
Excise and income taxes:
Black lung benefits, operator's trusts, self-dealing and taxable expenditures ... 55798
Income taxes:
Cemetery companies and crematoria, exemptions ... 55797
Exempt organizations, option income; tax treatment ... 55796

INTERNATIONAL COMMUNICATION AGENCY
Rules
Security information regulations ... 55944

INTERNATIONAL TRADE COMMISSION
Notices
Import investigations:
Steel wire strand for prestressed concrete from Japan ... 55826

INTERSTATE COMMERCE COMMISSION
Notices
Hearing assignments ... 55833
Motor carriers:
Exemptions; agricultural cooperative transportation, filing notices ... 55833
Temporary authority applications ... 55834
Petitions filing:
Denver & Rio Grande Western Railroad Co ... 55831
Railroad operation, acquisition, construction, etc.:
Southern Pacific Transportation Co ... 55835
Railroad services abandonment:
Chicago, Milwaukee, St. Paul & Pacific Railroad Co ... 55834
Illinois Central Gulf Railroad Co ... 55834

JUSTICE DEPARTMENT
See Drug Enforcement Administration; Parole Commission.

LAND MANAGEMENT BUREAU
Notices
Applications, etc.:
Wyoming ... 55825

MANAGEMENT AND BUDGET OFFICE
Notices
Clearance of reports; list of requests (2 documents) ... 55829

NATIONAL BUREAU OF STANDARDS
Notices
Voluntary product standards:
Bedding products and components (mattresses, foundations, beds, bed frames, and headboards) ... 55813
One-way concrete joist construction, types and sizes of forms, PS 16-69; withdrawal ... 55812

NATIONAL MEDIATION BOARD
Notices
Meetings; Sunshine Act ... 55837

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
Proposed Rules
Fishery conservation and management:
Foreign fishing, squid fisheries of Northwestern Atlantic ... 55809
Marine mammals:
Leatherback sea turtle, critical habitat ... 55806
Notices
Meetings:
Gulf of Mexico Fishery Management Council ... 55813
Gulf of Mexico Fishery Management Council; cancellation ... 55813

NATIONAL SCIENCE FOUNDATION
Proposed Rules
Conduct standards, financial interests from minor contracts; exemptions ... 55802
Notices
Meetings:
Policy Research and Analysis and Science Resources Studies Advisory Committee ... 55828

NATIONAL TECHNICAL INFORMATION SERVICE
Notices
Inventions, Government-owned; availability for licensing (2 documents) ... 55813, 55814

NUCLEAR REGULATORY COMMISSION
Notices
Applications, etc.:
Arizona Public Service Co. et al 55829

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
Notices
Meetings; Sunshine Act 55838

PAROLE COMMISSION
Proposed Rules
Prisoners, youth offenders, and juvenile delinquents; parole, release, etc.:
Offense severity examples and policy instructions; hearings 55800

PUBLIC BUILDINGS SERVICE
Rules
Procurement:
Small business concerns 55761

PUBLIC HEALTH SERVICE
Rules
Fellowships, internships, training:
National Research Service Awards; correction 55763

Notices
Organization, funtions, and delegations of authority:
Disease Control Center, Director; influenza immunization grant program 55825

SECURITIES AND EXCHANGE COMMISSION
Rules
Securities Exchange Act:
Beneficial ownership; filing and disclosure requirements 55751

SMALL BUSINESS ADMINISTRATION
Notices
Applications, etc.:
National City Capital Corp 55830
Super Market Investors, Inc .. 55830

SOCIAL SECURITY ADMINISTRATION
Notices
Meetings:
Social Security Advisory Council 55825

SOIL CONSERVATION SERVICE
Notices
Environmental statements on watershed projects; availability, etc.:
Briar Creek Watershed, Pennsylvania 55810

STATE DEPARTMENT
Rules
Security information regulations 55944

TEXTILE AGREEMENTS IMPLEMENTATION COMMITTEE
Notices
Wool textiles:
Korea 55814

TREASURY DEPARTMENT
See Customs Service; Internal Revenue Service.

UNITED STATES RAILWAY ASSOCIATION
Notices
Meetings; Sunshine Act 55838

WORLD HUNGER, PRESIDENTIAL COMMISSION
Proposed Rules
Privacy Act; implementation 55770

list of cfr parts affected in this issue

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published in today's issue. A cumulative list of parts affected, covering the current month to date, follows beginning with the second issue of the month.

A Cumulative List of CFR Sections Affected is published separately at the end of each month. The guide lists the parts and sections affected by documents published since the revision date of each title.

1 CFR
PROPOSED RULES:
475 55770

7 CFR
1421 55741
1435 55742
1904 55882
1921 55883
1941 55883
1943 55895

10 CFR
212 55744
515 55745

12 CFR
226 55746

16 CFR
259 ..... 55747, 55749
PROPOSED RULES:
437 55771
1205 55771
1306 55772

17 CFR
240 55751

18 CFR
154 55756
157 55756

19 CFR
Ch. I 55758

19 CFR—Continued
PROPOSED RULES:
10 55781
11 55782
127 55783
132 55783
141 55784
142 55789
143 55794
144 55794
158 55795
159 55795
173 55796

22 CFR
9 55794

25 CFR
112a 55759

26 CFR
301 55759
404 55759
PROPOSED RULES:
1 (3 documents) 55796-55798
53 ..... 55798, 55799

28 CFR
PROPOSED RULES:
2 55800

40 CFR
1500 55991
1501 55993
1502 55995
1503 55998

40 CFR—Continued
1504 55999
1505 56000
1506 56001
1507 56003
1508 56004

41 CFR
5B-1 55761

42 CFR
66 55763
460 55936
PROPOSED RULES:
124 55800

45 CFR
PROPOSED RULES:
116d 55801
134 55801
160f 55801
166 55801
602 55802

47 CFR
0 55764
73 55769
91 55769
PROPOSED RULES:
67 55803
73 55804

50 CFR
PROPOSED RULES:
226 55806
611 55809

CUMULATIVE LIST OF CFR PARTS AFFECTED DURING NOVEMBER

The following numerical guide is a list of parts of each title of the Code of Federal Regulations affected by documents published to date during November.

1 CFR

Ch. 1 50845
462 52457

PROPOSED RULES:
475 55770

3 CFR

EXECUTIVE ORDERS:
11157 (Amended by EO 12094) .. 51379
11562 (Amended by EO 12098) .. 53411
11846 (Amended by EO 12102) .. 54197
11945 (See EO 12098) 53411
12054 (Amended by EO 12090) .. 50997
12059 (Amended by EO 12097) .. 52455
12061 (Amended by EO 12091) .. 51373
12071 (Amended by EO 12100) .. 54193
12076 (Amended by EO 12099) .. 54191
12084 (Amended by EO 12097) .. 52455
12090 50997
12091 51373
12092 51375
12093 51377
12094 51379
12097 52455
12098 53411
12099 54191
12100 54193
12101 54195
12102 54197

MEMORANDUMS:
October 30, 1978 50995
November 22, 1978 55233

PROCLAMATIONS:
4608 53701

4 CFR

331 52693

5 CFR

213 ..... 51381-51383, 51753, 53703, 53704, 55333
300 51753
713 52694
890 ..... 52459, 52460, 55333
1601 55334
1602 55334

PROPOSED RULES:
334 53761

6 CFR

PROPOSED RULES:
705 51938

7 CFR

6 ..... 50999, 54900
26 52019
271 54199
273 54199
282 ..... 54215, 55334
331 54919
634 50845
722 54216
905 ..... 52197, 53027, 54217, 54617
906 ..... 50866, 51000
907 54618
910 ..... 52462, 53705, 54934
944 52197
946 52199

7 CFR—Continued

966 52199
971 53704
989 50866
1004 53413
1030 51383
1099 54920
1207 51000
1421 55741
1435 55742
1464 54218
1822 ..... 51385, 55235
1823 ..... 55236, 55237
1900 52462
1904 55882
1921 55883
1933 ..... 52462, 55237
1941 55893
1943 55895
1980 ..... 53413, 55345, 55346
2852 51753
2880 54921

PROPOSED RULES:
225 51806
273 54253
301 54936
401 52722
416 52723
651 53443
906 54254
917 52728
981 51405
1062 54642
1099 51405
1135 52496
1435 51026
1496 51406
1804 52496
1933 54652
2900 54938

8 CFR

103 55238
214 54618

9 CFR

73 52466
92 53706
97 ..... 52466, 53706
307 ..... 51386, 51754
350 51386
351 51386
354 51386
355 51386
362 51386
381 ..... 51386, 51754

10 CFR

Ch. II 53414
Ch. III 53414
20 ..... 52202, 54081
21 52202
35 55346
40 52202
51 53027
73 52202
205 51755
211 55322
212 55744
300 51956
473 55228
515 ..... 54912, 55745

10 CFR—Continued

PROPOSED RULES:
40 54255
50 54255
70 54255
75 54255
150 54255
205 53256
211 ..... 52104, 52186, 54081, 54652
212 ..... 52186, 54256
214 55734
435 54512
500 53974
501 53974
502 53974
503 53974
505 53974
580 54660
1040 53658

12 CFR

201 ..... 50867, 53707, 53708
204 52202
205 53708
211 55238
226 ..... 52695, 52696, 54924, 55746
250 53414
262 52203
265 52203
329 54081
526 53415
545 ..... 53415, 54622
563 53415
564 53415
615 55239
701 54220

PROPOSED RULES:
Ch. V 54942
12 50917
208 50914
302 ..... 53042, 54665
344 51638
526 52254
545 52254
552 ..... 53762, 54664
563 55413
563b 54664
701 ..... 51407, 54100

13 CFR

107 54924
309 54924

PROPOSED RULES:
120 53765
308 52432

14 CFR

11 52203
23 52495
25 ..... 52495, 54082
39 ..... 51001, 51004, 52207-52213, 53415-53417, 54082
71 ..... 51005-51010, 53418, 53419, 54925
73 ..... 51010, 51011, 52214, 52467
75 51012
97 53419
121 52205
127 52206
133 52206
137 52206
139 52206

14 CFR—Continued

221 52697
241 53647
242 53649
249 53649
250 53028
291 53628
302 52021
384 54622
385 ..... 53649, 54623
1208 52214

PROPOSED RULES:

39 54100
47 54101
71 ..... 51026, 51029, 52496, 53446-53449, 54943
73 52496
75 51030
91 54101
213 54665
221 54102
298 52182
302 54102
380 53450
399 54102

15 CFR

16 51615
371 52215
376 52215
399 52215
806 54623

PROPOSED RULES:

15 53765
90 51806

16 CFR

2 51757
3 51757
13 ..... 51013, 52216, 52467, 55347, 55348
259 ..... 55747, 55749
1202 53709
1701 53711

PROPOSED RULES:

Ch. II 54944
13 ..... 51031, 53450, 53767, 54944
433 54950
437 55771
440 54103
447 54951
455 52729
460 51038
1205 ..... 51038, 55771
1306 55772

17 CFR

11 55348
32 ..... 52467, 54220
201 52216
211 ..... 50868, 52217, 54228, 55239
230 ..... 52022, 54229
231 ..... 52022, 53246
239 54229
240 55751
241 ..... 52697, 53246
270 50869
271 52022

PROPOSED RULES:

1 53450
30 52729
230 ..... 53251, 55254
240 ..... 53251, 54256
250 53251
260 53251

18 CFR

1 52219
154 55756
157 55756

PROPOSED RULES:

Ch. I 55257
2 53270
154 53770
157 53270
270 53270
271 53270
273 53270
274 53270
275 53270
276 53270
284 53270
703 54262
707 54262

19 CFR

Ch. I 55758
4 54234
153 ..... 52022, 55240
158 ..... 53713, 54925
159 ..... 52485, 53421-53425

PROPOSED RULES:

4 53453
6 53453
10 ..... 53453, 55781
11 ..... 53461, 55782
111 53461
123 53453
127 55783
132 55783
133 53461
141 55784
142 55789
143 55794
144 55794
148 53461
158 55795
159 55795
162 ..... 53453, 53461
171 53453
173 55796

20 CFR

404 ..... 53713, 54083, 54087, 55349
416 ..... 54235, 55349, 55379

PROPOSED RULES:

404 ..... 51410, 52936, 54666, 55414
416 51410

21 CFR

5 51758
73 54235
81 ..... 54235, 54236
105 52690
155 54925
173 ..... 54237, 54926
177 54927
178 54927
184 54238
430 55382
436 55382
449 55384
520 ..... 52700, 55385, 55386
540 52700
558 ..... 52701, 53716, 54240, 55386
561 54088
809 52701
820 52701
1040 55387

21 CFR—Continued

PROPOSED RULES:

10 51966
12 51966
13 51966
14 51966
15 51966
16 ..... 51966, 52731
54 52731
71 52731
170 52731
171 52731
180 52731
310 ..... 52731, 52732
312 52731
314 52731
320 52731
330 52731
337 55417
350 51806
358 51546
361 52731
430 52731
431 52731
510 52731
511 52731
514 52731
570 52731
571 52731
601 52731
630 52731
882 55640
1003 52731
1010 52731

22 CFR

3a 55393
9 55794
41 54928
42 51013

PROPOSED RULES:

51 51410

23 CFR

480 54074
635 53717

PROPOSED RULES:

170 51040
173 51040
420 51040
620 51040

24 CFR

1914 ..... 50874, 51013
1915 50879
1917 ..... 50879-50903, 51386, 51617-51628

PROPOSED RULES:

Ch. XX 54951
1917 51411-51427

25 CFR

20 52227
36 52023
112a 55759

PROPOSED RULES:

231 51806

26 CFR

1 ..... 51387, 54089
6 ..... 52027, 54090
54 53718
141 53718
301 55759
404 55759
601 53029

26 CFR—Continued

PROPOSED RULES:

1 ..... 50920, 51428, 52734, 53045, 54103, 54265, 55796-55798
7 50920
53 ..... 55798, 55799
55 54103

27 CFR

4 54264

PROPOSED RULES:

4 54266
5 54266
7 54266
194 51808
197 51808
201 51808
250 51808
251 51808
252 51808

28 CFR

0 ..... 54929, 55394, 55395
45 52702

PROPOSED RULES:

2 55800
16 51816
301 52498

29 CFR

Ch. XVI 53426
1910 ..... 51760, 52952, 54354
1953 51761
1956 51389
2610 55240

PROPOSED RULES:

56 53771
1202 52032
1206 54267
1404 ..... 52500, 53466
1910 54955
2200 53774
2201 53774
2520 54268
2700 53045
2701 53470

30 CFR

41 51761
55 54065
56 54066
57 54067
75 54241
250 50903

PROPOSED RULES:

46 53774
715 ..... 50921, 52734
717 52734

31 CFR

129 51629
500 51763
515 51762

PROPOSED RULES:

500 53016
515 53021
520 53023

32 CFR

Ch. I 51391
361 52228
362 52230
832 ..... 51763, 51765
862 54625

32 CFR—Continued

PROPOSED RULES:

Ch. I 52032

33 CFR

1 54186
6 53427
117 ..... 52235, 54929
121 53427
125 53427
165 53427
223 52236

PROPOSED RULES:

117 ..... 53472, 54957
183 53471
207 53045
209 54269

36 CFR

PROPOSED RULES:

219 54958
800 55417

37 CFR

4 55395
201 54247
301 53719

PROPOSED RULES:

1 ..... 55417, 55419
3 ..... 55417, 55419

38 CFR

3 51015
21 52486
36 ..... 51015, 53728

PROPOSED RULES:

2 54104
3 55420
21 ..... 54104, 54666

39 CFR

111 ..... 51016, 51017
257 53428

40 CFR

52 ..... 51393, 51767-51780, 52029, 52237, 52239, 52702, 53031, 53035, 53439, 54247
55 54248
62 ..... 51393, 52241
65 ..... 51782, 51783, 52030, 52031, 52241, 52242, 52704-52706, 53037, 54273-54278, 54627
86 52914
162 52031
180 ..... 50904, 51018, 52486, 54090, 55402, 55403
600 52914
750 50905
762 55241
1500 55991
1501 55993
1502 55995
1503 55998
1504 55999
1505 56000
1506 56001
1507 56003
1508 56004

PROPOSED RULES:

52 ..... 51817, 52033, 52747, 53472, 54269
60 ..... 54959, 55258
65 ..... 50921, 51042, 52255, 52500, 52748-52753, 53473, 54273-54278, 55427
81 54960

41 CFR

Ch. 101 54632
1-1 53729
1-9 53440
3-1 54250
3-3 54250
5A-1 51395
5A-2 51396
5A-3 51397
5A-6 51398
5A-7 51398
5A-16 51398
5A-19 51398
5A-72 51399
5A-73 51399
5A-76 51399
5B-1 55761
5B-2 53440
5B-3 50907
14-19 55404
60-1 51400
60-2 51400
60-4 51401
60-30 51401
60-40 51401
60-50 51401
60-60 51401
60-250 51402
60-741 51402
101-36 55404

PROPOSED RULES:

Ch. I 52032
101-17 52502
101-26 51429
101-29 52503
101-38 51429
101-40 51817

42 CFR

50 52146
51b 52707
56a 51532
57 ..... 52487, 54929, 55242
66 55763
71 53039
441 52071
460 55936

PROPOSED RULES:

57 55261
124 55803
405 ..... 51822, 52256
419 52256
456 50922

43 CFR

2650 55326

PROPOSED RULES:

2540 51043
2740 51043
9180 51043

45 CFR

46 ..... 51559, 53652
64 45933
95 53039
116d 52676
137 55404
205 52174
220 52174
222 52174
228 52174
282 53730
801 51784
1067 55247
1068 52438
1350 51785

45 CFR—Continued

1351 55414
1602 51785
1609 51788
1620 51789

PROPOSED RULES:

46 53950
114 51431
115 51431
116d 55801
134 55801
139 53781
144 52128
160b 51431
160f 55801
160i 51432
161j 53046
166 55801
169 51260
175 52128
176 52128
186 51432
187 51432
188 51432
205 54105
224 53778
602 55802
1062 55263
1069 53474
1321 53782

46 CFR

197 53678
308 54090
390 51636

PROPOSED RULES:

Ch. IV 53046
25 52261
32 53474
34 52261
76 52261
95 52261
108 52261
151 53474
162 52261
181 52261
193 52261
276 51045
502 54960

47 CFR

Ch. II 53440
0 ..... 51791, 52243, 52244, 54096, 55764
1 ..... 53733, 54096
15 54097
21 ..... 52245, 52246
23 52245
25 52245
73 ..... 51790, 53733, 53742, 54097, 55769
74 51790
76 ..... 51791, 53742
78 52245
81 52246
83 ..... 51790, 52492
87 52245
89 54788
90 54788
91 ..... 51018, 53040, 54788, 55769
93 54788

PROPOSED RULES:

0 54106
1 53474
2 51649
5 54106
15 ..... 51650, 51652
21 54106
23 54106
25 54106
42 52263
43 52263
67 55803
68 54666
73 ..... 51655, 53475, 54106, 54109, 54110, 54111, 54279, 55428, 55804
74 54106
78 54106
81 ..... 51047, 51048, 54106
87 54106
89 54106
91 54106
93 54106
94 54106
95 ..... 51048, 54106
97 ..... 51048, 54106
99 54106

48 CFR

PROPOSED RULES:

9 54962
28 51432

49 CFR

99 54251
106 51020
107 51020
171 51020
172 51020
173 51020
174 51020
175 51020
177 51020
178 51020
225 51020
395 52246
501 51022
571 ... 52246, 52493, 53440, 54933, 55248
1033 ..... 50907, 51023-51025, 51402, 54098, 55409
1034 51404
1056 51805
1100 50908
1331 55252

PROPOSED RULES:

195 52504
571 ..... 51657, 51677, 52264, 52268
572 53478
576 53479
1201 51052

50 CFR

32 51025
33 ..... 54098, 54639, 54933, 54934
222 54639
227 54639
611 ..... 51637, 52709, 54636
651 ..... 52252, 53040, 55411
652 ..... 54252, 54638
672 52709

PROPOSED RULES:

23 ..... 50928, 55314
26 54963
222 55267
226 ..... 55267, 55306
227 55267
260 53047
611 ..... 50928, 51053, 52034, 54964, 55268, 55809
671 52034

FEDERAL REGISTER PAGES AND DATES—NOVEMBER

Pages	Date	Pages	Date	Pages	Date
50345-50994	Nov. 1	52455-52692	13	54191-54716	21
50995-51372	2	52693-53025	14	54717-54918	22
51373-51594	3	53027-53410	15	54919-55232	24
51595-51751	6	53411-53699	16	55233-55331	27
51753-52017	7	53701-54079	17	55333-55739	28
52019-52196	8	54081-54189	20	55741-56007	29
52197-52454	9				

reminders

(The items in this list were editorially compiled as an aid to FEDERAL REGISTER users. Inclusion or exclusion from this list has no legal significance. Since this list is intended as a reminder, it does not include effective dates that occur within 14 days of publication.)

Rules Going Into Effect Today

Interior—Determinations and findings and audit proposals 50429; 10-30-78

Next Week's Deadlines for Comments On Proposed Rules

AGRICULTURE DEPARTMENT

Agricultural Marketing Service—
- Milk in the southwestern Idaho-eastern Oregon marketing area, hearing on proposed marketing agreement and order; comments by 12-5-78 ..... 49704; 10-24-78

Federal Crop Insurance Corporation—
- Provisions for insuring peas; comments by 12-4-78 ..... 52723; 11-14-78
- Provisions for insuring soybeans; comments by 12-4-78 ..... 52722; 11-14-78

Rural Electrification Administration—
- Energy conservation and future service requirements; comments by 12-4-78. 45591; 10-3-78

COMMERCE DEPARTMENT

Maritime Administration—
- Construction-differential subsidy repayment; total repayment policy; comments by 12-4-78 ..... 51045; 11-2-78

National Oceanic and Atmospheric Administration—
- Kemp's ridley and loggerhead sea turtles; determination of critical habitat; comments by 12-4-78 ..... 45905; 10-4-78

DEFENSE DEPARTMENT

Office of the Secretary—
- Defense Intelligence Agency Scientific Advisory Committee, Rosslyn, Va. (closed), 12-5-78 ..... 50731; 10-31-78

ENVIRONMENTAL PROTECTION AGENCY

Approval and promulgation of State implementation plans:
- Alabama; comments by 12-6-78. 51649; 11-6-78
- California; comments by 12-6-78. 51632; 11-6-78
- Maryland; comments by 12-8-78. 52033; 11-8-78

Guidelines for registering pesticides in the United States, economic impact analysis; comments by 12-5-78 ..... 39644; 9-6-78

Lead national ambient air quality standard implementation plans; comments by 12-4-78 ..... 46275; 10-5-78

Policy for reporting for the revised inventory draft report form; comments by 12-8-78 ..... 49688; 10-24-78

FEDERAL COMMUNICATIONS COMMISSION

FM broadcast station; table of assignments: Pinconning, Mich.; comments by 12-4-78 ..... 47577; 10-16-78

International record carrier's scope of operations in U.S.; updating of applications for additional gateways; reply comments by 12-4-78 ..... 34167; 8-3-78

Telephone network, equipment and systems, protection of national defense and security; comment period extended to 12-8-78 ..... 54666; 11-22-78

HEALTH, EDUCATION, AND WELFARE DEPARTMENT

Food and Drug Administration—
- Obligations of clinical investigators of regulated articles; comments by 12-6-78. 52731; 11-14-78
- Orange B, termination of listing; comments by 12-4-78 ..... 45612; 10-3-78
- Requirements for designating the manufacturer's name on a drug or drug product's label; comments by 12-4-78. 45614; 10-3-78
- Standards for institutional review boards for clinical investigations involving human subjects and new human drug products; comments by 12-6-78. 35186; 8-8-78

Social Security Administration—
- Aid to families with dependent children; need and amount of assistance; methods for budgeting income; comments by 12-4-78 ..... 45888; 10-4-78

MANAGEMENT AND BUDGET OFFICE

Anti-inflation measures; comments by 12-7-78 ..... 52032; 11-8-78

NUCLEAR REGULATORY COMMISSION

Reactor Safeguards Advisory Committee, Subcommittee on Advanced Reactors, Washington, D.C. (partially open), 12-6-78 ..... 50763; 10-31-78
[Originally published at 43 FR 47802, 10-17-78 and 43 FR 48780, 10-20-78]

SUSQUEHANNA RIVER BASIN COMMISSION

Water conservation; policy and standards; comments by 12-8-78 ..... 46980; 10-12-78

TRANSPORTATION DEPARTMENT

Coast Guard—
- Casualty reporting requirements; amendments to certain criteria; comments by 12-4-78 ..... 48982; 10-19-78
- Casualty report requirements for deepwater ports and artificial islands; comments by 12-4-78 ..... 50000; 10-26-78

TREASURY DEPARTMENT

Alcohol, Tobacco and Firearms Bureau—
- Use of strip stamps and devices other than strip stamps on containers of distilled spirits; comments by 1-8-79 ..... 51808; 11-7-78

Customs Service—
- Foreign trade zones; processing costs; comments by 12-4-78 ..... 45885; 10-4-78

Next Week's Meetings

AGRICULTURE DEPARTMENT

Forest Service—
- National Forest Management Act Committee of Scientists, Sacramento, Calif. (open), 12-7 and 12-8-78 ..... 49028; 10-20-78

Office of the Secretary—
- Advisory Committee on Export Sales Reporting, Dallas, Tex. (open), 12-6-78. 53050; 11-15-78
- Advisory Committee on Export Sales Reporting, Memphis, Tenn. (open), 12-5-78 ..... 53050; 11-15-78

ANTITRUST LAWS AND PROCEDURES, NATIONAL COMMISSION FOR REVIEW

Final report to the President and Attorney General, Washington, D.C., 12-7-78. 54705; 11-22-78

ARTS AND HUMANITIES, NATIONAL FOUNDATION

Humanities Panel Advisory Committee, Washington, D.C. (closed), 12-5, 12-7 and 12-8-78 ..... 53512; 11-16-78

National Council on the Arts, Washington, D.C. (partially open), 12-1 through 12-3-78 ..... 53069; 11-15-78

Special Projects Advisory Committee, Washington, D.C. (closed), 12-8-78 ..... 54705; 11-22-78

Visual Arts (Workshops/Alternative Spaces) Advisory Panel, Washington, D.C. (closed), 12-4 and 12-5-78 ..... 53069; 11-15-78

BLACK HIGHER EDUCATION AND BLACK COLLEGES AND UNIVERSITIES, NATIONAL ADVISORY COMMITTEE

Washington, D.C. (open), 12-4 and 12-5-78 ..... 53500; 11-16-78

CIVIL RIGHTS COMMISSION

Indiana Advisory Committee, Indianapolis, Ind. (open), 12-5-78 ..... 52508; 11-13-78

Regional Advisory Committees, Denver, Colo. (open), 12-8-78 .. 54677; 11-22-78

COMMERCE DEPARTMENT

Industry and Trade Administration—
- Exporters' Textile Advisory Committee, Washington, D.C. (open), 12-7-78. 51826; 11-7-78

National Oceanic and Atmospheric Administration—
- Gulf of Mexico Fishery Management Council, Galveston, Tex. (open), 12-5 through 12-8-78 ..... 51829; 11-7-78

National Telecommunications and Information Administration—
- Electromagnetic Radiation Management Advisory Council, Washington, D.C. (partially closed), 12-7-78 ..... 54678; 11-22-78

Office of the Secretary—
Federal Policy on Industrial Innovation Advisory Committee (Subcommittee on Economic and Trade Policy), Washington, D.C. (open), 12-5-78 ..... 48679; 10-19-78
National Laboratory Accreditation Criteria Committee for Thermal Insulation Materials, Washington, D.C. (open), 12-8-78 ..... 54679; 11-22-78
Travel Service—
Travel Advisory Board, Washington, D.C. (open), 12-5-78 ..... 49556; 10-24-78

DEFENSE COMMUNICATIONS AGENCY

Scientific Advisory Group, Arlington, Va. (closed), 12-6-78 ..... 52759; 11-14-78

DEFENSE DEPARTMENT

Air Force Department—
USAF Scientific Advisory Board, Ft. Meade, Md. (closed), 12-7 and 12-8-78 ..... 52759; 11-14-78
USAF Scientific Advisory Board, Hanscom Air Force Base, Mass. (closed), 12-7 and 12-8-78 ..... 52276; 11-9-78
USAF Scientific Advisory Board, Wright-Patterson AFB, Ohio (closed), 12-4 and 12-5-78 ..... 53493; 11-16-78
USAF Scientific Advisory Board, Wright-Patterson Air Force Base, Ohio (closed), 12-7 and 12-8-78 ..... 52275; 11-9-78
Army Department—
Army Science Board/Air Force Scientific Advisory Board, Fort Monroe, Va. (closed), 12-8-78 ..... 54679; 11-22-78
Army Science Board, Fort Shafter, Ha. (closed), 12-7-78 ..... 52759; 11-14-78
Office of the Secretary—
DOD Advisor Group on Electron Devices, Arlington, Va. (closed), 12-6 and 12-7-78 ..... 53493; 11-16-78
DOD Advisor Group on Electron Devices, Washington, D.C. (closed), 12-7-7-78. 50955; 11-1-78
Defense Intelligence Agency Scientific Advisory Committee, Washington, D.C. (closed), 12-6 and 12-7-78 ..... 46999; 10-12-78
Defense Intelligence Agency Scientific Advisory Committee, Rosslyn, Va. (closed), 12-8-78 ..... 52760; 11-14-78
Wage Committee, Washington, D.C. (closed), 12-5-78 ..... 46563; 10-10-78

ECONOMIC OPPORTUNITY, NATIONAL ADVISORY COUNCIL

Committee and Council meetings, Washington, D.C. (open), 12-7 and 12-8-78. 50762; 10-31-78

ENERGY DEPARTMENT

Office of Energy Research—
High Energy Physics Advisory Panel, Batavia, Ill. (open), 12-4 and 12-5-78. 53494; 11-16-78

ENVIRONMENTAL PROTECTION AGENCY

Management Advisory Group to the Municipal Construction Division, Washington, D.C. (open), 12-7 and 12-8-78 .... 53495; 11-16-78
Science Advisory Board, Environmental Health Advisory Committee, Study Group on Pesticide Tolerances, Arlington, Va. (open), 12-4 and 12-5-78..... 53057; 11-15-78
Status of Toxic Substances Control Act's Section 8(e), Substantial Risk Reporting, Washington, D.C. (open), 12-7-78. 50503; 10-30-78

HEALTH, EDUCATION, AND WELFARE DEPARTMENT

Alcohol, Drug Abuse, and Mental Health Administration—
National Advisory Mental Health Council, Rockville, Md. (open), 12-4 and 12-5-78 ..... 51726; 11-6-78
Education Office—
Advisory Council on Financial Aid to Students Subcommittee on Federal and State insured programs, Chicago, Ill. (open), 12-5 and 12-6-78 ..... 53500; 11-16-78
National Advisory Council of Vocational Education, Dallas, Tex. (open), 12-4-78. 51726; 11-6-78
Human Development Office—
Federal Council on the Aging, Washington, D.C. (open), 12-4 and 12-5-78. 52290; 11-9-78
National Institutes of Health—
Aging Review Committee, Bethesda, Md. (partially open), 12-4 and 12-5-78. 49851; 10-25-78
Board of Scientific Counselors, National Institute of Environmental Health Sciences, Triangle Park, N.C. (partially open), 12-5 through 12-7-78 .... 49852; 10-25-78
Cause and Prevention Scientific Review Committee, Bethesda, Md. (partially open), 12-8-78 ..... 52526; 11-13-78
Ethics Advisory Board, Detroit, Mich. (open), 12-5-78 ..... 50508; 10-30-78
Ethics Advisory Board, Denver, Colo. (open), 12-8-78 ..... 50508; 10-30-78
Ethics Advisory Board, Kansas, Mo. (open), 12-4-78 ..... 50508; 10-30-78
Ethics Advisory Board, Philadelphia, Pa. (open), 12-6-78 ..... 50508; 10-30-78
General Clinical Research Centers Committee, Division of Research Resources, Bethesda, Md. (partially open), 12-7 and 12-8-78 ..... 50743; 10-31-78
General Research Support Review Committee, Bethesda, Md. (partially open), 12-6 through 12-8-78 ..... 53058; 11-15-78
Laboratory and Center Operations Review Panel, Washington, D.C. (open), 12-9 and 12-10-78 ..... 54699; 11-22-78
Large Bowel Subcommittee of the Large Bowel and Pancreatic Cancer Review Committee, Houston, Tex. (partially open), 12-7 and 12-8-78 ..... 52526; 11-13-78
National Arthritic Advisory Board, National Institute of Arthritis, Metabolism, and Digestive Diseases, Arlington, Va. (open), 12-7-78 ..... 50743; 10-31-78
Periodontal Diseases Advisory Committee, Bethesda, Md. (open), 12-7 and 12-8-78 ..... 44570; 9-28-78
Research Manpower Review Committee, Chevy Chase, Md. (partially open), 12-7 and 12-8-78 ..... 53058; 11-15-78
Office of the Secretary—
Advisory Council on Education Statistics, Washington, D.C. (open), 12-7-78. 54699; 11-22-78

INTERIOR DEPARTMENT

Land Management Bureau—
California Desert Wilderness Inventory, Barstow, Calif. (partially open), 12-7-78 ..... 47297; 10-13-78
California Desert Wilderness Inventory, Needles, Calif. (partially open), 12-5-78 ..... 47297; 10-13-78
California Desert Wilderness Inventory, Los Angeles, Calif. (partially open), 12-6-78 ..... 47297; 10-13-78
California Desert Wilderness Inventory, Riverside, Calif. (partially open), 12-8-78 ..... 47297; 10-13-78
California Desert Wilderness Inventory, Sacramento, Calif. (partially open), 12-4-78 ..... 47297; 10-13-78
Moab District Grazing Advisory Board, Moab, Utah (open), 12-7-78 ..... 51148; 12-2-78
National Park Service—
Draft General Management Plan for Yosemite National Park, Anaheim, Calif. (open), 12-6-78 ..... 42821; 9-21-78
Draft General Management Plan for Yosemite National Park, Oakland, Calif. (open), 12-5-78 ..... 42821; 9-21-78
Draft General Management Plan for Yosemite National Park, San Francisco, Calif. (open), 12-4-78...42821; 9-21-78
Draft General Management Plan for Yosemite National Park, Woodland Hills, Calif. (open), 12-7-78...42821; 9-21-78

JUSTICE DEPARTMENT

Federal Bureau of Investigation—
National Crime Information Center Advisory Policy Board, St. Petersburg Beach, Fla. (open), 12-6 and 12-7-78. 43396; 9-25-78

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

NASA Advisory Council, Space Systems and Technology Advisory Committee, Informal Ad Hoc Advisory Subcommittee on Shuttle Launched Entry Research Vehicles, Hampton, Va. (open), 12-5 through 12-7-78 ..... 53069; 11-15-78

NATIONAL CREDIT UNION ADMINISTRATION

National Credit Union Board, Washington, D.C. (open), 12-6 and 12-7-78. 51728; 11-6-78

NATIONAL SCIENCE FOUNDATION

Applied Social and Behavioral Sciences Subcommittee of the Advisory Committee for Applied Science and Research Applications Policy, Washington, D.C. (closed), 12-4 and 12-5-78 ..... 52566; 11-13-78

NUCLEAR REGULATORY COMMISSION

Reactor Safeguards Advisory Committee, Washington, D.C. (partially closed), 12-7 through 12-9-78 ..... 54707; 11-22-78
[Originally published at 43 FR 49080, October 20, 1978]

RENEGOTIATION BOARD

Meeting, Washington, D.C. (closed), 12-4-78 ..... 52603; 11-13-78

SMALL BUSINESS ADMINISTRATION

Region IV Advisory Council, Birmingham, Ala. (open), 12-7-78..... 53521; 11-16-78

TRANSPORTATION DEPARTMENT

Coast Guard—
Vapor Control Seminar, Washington, D.C. (open), 12-6-78 ..... 48752; 10-19-78
Federal Aviation Administration—
Radio Technical Commission for Aeronautics (RTCA), Special Committee 134—General Purpose Electronic Test Equipment, Arlington, Va. (open), 12-7 and 12-8-78 ..... 53522; 11-16-78

VETERANS ADMINISTRATION

Station Committee on Educational Allowances, Des Moines, Iowa (open), 12-4-78 ..... 52088; 11-8-78

Station Committee on Education Allowances, Nashville, Tenn. (open), 12-4-78. 52322; 11-9-78

Next Week's Public Hearings

AGRICULTURE DEPARTMENT

Agricultural Marketing Service—

Apples grown in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont; proposed marketing agreement and order; West Springfield, Mass. and Brentwood, New Hampshire, 12-4 and 12-7-78..... 50691; 10-31-78

Forest Service—

Guadalupe Escarpment Wilderness proposal, Albuquerque, N. Mex., 12-7-78 and Carlsbad, N. Mex., 12-9-78. 50719; 10-31-78

CIVIL AERONAUTICS BOARD

Caribbean area service investigation, San Juan, Puerto Rico, 12-5-78..... 51123; 11-2-78

ENERGY DEPARTMENT

Economic Regulatory Administration—

"Transfer" or "plant gate" pricing of natural gas liquids by gas processors and refiners, Washington, D.C., 12-7-78. 50842; 10-31-78

FEDERAL COMMUNICATIONS COMMISSION

FM broadcast station; table of assignments: Freeport, Tex.; comments by 12-4-78. 47576; 10-16-78

FEDERAL MARITIME COMMISSION

Common carriers by water in domestic offshore trade; financial reports; Los Angeles and San Francisco, Calif., 12-5 and 12-6-78..... 53047; 11-15-78

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Rules of procedure; Washington, D.C., 12-5-78 ..... 53045; 11-15-78

FEDERAL TRADE COMMISSION

Advertising for over-the-counter antacids, Washington, D.C., 12-4-78 ..... 38851; 8-31-78

HEALTH, EDUCATION, AND WELFARE DEPARTMENT

Education Office—

Health Education Assistance Loan Program; interim regulations, Fort Worth, Tex., 12-12-78 ..... 34320; 8-3-78

Strengthening Developing Institutions Program, New Orleans, La. and El Paso, Tex., ... 51260; 11-2-78

Health Resources Administration—

Community health services to persons unable to pay; requirements for facilities assisted by HEW, Washington, D.C., 12-5 and 12-6-78..... 49954; 10-25-78

Social Security Administration—

Advisory Council on Social Security, Miami, Fla., 12-7-78 ..... 45480; 10-2-78

INTERNATIONAL JOINT COMMISSION

Pollution of the Great Lakes by land use activities:

Chatham, Ontario; 12-5-78; Lansing, Mich., 12-6-78; Marie, Ontario, 12-7-78..... 49371; 10-23-78

List of Public Laws

NOTE: All public laws from the second session of the 95th Congress have been received and assigned law numbers by the Office of the Federal Register. The last listing appeared in the issue of November 15, 1978.

A complete listing for the full session will be published on or before December 1, 1978.

Documents Relating to Federal Grants Programs

This is a list of documents relating to Federal grants programs which were published in the FEDERAL REGISTER during the previous week.

Rules Going Into Effect:

DOE—Automotive propulsion research and development; review and certification of grants; cooperative agreements, contracts and projects; effective 11-20-78... 55228; 11-24-78

HEW/PHS—General practice of dentistry; grants for residency training; requirements; effective 11-24-78..... 54929; 11-24-78

Applications Deadlines:

HEW/OE—Fund for the Improvement of Postsecondary Education; new grants; preapplications by 1-9-79; apply by 3-20-79..... 54300; 11-21-78

Fund for the Improvemnet of Postsecondary Education; noncompeting continuation grants; apply by 3-1-79.... 54299; 11-21-78

Meetings:

NFAH—Humanities Panel, Washington, D.C. (closed), 12-14, 12-15, 12-18 and 12-20-78..... 55018; 11-24-78

NSF—Advisory Committee for Applied Science and Research Applications Policy, Subcommittee for Applied Physical, Mathematical, and Biological Sciences and Engineering, Washington, D.C. (closed), 12-7 and 12-8-78..... 54308; 11-21-78

Advisory Committee for Mathematical and Computer Sciences, Subcommittee for Computer Science, Washington, D.C. (partially open), 12-7 and 12-8-78. 54309; 11-21-78

Advisory Committee for Minority Programs in Science Education, Washington, D.C. (open), 12-11 and 12-12-78. 54308; 11-21-78

Advisory Committee for Physics, Washington, D.C. (open), 12-7 through 12-9-78..... 54308; 11-21-78

rules and regulations

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 month.

[3410-05-M]

Title 7—Agriculture

CHAPTER XIV—COMMODITY CREDIT CORPORATION, DEPARTMENT OF AGRICULTURE

SUBCHAPTER B—LOANS, PURCHASES, AND OTHER OPERATIONS

[CCC Grain Price Support Regs., Grain Reserve Program Supplement, Amdt. 1]

PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES

Subpart—Regulations Governing the Grain Reserve Program for 1976 and Subsequent Crops

MISCELLANEOUS AMENDMENTS

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule authorizes eligible 1978-crop corn to enter the Grain Reserve Program and provides storage payments on the quantity of grain actually measured in excess of the approved reserve loan amount. Continuing storage credit will be made available in any State where producers' prices are less than the state loan rate plus the difference between the national loan and release level. This rule also limits emergency release when in-line storage can be found for wheat, sorghum, and barley.

It is desirable to allow 1978-crop corn to enter the Grain Reserve Program in order to attain the desired goals of the program. This will also benefit producers while market prices are depressed.

EFFECTIVE DATE: November 24, 1978.

ADDRESS: Price Support and Loan Division, ASCS, U.S. Department of Agriculture, 3734 South Building, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT:

Harold L. Jamison, ASCS, 202-447-7973.

SUPPLEMENTARY INFORMATION:

This rule also corrects inequity caused by the fact that the release level for a commodity is compared with the national average market price for the commodity. Accordingly, very high prices in one area (for example, the June 1978 barley prices) can trigger release from the reserve on a national basis even though prices received by farmers in other areas may be substantially below the release level. The weighting techniques used by Economics Statistics and Cooperative Service in determining national average prices were not fully understood at the time the Grain Reserve Regulations and Agreements were drafted. The change will also benefit CCC which intended to promote redemptions by farmers only if they could realize a profit on their local markets. The change will encourage producers in States with low price levels to keep their grain in the reserve rather than market it. This will allow more orderly marketing of reserve grain and prevent prices in such areas from falling even further below the release level. By keeping such grain in the reserve, the grain will not be marketed in competition with current crop grain, which would tend to drive current crop grain into the current loan program, with attendant costs to CCC. Since this rule will benefit producers wishing to enter eligible 1978-crop corn in the reserve while market prices are depressed, it is essential that these amendments become effective immediately since producers are now harvesting 1978-crop corn.

Accordingly, Mr. Ray Fitzgerald has determined that compliance with the notice and public procedure provisions of 5 U.S.C. 553 is impracticable and contrary to the public interest and, in accordance with the provisions of Executive Order 12044 (43 FR 12661, March 24, 1978), that it is not possible to publish these regulations in proposed form and allow 60 days for public comment.

Accordingly, 7 CFR Part 1421, Subpart—Regulations Governing the Grain Reserve Program for 1976 and Subsequent Crops is amended as follows:

1. Section 1421.531 is amended by revising paragraph (a) to read as follows:

§ 1421.531 Eligible commodities and length of loans.

(a) *Eligible commodities.* All eligible 1976 and 1977-crops barley, corn, oats, sorghum, and wheat, and 1978-crop corn are eligible for grain reserve loans in accordance with § 1421.532.

* * * * *

2. Section 1421.532 is amended to read as follows:

§ 1421.532 Reserve quantities.

The Secretary will announce the quantity of wheat or feed grains he determines should be stored under this program to promote the orderly marketing of each commodity as far in advance of making loans as practicable. The Secretary may thereafter adjust such quantities in the event he finds that such adjustments are necessary in order to achieve orderly marketing. The quantity of wheat will not be less than 300,000,000 nor more than 700,000,000 bushels, except that such maximum quantity may be adjusted by the Secretary pursuant to an international agreement containing provisions relating to grain reserves. Notice of all such determinations will be published in the FEDERAL REGISTER.

3. Section 1421.533 is amended to read as follows:

§ 1421.533 Program availability.

Producers with farm or warehouse stored, 1976 or 1977 crop wheat or feed grain and 1978-crop corn loans (hereinafter called "regular loan(s)") may participate in the grain reserve program. A producer desiring to participate in the Grain Reserve Program shall file a request to participate not later than the regular loan maturity date for the grain the producer wishes to place in the program. The producer shall request the grain reserve loan at the county ASCS office which disbursed the regular loan. An approved cooperative marketing association shall request a grain reserve loan at the county ASCS office which disbursed the regular loan or at its servicing agent bank which disbursed the regular loan.

4. Section 1421.534 is amended by revising paragraph (b) to read as follows:

§ 1421.534 Eligibility requirements.

* * * * *

(b) *Commodities.* Eligibility of producers to place wheat and feed grains into the reserve program will be on a

first come, first serve basis. After the quantities established pursuant to § 1421.532 have been accomplished, the program will be closed to new applicants.

* * * * *

5. Section 1421.540 is amended by revising paragraphs (b) and (d) to read as follows:

§ 1421.540 Storage payments.

* * * * *

(b) Storage payments for farm stored grain reserve loans shall be based on the regular loan quantity, except that such payments can be based on the quantity measured for reserve loan when such measured quantity is more than the regular loan quantity.

* * * * *

(d) *Eligible storage credit.* Storage credit shall be allowed for the duration of the loan except that no storage credit shall be earned between the day following the second consecutive CCC announcement that the national average market price for the commodity is equal to or exceeds the release level and the date of a subsequent announcement by CCC that the market price is again below the release level. Except that credit will cease following the second consecutive CCC release announcement, except that, notwithstanding the provisions of paragraph 2 of the Farm Storage Grain Reserve Agreement (Form CCC-701) and the Warehouse Storage Grain Reserve Agreement (Form CCC-700), storage credits will continue to be earned by farmers if their States' mid-month average price received by farmers where the crop is stored (as announced by the Economics, Statistics, and Cooperatives Service) is less than such State's average loan level, plus the difference between the national average loan rate and the release level. Any unearned storage will be subtracted from any future storage payments or will be collected when the loan is redeemed or forfeited to CCC.

* * * * *

6. Section 1421.543 is amended as follows:

(a) By deleting the words "Statistical Reporting Service" in paragraph (a) wherever they appear; and substituting "Economics Statistics and Cooperatives Service."

(b) By amending paragraph (b)(1)(ii) to read as follows:

§ 1421.543 Release levels, redemption, requirements, and early redemption charges.

* * * * *

(b) *Redemption or voluntary forfeiture of commodity below release levels.* (1) * * *

(ii) *Emergency release.* In case of warehouse loans, if it is determined by CCC that storage space is no longer available and approved in-line storage for wheat, sorghum, and barley cannot be found, the producer may repay the loan or forfeit the commodity to CCC without incurring liability for liquidated damages and may retain earned storage payments. In the case of farm storage loans, if it is determined by CCC that there is insect infestation which cannot be controlled, the commodity is subject to damage by flood or fire, there is damage to the structure, the producer has lost control of the storage structure, or the commodity is going out of condition, the producer may repay the loan or forfeit the commodity to CCC without incurring liability for liquidated damages and retain earned storage payments.

* * * * *

(Secs. 4 and 5, 62 Stat. 1070, as amended (15 U.S.C. 714b and c); sec. 110, 63 Stat. 1051, as amended (7 U.S.C. 1445e).)

NOTE: An economic impact analysis is available from Orville Overboe, P.O. Box 2415, Room 3619 South Building, Washington, D.C. 20013.

Signed at Washington, D.C., on November 24, 1978.

RAY FITSGERALD,
Executive Vice President,
Commodity Credit Corporation.

[FR Doc. 78-33456 Filed 11-24-78; 4:53 pm]

[3410-05-M]

PART 1435—SUGAR

Subpart—Extended 1977 Crop Sugar Loans

TERMS AND CONDITIONS.

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule sets forth the terms and conditions under which the maturity dates of 1977 crop sugar loans may be extended. Sugar eligible for extension of loan maturity date is limited to that quantity outstanding under loan as of the maturity date specified in the Farm Storage Note and Security Agreement. The period of extension is until September 30, 1979, although Commodity Credit Corporation (CCC) may accelerate the maturity date. While properly maintained in extended loan status in approved storage, such sugar will earn storage payments at the rate of 0.3 cent per pound per year for raw cane sugar and 0.7 cent per pound per year for refined beet sugar. Processors may redeem all or any part of an extended loan at any time prior to its extended maturity date. After the extended maturity date, the processor may forfeit to CCC any unredeemed quantity. This rule is needed in order that 1977 crop sugar loans may be extended.

EFFECTIVE DATE: November 24, 1978.

FOR FURTHER INFORMATION CONTACT:

Laurence E. Acklind, ASCS, PSD, (202-447-5647), P.O. Box 2415, Washington, D.C. 20013.

SUPPLEMENTARY INFORMATION: Section 902 of the Food and Agriculture Act of 1977 (Pub. L. 95-113, 91 Stat. 949, effective October 1, 1977) amended Section 201 of the Agricultural Act of 1949 to provide that the price of the 1977 and 1978 crops of sugar beets and sugarcane shall be supported through loans or purchases with respect to the processed products thereof.

On November 11, 1977, a final rule was published in the FEDERAL REGISTER (42 FR 58734) implementing a program effective as of November 8, 1977, to support prices in the marketplace for producers of 1977 crop sugar beets and sugarcane through nonrecourse loans made to sugar processors. The price support loan program for the 1977 crop was amended on May 17, 1978 (43 FR 21317), on August 23, 1978 (43 FR 37419), on August 30, 1978 (43 FR 38686), and on October 30, 1978 (43 FR 50409).

Indications are that, because of a lack of market opportunity, about 300,000 tons of sugar will not redeemed from loan by existing maturity dates. Extended loan maturity dates provide an additional option to processors, which offers advantages both to processors and to the government:

1. The processor can retain title to the sugar for a longer time and the opportunity for redemption and subsequent additional income to processors and producers will be enchanced.

2. Since a participating processor will have the opportunity for additional proceeds on the sugar at no risk (he can still forfeit at the end of the extended period), he will have additional incentive to construct or otherwise arrange for needed storage.

3. To the extent that duties and fees on sugar imports support the higher 1978 sugar loan rates, 1977 extended loans may be redeemed, and CCC will not have the burden of such sugar,

which cannot be sold at less than 105 percent of the 1978 loan rate and which would probably have to be carried by CCC for some time.

4. To the extent that duties and fees do not support redemption of extended loans and such loans are ultimately forfeited, CCC will be no worse off than if title were taken earlier because, in any case, CCC will incur storage costs from the original maturity date. The responsibility for maintaining quantity and quality will remain with the processor during this period.

On November 2, 1978, a proposed rule for extending 1977 crop loans was published in the FEDERAL REGISTER (43 FR 51026). Interested persons were asked to comment on the proposal and were particularly requested to present data which would be useful in establishing storage payment rates applicable to sugar during the period it is in extended loan status.

Four comments were received on behalf of sugar processors, one from a beet growers' association, one from a State ASC Committee, and one from an interested private individual. All but the private individual supported the principle of loan extension. Three processor representatives and the grower's association offered additional suggestions.

The Amalgamated Sugar Company of Ogden, Utah, suggested that the processor should have the right to relocate subject sugar at the Government's expense. This is already permissible under existing regulations for loan sugar intended for eventual forfeiture; however, such relocation costs must be repaid, plus interest, for loan sugar redeemed.

The Rio Grande Valley Sugar Growers, Inc., of Santa Rosa, Texas, felt that the storage rate should equal or exceed the monthy loan interest charges outstanding from the prior loan period. The Nyssa-Nampa Beet Growers Association of Nyssa, Oregon, suggested that, in addition to actual storage costs, a one-time handling charge of 30 cents per hundredweight should be included in storage reimbursement. The Florida Sugar Marketing and Terminal Association, Inc., representing several Florida raw cane sugar processors with outstanding 1977 crop loan sugar, recommended, a storage rate of 0.75 cent per pound per year, of which 0.517 cent per pound represents costs of relocating loan sugar to alternate storage (transportation and loading-in and loading-out).

In response to the various suggestions for reimbursement of other costs, the Department does not believe that non-storage costs should be included in storage reimbursement. The intent of loan extension is only to permit processors to retain title and redemption rights to loan sugar for a longer period without, on average, incurring additional storage expense during the period of extension.

The private individual who opposed loan extension felt that the action represents continued subsidization and that the price of sugar should be permitted to go down. No specific objection was expressed to extending loans.

Only one respondent submitted storage costs for raw cane sugar. The Florida Sugar Marketing and Terminal Association, which is now in the process of relocating about 150,000 tons of loan sugar (indicated for forfeiture to CCC) to a new facility leased at Jacksonville, Florida, indicated that storage costs, analyzed in terms of average occupancy, will be slightly in excess of 0.233 cent per pound per year. The Department has also been informed by another person in Florida that he has offered to store sugar for a rate of 0.225 cent per pound per year. After consideration of this and other information available to the Department, which indicates somewhat higher storage costs, it has been determined that a storage reimbursement rate of 0.3 cent per pound for cane sugar, raw value, would be reasonable and is, therefore, adopted. Only the Nyssa-Nampa Beet Growers Association reported on the commercial cost of storing refined beet sugar. Their reported rate for traditional outside storage was 0.7 cent per pound per year, but the association stated that additional "non traditional storage could run as high as 1.0 cent per pound per year." Data regarding the cost to CCC of storing non-fat dry milk, which must be stored under conditions of controlled temperature and humidity similar to those required for refined sugar, indicates a simple average cost of 0.77 cent per pound per year. This data indicates that the recommended storage rate of 0.7 cent per pound per year for refined beet sugar is reasonable. It is accordingly adopted.

An approved final Impact Analysis Statement is available from Laurence E. Ackland, Room 5761, South Building, USDA, Washington, D.C. 20250.

Accordingly, Chapter XIV of Title 7 of the Code of Federal Regulations is amended by adding a new Subpart—Extended 1977 Crop Sugar Loans—to Part 1435 which reads as follows:

Subpart—Extended 1977 Crop Sugar Loans

Sec.

1435.45 General statement.
1435.46 Applicability of the regulations governing price support loans for 1977 crop sugar beets and sugarcane.
1435.47 Eligibility requirements.
1435.48 Period of extension.
1435.49 Storage payment.
1435.50 Commingling.
1435.51 Substitution.
1435.52 Loss or damage.
1435.53 Loss of storage payments.
1435.54 Applicable forms.

AUTHORITY: Secs. 201 and 401 *et seq.* of the Agricultural Act of 1949, as amended (7 U.S.C. 1446, 1421 *et seq.*).

Subpart—Extended 1977 Crop Sugar Loans

§ 1435.45 General statement.

(a) The regulations in this subpart set forth the terms and conditions for the extension of maturity dates for 1977 crop sugar price support loans evidenced by Farm Storage Note and Security Agreements and by Sugar Loan Addenda thereto.

(b) In order to obtain an extended 1977 crop sugar loan, a processor must file an application requesting an extended loan with the loan making office and have such application approved by that office. The extended loan granted under this subpart will be due on September 30, 1979, or such earlier date as CCC may make demand for payment. A producer may redeem his loan, or deliver the sugar covered by such loan to CCC, on the terms and conditions contained in this subpart.

(c) As used in the regulations in this subpart "CCC" means the Commodity Credit Corporation.

§ 1435.46 Applicability of the regulations governing price support loans for 1977 crop sugar beets and sugarcane.

The following sections of the regulations, as amended, governing the price support loan program for 1977 crop subarbeets and sugarcane shall also be applicable to extended 1977 crop sugar loans: §§ 1435.16; 1435.17; 1435.19; 1435.22(a), (b), (d), (f), and (g); 1435.23(a); 1435.24; and 1435.25.

§ 1435.47 Eligibility requirements.

(a) *Processor.* A processor shall be eligible to obtain a loan extension if the processor has eligible raw cane sugar or refined beet sugar under a 1977 price support loan.

(b) *Quantity.* The quantity eligible for extension of loan and for storage payment credit shall not exceed the loan balance outstanding upon the original maturity date of the loan.

(c) *Final dates.* The processor must apply for an extension of loan no later than November 30, 1978, for loans maturing on November 30, 1978, and no later than two weeks prior to the original maturity date of the loan for other loans.

(d) *Inspections.* Prior to approval for an extension of loan, the sugar shall be inspected by a representative of the loan-making office. An extension of loan will not be approved unless it is determined that the storage structure is eligible and the quality of the sugar is such that it can reasonably be expected to be stored with safety for the extended storage period.

§ 1435.48 Period of extension.

The maturity date for all loans extended shall be September 30, 1979, or such earlier date as CCC may make demand for payment.

§ 1435.49 Storage payment.

(a) *Storage credit.* Credit will be given for each full day of storage beginning on the day following the original loan maturity date. Storage credit will cease, for the extended loan quantity involved, on (1) the date of loan repayment, (2) the date of approval for removal of loan collateral from storage for delivery to a buyer prior to repayment of the loan, (3) the date of occurrence of any loss or damage to be assumed by CCC, or (4) the date a shortage in loan collateral is determined, whichever is earlier.

(b) *Storage rate.* The payment rate shall be .0008219 cent per pound per day for extended cane loan sugar, raw value, receiving storage credit and .0019178 cent per pound per day for extended refined beet loan sugar receiving storage credit.

(c) *Frequency and method of storage payments.* Storage payments shall be made on a quarterly basis during the extended loan term. Final storage payments will be made at the time loan collateral is redeemed or upon settlement. Disbursement of storage payments will be made by means of sight drafts drawn on CCC and issued by the loan-making office.

§ 1435.50 Commingling.

(a) *When permitted.* The loan-making office may permit:

(1) A processor to commingle quantities of sugar which are under more than one extended loan.

(2) Two or more processors to commingle quantities of sugar under extended loan.

(3) Sugar under extended loan to be commingled with sugar under 1978 crop price support loan and sugar not under price support loan (including forfeited sugar owned by CCC).

(b) *Special conditions.* Notwithstanding any other provision governing extension of loans, if it is determined that the total quantity determined to be in a storage facility is less than the total loan collateral and CCC-owned sugar requied to be therein maintained, the shortage shall be proprated to each processor whose loan sugar is in the facility based on the ratio of that portion of his outstanding loan quantity which is represented to be in the facility to the total outstanding loan collateral contained in the storage facility. Any shortage of sugar attributed to a processor shall be considered to be, to the extent possible, from the loan with the earliest disbursement date.

§ 1435.51 Substitution.

Sugar of the same or a subsequent crop year may be substituted for existing extended loan collateral if the required quantity of extended loan collateral is maintained in approved storage space at all times and if prior permission for substitution is obtained from the loan-making office.

§ 1435.52 Loss or damage.

The processor is responsible for any loss in quantity or quality of sugar under loan, except that CCC will bear the loss, or its pro rata share of the loss in the case of sugar stored on a commingled basis, less any insurance proceeds and salvage value of the sugar to which CCC may be entitled, if the processor establishes to the satisfaction of CCC each of the following conditions: (a) The loss or damage occurred without fault or negligence on the part of the processor; (b) The processor gave the State committee immediate notice if the loss or damage resulted solely from an external cause such as theft, fire, lightning, explosion, windstorm, cyclone, tornado, flood, or other act of God; (c) If the processor knew or should have known that the sugar was going out of condition or was in danger of going out of condition, the processor notified the loan-making office and confirmed such notice in writing; and (d) The processor made no fraudlent representation in the loan or loan extension documents or in obtaining or extending the loan.

§ 1435.53 Loss of storage payments.

Notwithstanding any other provisions concerning price support sugar loans, in no case will any storage payment for any quantity of sugar designated for extension of loan be made: (a) If the processor has made any false representation in the extension of the loan or in its settlement; or (b) If there has been unauthorized disposition of the commodity with intent to defraud on the part of the processor. If a processor received payment of any amount to which he is entitled, he shall refund such amount plus interest thereon promptly upon demand.

§ 1435.54 Applicable forms.

The forms for use in connection with extended sugar loans will be made available by the State committee.

Signed at Washington, D.C., on October 22, 1978.

BOB BERGLAND,
Secretary.

[FR Doc. 78-33390 Filed 11-24-78; 2:23 pm]

[6450-01-M]

Title 10—Energy

CHAPTER II—DEPARTMENT OF ENERGY

[Docket Nos. ERA-R-77-3 and ERA-R-77-15]

PART 212—MANDATORY PETROLEUM PRICE REGULATIONS

Amendment To Allow Refiners To Allocate Increased Costs to Gasoline on a Greater Than Pro Rata Volumetric Basis; Suspension of Effective Date; Amendment to Permit the Passthrough by Service Station Operators of Costs for Vapor Recovery Systems and Increased Service Station Rents; Suspension of Effective Date

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Suspension of Effective date of Final Rules.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby provides notice that it is suspending the December 1, 1978 effective date of the final rules permitting refiners to allocate additional increased costs to the price of gasoline and retail dealers to pass through increased costs associated with installation of vapor recovery systems and rent increases. This action is being taken to provide the Federal Energy Regulatory Commission (FERC) with sufficient time to determine whether these amendments may significantly affect certain functions within its jurisdiction within the meaning of section 404(a) of the Department of Energy Organization Act. If the FERC determines that the rules may not significantly affect such functions, or if it fails to make any determination by December 20, 1978, the rules will become effective January 1, 1979.

DATES: Each rule will become effective January 1, 1979 unless the FERC determines that the amendment may significantly affect a function within its jurisdiction.

FOR FURTHER INFORMATION CONTACT:

William L. Webb (Office of Public Information), Economic regulatory Administration, 2000 M street, NW., Room B110, Washington, D.C. 20461, 202-634-2170.

Chuck Boehl (Office of Regulations and Emergency Planning), Economic Regulatory Administration, 2000 M Street, NW., Room 2304, Washington, D.C. 20461, 202-254-7200.

Ben McRae (Office of General Counsel), Department of Energy, 12th and Pennsylvania Avenue, NW., Room 5134, Washington, D.C. 20461, 202-566-9565.

SUPPLEMENTARY INFORMATION: On October 22, 1978, the ERA issued a final rule (43 FR 50386, October 27, 1978), effective December 1, 1978, which will permit refiners to allocate increased costs to gasoline on a greater than pro rata volumetric basis. On October 22, 1978, another final rule (43 FR 50662, October 30, 1978), also effective December 1, 1978, was issued to allow retail gasoline dealers to pass through rent increases and the costs of vapor recovery systems incurred since May 15, 1973. The operation of these rules and the requests made therein for further comments are explained in detail in the preambles to the rules.

Section 404(a) of the Department of Energy Organization Act (Pub. L. 95-91, "DOE Act") requires the Secretary of Energy to notify the FERC when he proposes to prescribe rules and regulations in the exercise of any function transferred to him under section 301 or 306 of DOE Act, including the petroleum pricing and allocation functions authorized by the Emergency Petroleum Allocation Act of 1973, as amended (Pub. L. 93-159, "EPAA"). Section 404(a) further provides in relevant part that:

> [i]f the Commission, in its discretion, determines within such period as the Secretary may prescribe, that the proposed action may significantly affect any function within the jurisdiction of the Commission pursuant to section 402(a)(1), (b), and (c)(1), the Secretary shall immediately refer the matter to the Commission, which shall provide an opportunity for public comment.

Subsequent to the activation of the DOE on October 1, 1977, the notices of proposed rulemaking (42 FR 9675, February 17, 1977 and 42 FR 22374, May 3, 1977) which culminated in the above-mentioned final rules were referred to the FERC for a determination of whether they may significantly affect a function within its jurisdiction, without prescribing a date certain on or before which the determination was required to be made. The final rules were issued by ERA notwithstanding that the Commission had not yet made any determination with respect to either proposed rule under section 404(a). These procedural omissions were subsequently brought to ERA's attention, and accordingly it is issuing this notice to suspend the December 1 effective date of both final rules in order to provide the FERC with sufficient time to make the necessary determinations under section 404(a).

Concurrent with the issuance of this notice, ERA is notifying the FERC that it will have until December 20, 1978 to determine whether the proposed rules may significantly affect a function within its jurisdiction. If the FERC determines by that date that either of the proposed rules may not significantly affect such a function, or if it fails to make a determination by that date, that rule will become effective on January 1, 1979. On the other hand, if the Commission determines that either rule may significantly affect a function within its jurisdiction, the ERA will immediately refer that proposed rule to the FERC as prescribed by section 404(a). In either event, prior to January 1, 1979 the ERA will provide the public with notice of the FERC's actions and whether the rules will become effective on January 1, 1979.

Issued in Washington, D.C., November 24, 1978.

HAZEL R. ROLLINS,
Acting Administrator, Economic Regulatory Administration.

[FR Doc. 78-33457 Filed 11-28-78; 8:45 am]

[6450-01-M]

SUBCHAPTER E—ALTERNATE FUEL

[Docket No. ERA-R-78-21]

PART 515—TRANSITIONAL FACILITIES

Clarifying Amendment to Interim Rule To Permit Classification of Certain Powerplants and Installations as Existing Facilities

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Clarifying amendment to interim rule.

SUMMARY: On November 16, 1978, the Economic Regulatory Administration (ERA) issued interim rules to implement certain provisions of the Powerplant and Industrial Fuel Use Act of 1978 ("FUA" or "the Act"). The interim rules permit ERA to classify certain major fuel burning installations and powerplants which began substantial construction or acquisition after April 20, 1977, and before November 9, 1978, as existing facilities under the Act. The interim rules were made effective upon publication in the FEDERAL REGISTER and appear at 43 FR 54912 (November 22, 1978). ERA is now amending those interim rules in order to make clear that petitions filed with ERA pursuant to such interim rules must be filed no later than 15 days after the interim rules are made final following the close of the public comment period on January 15, 1979.

EFFECTIVE DATE: November 24, 1978.

FOR FURTHER INFORMATION CONTACT:

Barton House (Fuels Regulation—Program Office), Economic Regulatory Administration, Department of Energy, Room 6128I, 2000 M Street NW., Washington, D.C. 20461, 202-254-3905.

(Department of Energy Organization Act, Pub. L. 95-96; Powerplant and Industrial Fuel Use Act; E.O. 12009, 42 FR 46267.)

In consideration of the foregoing, Part 515 of Subchapter E, Chapter II, Title 10 of the Code of Federal Regulations is amended as follows to be effective immediately.

Issued in Washington, D.C., November 24, 1978.

HAZEL R. ROLLINS,
Acting Administrator, Economic Regulatory Administration.

1. Section 515.1(b) is deleted and the following is inserted in lieu thereof:

§ 515.1 Policy.

* * * * *

(b) If you commenced acquisition or construction of your facility between April 20, 1977 and November 9, 1978 (the date of FUA's enactment), your facility is considered "new" under the act unless you petition ERA to be classified as "existing" no later than 15 days after the date these interim regulations are made final. These interim regulations, which are effective upon publication, will not be made final until after the close of the public comment period on January 15, 1979. If ERA determines that your facility meets the criteria for eligibility in §§ 515.3(a) or 515.4(a) below, your units will be categorized a "transitional facility" pending ERA's determination.

2. Section 515.28(b) is deleted and the following is inserted in lieu thereof:

§ 515.28 General filing requirements.

* * * * *

(b) *When you submit*

You must submit your petition under the provisions of this Part no later than 15 days after the date these rules are made final.

[FR Doc. 78-33528 Filed 11-27-78; 2:40 pm]

[6210-01-M]

Title 12—Banks and Banking

CHAPTER II—FEDERAL RESERVE SYSTEM

SUBCHAPTER A—BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

[Reg. Z; FC-0155]

PART 226—TRUTH IN LENDING

Official Staff Interpretation; Suspension of Effective Date and Republication for Public Comment

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Effective date of official staff interpretation suspended; its text reprinted for public comment.

SUMMARY: The Board is suspending the effective date of official staff interpretation FC-0155, regarding § 226.8(c) disclosures, published on October 17, 1978 (43 FR 47719) and is republishing it for public comment. The agency is taking this action in response to a request for public comment submitted in accordance with 12 CFR Part 226.1(d)(3). The letter requesting a comment period is published below and immediately precedes the text of the official staff interpretation.

DATES: The effective date of FC-0155 is suspended until further notice. Comments must be received on or before December 29, 1978.

ADDRESS: Comments (including reference to FC-0155) to Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

FOR FURTHER INFORMATION CONTACT:

Glenn E. Loney, Section Chief, Division of Consumer Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, 202-452-3867.

SUPPLEMENTARY INFORMATION: (1) The effective date, November 16, 1978, of official staff interpretation FC-0155 is suspended in accordance with 12 CFR Part 226.1(d)(2)(ii). The text of the letter requesting the opportunity for public comment appears below. This interpretation will not go into effect until final action is taken. Notice of such action will be published in the FEDERAL REGISTER in approximately 60 days and will become effective upon publication.

(2) The text of official staff interpretation FC-0155 is republished for comment with the exception of language pertaining to its former effective date. Identifying details have been deleted to the extent required to prevent a clearly unwarranted invasion of personal privacy. The Board maintains and makes available for public inspection and copying a current index providing identifying information for the public subject to certain limitations stated in 12 CFR Part 261.6.

(3) Interested persons are invited to submit relevant comments. All material should be submitted in writing to: Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, and should be received not later than December 29, 1978. Comments will be made available for inspection and copying upon request, except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information (12 CFR 261.6(a)).

(4) After comments are considered, this official staff interpretation may be amended, may be rescinded or may remain unchanged. Final action regarding this official staff interpretation will appear in the FEDERAL REGISTER.

(5) Authority: 15 U.S.C. 1640(f).

FEDERAL TRADE COMMISSION,
BUREAU OF CONSUMER PROTECTION,
Washington, D.C., November 9, 1978.

Re: Federal Reserve Board Proposed Official Staff Interpretation No. FC-0155—Published 43 Fed. Reg. 47,719 (October 17, 1978.)

THEODORE E. ALLISON,
Secretary, Board of Governors of the Federal Reserve System, Washington, D.C.

DEAR MR. ALLISON: The Division of Credit Practices staff respectfully requests that the effective date of proposed Federal Reserve Board Official Staff Interpretation No. FC-0155 be suspended and that the interpretation be republished in the FEDERAL REGISTER for public comment, pursuant to Section 226.1(d)(2)(ii) of Regulation Z. The interpretation would permit creditors to combine or omit disclosures required by Section 226.8(c) which are "identical" or "inapplicable," in effect recodifying informal staff opinions in Public Information Letters No. 213 (December 16, 1969), 536 (September 23, 1971), and 740 (December 28, 1973). Accordingly, for example, in a transaction where there are no Section 226.8(c) (4) or (6) charges, a creditor would have three disclosure options: (1) combine the "unpaid balance of cash price," "unpaid balance," and "amount financed" into one composite disclosure; (2) combine any two of these terms into one disclosure and omit the third; or (3) disclose any one of these three terms and omit the other two.

In our opinion, public comment on this proposed interpretation would be appropriate for the following reasons:

(1) Since the proposed interpretation has the effect of reducing the number of required disclosures, thus "simplifying" compliance with the Truth in Lending Act, it is substantive and not interpretative in nature. Although we agree that compliance should be simplified and a reduction in the number of required disclosures considered, an official staff interpretation is not felt to be an appropriate vehicle for accomplishing this purpose. A substantial change in existing disclosure requirements should be effected through an amendment to Regulation Z or the Act itself.

(2) As written, the proposed interpretation would reduce the comparability of available terms, thus hampering the informed use of credit, contrary to the most basic purpose of the Truth in Lending Act. Key credit *terms*, such as the "amount financed," must be disclosed, even where corresponding *dollar amounts* are identical to other terms. To allow otherwise renders comparability a nullity. Further, we are aware of no other simplification proposal which would allow deletion of the "amount financed" from the required disclosures, nor can we think of any reason to do so. Where the "unpaid balance of cash price," "unpaid balance," and "amount financed," are the same, however, we would agree that there should be no requirement to disclose more than the "amount financed," using that term, for credit shopping purposes.

(3) Numerous courts have reached decisions contrary to this proposed interpretation (including at least one U.S. Court of Appeals and several district courts). Although the effect of such conflicts on the status of official staff interpretations is uncertain, one reasonable interpretation of Section 130(f) of the Truth in Lending Act is that there can be no "good faith" reliance on such an interpretation when a court has already determined that the position taken is invalid. If the Board wishes to change the interpretation given to Section 226.8(c) of Regulation Z, it should do so by regulation.

We will submit more detailed comments on the above issues following republication. Your consideration is appreciated.

Sincerely,

LEWIS M. GOLDFARB,
Assistant Director for Credit Practices.
GEORGE J. ZWEIBEL,
Attorney, Division of Credit Practices.

12 CFR Part 226, FC-0155

§ 226.8(c)—Where disclosures required by § 226.8(c) are repetitive or inapplicable, the disclosure of such terms may be combined or omitted, for example, "unpaid balance," "unpaid balance of cash price," and "amount financed."

SEPTEMBER 21, 1978.

This is in response to your letter of * * *, requesting an offical staff interpretation of § 226.8(c) of regulation Z.

You state that your client, a publicly held corporation owning and operating health spa facilities, offers spa memberships to the public on credit. You indicate that your client imposes a charge for credit and makes credit sale disclosures pursuant to § 226.8(c).

Although disclosure of the "unpaid balance" is required by § 226.8(c)(5), your client omits this disclosure because no other charges, within the meaning of § 226.8(c)(4), are added to the "unpaid balance of cash price" and consequently, the "unpaid balance" would be identical to the "unpaid balance of cash price." You state that your client relies on the wording of § 226.8(c) that only applicable items need to be disclosed to justify omitting the disclosure of "unpaid balance." In addition, you note that public information letters 213, 536, and 740 support this position. These letters reason that where certain charges are omitted and required terms (for example, "cash price" and "amount financed") are identical in amount, the disclosure of one or more such terms

may be inapplicable and the terms may be combined or omitted as appropriate. Letter 536 specifically approved omitting the term "unpaid balance" where there are no other charges to be disclosed pursuant to § 226.8(c)(4) and no prepaid finance charges or required deposit balances to be disclosed pursuant to § 226.8(c)(6).

You request that the staff issue an official interpreation reiterating these informal positions taken previously concerning omission of the term "unpaid balance." In particular, you ask whether it would be proper to make a single disclosure either combining the "unpaid balance of cash price" and the "amount financed" and omitting the "unpaid balance" or combining the "unpaid balance of cash price," the "unpaid balance," and the "amount financed" where there are no § 226.8(c) (4) or (6) charges. The staff believes that the positions taken in the letters previously cited are correct and that either of the combined disclosures which you suggest would be permissible.

However, as you note, there are at least two Federal district courts which apparently have reached decisions contrary to the opinion expressed in this letter. The effect of an official staff interpretation that is contrary to such decisions is uncertain. Therefore, the staff believes that the most prudent course is to follow the court decisions in those jurisdictions in which a court has addressed the issue.

This is an official staff interpretation of § 226.8(c) of regulation Z, issued in accordance with § 226.1(d)(2) of the regulation and limited in its application to the facts and issues discussed herein.

Although you enclosed a copy of your client's disclosure form with your letter, nothing here should be construed as either a review or approval of any portion of that form.

I trust this is responsive to your inquiry.

Sincerely,

NATHANIEL E. BUTLER,
Associate Director.

Board of Governors of the Federal Reserve System, November 21, 1978.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc. 78-33450 Filed 11-28-78; 8:45 am]

[6750-01-M]

Title 16—Commercial Practices

CHAPTER I—FEDERAL TRADE COMMISSION

SUBCHAPTER B—GUIDES AND TRADE PRACTICE RULES

PART 259—GUIDE CONCERNING FUEL ECONOMY ADVERTISING FOR NEW AUTOMOBILES

Final Interim Guide Amendments

AGENCY: Federal Trade Commission.

ACTION: Notice of final interim guide amendment.

SUMMARY: The Federal Trade Commission herein amends on an interim basis its former Fuel Economy Guide. The amended Guide requires disclosure of the EPA "estimated mpg" whenever fuel economy representations are made. It permits the use of other fuel economy estimates, but requires that: (1) any such figures be accorded substantially less prominence than the "estimated mpg," and (2) such other figures be accompanied by certain additional information.

EFFECTIVE DATE: December 29, 1978.

ADDRESSES: Inquiries and requests for copies of the Guide should be directed to the Division of Energy and Product Information, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT:

Marylin Holmes, 202-724-1964.

SUPPLEMENTARY INFORMATION: On September 10, 1975, the Federal Trade Commission promulgated a Guide Concerning Fuel Economy Advertising for New Automobiles (40 FR 42003). The Commission issued a Guide instead of a trade regulation rule because of questions concerning Environmental Protection Agency test procedures and criticism that the EPA test results, primarily those relating to highway mileage, may overstate fuel economy.

The 1975 Guide required:

(1) Disclosure of EPA city and highway test results whenever fuel economy claims were made. This requirement applied to advertisements containing specific mileage figures and to those making more general claims like "saves gas" or "gas stingy engine." Both the city and the highway estimated fuel economy figures had to be disclosed in close conjunction with the other and with substantially equal prominence.

(2) Qualification of the EPA test results. The Guide required disclosure that the cited figures were estimates, and that actual mileage obtained by the consumer might be different, depending upon how and where the consumer drives, the condition of the car and its optional equipment.

(3) Identification of the advertised vehicle's engine size, transmission type, or fuel system, when the advertised vehicle was available in more than one configuration. The Guide required additional disclosures about the use of optional equipment or the absence of commonly-used equipment for cars not tested according to EPA requirements.

The Environmental Protection Agency recently changed its requirements for fuel economy disclosures on labels, issued pursuant to the Energy Policy and Conservation Act of December, 1975. Until this year, EPA had required disclosure of three figures: city, highway, and a number combining the two. Criticism of the non-city numbers, recognized by this Commission when the original Guide was promulgated, has persisted despite certain technical improvements in the test procedures. Studies conducted by the Environmental Protection Agency and the Department of Energy have indicated that the combined and highway figures overstate the experience of most ordinary drivers. On May 17, 1978, the Environmental Protection Agency published new interim label requirements, mandating the disclosure of a single "estimated mpg" figure beginning with 1979 model year automobiles (43 FR 21412).

Because of the change by EPA in its labeling requirements and the widespread public dissatisfaction with the highway estimates mandated by the original FTC Guide, the Commission, on August 4, 1978, published proposed interim amendments to the Guide (43 FR 34496) and invited public comment for one month. A total of twenty-one written comments were submitted and placed on the public record: nine from consumer groups, six from domestic and foreign automotive manufacturers, two from federal agencies, and four form individual consumers.

The notice published for comment in August, 1978, included three alternative approaches to disclosures in advertising. Common to all three were a requirement that "estimated mpg" figures be disclosed whenever fuel economy representations were made, and a prohibition on the use of non-EPA estimates.

SECTION A. PUBLISHED PROPOSALS

1. ALTERNATIVE A

The first published alternative would have prohibited the use of any non-"estimated mpg" figures (§ 259.2(d)), except that provision was made for advertising the incremental highway mileage improvement achieved by vehicles equipped with special highway-efficient features. The Commission believed that this approach might avoid any deception caused by inflated highway or combined figures, yet not discourage product developments affording highway fuel economy benefits.

2. ALTERNATIVE B

The second published proposal would have permitted use of highway or combined figures, but only if the "estimated mpg" was also disclosed and given substantially more prominence.

The original Guide issued in 1975, premised on an understanding that approximately half of consumers' driving

is done on highways and half in the city, required that both numbers be disclosed in close conjunction and with substantially equal prominence. The Commission was particularly concerned that the highway number might appear in a headline, and the city estimate in a footnote or buried in lengthy body copy.

Recent studies casting additional doubt on the reliability of the combined and highway numbers as predictors of actual fuel economy suggest the 1975 Guide is inadequate to prevent deception. Unless the "estimated mpg" is emphasized, the higher numbers, presented with equal or greater prominence, are likely to deceive consumers.

3. ALTERNATIVE C

The third published alternative was based on a belief that according substantially greater prominence to the "estimated mpg" was necessary, but not sufficient, to avoid deception. This alternative (§ 259.2(d)(ii)-(iv)) would have required additional disclosures if advertisers chose to present the highway or combined numbers. Alternative C would have required a statement that the "estimated mpg" is the best number for comparing cars; and that the highway number does not represent freeway mileage, but rather is based on a nonstop trip, under dry, warm weather conditions, on flat roads, at an average speed of 48 mph, in a well-tuned vehicle. The combined number, if disclosed, would have triggered disclosures that the estimated mpg was to be used for comparison purposes, that the combined estimate was an average of two laboratory tests, weighted 55 percent city and 45 percent highway, and that the highway cycle simulates an open road trip, at an average speed of 48 mph, under dry, warm weather conditions.

SECTION B. PUBLIC COMMENTS

Although the comments the Commission received on the published proposals reflect a variety of opinions and sources, the majority agreed that the EPA numbers required by the original Guide contain certain deficiencies. Most commenters believe that the public benefits from orderly, uniform fuel economy representations, and that a significant conflict between the labels and advertising could undermine the government's efforts to help consumers conserve energy and make informed purchasing decisions.

Most industry members urged that the Guide permit the use of highway estimates, and suggested revisions to the proposed disclaimers. One manufacturer expressed a belief that advertisements must be as consistent as possible with labels to avoid consumer confusion, and so recommended banning the use of fuel economy numbers other than the "estimated mpg." Two automakers urged that the Guide, unlike all of the proposed alternatives, permit use of non-EPA figures in advertising, as had the original Guide. Finally, industry members urged that they be given some time to bring their advertising into conformance before the Guide's requirements took effect.

The consumer groups were generally in favor of a ban on highway estimates, believing the "estimated mpg" was more reliable and that a single number system would facilitate comparisons.

The Department of Energy stated that the primary problem with the EPA numbers is deficiencies in the test procedures. DOE recommended that the Commission adopt Alternative B, which entailed the least change from the present system and therefore would cause the least confusion. The Department of Transportation supported Alternative B, but suggested modifications resembling the disclaimers in Alternative C. The written opinions were helpful to the Commission in developing its final interim Guide. The specific determinations underlying the provisions of the amended Guide are described below. The Commission has decided to promulgate Alternative C, with certain changes.

SECTION C. GUIDE PROVISIONS

1. SCOPE OF THE GUIDE

In response to suggestions by two commenters, the seope of the Guide as applicable to express and implied claims has been clarified (see footnote 1). The Commission has determined that the Guide will apply to any representation which ordinary consumers would understand as referring to the fuel economy performance of the advertised vehicle.

2. DISCLOSURE OF THE "ESTIMATED MPG"

By requiring the disclosure of the "estimated mpg" (§ 259.2(a)(1)) and requiring that it be so identified rather than as the "city estimate" (unless certain requirements are met, § 259.2(d)), the Guide brings advertising into conformance with the new EPA labels.

3. THE DISCLAIMERS ACCOMPANYING THE "ESTIMATED MPG"

Like the EPA labeling regulation, the Guide requires a disclosure that the "estimated mpg" should be used for comparison purposes. In considering whether to warn consumers that their mileage might be "poorer" than or merely "different" from the "estimated mpg," the Commission considered the evidence that approximately 50% of the public has achieved or surpassed the city estimate in the past. Most comments submitted asserted that the proposed "poorer" disclosure would unduly denigrate the entire information system and discourage reliance on the "estimated mpg." The Commission agrees that advertisements should be permitted to state that actual mileage may "differ," even though this departs from the EPA's labeling disclaimers.

Instead of the original Guide's required disclosure that actual mileage may vary depending on vaguely defined conditions, the Commission has decided to require disclosure of three of the variables most likely to affect mileage performance: driving speed, trip length, and weather conditions. This is a departure from past advertising, the alternatives proposed, and present labeling requirements, but these new disclosures should help consumers adjust their expectations about the applicability of the EPA estimates.

4. ENGINE SIZE, TRANSMISSION TYPE, AND FUEL SYSTEM

The Guide, as amended, no longer requires the disclosure of the advertised vehicle's engine size, transmission type, or fuel system. Most ads, since 1975, have presented estimates for only the most economical vehicle configuration of the model advertised. The Commission has also noted that the engine size disclosures have tended to be unreadable. Therefore, the Commission has decided not to retain § 259.2(b) of the original Guide.

However, mileage estimates measured for vehicles with more efficient configurations should not be presented so as to give the impression that those numbers apply to less efficient versions of the same model. For example, if an advertisement states that two engine sizes are available for a given car put provides only one "estimated mpg," the ad should make clear the engine size to which the EPA estimate applies.

5. USE OF EPA HIGHWAY AND COMBINED ESTIMATES

On the basis of existing information, the Commission cannot conclude that the highway and combined estimates are so unreliable that their disclosure in advertising must be prohibited. However, the numbers are sufficiently questionable as predictors of actual fuel economy that the Commission has determined to place certain restrictions on their disclosure.

Advertisers may, at their option, disclose the highway and combined figures provided that (1) they accord the "estimated mpg" "substantially more prominence" than the other figures, (2) they place all EPA estimates in close proximity to each other, and (3) they include disclaimers designed to

avoid deception. In response to requests for elaboration on the meaning of "substantially more prominence," the Commission has included footnote 3. The disclosures required by the final interim Guide are different from those proposed in Alternative C, in response to suggestions submitted by members of the public. The disclosures adopted are less extensive than those proposed, but should be adequate to protect consumers from the mistaken impression that they will achieve the highway or combined fuel economy in their own driving.

6. USE OF NON-EPA MILEAGE DATA

The original Guide permitted use of fuel economy figures not derived from EPA testing, if accompanied by certain disclosures. Because use of EPA numbers was Congressionally-mandated in the Energy Policy and Conservation Act after the original Guide was issued, the Commission expressed a belief when publishing the proposed amendments that non-uniform mileage information would confuse or mislead consumers and should not be allowed. Hence, none of the proposed alternatives would have permitted non-EPA figures.

Considering the question raised about the reliability of EPA highway and combined estimates, and in light of several comments it has received, the Commission has determined that non-EPA numbers should be permitted. While unreliable, improperly-qualified figures should not be used, the Commission does not want to discourage the development of new, more reliable methods of measuring fuel economy. Such methods might contribute so much to efforts to save energy so as to outweigh the benefits arising from a single uniform disclosure system. Therefore, the Guide permits non-EPA numbers, but requires inclusion of the "estimated mpg" and certain additional disclosures (§ 259.2(c)).

7. USE OF TERM "ESTIMATED CITY FUEL ECONOMY"

The Commission's Guide requires use of the "estimated mpg" designation, to conform to the new EPA labels, but permits use of the "city fuel economy" terminology, with certain limitations (§ 259.2(d)). It was suggested that the proposed amendments were unclear as to whether the former "city" designation could be used.

8. EFFECTIVE DATE

Because much of the advertising prepared for the 1979 model year may have already been developed, the Commission has determined to allow advertisers some flexibility in their advertisements disseminated soon after the amended Guide is published. Rather than establishing one specific date by which all advertising must conform, § 259.2(e) allows ads placed during the first thirty days after promulgation of the amended Guide to conform only to the old Guide provisions. This approach will not ensure that all ads will comply with the new Guide by a particular date. However, advertisers are encouraged to bring their ads into conformance as soon as possible, and to make any necessary changes in undisseminated ad copy that can be made.

SECTION D. THE GUIDE

Accordingly, the Commission hereby issues the following Guide, which amends Subchapter B, Guides and Trade Practice Rules, of 16 CFR, Chapter I, by revising part 259, to take effect December 29, 1978, as follows:

PART 259—GUIDE CONCERNING FUEL ECONOMY ADVERTISING FOR NEW AUTOMOBILES

Sec.
259.1 Definitions.
259.2 Advertising disclosures.

AUTHORITY: 38 Stat. 717, as amended (15 U.S.C. 41-58).

§ 259.1 Definitions.

For the purposes of this part, the following definitions shall apply:

(a) *"New automobile."* Any passenger automobile or light truck for which a fuel economy label is required under the Energy Policy and Conservation Act (42 U.S.C. 6201 *et seq.*) or rules promulgated thereunder, the equitable or legal title to which has never been transferred by a manufacturer, distributor, or dealer to an ultimate purchaser. The term "manufacturer" shall mean any person engaged in the manufacturing or assembling of new automobiles, including any person importing new automobiles for resale and any person who acts for and is under control of such manufacturer, assembler, or importer in connection with the distribution of new automobiles. The term "dealer" shall mean any person, resident or located in the United States or any territory thereof engaged in the sale or distribution of new automobiles to the ultimate purchaser. The term "ultimate purchaser" means, for purposes of this part, the first person, other than a dealer purchasing in his or her capacity as a dealer, who is good faith purchases such new automobile, for purposes other than resale, including a person who leases such vehicle for his or her personal use.

(b) *"Gas Mileage Guide."* The most recent publication of the U.S. Environmental Protection Agency (EPA) and/or the U.S. Department of Energy issued pursuant to Section 506(b) of the Energy Policy and Conservation Act (15 U.S.C. 2006(b)).

(c) *"Estimated mpg"* and *"estimated city fuel economy."* The gasoline consumption or mileage of new automobiles as determined in accordance with the test procedure employed and published by the U.S. Environmental Protection Agency as described in 40 CFR Part 86 (1977), and subsequent revisions; and expressed in miles-per-gallon, to the nearest whole mile-per-gallon as measured, reported, published, or accepted by the U.S. Environmental Protection Agency.

(d) *"Estimated highway fuel economy."* The gasoline consumption or mileage of new automobiles as determined in accordance with the highway test procedure employed by the U.S. Environmental Protection Agency as described in 40 CFR Part 600 (1977) and subsequent revisions; and expressed in miles-per-gallon, to the nearest whole mile-per-gallon, as measured, reported, or accepted by the U.S. Environmental Protection Agency.

(e) *"Estimated combined fuel economy."* The harmonic average of the "estimated mpg" and the estimated highway fuel economy" weighted 0.55 and 0.45, respectively.

(f) *"Vehicle configuration."* The unique combination of automobile features, as defined in 40 CFR Part 600.

§ 259.2 Advertising Disclosures.

(a) No manufacturer or dealer shall make any express or implied representation in advertising concerning the fuel economy of any new automobile [1] unless such representation is accompanied by the following clear and conspicuous disclosures:

(1) The "estimated mpg" of such automobile, with the U.S. Environmental Protection Agency identified as the source of such figures; and

(2) That the "estimated mpg" is to be used for comparison purposes, and that the actual fuel economy to be obtained by the consumer may be different and will depend upon the individual's driving speed, weather conditions, and trip length.[2]

---

[1] The Commission will regard as an express or implied fuel economy representation one which an ordinary consumer, upon considering the representation in the context of the entire advertisement, would understand as referring to the fuel economy performance of the vehicle or vehicles advertised.

[2] The Commission will regard the following disclosures as complying with § 259.2(a)(2):

For radio and television when the "estimated mpg" appears in the audio portion, the following audio disclosures will be sufficient: *"Remember:* Use this number for comparisons. The actual mileage *you* get may be different." or *"Remember: Compare* this estimate to the "estimated mpg" of other cars. The actual mileage *you* get may be different."

Footnotes continued on next page

(b) If an advertisement for a new automobile cites:

(1) The "estimated highway fuel economy" for the advertised vehicle, the advertisement must refer to that figure as the "estimated highway" mileage or "highway estimate," and must clearly and conspicuously disclose:

(i) The "estimated mpg" of the advertised vehicle, giving that figure substantially more prominence than the "estimated highway fuel economy" and placing the two figures in close conjuction with each other; [3]

(ii) That the "estimated mpg" is to be used for comparison purposes and that actual mileage may be different from the "estimated mpg," depending on the individual's driving speed, weather conditions, and trip length;

(iii) That actual highway mileage will probably be less than the "estimated highway fuel economy."

(2) The "estimated combined fuel economy" for the advertised vehicle, the advertisement must refer to that figure as the "estimated combined" mileage or the "combined estimate," and must clearly and conspicuously disclose:

(i) The "estimated mpg" of the advertised vehicle, giving that figure substantially more prominence than the "estimated combined fuel economy" and placing the two figures in close conjunction with each other;

(ii) That the "estimated mpg" is to be used for comparison purposes and that actual mileage may be different from the "estimated mpg," depending on the individual's driving speed, weather conditions, and trip length;

(iii) That the "estimated mpg" is more likely to reflect actual overall mileage than the "estimated combined fuel economy."

(c) Fuel economcy estimates derived from a non-EPA test may be disclosed provided that:

(i) The advertisement also discloses the "estimated mpg," includes the disclosures required by § 259.2(b)(1)(ii), and gives the "estimated mpg" substantially more prominence than any other estimate disclosed;

(ii) The source of the non-EPA test is clearly and conspicuously identified;

(iii) The driving conditions and variables simulated by the test which differ from those used to measure the "estimated mpg" are clearly and conspicuously disclosed. Such conditions and variables may include, but are not limited to, road or dynamometer test, average speed, range of speed, hot or cold start, and temperature; and

(iv) The advertisement clearly and conspicuously discloses any distinctions in vehicle configuration and other equipment affecting mileage performance (e.g. radial tires) between the automobiles tested in the non-EPA and "estimated mpg" EPA tests.

(d) No manufacturer or dealer shall represent that the "estimated mpg" is the "estimated city fuel economy" unless;

(i) The designation as "estimated mpg" is accorded prominence at least equal to the designation as "estimated city fuel economy" or similar terms; and

(ii) The designation as "estimated city fuel economy" or similar term is accompanied by the clear and conspicuous disclosure that fuel economy in heavy city traffic will be lower.

(e) All advertisement placed thirty days or later after publication of this Guide must comply with the foregoing provisions. All non-conforming ad copy which has been placed during the period, but which can be withdrawn and replaced with conforming advertisements without penalty, must be so withdrawn. For purposes of this section, ad copy can be withdrawn and replaced with conforming advertisements without penalty if applicable standard media deadlines or closing dates, as set by current rate cards, standard contracts or ordinary business practice, have not yet expired. In no case may a non-conforming ad appear five months after publication of this Guide.

Promulgated by the Federal Trade Commission, November 29, 1978.

CAROL M. THOMAS,
Secretary.

PARTIALLY DISSENTING STATEMENT OF COMMISSIONER DIXON ON GUIDE FOR FUEL ECONOMY ADVERTISING OF NEW CARS

While this matter presents many difficult issues, and the Commission has done its best to resolve them, I cannot support that part of the Guide for Fuel Economy Advertising of New Cars that permits the advertising of EPA in-city, combined, or highway miles per gallon figures. Our best evidence is that these figures do not comport with the mileage realized in actual driving, and so have led consumers to believe, mistakenly, that new automobiles will realize substantially greater mileage than those automobiles have been able to deliver. Even if the highway figure is considered to be a valid measure for comparing new cars (and I am told that there is serious question even as to this) that fact is likely to be of little comfort to the consumer who trades in his old car (the highway mileage of which he knows with certainty) for a new car that sports a highway figure in excess of that realized by the trade-in. The fact that these inflated, unsubstantiated mileage estimates can be touted as coming from one arm of the government (EPA), and will carry the endorsement of another (FTC) is likely only to compound further the misrepresentation, while eroding the natural skepticism of consumers that is peculiarly warranted with respect to fuel economy claims. Apparently recognizing these hazards, EPA does not permit the use of in-city, combined, or highway figures on stickers that the agency requires be affixed to new automobiles. I would not treat advertising differently.

Because miles per gallon figures realized in highway driving can be of considerable use for consumers who do much of their driving outside congested areas, I support that portion of the Guide that permits the advertising of highway figures derived from tests

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Footnotes continued from last page

For television, when the "estimated mpg" appears only in the video portion: *"Remember:* Use this estimate for comparisons. *Your* mileage may be different, depending on your speed, trip length, and weather."

For print media only (other than roadside billboards): *"Remember: Compare* this *estimate* to the "estimated mpg" of other cars. You may get different mileage, depending on how fast you drive, weather conditions, and trip length."

For roadside billboards only: "Use for Comparisons. Get *Free* Gas Mileage Guide from dealer for details." or "Use for Comparisons. Actual mileage may be different."

[3] The Commission will regard the following as constituting "substantially more prominence":

For television only: If the "estimated mpg" and any other mileage estimate appear only in the visual portion, the "estimated mpg" must appear in numbers twice as large as those used for any other estimate, and must remain on the screen at least as long as any other estimate. If the "estimated mpg" appears in the audio portion, visual broadcast of the "estimated highway fuel economy" or the "estimated combined fuel economy" must be accompanied by the simultaneous, at least equally prominent, visual broadcast of the "estimated mpg." Each visual "estimated mpg" must be broadcast against a solid color background which contrasts easily with the color used for the numbers when viewed on both color and black-and-white televisions.

For radio and television when "estimated highway fuel economy" or "estimated combined fuel economy" are used in audio: The "estimated mpg" must be stated, both before and after each disclosure of the "estimated highway fuel economy" or the "estimated combined fuel economy" at least as audibly as each other estimate.

For print only: The "estimated mpg" must appear in clearly legible type at least twice as large as that used for the "estimated highway fuel economy" or the "estimated combined fuel economy." Alternatively, if the "estimated mpg" appears in type of the same size as the "highway" or "combined" estimate, it must be clearly legible and conspicuously circled. The "estimated mpg" must appear against a solid color, contrasting background. It may not appear in a footnote unless all references to fuel economy appear in a footnote. No reference to or citation of the "estimated highway fuel economy" or the "estimated combined fuel economy" may appear in the title of any advertisement.

conducted by the automobile companies. The Commission can help ensure the accuracy of these figures by insisting that they be substantiated adequately and that relevant conditions of the test be disclosed. Moreover, the companies themselves have a strong incentive to guarantee that any figures they use are not misleading, inasmuch as they must account to their customers for the accuracy of such figures, a restraint that does not exist where the government can be pointed to as the source of any deception.

The entire Commission is, of course, fully aware of the misleading nature of those figures EPA will not allow on labels, and has endeavored mightily to minimize this deception by requiring, in the case of the highway figure, a disclosure that the consumer is unlikely to realize in practice a figure so high. If advertisers were further required to disclose that the highway figure does not even uniformly overstate the mileage likely to be achieved in practice by different cars, then I would agree that a consumer who saw the figure and read and understood the disclosures would not be misled. However, I question whether any advertiser would be prepared to make such disclosures, which would be tantamount to an admission that the representation that triggered them was untrue. Our traditional response to misleading claims has been to prohibit them, not to hope that deception can be dispelled by a disclosure to the effect that a misrepresentation has occurred.

While the Commission believes that the usefulness of the highway figure in advertising outweighs the costs of its being misleading and I recognize the reasonableness of such a judgment, my own view is that the harm that results from permitting use of this misleading figure is likely to exceed the benefits. If the disclosures necessary to eliminate deception in a claim cannot be conveniently fitted into an advertisement, I am not aware that the law requires that the disclosures be trimmed back. In this case, it seems to me that consumers would on balance be better off to draw their estimates of highway mileage figures from a variety of print sources, wherein the infirmities and peculiarities of such figures can be accurately conveyed, rather than being subjected to misleading representations on television that are likely to invite reliance without further inquiry.

[FR Doc. 78-33471 Filed 12-28-78; 8:45 am]

[8010-01-M]

Title 17—Commodity and Securities Exchanges

CHAPTER II—SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-15348]

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

Filing and Disclosure Requirements Relating to Beneficial Ownership

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission announces the adoption of an amendment to a rule which expands the classes of persons required to disclose beneficial ownership and related information of certain equity securities. The persons added by the amendment are those who own more than five percent of a class of certain equity securities and who are not required to file a statement under Section 13(d) of the Securities Exchange Act of 1934 because, for example: (a) Beneficial ownership of the securities was acquired prior to December 22, 1970; (b) beneficial ownership of not more than 2 percent of the class was acquired within a 12 month period; or (c) beneficial ownership was acquired in certain stock-for-stock exchanges. The amendment and actions related thereto implement the statutory authority recently granted to the Commission to close the gaps which exist in the present scheme for requiring disclosure of persons whose beneficial ownership exceeds 5 percent of a class of certain equity securities. Technical amendments to the rules and schedules governing the disclosure of beneficial ownership of certain equity securities are also adopted.

EFFECTIVE DATE: December 29, 1978.

FOR FURTHER INFORMATION CONTACT:

John Granda, Office of Disclosure Policy and Proceedings, Division of Corporation Finance, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549, 202-755-1750.

SUPPLEMENTARY INFORMATION: The Commission today announced the adoption of amendments to Rule 13d-1 (17 CFR 240.13d-1), Rule 13d-7 (17 CFR 240.13d-7), Schedule 13D (17 CFR 240.13d-101) and Schedule 13G (17 CFR 240.13d-102) under the Securities Exchange Act of 1934 ("Exchange Act") (15 U.S.C. 78a et seq., as amended by Pub. L. No. 94-29 (June 4, 1975) and Pub. L. No. 95-213 (December 19, 1977)). Most of these amendments were proposed for comment in Securities Exchange Act Release No. 14693 (April 21, 1978) (43 FR 18501) in connection with the adoption of extensive amendments to Regulation 13D which became effective on May 30, 1978.[1] Among those proposals was Rule 13d-1(c) which closes the gaps in the existing scheme for reporting beneficial ownership of equity securities under Section 13(d) and thereby implements the authority granted to the Commission under Section 13(g) of the Exchange Act.

The amendments adopted today also: (1) Narrow the definition of equity security formerly set forth in Rule 13d-1(c) and now set forth in Rule 13d-1(d); (2) revise Rule 13d-7 to make clear that an additional filing fee is required for the next filing following an amendment to a Schedule 13D or Schedule 13G which reflects beneficial ownership of five percent or less; and (3) tailor more specifically the disclosure requirements in Schedule 13G for the persons who will be filing that schedule pursuant to Rule 13d-1(c).

I. Background

Section 13(d) of the Exchange Act requires any person who acquires beneficial ownership of more than 5 percent of a class of certain equity securities to file a statement with the Commission reporting that acquisition and certain other information related to such person's ownership of those securities. Section 13(d) is not, however, an ownership reporting provision of general application. Its legislative history reveals that it was intended to provide information to the public and the affected issuer about rapid accumulations of its equity securities in the hands of persons who would then have the potential to change or influence control of the issuer.[2]

Because section 13(d) attempts to deal with the more limited concern of rapid shifts in control, acquisitions unrelated to that purpose were exempted therefrom. Thus, persons who acquire not more than 2 percent of a class of securities within a 12-month period are exempted by Section 13(d)(6)(B) from disclosing their ownership. Also Section 13(d) is keyed to making an "acquisition" of the requisite amount of securities. Thus, persons who acquired their ownership prior to the en-

[1] Securities Exchange Act Release No. 34-14692 (April 21, 1978) (43 FR 18484).

[2] S. Rep. No. 550, 90th Cong., 1st sess. 7 (1967); H.R. Rep. No. 1711, 90th Cong., 2nd sess. 8 (1968) and hearings on S. 510 before the Subcommittee on Securities of the Senate Committee on Banking and Currency, 90th Cong., 1st sess. (1976).

actment of the 5-percent threshold on December 22, 1970 (Pub. L. 91-567) also are not subject to section 13(d). There also is an exemption from reporting acquisitions of securities acquired in a stock-for-stock exchange which is registered under the Securities Act of 1933 ("Securities Act") (15 U.S.C. 77a et seq.) because Congress apparently believed, at that time, that shareholders of the subject issuer would, through the receipt of the required prospectus, receive all the material facts necessary to make an informed decision whether to hold their stock or exchange it for the stock of the company making the exchange offer.[3]

Among the recommendations included in the final report prepared by the Commission pursuant to Section 12(m) of the Exchange Act[4] was that the gaps in Section 13(d), discussed above, be closed in order to establish a comprehensive system for disclosure of beneficial ownership of equity securities. The Commission's recommendation was implemented with the enactment of Section 13(g) of the Exchange Act on December 19, 1977.[5] Section 13(g)(1) requires any person who is directly or indirectly the beneficial owner of more than 5 percent of a class of equity securities specified in Section 13(d)(1) of the Exchange Act to send to the issuer and file with the Commission a statement setting forth, in such form and at such time as the Commission may, by rule, prescribe: Such person's identity, residence, citizenship, the number and description of the shares in which such person has an interest and the nature of such interest. Section 13(g)(1) taken literally would require disclosure of the prescribed information, as well as that which may be required pursuant to the Commission's general rulemaking authority thereunder, regardless of whether the persons subject thereto are also required to report similar ownership information under other sections of the Exchange Act. Section 13(g)(5), however, directs the Commission to take such steps as are necessary and appropriate in the public interest and for the protection of investors to achieve centralized reporting of the information, to avoid unnecessary duplicative reporting, and to minimize the compliance burden on persons required to report. Moreover, the legislative history is clear that Section 13(g) was intended to "supplement the current statutory scheme by providing legislative authority for certain additional disclosure requirements that in some cases could not be imposed administratively."[6] The principal effect of Section 13(g), therefore, is to provide the authority necessary to close the gaps previously described in the disclosure requirements under Section 13(d).[7]

A. REGULATION 13D-G AND RULE 13D-1(C)

In order to effectuate the Congressional purpose underlying Section 13(g), the Commission is adopting, substantially as proposed, the amendments published in Securities Exchange Act Release No. 14693 (April 21, 1978) (43 FR 18501). Thus, "Regulation 13D" is re-captioned "Regulation 13D-G" and a new paragraph (c) is being added to Rule 13d-1 within the existing paragraph (c) and the succeeding paragraphs redesignated accordingly.

Rule 13d-1(c) requires persons who own more than 5 percent of a class of security now specified in Rule 13d-1(d), and who are currently not required to file under Rule 13d-1(a), to file a statement on Schedule 13G containing the information applicable to such persons. Generally, persons who are not required to file under Rule 13d-1(a) but who would be required to file a Scheduled 13G pursuant to Rule 13d-1(c) are: (1) Those persons who acquired beneficial ownership of their securities prior to December 22, 1970, (2) those persons who acquired not more than 2 percent of a class of securities with a 12-month period, who are exempt from Rule 13d-1(a) by Section 13(d)(6)(B), and (3) those persons who acquired securities through a stock-for-stock exchange registered under the Securities Act, who are exempted from Rule 13d-1(a) by Section 13(d)(6)(A). Rule 13d-1(c) also would require any persons "otherwise" not required to report pursuant to Rule 13d-1(a) but who is a beneficial owner of more than 5 percent of a specified class of equity securities to report on Schedule 13G. A person could fall into this category if, for example, he acquired beneficial ownership of more than five percent of a class of securities which at the time of acquisition was not registered pursuant to Section 12(g) but which subsequently became registered. However, an exception has been added to Rule 13d-1(c) to indicate that the "or otherwise" language does not cover issuers who acquire their own securities. Thus, issuers who satisfy the exemption under Section 13(d)(6)(c) of the Exchange Act will not have to file a Schedule 13D or a Schedule 13G. In the Commission's view, requiring a report from an issuer in this context is not within the legislative purpose of Section 13(d) and Section 13(g).

One commentator suggested that Rule 13d-1(c) would be clearer if, instead of referring to particular bases for exemptions from Section 13(d), the Rule stated that it covered everyone who is not required to file under Section 13(d) but who has beneficial ownership of more than five percent of a class. The Commission has determined to retain the references to exemptions because it is more informative in that manner. For example, a person who does not appreciate the significance of acquiring securities prior to December 22, 1970 for purposes of Section 13(d) might not be aware of the obligation to file under Section 13(g) absent a reference to that fact.

A technical suggestion also offered by this commentator was to adopt a Rule under Section 13(g) in order to indicate that the Section had been implemented by the adoption of Rule 13d-1(c). The Commission believes that the fact that the Regulation in which the rule implementing Section 13(g) appears is captioned "Regulation 13D-G" provides adequate notice that the Section is operative.

Proposed Rule 13d-1(c) subjects persons it covers to all of the rules in Regulation 13D-G. Thus, the determination of whether a person is a beneficial owner for the purpose of Rule 13d-1(c) is governed by Rule 13d-3. Rule 13d-3(a) provides that a beneficial owner of a security includes any person who has or shares voting power and/or investment power with respect to such security. Voting power includes "the power to vote, or to direct the voting of such security" and investment power includes "the power to dispose, or to direct the disposition of such security." Under Rule 13d-3(d)(1)(i) a person is also deemed to be the beneficial owner of securities which he may acquire at any time within sixty days, subject to certain conditions. In addition, Rule 13d-3(c) provides that all securities beneficially owned by a person are to be aggregated in determining how may securities such persons owns, regardless of the nature of the beneficial ownership.

As indicated above, reporting under Rule 13d-1(c) and under regulation 13D-G generally is directed to obtaining ownership information from persons who have the potential to change or influence control of the issuer. The Commission believes that, while Section 13(g) is a disclosure provision of

[3] Section 13(d)(6)(A); See S. Rep. No. 550, 90th Cong., 1st sess. 3 (1967); H.R. Rep. No. 1711, 90th Cong., 2nd sess. 3 (1968).

[4] Final Report of the Securities and Exchange Commission on the Practice of Recording the Ownership of Securities in the Records of the Issuer in Other Than the Name of the Beneficial Owner of Such Securities, 94th Cong., 2nd Sess. (Committee print 1976).

[5] Section 13(g) was added to the Exchange Act by the Domestic and Foreign Investment Disclosure Act of 1977 (the "Act") (Title II of Pub. L. No. 95-213). The Act also amended Section 13(d)(1) and Section 15(d) of the Exchange Act and added Section 13(h) to the Exchange Act.

[6] S. Rep. No. 114, 95th Cong., 1st sess. 13 (1977).

[7] *Id.*

more general application that Section 13(d), the possible affect on control is the aspect of beneficial ownership of greatest interest to issuers and investors in this context.[8] Accordingly, the traditional economic interests in securities, i.e., the right to receive dividends and the right to receive proceeds upon sale, have not been included as criteria for defining beneficial ownership for purposes of Regulation 13D-G.

The legislative history of Section 13(g) also stresses "the need to integrate and consolidate, wherever possible, the various reporting requirements of the Securities Exchange Act into a comprehensive system for gathering and disseminating information about ownership interests in public (sic) held companies." [9] Thus, Section 13(g)(5) directs the Commission to take such steps as it deems necessary or appropriate in the public interest: To achieve centralized reporting of information regarding ownership; to avoid unnecessarily duplicative reporting by and minimize the compliance burden on persons required to report; and to tabulate and promptly make available the information contained in any report filed thereunder in a manner which will, in the view of the Commission, maximize the usefulness of the information.

Adoption of Rule 13d-1(c) as part of proposed Regulation 13D-G is the final major step in the accomplishment of the system contemplated by Congress for the reporting of beneficial ownership of the equity securities of public companies.

Regulation 13D-G should result in a minimum of duplication, although some duplication may be necessary to accomplish the differing regulatory objectives of the various sections of the Exchange Act requiring disclosure of ownership information. In order to minimize such duplication for persons who are required to report under Sections 13(f) and 13(g), such persons are permitted to respond to any of the items of Schedule 13G by incorporating in a report which is filed pursuant to Section 13(f).

In light of the objective of obtaining ownership information directed to the ability to change or influence control, it is not feasible to integrate the reports filed pursuant to Section 16(a) into the reporting system under Regulation 13D-G. Section 16 is a prophylactic provision designed to prevent the use of inside information by certain insiders to derive windfall profits on purchases and sales of the issuer's securities within a 6-month period. The overriding concern under Section 16 is with the economic incidents of ownership. Beneficial ownership is therefore defined differently for Section 16 and for Regulation 13D-G in order to achieve their separate purposes. Thus, consolidation of the ownership information under the two sets of reports would be a matter of mixing two distinct concepts. Further difficulty in joining the two reporting systems is presented by the fact that Section 16 has a 10-percent reporting threshold while Sections 13(d) and 13(g) have a 5-percent threshold.

The Commission believes that the compliance burden on persons required to file Schedule 13G is held to a minimum, since the information called for is essentially the minimum statutory requirement. Moreover, it is to be filed annually within 45 days after the end of the calendar year. The expense of consolidating the necessary ownership information is also held to a minimum since a determination need only be made as of the last day of the calendar year.

Registrants which are required to file periodic reports under Section 13 of the Exchange Act must set forth in Item 14 of their annual report on Form 10-K and in Item 5 of their proxy statement the information called for by Item 6 of Regulation S-K (17 CFR 220.20.6.). Item 6 requires disclosure of the name, address, number of shares owned, and the percent of the class represented by such shares for each person who beneficially owns more than 5 percent of a class of a registrant's voting securities. These registrants will be able to more accurately reflect such ownership information because all persons who own more than 5 percent of a class of an equity security specified in Rule 13d-1(d) will be required to send a copy of his Schedule 13D or Schedule 13G to the issuer. Shareholders, interested members of the public, and government agencies will therefore be able to consult the ownership information prepared by the registrant and filed in its annual report or proxy statement for the purpose of identifying the substantial beneficial owners of a particular issuer. If further information is necessary with respect to such ownership, the statements (Schedules 13D and 13G) upon which the issuer based its disclosure may be examined in the Commission's public files.

The Commission has also recently proposed for comment amendments to the "cover pages" for Schedules 13D, 13G, and 14D-1.[10] These proposals would require persons filing the schedules to abstract certain data from within the schedule in order to facilitate the entry of such data into the Commission's computer system. The release also describes and invites comments on proposed methods for collating information through computer and other systems to satisfy the Commission's obligation to tabulate and make promptly available ownership information. At present, two basic tabulations of beneficial ownership data are proposed, one being classified by issuer and showing the beneficial owners of over 5 percent of that issuer's stock, the other being a classification by reporting persons, i.e., for each reporting person it would give a list of companies in which such person had a reportable beneficial interest.

B. RULE 13D-1(D)

The definition of the term "equity security," for purposes of Regulation 13D-G, formerly set forth in Rule 13d-1(c) is now set forth in Rule 13d-1(d). As adopted on May 30, 1978, the Rule excluded securities of a class of non-voting option, warrants, rights, convertible debt or convertible preferred securities. As a result, beneficial ownership of such securities does not, in and of itself, generate an obligation to file reports under Section 13(d) or Section 13(g). However, securities which might be acquired upon the exercise or conversion of such securities are not removed from the definition of the term "equity security" and would be includable in the calculation of the 5 percent threshold.

While amendments to former Rule 13d-1(c) were not proposed in Securities Exchange Act Release 14693, comments were received on the Rule as part of the comments on that Release. Although the commentators thought that the rule was an appropriate expression of the Congressional purpose underlying the Williams Act, they were of the view that it did not go quite far enough. It was noted in this regard that there are many small classes of preferred stock which are not convertible but which would not be excepted by the present definition and could therefore give rise to a reporting obligation. The logical extension of this view is that all non-voting securities should be removed from the definition of the term "equity security" since such securities do not carry with them the potential to change or influence control of an issuer. The Commission believes that this view is supported by the limited purpose of Sections 13(d) and 13(g). Accordingly, all non-voting securities have been excluded from the definition of "equity security" set forth in Rule 13d-1(d).

[8] "The touchstone of the national disclosure policy in this area is the concept of control or potential control." Final report of the Securities and Exchange Commission on the Practice of Recording the Ownership of Securities in the Records of the Issuer in Other Than the Name of the Beneficial Owner of Such Securities, 94th Cong., 2d sess. (Committee print 1976), at 50 n. 13.

[9] S. Rep. No. 550, 90th Cong., 1st sess. 14 (1967).

[10] Securities Exchange Act Release No. 15317 (November 9, 1978).

C. RULE 13D-7

Rule 13d-7 establishes a uniform fee schedule for acquisition statements filed on Schedules 13D and 13G. It provides that the first schedule which is filed must be accompanied by a filing fee of $100. All amendments to that schedule reflecting an increase in ownership above 5 percent do not require an additional fee. However, as originally adopted, the rule provided that after an amendment to the schedule reporting beneficial ownership of *less than 5 percent* has been filed, the first schedule filed thereafter is treated as a new filing and must be accompanied by a filing fee of $100. The Rule inadvertently failed to specify that an additional fee would be generated if the first schedule filed thereafter reported beneficial ownership of five percent of a class as well as less than five percent of a class. This, of course, is based on the fact that Section 13(d) and Section 13(g) are triggered only if beneficial ownership of a class of securities exceeds five percent. Rule 13d-7 has therefore been amended to correct this oversight.

D. SCHEDULE 13G

1. *Item 2.* Because persons who may be filing under Rule 13d-1(c) may not have a business office, Item 2 of Schedule 13G has been amended to permit such persons to state their residence address.

2. *Item 6.* Two commentators objected to the requirement in Item 6 that the filing person must identify persons who have an interest exceeding five percent in a class of securities based on the right to receive, or the power to direct the receipt of, dividends or sales proceeds. One of the commentators believes the Commission lacks the authority to require this information. The other commentator was of the view that this information is not relevant under Section 13(g), particularly since these incidents of ownership have not been included as criteria for defining beneficial ownership. These commentators were also of the view that this requirement is an unwarranted invasion of privacy.

The Commission believes that Section 13(g)(1) and its legislative history indicate that the Commission has the authority necessary to require the disclosure required by Item 6. Thus, Section 13(g)(1)(B) provides that the Commission may require disclosure of "the nature of (the) interest" in the shares which the filing person beneficially owns. In describing the parallel term added to Section 13(d)(1), *viz.* "nature of such beneficial ownership," the Senate Report stated it that "could include such matters as whether the beneficial owner has the right to direct the voting of the securities, the receipt of dividends, the proceeds of sale or such other or different indicia of beneficial ownership as the SEC may prescribe." [11] When the incidents of ownership are split in the manner contemplated by Item 6, it seems clear that the term "nature of (the) interest" as well as the Commission's general rulemaking authority under Section 13(g) reaches the identification of the person owning more than five percent of the economic interests in the securities. The changes made by Conference Committee to the bill which was enacted do not, as suggested, indicate a different view. [12]

In defining beneficial ownership for purposes of Sections 13(d) and 13(g), the Commission did not include the right to receive or the power to direct the receipt of dividends or sales proceeds as bases for triggering a filing obligation thereunder. However, these incidents of ownership may be relevant as an item of disclosure in the Schedule which is filed by the person who has the power to vote or direct the vote or the power to dispose or to direct the disposition of the securities. The presence of the term "nature of [the] interest" in Section 13(g)(1)(B) as an item of disclosure which may be obtained and the description of the meaning of that term in the Senate Report evince a Congressional intent that disclosure concerning the economic incidents of ownership may be significant. The Commission has limited disclosure in this context to merely indicating whether someone other than the filing person has the right or power to receive dividends or sales proceeds and, where these incidents of ownership exceed five percent, identification of the owner. An identification of the person who is able to profit from the exercise of control through a block of this size may be relevant, for example, in assisting the Commission in determining the accuracy of the representations in the Schedule and compliance by such persons with their filing obligations.

Congress has decided the privacy issue in the context of Sections 13(d) and 13(g) by requiring certain disclosure from persons whose ownership exceeds five percent. Unlike Section 13(f)(3) of the Exchange Act, there is no provision in these Sections for withholding disclosure of securities owned by individuals.

3. *Items 7 and 8.* Item 7 has been bifurcated so that the specific requirement imposed thereby is dependent upon whether the person is filing pursuant to Rule 13d-1(b)(ii)(G) or Rule 13d-1(c). Thus, parent holding companies filing pursuant to Rule 13d-1(b)(ii)(G) are required to so indicate under Item 3(g) and attach an exhibit stating the identity and Item 3 classification of the relevant subsidiary. However, persons filing purusant to Rule 13d-1(c) need only file an exhibit identifying the relevant subsidiary. As suggested by one commentator, the classification of a subsidiary has no relevance for purposes of Section 13(g).

For the same reason, Item 8 has been similarly bifurcated. Thus, the exhibit required to be attached by the Item for a group filing pursuant to Rule 13d-1(c) need only identify the members of the group; the Item 3 classification does not have to be provided with respect to the members of the group.

4. *Item 10.* Item 10 has been amended to provide that the certification required thereby need only be provided by persons who file Schedule 13G pursuant to Rule 13d-1(b). Persons filing Schedule 13G pursuant to Rule 13d-1(c) are not required to include the certification because they are not required to satisfy the conditions set forth in the certification in order to use the Schedule.

II. POSSIBLE FUTURE ACTION

In view of the interpretive questions and concerns which have arisen under Regulation 13D as well as the experience gained by the Commission since it was last amended, it may be necessary to make certain minor or technical changes in some of the rules. In addition, certain commentators have stressed the need for a current listing of all Section 13(d)(1) securities showing the name of the issuer, the CUSIP number, and the number of outstanding shares. In this regard, these commentators noted that Section 13(f)(3) requires the Commission to make available to the public, for purposes of Section 13(f), a list of section 13(d) securities. The Commission fulfilled its 13(f) obligation by providing that Section 13(f) would apply only to securities listed on an exchange or quoted on NASDAQ and by publishing a list of these securities. Based on the experience with the list prepared for purposes of Section 13(f) as well as an examination of the feasibility of providing a comprehensive list of the securi-

[11] S. Rep. No. 114, 95th Cong., 1st Sess. 18 (1977).

[12] H.R. Rep. No. 831, 95th Cong., 1st Sess. 14 (1977). Sections 13(g)(1)(C) and 13(g)(1)(D) of the Senate bill were deleted in conference. *Id.* Section 13(g)(1)(c) authorized the Commission to obtain disclosure of "the time and manner of acquisition of such shares and subsequent transactions in such shares." It was deleted "to make clear that the (Commission) may not require extensive historical ownership and transaction information." *Id.* Section 13(g)(1)(D) authorized the Commission to obtain disclosure of "such other similar information as the Commission may, by rule, prescribe as necessary or appropriate in the public interest or for the protection of investors." It was deleted because it was "unnecessary in view of the Commission's general grant of rulemaking authority under Section 13(g)." *Id.*

ties specified in Section 13(d)(1), the Commission will determine whether to publish such a list.

III. CERTAIN FINDINGS

As required by Section 23(a)(2) of the Exchange Act, the Commission has specifically considered the impact which the amendments adopted herein would have on competition. The Commission has found that these amendments will not significantly burden competition and, in any event, has determined that any possible resulting competitive burden will be far outweighed by, and is necessary and appropriate to achieve, the benefits of this information to investors.

IV. AUTHORITY

The Commission hereby amends Rules 13d-1 and 13d-7 and Schedules 13D and 13G pursuant to the authority set forth in Sections 3(b), 13, and 23 of the Exchange Act. The Commission finds that these amendments have already been generally subject to comment as a result of the proposals published in Exchange Act Release No. 14693 (43 FR 18501) and are either technical in nature or less burdensome than previous requirements so that further notice and rulemaking procedures pursuant to the Administrative Procedure Act (5 U.S.C. 553) are not necessary.

V. TEXT OF AMENDED RULES AND SCHEDULES

17 CFR Part 240 is amended by revising Regulation 13D in the following respects:

REGULATION 13D-G

A. Section 240.13d-1 is amended to read as follows:

§ 240.13d-1 Filing of Schedules 13D and 13G.

(a) Any person who, after acquiring directly or indirectly the beneficial ownership of any equity security of a class which is specified in paragraph (d) of this section, is directly or indirectly the beneficial owner of more than 5 percent of such class shall, within 10 days after such acquisition, send to the issuer of the security at its principal executive office, by registered or certified mail, and to each exchange where the security is traded, and file with the Commission, a statement containing the information required by Schedule 13D (§ 240.13d-101). Six copies of the statement, including all exhibits, shall be filed with the Commission.

(b)(1) A person who would otherwise be obligated under paragraph (a) of this section to file a statement on Schedule 13D may, in lieu thereof, file with the Commission, within 45 days after the end of the calendar year in which such person became so obligated, six copies, including all exhibits, of a short form statement on Schedule 13G and send one copy each of such schedule to the issuer of the security at its principal executive office, by registered or certified mail, and to the principal national securities exchange where the security is traded: *Provided*, That it shall not be necessary to file a Schedule 13G unless the percentage of the class of equity security specified in paragraph (d) of this section beneficially owned as of the end of the calendar year is more than 5 percent: *And provided further*, That:

* * * * *

(c) Any person who, as of December 31, 1978, or as of the end of any calendar year thereafter, is directly or indirectly the beneficial owner of more than 5 percent of any equity security of a class specified in paragraph (d) of this section and who is not required to file a statement under paragraph (a) of this section by virtue of the exemption provided by Section 13(g)(6) (A) or (B) of the Act, or because such beneficial ownership was acquired prior to December 22, 1970, or because such person otherwise (except for the exemption provided by Section 13(d)(6)(c) of the Act) is not required to file such statement, shall, within 45 days after the end of the calendar year in which such person became obligated to report under this paragraph, send to the issuer of the security at its principal executive office, by registered or certified mail, and file with the Commission a statement containing the information required by Schedule 13G (§ 240.13d-102). Six copies of the statement, including all exhibits, shall be filed with the Commission.

(d) For the purpose of this regulation, the term "equity security" means any equity security of a class which is registered pursuant to Section 12 of that Act, or any equity security of any insurance company which would have been required to be so registered except for the exemption contained in Section 12(g)(2)(G) of the Act, or any equity security issued by a closed-end investment company registered under the Investment Company Act of 1940: *Provided*, Such term shall not include securities of a class of non-voting securities.

(e) For the purpose of Sections 13(d) and 13(g), any person, in determining the amount of outstanding securities of a class of equity securities, may rely upon information set forth in the issuer's most recent quarterly or annual report, and any current report subsequent thereto, filed with the Commission pursuant to this Act, unless he knows or has reason to believe that the information contained therein is inaccurate.

(f)(1) Whenever two or more persons are required to file a statement containing the information required by Schedule 13D or Schedule 13G with respect to the same securities, only one statement need be filed: *Provided*, That:

* * * * *

B. Section 240.13d-7 is amended to read as follows:

§ 240.13d-7 Fees for filing Schedules 13D or 13G.

The initial Schedule 13D or 13G filed by a person shall be accompanied by a fee of $100 payable to the Commission, no part of which shall be refunded. No fees shall be required with respect to the filing of any amended Schedule 13D or 13G: *Provided, however*, That once an amendment has been filed reflecting beneficial ownership of 5 percent or less of such class, an additional fee of $100 shall be paid with the next filing of that person which reflects ownership of more than 5 percent thereof.

C. Item 7 of Schedule 13D (§ 240.13d-101) is amended to read as follows:

§ 240.13d-101 Schedule 13D—Information to be included in statements filed pursuant to § 240.13d-1(a) and amendments thereto filed pursuant to § 240.13d-2(a).

* * * * *

Item 7. Material to be Filed as Exhibits. The following shall be filed as exhibits: Copies of written agreements relating to the filing of joint acquisition statements as required by Rule 13d-1(f) (§ 240.13d-1(f)) and copies of all written agreements, contracts, arrangements, understanding, plans or proposals relating to: (1) The borrowing of funds to finance the acquisition as disclosed in Item 3; (2) the acquisition of issuer control, liquidation, sale of assets, merger, or change in business or corporate structure, or any other matter as disclosed in Item 4; and (3) the transfer or voting of the securities, finder's fees, joint ventures, options, puts, calls, guarantees of loans, guarantees against loss or of profit, or the giving or withholding of any proxy as disclosed in Item 6.

D. Schedule 13G is amended to read as follows:

§ 240.13d-102 Schedule 13G information to be included in statements filed pursuant to § 240.13d-1 (b) and (c) and amendments thereto filed pursuant to § 240.13d-2(b).

* * * * *

Items 2, 7, 8, and 10 of § 240.13d-102 are amended to read as follows:

* * * * *

2(a) Name of person filing:

2(b) Address or principal business office or, if none, residence:

2(c) Citizenship:

2(d) Title of class of securities:

2(e) CUSIP No.:

---

* * * * *

Item 7. Identification and Classification of the Subsidiary Which Acquired the Security Being Reported on By the Parent Holding Company. If a parent holding company has filed this schedule, pursuant to Rule 13d-1(b)(ii)(G), so indicate under Item 3(g) and attach an exhibit stating the identity and the Item 3 classification of the relevant subsidiary. If a parent holding company has filed this schedule pursuant to Rule 13d-1(c), attach an exhibit stating the identification of the relevant subsidiary.

Item 8. Identification and Classification of Members of the Group. If a group has filed this schedule pursuant to Rule 13d-1(b)(ii)(H), so indicate under Item 3(h) and attach an exhibit stating the identity and Item 3 classification of each member of the group. If a group has filed this schedule pursuant to Rule 13d-1(c), attach an exhibit stating the identity of each member of the group.

* * * * *

10. *Certification.* The following certification shall be included if the statement is filed pursuant to Rule 13d-1(b):

By signing below I certify that, to the best of my knowledge and belief, the securities referred to above were acquired in the ordinary course of business and were not acquired for the purpose of and do not have the effect of changing or influencing the control of the issuer of such securities and were not acquired in connection with or as a participant in any transaction having such purposes or effect.

* * * * *

(Secs. 3(b), 13(d)(1), 13(d)(2), 13(d)(5), 13(d)(6,) 13(g)(1), 13(g)(2), 13(g)(5), 23; 48 Stat. 882, 894, 901; sec. 203(a), 49 Stat. 704; sec. 8, 49 Stat. 1379; sec. 10, 78 Stat. 88a; sec. 2, 82 Stat. 454; secs. 1, 2, 84 Stat. 1497; secs. 3, 10, 18, 89 Stat. 97, 119, 155; secs. 202, 203, 91 Stat. 1494, 1498, 1499; (15 U.S.C. 78c(b), 78m(d)(1), 78m(d)(2), 78m(d)(5), 78m(d)(6), 78m(g)(1), 78m(g)(2), 78m(g)(5), 78w).)

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

NOVEMBER 22, 1978.

[FR Doc. 78-33392 Filed 11-28-78; 8:45 am]

[6740-02-M]

Title 18—Conservation of Power and Water Resources

CHAPTER I—FEDERAL ENERGY REGULATORY COMMISSION, DEPARTMENT OF ENERGY

[Docket No. RM79-4 Order 15]

PART 154—RATE SCHEDULES AND TARIFFS

PART 157—APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND ORDERS PERMITTING AND APPROVING ABANDONMENT UNDER SECTION 7 OF THE NATURAL GAS ACT

Amendments to the Commission's Regulations Relating to Independent Producer Filing Requirements

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Commission is amending its regulations relating to independent producer filing requirements to eliminate the requirement that producers file with the Commission a change in rate for each increase in rate resulting from the application of the inflation adjustment factor under the Natural Gas Policy Act of 1978 (NGPA). Without these amendments producers selling natural gas for which a maximum lawful price is established under section 104(b)(1)(A) or 106(a) of the NGPA would be required to make monthly rate change filings in order to collect those maximum lawful prices beginning December 1, 1978, or subsequent monthly inflation adjustments. Since the new maximum lawful prices are authorized by the NGPA, the Commission believes that the monthly filings are unnecessary, and is providing instead for a blanket filing for the maximum lawful price and escalations.

EFFECTIVE DATE: Immediately.

COMMENTS: December 1, 1978.

ADDRESS: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426 (Reference Docket No. RM79-4).

FOR FURTHER INFORMATION CONTACT:

Romulo Diaz, Office of the General Counsel, 825 North Capitol Street NE., Washington, D.C. 20426, 202-275-3771.

SUPPLEMENTARY INFORMATION:

NOVEMBER 17, 1978.

Under sections 104 and 106(a) of the Natural Gas Policy Act of 1978 (NGPA), enacted on November 9, 1978, maximum lawful prices are prescribed for certain sales by producers of natural gas which is committed or dedicated to the interstate market as of November 8, 1978. Pursuant to section 101(b)(4)(C) of the NGPA, these maximum lawful prices will apply to deliveries of natural gas occurring on or after December 1, 1978, the first day of the first month following the date of enactment. Sections 104(b)(1)(A) and 106(a) of the NGPA permit these maximum lawful prices to escalate on a monthly basis in accordance with the inflation adjustment factor described in section 101(a) of the NGPA.

Under section 4 of the Natural Gas Act (NGA) and the Commission's current regulations in §§ 154.92 and 154.94, a producer selling natural gas under section 104(b)(1)(A) or 106(a) of the NGPA would not be permitted to collect the maximum lawful prices beginning December 1, 1978, unless he filed a change in rate pursuant to section 4(d) of the NGA and § 154.94 of the Commission's regulations. The maximum lawful prices under sections 104(b)(1)(A) and 106(a) of the NGPA increase each month in accordance with the inflation adjustment factor. Absent amendments to the Commission's regulations, a producer would be required to file a change in rate each month in order to charge and collect the additional increment in the maximum lawful price reflecting the inflation adjustment. Since these increases in price are authorized to be charged and collected by statute, the Commission believes that such monthly filings are unnecessary and that to continue to require them would impose needless administrative burdens and costs on both the producers and the Commission.

In order to provide an orderly transition from the producer rates currently in effect under the NGA to the new statutory pricing system prescribed under the NGPA for sales of dedicated natural gas, the Commission finds it necessary to amend its current regulations relating to producer filing requirements.

Under the amendments set forth herein, a producer that complies with the new blanket filing requirements would be permitted to charge and collect for each vintage or category of natural gas for which a just and reasonable price was in effect on April 20, 1977, the NGPA maximum lawful price for December 1, 1978, as well as the monthly inflation adjustment increases in subsequent months without having to make any further rate filings with the Commission. The blanket filing procedure implemented by

this rulemaking will allow for a one-time filing and will relieve producers from current requirements, which, in the absence of this revision, would compel an estimated 200,000 filings per year.

An independent producer may file a blanket affidavit under which he may collect any maximum lawful price, including periodic escalations, which is applicable under section 104(b)(1)(A) or 106(a) of the NGPA and to which he is entitled on the basis of having qualified under the NGA for a base rate. (Section 104(b)(1)(A) of the NGPA permits collection of the just and reasonable rate in effect under the NGA on April 20, 1977, adjusted for inflation. Section 106(a) prescribes the rate for interstate rollover contracts.) "Base rate" is defined as a just and reasonable rate under the NGA applicable to a first sale of natural gas. A producer has established qualification for the base rate if he has made an initial rate filing or change of rate filing with the Commission under § 154.92 or § 154.94 of the regulations to collect such base rate, if collection of the filed rate is permissible under the applicable sales contract, and if the rate filing has taken effect. An initial rate filing takes effect when the filing has been accepted by the Commission, A rate change filing takes effect on the thirtieth day after the date of filing or any later effective date specified in the filing, unless such filing has been suspended or rejected.

A blanket affidavit covers both first sales listed in the affidavit for which qualification to collect the base rate has been established before the date of filing of the affidavit, and first sales for which qualification to collect the base rate is established after filing of the affidavit. In the latter case, the filing to establish the base rate must state that the sale will be covered by the blanket affidavit.

If a blanket affidavit filed before December 30, 1978, covers a first sale, it is effective with respect to deliveries, pursuant to that first sale, beginning on December 1, 1978. An affidavit filed on or after December 30, 1978, is effective with respect to deliveries, pursuant to a covered first sale, beginning on the date of filing of the affidavit. However, in neither case may an affidavit authorize collection of an NGPA rate prior to establishment of qualification to collect the base rate.

A blanket affidavit is deemed to be a notice of change of rate for purposes of section 4(d) of the NGA. The form of the affidavit is set out in the regulation. However, when the base rate for sales under a particular rate schedule changes, a rate change filing pursuant to § 154.94 will still be required before the new rate may be charged.

Certain natural gas which is committed or dedicated to the interstate market as of November 8, 1978, is subject to the interim collection provisions of section 503(e) of the NGPA. Under the amendments, the filing requirements imposed by that section shall satisfy any and all filing and notice requirements imposed by section 4(d) of the NGA and §§ 154.92 and 154.94 of the Commission's regulations. Section 503(e) of the NGPA indicates the intent of Congress to permit the prices prescribed in the NGPA and subject to the interim collection authority to become effective in accordance with the filing requirements imposed by that section. Therefore, to the extent that such filing requirements effect a waiver of the requirement in section 4(d) of the NGA and the Commission's regulations that publication be made thirty days prior to the effective date of such filing, good cause exists to waive such requirement.

Finally, § 157.40 of the regulations is amended herein to provide that small producers may charge the rate prescribed in sections 104(b)(1)(A) or 106(a) of the NGPA pursuant to the blanket certificate provided for in § 157.40(b).

The Commission is making this amendment effective upon the date of issuance of this order upon a finding that good cause exists to proceed without compliance with the notice, public procedure, and effective date provisions of 5 U.S.C. 553. The Commission is concerned that unless it makes these changes in its filing requirements immediately effective, producers will make unnecessary filings, under the previously established rules, between the date of enactment of the NGPA and the effective date of the new requirements. A delay in the effective date of these amendments would only lead to a disruptive transition from the pricing rules established under the NGA and those prescribed under the NGPA and result in needless administrative burdens and costs. For these reasons, the Commission has found it necessary to make these amendments effective upon the issuance of this order.

WRITTEN COMMENT PROCEDURES

Although these amendments are being made effective immediately, interested persons are invited to submit written comments, data, views or arguments with respect to the amendments. An original and 14 copies should be filed with the Secretary of the Commission. All comments received prior to December 1, 1978, will be considered by the Commission, and if appropriate, further revisions will be made. All written submissions will be placed in the Commission's public files and will be available for public inspection in the Commission's Office of Public Information, 825 North Capitol Street NE., Washington, D.C. 20426, during regular business hours. Comments should be submitted to the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, and should reference Docket No. RM79-4.

(Natural Gas Act, as amended, 15 U.S.C. 717 *et seq.*, Department of Energy Organization Act, Pub. L. 95-91, E.O. 12009, 42 FR 46267.)

In consideration of the foregoing, Parts 154 and 157 of Subchapter E, Chapter I, Title 18, Code of Federal Regulations, is amended as set forth below, effective immediately.

By the Commission.

KENNETH F. PLUMB,
Secretary.

1. Section 157.40 is amended in paragraph (c) by adding a new subparagraph (6) to read as follows:

§ 157.40 Exemption of small producers from certain filing requirements.

* * * * *

(c) * * *

(6) All sales of natural gas by small producers for resale in interstate commerce which are subject to a maximum lawful price under section 104(b)(1)(A) or 106(a) of the Natural Gas Policy Act of 1978, shall be made at a price which does not exceed the applicable maximum lawful price under such section.

2. Section 154.94 is amended in the first sentence of paragraph (b) by striking out "Every" and inserting in lieu thereof the phrase "Except as provided in paragraphs (h) and (i) of this section, every", and is amended by adding new paragraphs (h) and (i), to read as follows:

§ 154.94 Changes in rate schedules.

* * * * *

(h) *Blanket filing.*—(1) *General rule.* An independent producer may file a blanket affidavit under this paragraph under which he may collect any maximum lawful price (including periodic escalations) which is applicable under section 104(b)(1)(A) or 106(a) of the Natural Gas Policy Act of 1978 (NGPA), and to which he is entitled on the basis of having qualified under the Natural Gas Act (NGA) for a base rate. Such maximum lawful price may be collected only in accordance with this paragraph.

(2) *Base rate.* For purposes of this paragraph:

(i) *Definition.* "Base rate" means a just and reasonable rate under the

NGA applicable to a first sale of natural gas.

(ii) *Establishment of base rate.* An independent producer has established qualification for a base rate if: (A) He has made a rate filing with the Commission under § 154.92 or the preceding paragraphs of this section to collect such base rate; (B) such rate filing has taken effect; and (C) collection of such rate is permissible under the applicable sales contract.

(iii) *Date of base rate.* An initial rate filing under § 154.92 to collect a base rate has taken effect if such filing has been accepted by the Commission. A rate change filing under the preceding paragraphs of this section to collect a base rate takes effect on the thirtieth day after the date of filing (or any later effective date specified in the filing), unless such filing has been suspended or rejected.

(3) *Sales covered by affidavit.* An affidavit under paragraph (1) covers:

(i) Any first sale for which qualification to collect the base rate has been established before the date of filing of the affidavit, if such first sale is listed in the affidavit, and

(ii) Any first sale for which qualification to collect the base rate is established on or after the date of filing of the affidavit, if the filing to establish the base rate states that upon establishment of qualification for the base rate, the first sale will be covered by such affidavit.

(4) *Effective date of coverage under affidavit.* (i) An affidavit filed before December 30, 1978, is effective with respect to deliveries, pursuant to a first sale, beginning at the later of December 1, 1978, or the date of qualification of such first sale for the base rate.

(ii) An affidavit filed on or after December 30, 1978, is effective with respect to deliveries, pursuant to a first sale, beginning at the later of the date of qualification of such first sale for the base rate or the date of filing of the affidavit.

(5) *Effect of affidavit.* An affidavit filed under this paragraph shall be deemed to be a notice of change of rate for purposes of section 4(d) of the NGA. A filing made under this paragraph does not constitute a waiver of the right to apply for a higher rate under sections 104(b)(2) or 106(c) of the NGPA.

(6) *Form.* Any affidavit filed under subparagraph (1) shall be subscribed in accordance with § 1.16(a) of this chapter (except that § 1.16(a)(1)(iv) shall not apply). The form for such affidavit appears as Appendix A to this section. Concurrently with any filing made under this paragraph, the filing party must serve each affected purchaser with a copy of the affidavit.

(i) *Interim Collections.* Compliance with the filing requirements imposed by section 503(e) of the NGPA shall be deemed to satisfy the requirements of paragraph (b) of this section and section 4(d) of the NGA for sales of natural gas subject to section 503(c) of the NGPA. The 30 day notice otherwise required by section 4(d) of the NGA is waived.

APPENDIX A TO § 154.94

BLANKET AFFIDAVIT FILING UNDER § 154.94(h)

———— (the affiant) certifies that he is ———— (exact legal title or capacity of the affiant) of ———— (filing party) and, that:

(1) Under 18 CFR 154.94(h) he is entitled, and intends, to collect a maximum lawful price (including periodic escalations) under section 104(b)(1)(A) or 106(a) of the Natural Gas Policy Act of 1978 (NGPA) for each of the sales identified in the form attached as Exhibit A to his affidavit; and

(2) He will notify the Commission that additional first sales are covered by this affidavit in accordance with the requirements of § 154.94(h).

The undersigned swears or affirms that with respect to each rate filing under 18 CFR 154.92 or 154.94 which is identified in Exhibit A and on which he relies to collect the applicable price under this affidavit, he has made a diligent inquiry of individuals with personal knowledge of the facts contained in such filing and has determined after such inquiry that all statements made in such filing are true and accurate to the best of his knowledge, information and belief concerning, among other things, the factors relating to the eligibility to charge the rates therein, and that he has examined the prices to be charged under the NGPA for sales covered by this affidavit and found them to be in accordance with sections 104(b)(1)(A) and 106(a) of the NGPA.

Signature ————————

EXHIBIT A

Respondent name and code ————————

Rate schedule No.	Buyer name	Applicable just and reasonable rate previously established under NGA	Applicable NGPA rate	Effective date of rate establishment

INSTRUCTIONS FOR COMPLETING EXHIBIT A

I. *General Instructions.* Exhibit A shall be attached to the affidavit filed pursuant to § 154.94(h)(1) to identify those sales that qualify for the maximum lawful price permitted under §§ 104 or 106(a) of the NGPA. Where necessary, the list may be continued on succeeding pages in the same form. An affidavit and Exhibit A thereto may be filed in conjunction with a qualifying initial service application and should be attached to the billing statement filed therewith.

II. *Specific Instructions. Respondent Name and Code:* Enter the name of the respondent and the code, if any, assigned to the respondent from the publication entitled Buyer/Seller Codes.

FERC Rate Schedule Number: Enter the rate schedule number assigned by the FERC. If none, enter the contract date.

Buyer Name: Enter the buyer name.

Applicable Just and Reasonable Rate Previously Established Under NGA: Enter the base rate (Mcf at 14.73 psia) reflected in Data Field 24 of the last Schedule 507 submitted for the vintage involved. Where the last Schedule 507 was submitted for initial billing statement purposes, enter the base rate reflected in Data Field 23 thereof.

Applicable NGPA Rate: Enter the maximum lawful MMBtu ceiling price (excluding taxes) for the vintage involved.

Effective Date of the Rate Establishment: Enter the proposed effective date of the NGPA rate.

[FR Doc. 78-33394 Filed 11-28-78; 8:45 am]

[1505-01-M]

Title 19—Customs Duties

CHAPTER I—U.S. CUSTOMS SERVICE, DEPARTMENT OF THE TREASURY

[T.D. 78-394]

CONFORMING AMENDMENTS REQUIRED BY THE "CUSTOMS PROCEDURAL REFORM AND SIMPLIFICATION ACT OF 1978"

Correction

In FR Doc. 78-30095 appearing on page 49784 in the issue of Wednesday, October 25, 1978 on page 49790 in the 1st column, § 148.102(b), the 8th line should read, "* * * acquired in these insular possessions * * *".

In § 148.110, the 4th line, should read, "* * * which are purchased in *and* shipped * * *".

On page 49791 in § 148.115(e), the next to the last line, and in § 148.116, the 8th and 10th line, the word "part" should read, "Part".

On page 49792, the amendatory language under Part 177 should read, "1. The heading of § 177.10 and § 177.10(a) are amended to read as follows:".

[4310-02-M]

Title 25—Indians

CHAPTER I—BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

SUBCHAPTER J—FISCAL AND FINANCIAL AFFAIRS

PART 112a—MANAGEMENT OF OSAGE JUDGMENT FUNDS FOR EDUCATION AND SOCIOECONOMIC PROGRAMS

Final Rule; Correction

NOVEMBER 20, 1978.

AGENCY: Bureau of Indian Affairs, Department of the Interior.

ACTION: Final rule; correction notice.

SUMMARY: This document changes Part number 113 as it appeared in the FEDERAL REGISTER published at 43 FR 37175, August 22, 1978 to Part number 112a. The substantive provisions of the regulations are not changed by this correction.

EFFECTIVE DATE: November 29, 1978.

FOR FURTHER INFORMATION CONTACT:

Ramona L. Osborne, Bureau of Indian Affairs, Office of Indian Education Programs, Washington, D.C., 202-343-7387.

SUPPLEMENTARY INFORMATION: Beginning on page 37175 of the FEDERAL REGISTER (43 FR 37175) a new Part 113 to Subchapter J, Chapter I, Title 25 of the Code of Federal Regulations was published. Since Part 113 was assigned previously, Part number 112a is hereby assigned to correct the numbering for this final rule.

Accordingly, the following corrections to the FEDERAL REGISTER of Aug. 22, 1978 should be made:

Beginning on page 37175 and ending on page 37180, all references to Part 113 are to be corrected to read 112a and all sections thereof are to be corrected to read 112a, inclusively. The primary author of this document is Mary F. Asbill, Education Specialist, Office of Indian Education Programs, BIA, Washington, D.C. (202) 343-7387.

FORREST J. GERARD,
Assistant Secretary—
Indian Affairs.

[FR Doc. 78-33368 Filed 11-28-78; 8:45 am]

[4830-01-M]

Title 26—Internal Revenue

CHAPTER I—INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY

SUBCHAPTER F—PROCEDURE AND ADMINISTRATION

[T.D. 7573]

PART 301—REGULATIONS ON PROCEDURE AND ADMINISTRATION

PART 404—TEMPORARY REGULATIONS ON PROCEDURE AND ADMINISTRATION UNDER THE TAX REFORM ACT OF 1976

Disclosure of Returns and Return Information to and by Attorneys of the Department of Justice in Preparation for Proceeding of Investigation Involving Tax Administration; and to Delete Certain Existing Regulations Which Were Made Obsolete by the Tax Reform Act of 1976

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains a final regulation under section 6103 (h)(2) of the Internal Revenue Code relating to disclosures of returns and return information to and by attorneys of the Department of Justice in preparation for proceedings or investigations involving tax administration. The regulation provides officers and employees of the Internal Revenue Service and the Department of Justice with guidance needed to comply with section 6103(h)(2) of the Code.

DATE: The regulation is effective as of November 29, 1978.

FOR FURTHER INFORMATION CONTACT:

David E. Dickinson of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224, Attention: CC:LR:T, 202-566-3218, not a toll-free call.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On July 6, 1978, the Internal Revenue Service published in the FEDERAL REGISTER a notice of proposed rulemaking to amend the Regulations on Procedure and Administration (26 CFR Part 301) to provide rules under section 6103(h)(2) of the Internal Revenue Code of 1954, relating to disclosures of returns and return information to and by attorneys of the Department of Justice in preparation for proceedings or investigations involving tax administration. These regulations are identical to present § 404.6103 (h)(2)-1 of the Temporary Regulations on Procedure and Administration (26 CFR Part 404). In addition, the notice of proposed rulemaking proposed deletion of existing regulations issued under section 6103 of the Code prior to amendment of that section by the Tax Reform Act of 1976. These issued regulations have been made obsolete by reason of the amendments of section 6103.

One written comment on the proposed amendments was received, but no public hearing was requested or held. The written comment consisted of six individual member views forwarded by the Tax Section of the American Bar Association. Three members felt that the proposed amendments were consistent with the statutory requirements of section 6103. Two members, on the other hand, believed that the proposed amendments are inconsistent with the statutory requirement of section 6103 (i)(1) that a court order be obtained before returns or taxpayer return information are used in a nontax related criminal investigation. In the case of a joint title 26—title 18 investigation, the tax and nontax aspects are often so intertwined that they cannot, as a practical matter, be separated. Any effort to separate the nontax matter from the tax case for purposes of applying section 6103(i)(1) could seriously impair the effectiveness of either or both aspects of the joint investigation. It is believed that Congress did not intend to create overwhelming obstacles to the successful conduct of these joint investigations. Accordingly, the proposed amendments impose restrictions upon the use of tax data in joint title 26—title 18 investigations which properly balance the vital practical need to conduct these investigations jointly while at the same time providing suitable protection against unwarranted use of tax data in nontax criminal matters without the intervention of a federal district court.

A sixth individual member commented that the restrictions which the proposed amendments impose upon the use of tax data in joint title 26—title 18 investigations impose unnecessary burdens upon the Federal Government. It is believed, however, that these restrictions, burdensome or not, are consistent with Congressional policy to restrict the use of tax data in nontax related matters.

Accordingly, the proposed amendments are adopted by this Treasury decision with one technical change, that being deletion of § 404.6103(h)(2)-

1 of the temporary regulations, which is identical to the proposed amendments being adopted.

DRAFTING INFORMATION

The principal author of this regulation is David E. Dickinson of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

ADOPTION OF AMENDMENTS TO THE REGULATIONS

Accordingly, the proposed amendment to 26 CFR Part 301 as published in the FEDERAL REGISTER (43 FR 29132) on July 6, 1978, is adopted as set forth below:

This Treasury decision is issued under the authority contained in sections 6103(q) and 7805 of the Internal Revenue Code of 1954 (90 Stat. 1685, 68A Stat. 917; (26 U.S.C. 6103(q), 7805)).

JEROME KURTZ,
Commissioner of Internal Revenue.

Approved: November 15, 1978.

DONALD C. LUBICK,
Assistant Secretary of the Treasury.

PARAGRAPH 1. Sections 301.6103(a), 301.6103 (a)-1, 301.6103 (a)-2, 301.6103 (a)-100, 301.6103 (a)-101, 301.6103 (a)-102, 301.6103 (a)-103, 301.6103 (a)-104, 301.6103 (a)-105, 301.6103 (a)-106, 301.6103 (a)-107, 301.6103 (a)-109, 301.6103(b), 301.6103 (b)-1, 301.6103 (c), 301.6103 (c)-1, 301.6103(d), 301.6103 (d)-1, 301.6103(e), 301.6103(f), and 301.6103 (f)-1 are deleted:

PAR. 2. The following new section is added after § 301.6102-1(d):

§ 301.6103(h)(2)-1 Disclosure of returns and return information (including taxpayer return information) to and by attorneys and other officers and employees of the Department of Justice in preparation for proceeding or investigation involving tax administration.

(a) *Disclosure of returns and return information (including taxpayer return information) to and by attorneys of the Department of Justice.* (1) Returns and return information (including taxpayer return information), as defined in section 6103(b) (1), (2), and (3) of the Internal Revenue Code, shall, to the extent provided by subparagraphs (A), (B), and (C) of paragraph (2) of section 6103(h) and subject to the requirements of section 6103(h)(3), be open to inspection by or disclosure to attorneys of the Department of Justice (including United States attorneys) personally and directly engaged in, and for their necessary use in, preparation for any proceeding (or for their necessary use in an investigation which may result in such a proceeding) before a Federal grand jury of any Federal or State court in a matter involving tax administration (as defined in section 6103(b)(4)), including any such proceeding (or any such investigation) also involving the enforcement of a related Federal criminal statute which has been referred by the Secretary to the Department of Justice.

(2) Returns and return information (including taxpayer return information) inspected by or disclosed to attorneys of the Department of Justice as provided in paragraph (a)(1) of this section may also be used by such attorneys, or disclosed by them to other attorneys (including United States attorneys and supervisory personnel, such as Section Chiefs, Deputy Assistant Attorneys General, Assistant Attorneys General, the Deputy Attorney General, and the Attorney General), of the Department of Justice where necessary—

(i) In connection with preparation for any proceeding (or with an investigation which may result in such a proceeding) described in paragraph (a)(1), or

(ii) In connection with preparation for any proceeding (or with an investigation which may result in such a proceeding) described in paragraph (a)(1) which also involves enforcement of a specific Federal criminal statute other than one described in paragraph (a)(1) to which the United States is or may be a party, provided such matter involves or arises out of the particular facts and circumstances giving rise to the proceeding (or investigation) described in paragraph (a)(1) and further provided the tax portion of such proceeding (or investigation) has been duly authorized by or on behalf of the Assistant Attorney General for the Tax Division of the Department of Justice, pursuant to the request of the Secretary, as a proceeding (or investigation) described in paragraph (a)(1).

If, in the course of preparation for a proceeding (or the conduct of an investigation which may result in such a proceeding) described in subdivision (ii) of this subparagraph, the tax administration portion thereof is terminated for any reason, any further use or disclosure of such returns or taxpayer return information in such preparation or investigation with respect to the remaining portion may be made only pursuant to, and upon the grant of, a court order as provided by section 6103(i)(1)(A), provided, however, that the returns and taxpayer return information may in any event be used for purposes of obtaining the necessary court order.

(b) *Disclosure of returns and return information (including taxpayer return information) by attorneys of the Department of Justice.* (1) Returns and return information (including taxpayer return information), as defined in section 6103(b) (1), (2), and (3) of the Code, inspected by or disclosed to attorneys of the Department of Justice as provided by paragraph (a) of this section may be disclosed by such attorneys to other persons, including, but not limited to, persons described in paragraph (b)(2), but only to the extent necessary in connection with the proper preparation for a proceeding (or in connection with an investigation which may result in such a proceeding) described in paragraph (a). Such disclosures may include, but are not limited to, disclosures—

(i) To properly accomplish any purpose or activity of the nature described in section 6103(k)(6) and the regulations thereunder which is essential to proper preparation for such proceeding (or to such investigation);

(ii) To properly interview, consult, depose, or interrogate or otherwise obtain relevant information from, the taxpayer to whom such return or return information relates (or such taxpayer's legal representative) or from any witness who may be called to give evidence in the proceeding; or

(iii) To properly conduct negotiations concerning, or obtain authorization for, settlement or disposition of the proceeding, in whole or in part, or stipulations of fact in connection with the proceeding.

Disclosure of a return or return information to a person other than the taxpayer to whom such return or return information relates or such taxpayer's legal representative to properly accomplish any purpose or activity described in this paragraph should be made, however, only if such purpose or activity cannot otherwise properly be accomplished without making such disclosure.

(2) Among those persons to whom returns and return information may be disclosed by attorneys of the Department of Justice as provided by paragraph (a)(1) of this section are—

(i) Other officers and employees of the Department of Justice, such as personnel of an office, board, division, or bureau of such department (for example, the Federal Bureau of Investigation or the Drug Enforcement Administration), clerical personnel (for example, secretaries, stenographers, docket and file room clerks, and mail room employees) and supervisory personnel (such as supervisory personnel of the Federal Bureau of Investigation or the Drug Enforcement Administration);

(ii) Officers and employees of another Federal agency (as defined in

section 6103(b)(9)) working under the direction and control of any such attorney of the Department of Justice; and

(iii) Court reporters.

§ 404.603(h)(2)-1 [Deleted]

PARAGRAPH 3. Section 404.603(h)(2)-1 of the Temporary Regulations on Procedure and Administration under the Tax Reform Act of 1976 (26 CFR Part 404), published in the FEDERAL REGISTER (43 FR 29115) on July 6, 1978, is deleted.

[FR Doc. 78-33429 Filed 11-28-78; 8:45 am]

[6820-23-M]

Title 41—Public Contracts and Property Management

CHAPTER 5B—PUBLIC BUILDINGS SERVICE, GENERAL SERVICES ADMINISTRATION

[PBS P 2800.6A CHGE 4]

PART 5B-1—GENERAL

Small Business Concerns

AGENCY: General Services Administration.

ACTION: Final rule.

SUMMARY: This regulation clarifies the duties, responsibilities, and procedures to be followed by contracting officers and Business Service Center personnel. This change updates this regulation and brings it into conformance with Pub. L. 95-89 dated August 4, 1977, which amended the Small Business Act of 1958. These changes are necessary to clarify and streamline the set-aside of procurements for the exclusive participation of small businesses.

EFFECTIVE DATE: November 29, 1978.

FOR FURTHER INFORMATION CONTACT:

Anthony G. Ratkus, Jr., Procurement Policy Review Staff, Office of Program Management, Public Buildings Service, General Services Administration, Washington, D.C. 20405, 202-566-1954.

The table of contents of Part 5B-1 is amended as follows:

Sec.
5B-1.701-8 Set-aside for small business.
5B-1.703 Determination of status as a small business concern.
5B-1.703-1 Representation by bidder or offeror.
5B-1.704-2 Program operations.
5B-1.706-1 [Reserved]
5B-1.706-5 Total set-asides.
5B-1.706-51 Class set-aside determinations.
5B-1.706-52 Determinations not to set-aside.
5B-1.706-53 Change of status of unrestricted or set-aside procurements.

Subpart 5B-1.7—Small Business Concerns

1. Section 5B-1.700 is revised to read as follows:

§ 5B-1.700 General.

This subpart implements and supplements FPR 1-1.7 by prescribing PBS procedures for implementing the GSA small business program, including unilateral set-asides.

2. Section 5B-1.701-8 is added to read as follows:

§ 5B-1.701-8 Set-aside for small business.

(a) *Clarification of class set-aside definition.* In further explanation of § 1-1.705-3(b), a class set-aside may consist of contracts for selected items or services or all contracts for like items or services when restricted to small business on a continuing basis, as opposed to a one-time basis.

(b) *Determining the set-aside status.* The fact that a particular contract is within a class set-aside does not mean that a procurement is automatically set aside without consideration of events which may have occurred since the last procurement. The contracting officer must determine if the circumstances justify excluding the procurement from being set-aside.

(c) *Class set-aside authority.* Except for construction contracts subject to provisions of § 5B-1.706 (b) and (c) small business class set-asides will normally be made on a unilateral basis by the contracting officer and documented in accordance with § 5B-1.706-51(a) using the format set forth therein. The Commissioner, PBS, may also establish class set-asides. It should be noted that § 1-1.706-2(c) requires that class set-aside determinations be reviewed at least annually and that they do not apply to any individual procurement for which small purchase procedures are to be used. The legal authorities for making small business set-asides are set forth in §§ 1-1.706-8 and 1-3.201. All GSA-initiated determinations to set aside shall be approved in accordance with current agency delegations of authority for procurement and contracting under section 302(c)(1) of the Federal Property and Administrative Services Act of 1949.

3. Section 5B-1.703 is added to read as follows:

§ 5B-1.703 Determination of status as a small business concern.

§ 5B-1.703-1 Representation by bidder or offeror.

If it is determined that a bidder on a procurement set-aside for small business has made a willful and knowing (i.e., not inadvertent or not in good faith) misrepresentation of its size status as a small business concern, the firm shall be placed on the Review List of Bidders maintained pursuant to § 5B-1.1251.

4. Section 5B-1.704-2 is revised to read as follows:

§ 5B-1.704-2 Program operations.

(a) Each procuring activity shall use its best efforts to identify procurements where a potential exists for increasing the small business share of contract awards. Whenever feasible, contracting officers shall seek the assistance of the Business Service Center (BSC) personnel and the Small Business Administration (SBA) procurement representatives in identifying qualified small business concerns for inclusion on the bidders mailing list.

(b) The Business Service Centers, with respect to the commodities and services identified pursuant to (a) of this § 5B-1.704-2 and with respect to small business concerns doing business in such commodities and services in their regional areas, are responsible for:

(1) Taking appropriate actions to publicize advance and current information about regional and national GSA business opportunities to the maximum extent practicable. (See Subpart 1-1.10.)

(2) Provide maximum advance and current information, assistance, and counseling of such nature, extent, and timeliness as to enable small business concerns to take full advantage of the available GSA business opportunities and to compete for contracts.

(3) Developing publications and public relations techniques to stimulate the interest and participation of small business concerns in GSA procurements. This activity will include, but not be limited to, the following:

(i) Arranging for and participating in meetings with business groups such as Chambers of Commerce, trade associations and similar organizations, State development corporations, Governors and Mayors' advisory groups, local business and civic organizations, and small business councils.

(ii) Developing, preparing, and distributing informational material designed to stimulate interest on the part of small business concerns.

(iii) Developing interest and cooperation on the part of trade publications and the local press, and other media.

(c) Proposed PBS regulations and procedures affecting the operation of the small business program shall be developed through the office of the appropriate Assistant Commissioner. Material shall then be submitted to the Director, Procurement Policy Review Staff, who shall ensure that proper coordination is achieved with the Central Office, Public Services Division (Business Service Center Staff), which, in turn, will involve the Small Business Administration to the extent appropriate.

5. Section 5B-1.706 is revised to read as follows:

§ 5B-1.706 Procurement set-aside for small business.

(a) *General.* The Public Buildings Service, GSA, has primary responsibility for the initiation of small business set-asides of its procurements. Accordingly, procuring activities, to the maximum extent feasible, shall make unilateral small business set-asides on all procurements qualifying therefor, as provided in Subpart 1-1.7, and as required by the following paragraphs.

(b) *Construction contracts from $2,500 to $500,000.* Pursuant to an understanding with the SBA, every proposed procurement for construction, including alteration, maintenance, and repairs estimated to be in excess of $2,500 and under $500,000 shall be considered individually as though the SBA had initiated a set-aside request and shall be set-aside, except as otherwise provided in § 5B-1.706 (d) and (g).

(c) *Construction contracts from $500,000 to $1 million.* The Commissioner, PBS, has unilaterally established a class set-aside for PBS procurements of construction including alteration, maintenance, and repairs estimated to cost between $500,000 and $1 million. Such procurements shall be set-aside for small business except as otherwise provided in § 5B-1.706 (d) and (g).

(d) *Exemption of certain construction and repair contracts.* All separate construction contracts under a construction-management-phased construction project and contracts for repair of mechanical systems, such as elevators, steam generators, air-conditioners, or distributing systems, are exempt from the requirements of § 5B-1.706 (b) or (c). However, contracting officers shall review each such exempt procurement and initiate a small business set-aside where it appears that there would be sufficient competition to insure award at a reasonable price and set-aside is otherwise feasible.

(e) *Building service contracts in excess of $2,500.* Each procuring activity shall, to the maximum extent feasible, arrange for the making of small business set-asides on all contract actions which qualify therefor, as provided in Subpart 1-1.7. In the initiation of small business set-asides, procuring activities should give priority consideration to the establishment of class set-asides. Procuring activities shall periodically review individual set-asides to identify services suitable for class set-asides.

(f) *All other contracts.* All contracts other than those contracts subject to the provisions of § 5B-1.706 (b), (c), (d), and (e) are subject to set-aside in accordance with the provisions of § 1-1.706 and § 5B-1.706(a).

(g) *Procurement set-aside that is not feasible.* Where the contracting officer determines that a small business set-aside of a procurement is not feasible, the procedures defined in § 1-1.706 and § 5B-1.706-52 shall be followed.

6. Section 5B-1.706-51 is added to read as follows:

§ 5B-1.706-51 Class set-aside determinations.

Class set-aside determination shall be documented substantially in the format set forth herein and a copy shall be retained in the purchase history file or equivalent record covering the commodity or service involved.

SMALL BUSINESS CLASS SET-ASIDE DETERMINATION

In accordance with FPR 1-1.706, it is hereby determined that procurements by the (name of procuring activity) for the following procurement classes shall be set aside for small business concerns on a class basis. This determination shall be reviewed jointly by a Small Business Administration Procurement Center Representative and the procuring activity not later than 1 year after the above determination date. This determination does not generally apply to any individual procurement for which small purchase procedures are to be used and applies only to the procuring activity named above.

(List items or services)

The above format should be appropriately modified with respect to any class procurements proposed to be partially set-aside. It shall be signed by the contracting officer who is responsible for the contract involved and shall be approved by the Regional Commissioner, PBS.

7. Section 5B-1.706-52 is added to read as follows:

§ 5B-1.706-52 Determination not to set aside.

(a) When the contracting officer determines that, in his judgment, a particular procurement subject to § 5B-1.706 or to another GSA-initiated set-aside is unsuitable as a set-aside for small business participation, he shall document the reasons for his determination and shall notify the appropriate GSA Regional Director of Business Affairs or, in Central Office procurements, the Director, Procurement Policy Review Staff of his decision. GSA form 2689, Procurement Not Set Aside for Small Business, shall be used for this purpose. The officials designated above are responsible for the review of procurements not to be set aside (when feasible this review shall be conducted jointly with the Small Business Administration Procurement Center Representative). The designated reviewing officials are responsible for any necessary coordination with the Small Business Administration. When the Small Business Administration Procurement Center Representative does not agree to a proposed non-set-aside action, the procedures set forth in FPR 1-1.706-2 and 3 shall be followed instead of this § 5B-1.706-52.

(b) Reviews by officials designated in § 5B-1.706-52(a) shall be completed within 5 working days from the time they are notified by the contracting officer. If the contracting officer receives no response or objections within the 5-working-day period, he may assume concurrence by the reviewing official in his determination not to set aside the procurement for small business, and he may proceed to process the procurement on an unrestricted basis.

(c) If the reviewing official is able to identify additional small business firms (which the contracting officer was not aware of) who are capable of performing the contract, who are interested in bidding on it, and who have been contacted by the reviewing official to verify capability and interest, the extent of the additional competition should be taken into consideration by the contracting officer. Names obtained from registers or listings, without contact for verification, may not be considered in reviewing the contracting officer's determination. Contact for purposes of verifying capability and interest in bidding may be made orally (by telephone or in person) when necessary in order to complete a review within the 5-working-day time period. If the reviewing official identifies additional prospective sources, determined in accordance with provisions of this § 5B-1.706-52(c), and concludes that a contract should be set aside, contrary to the contracting officer's determination not to set it aside, the information obtained on these additional prospective sources shall be furnished to the contracting officer with the conclusions reached by the reviewing official.

(d) If there is disagreement between the reviewing official and the contracting officer concerning the initiation of a small business set-aside, the disagreement shall be referred as follows:

(1) In regional procurement actions, to the appropriate Division Director or, if the Division Director is the contracting officer, to the Regional Com-

missioner. In the event the disagreement is not resolved, referral shall be made to the Regional Administrator for decision.

(2) In Central Office procurement actions, to the appropriate Assistant Commissioner or, if the Assistant Commissioner is the contracting officer, to the Commissioner, PBS. If the disagreement is not resolved, referral shall be made to the Commissioner, PBS, for decision.

(e) Actions taken pursuant to this § 5B-1.706-52 shall be summarized in the contract file.

8. Section 5B-1.706.53 is added to read as follows:

§ 5B-1.706-53 Change of status of unrestricted or set-aside procurements.

(a) The determination not to make a set-aside shall not be changed (except when pursuant to an appeal by the Small Business Administration) once the solicitation is issued even if information subsequently becoming available discloses a basis for setting aside an unrestricted procurement. See § 1-1.706-3.

(b) A procurement set aside for exclusive participation by small business may be opened up to participation by all firms by:

(1) The issuance of an amendment to the solicitation and the publication in the Commerce Business Daily. In accordance with the provisions of § 1-1.1003-6;

(2) The notice shall describe the procurement and the fact that it has been changed to an unrestricted procurement; and

(3) The establishment of a new bid opening date, if necessary, under the requirement of § 5B-2.202-1.

(c) The contracting officer may remove a set-aside under circumstances where:

(1) It becomes apparent that there will not be adequate competition within the small business community; or

(2) An amendment is issued which will increase materially the scope or extent of the procurement which would diminish participation by small business.

(d) This determination shall be submitted for review in accordance with the procedures prescribed in § 5B-1.706-52 except when the review is completed within 2 working days.

Subpart 5B-1.12—Responsible Prospective Contractors

1. Section 5B-1.1204 is revised to read as follows:

§ 5B-1.1204 Determination of responsibility or nonresponsibility.

(a) When a contracting officer finds a bidder or offeror, who is a small business, to be nonresponsible, he shall refer the matter to the Small Business Administration for review and further action in accordance with §§ 1-1.708-1 through 1-1.708-3.

(b) When a bid or offer is rejected because of a determination by the contracting officer that the prospective contractor does not qualify as responsible, the contracting officer shall notify the prospective contractor by letter, setting forth the reasons for the rejection. This will provide opportunity, where applicable, for the correction of the offending practices prior to future offerings. The contracting officer shall send a copy of the letter, together with a copy of the determination to reject, to the Office of Investigations through the head of the procuring activity. He shall include a recommendation that the rejected bidder be or not be placed on the Review List in accordance with § 5B-1.1251. The head of the procuring activity shall determine the appropriate action required and so advise the Office of Investigations.

(c) For determination of responsibility in connection with equal opportunity in employment, see 5B-12.805-50.

2. Section 5B-1.1251 is amended to read as follows:

§ 5B-1.1251 Review list of bidders.

* * * * *

(a) * * *

(1) When, after recommendation by the Office of Investigations, it is determined by the head of a procuring activity that a firm or individual is of questionable responsibility within purview of Subpart 1-1.12;

(2) When a bid is rejected because of a determination by the contracting officer that the bidder does not qualify as responsible and the Office of Investigations has been notified in accordance with § 5B-1.1204(a);

(3) When before investigation of the circumstances of a particular case, the Head of a procuring service or staff officer (or his designee) so requests, if such action has the concurrence of the appropriate legal counsel and the Office of Investigations; or

(4) When it is determined that a bidder on a small business set-aside procurement has made a willful and knowing (i.e., not inadvertent or not in good faith) misrepresentation of its size status as a small business concern.

* * * * *

(c) * * *

(4) If award is made to a listed firm or individual, the contracting officer shall solicit the aid of the appropriate elements within GSA that may be of assistance in maintaining close surveillance over the performance of the contract. If derogatory information is developed during the life of the contract, the information shall be transmitted to the contracting officer and the appropriate Office of Investigations representative.

(Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)).)

Dated: November 1, 1978.

JAMES B. SHEA, Jr.,
Commissioner,
Public Buildings Service.

[FR Doc. 78-33369 Filed 11-28-78; 8:45 am]

[4110-08-M]

Title 42—Public Health

CHAPTER I—PUBLIC HEALTH SERVICE, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PART 66—NATIONAL RESEARCH SERVICE AWARDS

Predoctoral Training; Correction

AGENCY: Public Health Service, DHEW.

ACTION: Correction of Rules and Regulations.

SUMMARY: DHEW corrects the Regulation published in the FEDERAL REGISTER December 17, 1977 (42 FR 63390). In that publication, the definition of "predoctoral training" (42 CFR 66.102(k)) incorrectly included an earlier definition. Paragraph (k) of § 66.102 of Part 66 of Title 42 of the Code of Federal Regulations should read as set forth below.

EFFECTIVE DATE: November 29, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Lowell D. Peart, NIH Regulations Officer, National Institutes of Health, OA, DMP, Building 31, Room 3B11, 9000 Rockville Pike, Bethesda, Maryland 20014, 301-496-4606.

Paragraph (k) of § 66.102 of Part 66 of Title 42 of the Code of Federal Regulations should read as follows:

§ 66.102 Definitions.

* * * * *

(k) "Predoctoral training" means training at the post-baccalaureate level in a program leading to the award of a doctor of philosophy of science, or equivalent degree; except that for purposes of Awards under the Minority Access to Research Careers program of the National Institute of General Medical Sciences "predoctoral training" also means training in a pro-

gram leading to the award of a baccalaureate degree in science or equivalent degree.

Dated: November 21, 1978.

L. DAVID TAYLOR,
Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 78-33395 Filed 11-28-78; 8:45 am]

[6712-01-M]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

PART 0—COMMISSION ORGANIZATION

Editorial Amendments Concerning Current Location Addresses and Administrative Areas of the Field Operations Bureau's Field Installations

AGENCY: Federal Communications Commission.

ACTION: Order.

SUMMARY: Editorial amendments to § 0.121 of the Commission's rules to reflect current location addresses and administrative areas of the Field Operations Bureau's field installations. Changes are informational and procedural in nature. No prior notice required.

EFFECTIVE DATE: December 6, 1978.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Sylvia B. Sternstein, Attorney Advisor, Field Operations Bureau, Room 734, 1919 M Street NW., Washington, D.C. 20554, 202-632-7591.

Adopted: November 16, 1978.

Released: November 20, 1978.

Order. In the Matter of Editorial amendment of § 0.121 of the Commission's rules and regulations.

1. Section 0.121 of the Commission's rules is to be amended to reflect the current location addresses, and administrative areas of the Field Operations Bureau's field installations as set forth below.

2. The amendments are editorial, informational, and procedural in nature. The prior notice and effective date requirements of 5 U.S.C. 553 are therefore inapplicable.

3. Authority for their adoption is contained in Sections 4(i), 5(d), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 155(d), and 303(r), and in § 0.231(d) of the rules and regulations, 47 CFR 0.231(d).

4. *Accordingly, it is ordered,* Effective December 1, 1978, that the rules and regulations are amended as set forth below.

(Secs. 4, 5, 303, 48 Stat., as amended, 1066, 1068, 1082 (47 U.S.C. 154, 155, 303).)

R. D. LICHTWARDT,
Executive Director.

Part 0 of Chapter I of Title 47 of the Code of Federal Regulations, § 0.121 is revised to read as follows:

§ 0.121 Location of Field Installations.

(a) Regional Offices are located at the following addresses:

[6712-01-C]

Address of the Regional Director	States
California, San Francisco 94105 Room 537, 211 Main Street	American Samoa Arizona California Guam Hawaii Mariana Islands Midway Island Nevada Pacific Trust Territories & Commonwealth Swains Island Utah Wake Island
Georgia, Atlanta 30301 P.O. Box 1775, Room 2111 101 Marietta Tower	Alabama Florida Georgia North Carolina Puerto Rico South Carolina Tennessee Virginia Virgin Islands
Illinois, Chicago 60068 (Park Ridge) Room 306 Park Ridge Office Center 1550 N.W. Highway	Illinois Indiana Kentucky Michigan Minnesota Ohio Wisconsin
Massachusetts, Boston 02109 1500 Customhouse 165 State Street	Connecticut Delaware District of Columbia Maine Maryland Massachusetts New Hampshire New Jersey New York Pennsylvania Rhode Island Vermont West Virginia
Missouri, Kansas City 64133 Room 320 Brywood Office Tower 8800 E. 63rd Street	Arkansas Colorado Iowa Kansas Louisiana Mississippi Missouri Nebraska New Mexico North Dakota Oklahoma South Dakota Texas Wyoming
Washington, Seattle 98174 3090 Federal Building 915 Second Street	Alaska Idaho Montana Oregon Washington

(b) Field offices and suboffices are located at the following addresses:

Field Installations	States	Administrative Areas Counties
Alaska, Anchorage 99510 Federal Bldg., & U.S. Courthouse P.O. Box 2955, 4th & F Sts.	Alaska	All.
California, Long Beach 90807 Room 501, 3711 Long Beach Blvd. Special Enforcement Facility - Long Beach, Room 518	Arizona California	All counties. Imperial, Inyo, Kern, Los Angeles, Orange, Riverside San Bernardino, San Diego, San Luis Obispo, Santa Barbara and Ventura.
	Nevada	Clark; other counties covered by San Francisco, CA office.
California, Los Mesa 92041 1/ (San Diego) 7840 El Cajon Blvd., Room 405		

1/ Indicates specialized office with no designated administrative area.

Field Installations	Administrative Areas	
	States	Counties
California, San Francisco 94111 323-A Customhouse, 555 Battery St.	California	All except those listed for Long Beach, CA.
	Nevada	All except Clark, which is covered by Long Beach, CA office.
	Utah	All counties.
Colorado, Denver 80202 Room 2925, The Executive Tower 1405 Curtis Street	Colorado	All counties.
	New Mexico	All counties.
	North Dakota	All counties.
	South Dakota	All counties.
	Wyoming	All counties.
District of Columbia, Washington 20554, Room 411, 1919 M St., N.W.	District of Columbia	All.
	Maryland	Charles, Montgomery, and Prince Georges.
	Virginia	Arlington, Fairfax, Loudoun, and Prince William; all others covered by Norfolk, VA.
Florida, Miami 33130 Room 919, 51 Southwest First Ave.	Alabama	Baldwin and Mobile; all others are covered by Atlanta, GA office.
	Florida	All counties.
Florida, Tampa 33602 1/ ADP Building, Room 601 1211 N. Westshore Blvd.		
Georgia, Atlanta 30309 Room 440, Massell Bldg., 1365 Peachtree St., N.E.	Alabama	All except Baldwin and Mobile which are covered by Miami, FL office.
	Georgia	All counties.
	South Carolina	All counties.
	Tennessee	All counties.
Georgia, Powder Springs 30073 Special Enforcement Facility P.O. Box 65		
Georgia, Savannah 31402 1/ Room 238, Federal Bldg., & Courthouse, P.O. Box 8004 (125 Bull Street)		

1/ Indicates specialized office with no designated administrative area.

Field Installations	Administrative Areas	
	States	Counties
Hawaii, Honolulu 96850 Prince Kuhio Federal Bldg., Room 7304, P.O. Box 50023 300 Ala Moana Blvd.	American Samoa	All.
	Guam	All.
	Hawaii	All.
	Mariana Islands	All.
	Midway Island	All.
	Pacific Trust Territories & Commonwealths	All.
	Swains Island	All.
	Wake Island	All.
Illinois, Chicago 60604 Federal Bldg., Room 3935 230 South Dearborn St.	Illinois	All counties.
	Indiana	All counties.
	Kentucky	All counties except those listed for Detroit, MI.
	Wisconsin	Brown, Calumet, Columbia, Crawford, Dane, Dodge, Door Fond du Lac, Grant, Green, Iowa, Jefferson, Kenosha, Kewaunee, LaFayette, Manitowoc, Marinette, Milwaukee, Oconto, Outagamie, Ozaukee, Racine, Richland, Rock, Sauk, Sheboygan, Walworth, Washington, Waukesha, and Winnebago; all others are covered by St. Paul, MN office.
Louisiana, New Orleans 70130 829 F. Edward Hebert Federal Bldg., 600 South St.	Arkansas	All counties.
	Louisiana	All counties.
	Mississippi	All counties.
Maryland, Baltimore 21201 1017 Federal Bldg., 31 Hopkins Plaza	Delaware	Kent and Sussex.
	Maryland	All except those listed for Washington, D.C.
	West Virginia	All counties.
Maryland, Columbia 21045 Special Enforcement Facility - Laurel, P.O. Box 250		
Massachusetts, Boston 02109 1600 Customhouse, 165 State St.	Connecticut	All counties.
	Maine	All counties.
	Massachusetts	All counties.
	New Hampshire	All counties.
	Rhode Island	All counties.
	Vermont	All counties.

Field Installations	Administrative Areas	
	States	Counties
Michigan, Detroit 48226 1054 Federal Bldg., 231 W. LaFayette Special Enforcement Facility - Detroit - 1007 Federal Bldg.	Kentucky	Bath, Bell, Boone, Bourbon, Boyd, Bracken, Breathitt, Campbell, Carter, Clarke, Clay, Elliott, Estill, Fayette, Fleming, Floyd, Franklin, Gallatin, Garrard, Grant, Greenup, Harlan, Harrison, Jackson, Jessamine, Johnson, Kenton, Knott, Knox, Laurel, Lawrence, Lee, Leslie, Letcher, Lewis, Lincoln, Madison, Magoffin, Martin, Mason, McCreary, Monifee, Montgomery, Morgan, Nicholas, Owen, Owsley, Pendleton, Perry, Pike, Powell, Pulaski, Robertson, Rockcastle, Rowan, Scott, Wayne, Whitley, Wolfe, and Woodford, all others covered by Chicago, IL office.
	Michigan	All counties except those listed for St. Paul, MN.
	Ohio	All counties.
Minnesota, St. Paul 55101 691 Federal Bldg. & U.S. Courthouse, 316 N. Robert St.	Michigan	Alger, Baraga, Chippewa, Delta, Dickinson, Gogebic, Houghton Iron, Keweenaw, Luce, Mackinac, Marquette, Menominee, Ontonagon, and Schoolcraft; all others covered by Detroit, MI office.
	Minnesota	All counties.
	Wisconsin	All except those listed for Chicago, IL.
Missouri, Kansas City 64133 Room 320 Brywood Office Tower 8800 E. 63rd Street	Iowa	All counties.
	Kansas	All counties.
	Missouri	All counties.
	Nebraska	All counties.
Nebraska, Grand Island 68801 Special Enforcement Facility P.O. Box 1583		
New York, Buffalo 14202 T307 Federal Bldg., 111 West Huron Strett	New York	All except those listed for New York, N.Y.
New York, New York 10014 201 Varick Street	New Jersey	Bergen, Essex, Hudson, Hunterdon Mercer, Middlesex, Monmouth, Morris, Passaic, Somerset, Sussex, Union, and Warren; all others are covered by Philadelphia, PA office.
	New York	Albany, Bronx, Columbia, Delaware, Dutchess, Greene, Kings, Nassau-New York, Orange, Putnam, Queens, Rensselaer, Richmond, Rockland, Schenectady, Suffolk, Sullivan, Ulster, and Westchester; all others are covered by Buffalo, N.Y. office.
Ohio, Cincinnati 45231 1/ 8620 Winton Road		
Oregon, Portland 97204 1782 Federal Office Bldg., 1220 S.W. 3rd Avenue	Idaho	All except those listed for Seattle, WA.
	Oregon	All counties.
	Washington	Clark, Cowlitz, Klickitat, Skamania and Wahkiakum; all others covered by Seattle, WA office.
Pennsylvania, Philadelphia 19106 11425 James A. Byrne Federal Courthouse, 601 Market Street	Delaware	New Castle.
	New Jersey	Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester Ocean, and Salem; all others covered by New York, N.Y. office
	Pennsylvania	All counties.
Pennsylvania, Monroeville 15146 (Pittsburgh) 1/ William Penn Highway		
Puerto Rico, Hato Rey 00918 (San Juan) 747 Federal Bldg.	Puerto Rico	All Counties.
	Virgin Islands	All.
Texas, Beaumont 77701 1/ Jack Brooks Federal Bldg., Room 323, 300 Willow Street		

1/ Indicates specialized office with no designated administrative area.

Field Installations	Administrative Areas	
	States	Counties
Texas, Dallas 75242 Earle Cabell Federal Bldg. U.S. Courthouse, Room 13E7 1100 Commerce Street	Oklahoma Texas	All counties All except those listed for Houston, TX
Texas, Houston 77002 New Federal Office Bldg. 515 Rusk Avenue, Room 5636	Texas	Angelina, Aransas, Atascosa, Austin, Bandera, Bastrop Bee, Bexar, Blanco, Brazoria, Brazos, Brooks, Burleson, Caldwell, Calhoun, Cameron, Chambers, Colorado, Comal, De Witt, Dimmit Duval, Edwards Fayette, Fort Bend, Frio, Galveston, Gillespie, Goliad, Gonzales, Grimes, Guadalupe, Hardin, Harris, Hays Hidalgo, Jackson, Jasper, Jefferson, Jim Hogg, Jim Wells, Karnes, Kendall, Kennedy, Kerr Kinney, Kleberg, La Salle Lavaca, Lee, Liberty, Live Oak, Madison, Matagorda, Maverick, McMullen, Medina Montgomery Nacogdoches, Newton, Nueces, Orange Polk, Real, Refugio, Sabine, San Augustine, San Jacinto, San Patricio Starr Travis, Trinity, Tyler, Uvalde, Val Verde, Victoria Walker, Waller Washington, Webb, Wharton, Willacy, Williamson, Wilson, Zapata, and Zavala; all others covered by Dallas TX office
Virginia, Norfolk 23502 Military Circle, 870 North Military Highway	North Carolina Virginia	All counties All except those listed for District of Columbia
Washington, Seattle 98174 3256 Federal Bldg , 915 Second Avenue	Idaho	Benewah, Bonner Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce, Shoshone; all others covered by Portland, OR office
	Montana Washington	All counties All except those listed for Portland, OR

(c) Monitoring stations are located at the following addresses:

Alaska, Anchorage 99510
P O Box 2955

Arizona, Douglas 85607
P O Box 6

California, Livermore 94550
P O Box 311

Florida, Ft Lauderdale 33335
P O Box 22836

Georgia, Powder Springs 30073
P O Box 85

Hawaii, Waipahu 96797
P O Box 1035

Maine, Belfast 04915
P O Box 470

Maryland, Columbia 21045 (Laurel)
P O Box 250

Michigan, Allegan 49010
P O Box 89

Nebraska, Grand Island 68801
P O Box 1588

Puerto Rico, Sabana Seca 00749
P O Box 181

Texas, Kingsville 78363
P O Box 632

Washington, Ferndale 98248
P O Box 1125

[FR Doc. 78-33366 Filed 11-28-78; 8:45 am]

[6712-01-M]

PART 73—RADIO BROADCAST SERVICES

Reregulation of Radio and Broadcasting; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule relating to reregulation of radio and broadcasting appearing in the FEDERAL REGISTER of October 4, 1978 at 43 FR 45842. The correction is necessary to add the word "news" to the appropriate subparagraphs.

EFFECTIVE DATE: November 16, 1978.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Steve J. Crane, Broadcast Bureau, 202-632-9660.

SUPPLEMENTARY INFORMATION:

Released: November 17, 1978.

In the matter of Reregulation of Radio and TV Broadcasting.

In the above captioned Order FCC-78-681, released 10-16-78, and published in the FEDERAL REGISTER October 4, 1978 at 43 FR 45842, certain words were inadvertently omitted from § 73.1940(g)(1) (ii) and (iii), and should read as follows:

* * * * *

(g) * * *

(i) * * *

(ii) Bona fide *news* interview,

(iii) Bona fide *news* documentary (if the appearance of the candidate is incidental to the presentation of the subject or subjects covered by the news documentary),

* * * * *

FEDERAL COMMUNICATIONS COMMISSION.
WILLIAM J. TRICARICO,
Secretary.

[FR Doc. 78-33472 Filed 11-28-78; 8:45 am]

[6712-01-M]

PART 91—INDUSTRIAL RADIO SERVICES

Designation of 483.1375 MHz as a new Starting Point for Assigning Frequencies in the Business Radio Service in the Dallas/Fort Worth, Tex., Metropolitan Area in the 470-512 MHz Band

AGENCY: Federal Communications Commission.

ACTION: Order.

SUMMARY: This order amends the Business Radio Service frequency table by establishing a new starting point for assigning frequencies in the 470-512 MHz band in the Dallas/Fort Worth metropolitan area. The new starting point is 483.1375 MHz.

EFFECTIVE DATE: December 6, 1978.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Victor Tawil, Industrial and Public Safety Facilities Division, Safety and Special Radio Services Bureau, telephone 202-632-6497.

In the matter of the designation of 483.1375 MHz as a new starting point for assigning frequencies in the Business Radio Service in the Dallas/Fort Worth Texas, metropolitan area in the 470-512 MHz band. *Order.*

Adopted: November 16, 1978.

Released: November 24, 1978.

By the Chief, Safety and Special Radio Services Bureau:

1. In the Fifth Report and Order in Docket 18261 the Commission provided a flexible frequency assignment plan for the 470-512 MHz band frequencies available in Dallas and Houston, Texas, and Miami, Florida. *Land Mobile/UHF-TV Sharing Plan*, 48 FCC 2d 360 (1974). In Paragraph 12 of that Report and Order, the Commission said, "* * * since all of the frequencies are to be available in all eligible radio services, the frequencies in which the first assignments are to be made do not necessarily set out the boundaries for frequency availability in a particular radio service. A new starting frequency may be assigned by the staff for any of the various groups when the frequencies available to its sequence are exhausted. Also, should any group fail to use its assigned frequency, that base line may be moved." *Land Mobile/UHF-TV Sharing Plan, supra*, at p. 364.

2. The frequencies available in sequence in the Business Radio Service in Dallas/Fort Worth in the 470-512 MHz band are now occupied and are subtantially loaded. Therefore, in accordance with Paragraph 12 of the Report and Order in Docket 18261, an additional starting point is being established. That starting frequency will be 483.1375 MHz. Assignments will be made sequentially in ascending and descending order from this frequency until all available contiguous channels are occupied.

3. This action is taken pursuant to the authority contained in Section 4(i) of the Communications Act of 1934, as amended, and to authority delegated by the Commission in the *Fifth Report and Order* in Docket 18261 previously cited. The amendment to § 91.114 (f)(3) is for conformity with substantive matters which were previously decided in the *Fifth Report and Order* and which are being implemented herein. Therefore, compliance with the prior notice requirements prescribed by 5 U.S.C. 553 is unnecessary.

4. Accordingly, *it is ordered*, That effective December 6, 1978, § 91.114(f)(3) of the Commission's Rules is amended as shown below.

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

CARLOS V. ROBERTS,
Chief, Safety and Special Radio Services Bureau.

Part 91 of Chapter I of Title 47 of the Code of Federal Regulations is revised as follows:

Section 91.114(f)(3) is amended to read:

§ 91.114 Frequencies in the band 470-512 MHz.

* * * * *

(f) * * *

(3) Base station frequencies for the Business Radio Service will be assigned serially beginning at 472.3625 MHz for Miami, 484.3625, 483.6125 and 483.1375 MHz for Dallas, and 489.6625 MHz and 490.3625 MHz for Houston and progressing, a channel at a time, upward and downward from those points. Mobile station frequencies are 3 MHz higher than the corresponding base station frequencies. Normally, each channel shall be substantially filled before the next channel will be assigned

* * * * *

[FR Doc. 78-33413 Filed 11-28-78; 8:45 am]

proposed rules

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.

[6820-97-M]

PRESIDENTIAL COMMISSION ON WORLD HUNGER

[1 CFR Part 475]

PRIVACY ACT OF 1974

Proposed Regulations for Implementation

AGENCY: Presidential Commission on World Hunger.

ACTION: Proposed Rule.

SUMMARY: The following proposed regulations drafted in accordance with section (f) of 5 U.S.C. 552a, the Privacy Act of 1974, are hereby offered for public comment. The purposes of these regulations are to establish procedures by which an individual can determine if the Commission maintains a system of records which included a record pertaining to that individual and also to establish procedures for individual access to the records for purposes of review, amendment and/or correction.

DATE: Comments are due on or before December 20, 1978.

ADDRESS: Send comments to the Deputy Executive Director, Presidential Commission on World Hunger, 734 Jackson Place, N.W., Washington, D.C. 20006.

FOR FURTHER INFORMATION CONTACT:

Donald Harper, (202) 395-3505.

Signed this 21st day of November 1978.

DANIEL E. SHAUGHNESSY,
Deputy Executive Director.

It is proposed to add the following Part 475 to Title 1 of the CFR.

PART 475—PRIVACY ACT IMPLEMENTATION

Sec.
475.1 Purpose and scope.
475.2 Definitions.
475.3 Procedures for requests pertaining to individual records in a records system.
475.4 Times, places, and requirements for the identification of the individual making a request.
475.5 Disclosure of requested information to the individual.
475.6 Request for correction or amendment to the record.
475.7 Agency review of request for correction or amendment of the record.
475.8 Appeal of an initial adverse agency determination on correction or amendment of the record.
475.9 Disclosure of record to a person other than the individual to whom the record pertains.
475.10 Fees.

AUTHORITY: 5 U.S.C. 552a: Pub. L. 93-579.

§ 475.1 Purpose and scope.

The purposes of these regulations are to:

(a) Establish a procedure by which an individual can determine if the Presidential Commission on World Hunger hereafter known as the Commission maintains a system of records which includes a record pertaining to the individual; and

(b) Establish a procedure by which an individual can gain access to a record pertaining to him or her for the purpose of review, amendment and/or correction.

§ 475.2 Definitions.

For the purpose of these regulations—

(a) The term "individual" means a citizen of the United States or an alien lawfully admitted for permanent residence;

(b) The term "maintain" includes maintain, collect, use or disseminate;

(c) The term "record" means any item, collection or grouping of information about an individual that is maintained by the Commission, including, but not limited to, his or her employment history, payroll information, and financial transactions and that contains his or her name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as social security number;

(d) The term "system of records" means a group of any records under control of the Commission from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual; and

(e) The term "routine use" means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected.

§ 475.3 Procedures for requests pertaining to individual records in a records system.

An individual shall submit a request to the Director of Administrative and Fiscal Services to determine if a system of records named by the individual contains a record pertaining to the individual. The individual shall submit a request to the Deputy Executive Director of the Commission which states the individual's desire to review his or her record.

§ 475.4 Times, places, and requirements for the identification of the individual making a request.

An individual making a request to the Director of Administrative and Fiscal Services of the Commission pursuant to Section § 475.3 shall present the request at the Commission offices, 734 Jackson Place, N.W., Washington, D.C. 20006, on any business day between the hours of 9 a.m. and 5 p.m. The individual submitting the request should present himself or herself at the Commission's offices with a form of identification which will permit the Commission to verify that the individual is the same individual as contained in the record requested.

§ 475.5 Access to requested information to the individual.

Upon verification of identity the Commission shall disclose to the individual the information contained in the record which pertains to that individual.

§ 475.6 Request for correction or amendment to the record.

The individual should submit a request to the Director of Administrative and Fiscal Services which states the individual's desire to correct or to amend his or her record. This request is to be made in accord with provisions of § 475.4.

§ 475.7 Agency review of request for correction or amendment of the record.

Within ten working days of the receipt of the request to correct or to amend the record, the Director of Administrative and Fiscal Services will acknowledge in writing such receipt and promptly either—

(a) Make any correction or amendment of any portion thereof which the individual believes is not accurate, relevant, timely, or complete; or

(b) Inform the individual of his or her refusal to correct or to amend the record in accordance with the request, and the procedures established by the Commission for the individual to request a review of that refusal.

§ 475.8 Appeal of an initial adverse agency determination on correction of amendment of the record.

An individual who disagrees with the refusal of the Director of Administrative and Fiscal Services to correct or to amend his or her record may submit a request for a review of such refusal to the Deputy Executive Director, Presidential Commission on World Hunger, 734 Jackson Place, N.W., Washington, D.C. 20006. The Deputy Executive Director will, not later than thirty working days from the date on which the individual request such review, complete such review and make a final determination unless, for good cause shown, the Deputy Executive Director extends such thirty day period. If, after his or her review, the Deputy Executive Director also refuses to correct or to amend the record in accordance with the request, the individual may file with the Commission a concise statement setting forth the reasons for his or her disagreement with the refusal of the Commission and may seek judicial review of the Deputy Executive Director's determination under 5 U.S.C. 552a(g)(1)(A).

§ 475.9 Disclosure of record to a person other than the individual to whom the record pertains.

The Commission will not disclose a record to any individual other than to the individual to whom the record pertains without receiving the prior written consent of the individual to whom the record pertains, unless the disclosure has been listed as a "routine use" in the Commission's notices of its system of records, or falls within one of the special disclosure situations listed in the Privacy Act of 1974 (5 U.S.C. 552a(b)).

§ 475.10 Fees.

If an individual request copies of his or her record, he or she shall be charged ten cents per page, excluding the cost of any search for review of the record, in advance of receipt of the pages.

[FR Doc. 78-33347 Filed 11-28-78; 8:45 am]

[6750-01-M]

FEDERAL TRADE COMMISSION

[16 CFR Part 467]

FOOD ADVERTISING (PHASE I)

Trade Regulation Rule

PUBLICATION OF STAFF REPORT ON PROPOSED TRADE REGULATION RULE

AGENCY: Federal Trade Commission.

ACTION: Publication of staff report.

SUMMARY: On March 22, 1978, the Director of the Bureau of Consumer Protection published in the FEDERAL REGISTER, 43 FR 11834, notice of publication of the Presiding Officer's report on Phase I of the proposed trade regulation rule on food advertising.

The Bureau of Consumer Protection's staff report which analyzes the evidence in Phase I of its rulemaking proceeding on food advertising and makes recommendations as to the final action which the Commission should take has now been made public and placed on Public Record No. 215.40.

DATE: The publication of the staff report commences the final 60-day comment period on both the staff report and the Presiding Officer's report. Comments will be accepted for the public record if received on or before January 29, 1979.

ADDRESSES: Requests for copies of the report should be sent to: Public Reference Branch, Room 130, Federal Trade Commission, 6th Street and Pennsylvania Avenue NW., Washington, D.C. 20580.

Comments should be sent to: Secretary, Federal Trade Commission, 6th and Pennsylvania Avenue NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT:

Melvin H. Orlans, 202-724-1511, Deputy Assistant Director for Food and Drug Advertising, Federal Trade Commission, Washington, D.C. 20580 or Judith A. Nelbrief, 202-724-1496, Attorney, Division of Food and Drug Advertising, Federal Trade Commission, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: Pursuant to § 1.13(g) of the Commission's rules of practice, the staff has made its report, containing its analysis of the record and its recommendations as to the form of the final rule, to the Commission. The report is now available for public comment under the Commission's rules of practice, § 1.13(h). Requests for copies of the report should be sent to the Public Reference Branch, Room 130, Federal Trade Commission, 6th Street and Pennsylvania Avenue N.W., Washington, D.C. 20580.

Comments will be accepted on both the staff report and the Presiding Officer's report (which has previously been made public) for a period of 60 days ending on January 29, 1979. Comments should be identified as "Comment on Presiding Officer and Staff Reports—Food Advertising TRR," and addressed to the Secretary, Federal Trade Commission, 6th Street and Pennsylvania Avenue NW., Washington, D.C. 20580, and submitted, when feasible, in five copies.

The Commission cautions all concerned that the staff report has not been reviewed or adopted by the Commission, and that its publication should not be interpreted as reflecting the present views of the Commission or any individual member thereof.

Approved: November 24, 1978.

ALBERT H. KRAMER,
Director, Bureau of Consumer Protection.

[FR Doc. 78-33449 Filed 11-28-78; 8:45 am]

[6355-01-M]

CONSUMER PRODUCT SAFETY COMMISSION

[16 CFR Part 1205]

POWER LAWN MOWERS

Brake-Clutch Reliability and Safety

AGENCY: Consumer Product Safety Commission.

ACTION: Extension of comment period and announcement of oral presentation of comments.

SUMMARY: As part of its proceeding to develop a safety standard for power lawn mowers, the Commission had previously requested comment on data it had received concerning the reliability of brake-clutch mechanisms for power lawn mowers and on several questions it had concerning the reliability and safety of such mechanisms. The Commission had specified that the comments should be submitted by November 22, 1978. After considering requests from the Outdoor Power Equipment Institute and FMC Corporation for an extension of the comment period and for a public hearing, however, the Commission has decided to extend the period for receipt of written comment on this subject until December 15, 1978, and to provide an opportunity for the oral presentation of comments at 9:30 a.m., December 11, 1978.

DATES: Written comments limited to the reliability and safety of brake-clutch mechanisms for walk-behind rotary power lawn mowers must be received in the Office of the Secretary no later than December 15, 1978.

An opportunity for the oral presentation of comments on the reliability and safety of brake-clutch mechanisms for walk-behind rotary power lawn mowers will be provided at 9:30 a.m., December 11, 1978. A summary of the testimony to be present must be filed with the Office of the Secretary no later than December 7, 1978, and persons desiring to give an oral presentation of comments must notify the Commission by December 6, 1978.

ADDRESSES: Comments and summaries of testimony should be submitted to the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207 and entitled "Power Mower Brake-Clutch Reliability." All material which the Commission has that is revelant to the issue of brake-clutch reliability, including any comments that may be received on this issue, may be seen in, or copies obtained from, the Office of the Secretary, Third Floor 1111-18th Street, NW., Washington, D.C. 20207, (202) 634-7700.

The oral presentation of comments will be held in the third floor conference room, consumer product Safety Commission, 1111-18th Street, NW., Washington, D.C. 20207.

FOR FURTHER INFORMATION CONTACT:

William Kitzes, Office of Program Management, Consumer Product Safety Commission, Washington, D.C. 20207 (301)492-6557.

SUPPLEMENTARY INFORMATION: On November 2, 1978, the Commission published a request for comment on data that the Commission's staff had received concerning the reliability and safety of brake-clutches for power lawn mowers and solicited responses to certain questions relating to the reliability and safety of these devices (43 FR 51038). This notice was in connection with the Commission's pending proceeding to develop a consumer product safety standard for power lawn mowers. A more detailed explanation of the background and reasons for the Commission's request is given in that notice.

After the publication of the request for comments, the Commission received requests from the Outdoor Power Equipment Institute (OPEI) and from FMC Corporation that the comment period be extended and that a public hearing be held concerning these issues. OPEI requested an extension of the comment period until December 22, 1978, and FMC requested that the comment period be "lengthened substantially."

The reasons given for the requests for an extension of the comment period are that the issues raised by the requests for comments are central to the standard development proceeding, that the materials on which comment is requested are lengthy and that the material is "inextricably intertwined with many other documents that * * * have a direct bearing on the very issues on which the public is asked to respond." No examples of such additional documents are given, and no explanation is made of the specific activities which the requesters feel would be necessary in order to respond to the request for comments. The Commission does not believe that there is any legal requirement to provide a longer comment period in this case. However, the Commission acknowledges that the issues are complex and OPEI may find it necessary to consult with its member companies in order to formulate any additional comments. Accordingly, in order to be sure that all points of view are fully expressed, the Commission has decided that an extension of the comment period is in order. However, in view of the fact that the persons requesting the extension were sent an advance copy of the materials that had been submitted to the Commission, because the materials had previously been publicly available, and because some of the materials had already been the subject of other comments that were submitted to the Commission, the Commission believes that an extension of 30 days is excessive. this is especially so, since, as discussed below, the Commission is scheduling an opportunity for the oral presentation of comments. Therefore, the Commission is extending the period for the submission of written comments concerning the safety and reliability of brake-clutch mechanisms for walk-behind rotary power lawn mowers until December 15, 1978. Written submissions and any accompanying data or material, preferaby in five copies, must be received by that date in the Office of the Secretary, Consumer Product Safety Commission, 1111 18th Street, NW., Washington, D.C. 20207.

The Commission has also decided that it would be in the public interest to allow the oral presentation of comments in this procceding and has scheduled such a hearing for 9:30 a.m., December 11, 1978. In so doing, however, the Commission wishes to point out that it does not agree with the contention of OPEI that it is legally obligated to provide an opportunity for oral presentation of data, views, and arguments.

OPEI contends that section 9(a)(2) of the CPSA requires the Commission to schedule a public hearing on the issues on which comment was requested. This section provides that proposed consumer product safety rules shall be promulgated by notice and comment rulemaking (5 U.S.C. 533) "except that the Commission shall give interested persons an opportunity for the oral presentation of data, views, or arguments, in addition to the opportunity to make written submissions."

There has already been an opportunity to present oral comments on the *proposal*, and there is nothing in the legislative history of section 9(a)(2) which indicates an intent that a request for additional comments on *data* received by the Commission would also invoke the requirement of section 9(a)(2).

Persons wishing to present oral comments must notify William Kitzes, Consumer Product Safety Commission, Washington, D.C. 20207 301-492-6557) by December 6, 1978, and must submit a summary of the data, views, and arguments to be presented to the Office of the Secretary by December 7, 1978.

Dated: November 22, 1978.

SADYE E. DUNN,
Secretary, Consumer Product Safety Commission.

[FR Doc. 78-33427 Filed 11-28-78; 8:45 am]

[6355-01-M]

[16 CFR Part 1306]

UNVENTED GAS-FIRED SPACE HEATERS

Proposed Withdrawal of Proposed Rule

AGENCY: Consumer Product Safety Commission.

ACTION: Proposal to withdraw proposed ban.

SUMMARY: Based on information recently made available to the Commission, the Commission believes it is feasible to develop a consumer product safety standard addressing the hazard of carbon monoxide poisoning associated with unvented gas-fired space heaters. Since it appears that the public can be adequately protected by a standard, it is not necessary to ban these products, and the Commission therefore proposes to withdraw the proposal to ban unvented gas-fired space heaters which was published on February 14, 1978. At this time, the Commission affirms its belief that unvented gas-fired space heaters present an unreasonable risk of injury and announces that it intends to address this unreasonable risk by publishing a proposed safety standard for public comment. November 29, 1978, is the date on which the Commission is now obligated to either publish a final banning rule or withdraw the proposal to ban. Since the Commission wishes to obtain public comments on withdrawal of the proposed ban before the effective date of the withdrawal the Commission extends its decision date from November 29, 1978 to April 2, 1979.

DATE: Comments are due on or before December 29, 1978. Late received comments will be considered to the extent practicable.

ADDRESSES: Those who wish to comment on any aspect of this proposal to withdraw the proposed ban should address their comments to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207.

Copies of the staff briefing package and related materials are available at the Office of the Secretary, 1111 18th St., N.W., 3rd. Floor, Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

George P. Anikis, Office of Program Management, Consumer Product Safety Commission, Washington, D.C. 20207, (301) 492-6453.

SUPPLEMENTAL INFORMATION:

BACKGROUND

On February 14, 1978 (43 FR 6235), the Commission published a proposal to declare that unvented gas-fired space heaters are banned hazardous products. The Commission had preliminarily determined that the hazard of carbon monoxide poisoning associated with these products presents an unreasonable risk of injury to the public. Based on information known to the Commission at that time, the Commission concluded that no feasible standard under the Consumer Product Safety Act (CPSA) could adequately protect the public from that unreasonable risk. Accordingly, as provided by section 8 of the CPSA (15 U.S.C. 2057), the Commission proposed that these heaters be banned.

Approximately 300 comments on the proposed ban were received from trade associations, distributors of liquid petroleum gas, manufacturers, retailers, individual consumers, consumer interest groups, and government officials. The majority of these comments were opposed to the proposed ban on the grounds that it would remove from the market a fairly inexpensive source of heat.

During the comment period, the Commission was advised that mandatory standards adopted by several foreign countries require that unvented gas-fired space heaters incorporate a sensing and control device that does not directly measure the presence of carbon monoxide but is designed to detect the depletion of oxygen in the living space and shut off the flow of gas to the space heater before carbon monoxide emissions can build up and create a hazardous atmosphere. Such a device, known as an oxygen depletion sensor (ODS) had not, to the Commission's knowledge, even been adopted for use on unvented gas space heaters produced by American manufacturers. In addition, a voluntary standard of the American National Standards Institute (ANSI) provides for an ODS, although the voluntary standard does not currently require the presence of ODS on heaters certified under that standard.

To acquire more knowledge of the ODS, the Commission requested the National Bureau of Standards (NBS) to perform a series of tests on the device. Since additional time was needed for completion of these tests, the Commission, as provided by section 9(a)(1) of the CPSA, extended until August 29, 1978, the time in which it would be required to either publish a final rule or withdraw the proposal to ban (43 FR 29011, July 5, 1978).

During this period, the Commission received information concerning an additional control device known as a temperature limiting device (TLD), which is purported to help avoid a hazardous build-up of carbon monoxide in the living space by shutting off the gas supply to the heater when a room temperature of 100°F. is reached. A temperature limiting device requirement for unvented gas-fired space heaters was adopted on July 26, 1978 by ANSI as part of the voluntary industry standard. However, since very little test data on this device was available, the Commission concluded that additional information was needed to determine the degree of safety afforded by the TLD when applied to unvented gas-fired space heaters. Therefore, the Commission requested that the National Bureau of Standards evaluate the performance and reliability of the TLD. Further, to assure sufficient time to conduct these investigations, analyze the results, and correlate this information with the data obtained previously on the oxygen depletion sensor, the Commission extended until November 29, 1978, the period in which it must either publish a final banning rule or withdraw the proposal to ban (43 FR 37713, August 24, 1978).

TEST EVALUATIONS

The results of the National Bureau of Standards' evaluation of the ODS show that the device repeatedly operated satisfactorily to shutdown unvented gas-fired space heaters when the room oxygen content was depleted to between 18.2 and 20.4 percent. Carbon monoxide concentrations at these levels of oxygen depletion ranged from 90 to 7 parts per million (ppm), with a mean concentration of 37 ppm. Deliberate changes to the heater air shutter and blockage of the ODS air ports to simulate burner and sensor maladjustment and abnormal conditions did not significantly affect the operation of the ODS. Additionally, the ODS operated satisfactorily when used with a variety of representative fuel gases in use in the United States, including propane, butane, and natural gases.

An NBS investigation of the TLD indicates that it appears to be inadequate to address the carbon monoxide poisoning/asphyxiation hazard under a variety of limited room ventilation and heat loss conditions. The results of these analyses show that high concentrations of carbon monoxide can exist at various levels of oxygen depletion in ventilated rooms and at temperatures below the shut-off point of TLD.

Complete copies of both NBS reports are available through the Office of the Secretary.

CONCLUSION

In requesting that the NBS test the oxygen depletion sensor and the temperature limiting device, the Commission wished to learn of the effectiveness of these sensing and control devices. In addition, the Commission wished to determine whether it would be feasible for American manufacturers of unvented gas-fired space heaters to attach such devices to their products. If these devices can be attached and function effectively, such a requirement could be incorporated in a product safety standard.

Upon review of the test results discussed here, the Commission now believes that a feasible consumer product safety standard for unvented gas-fired heaters can be implemented under the CPSA. Such a standard would require an ODS device which has the capability of detecting indirectly a hazardous atmosphere resulting from carbon monoxide emissions and shutting off the gas supply to the heater.

Since it presently appears that a standard can adequately protect the public from the unreasonable risk of injury due to carbon monoxide poisoning associated with unvented gas-fired space heaters, the Commission believes that it is not necessary to ban this product. Therefore, in accordance with section 9(a)(1)(B) of the CPSA, the Commission proposes to withdraw its proposal to ban these products, and solicits public comment on this proposal.

This withdrawal would mean only that the Commission does not intend to issue a final rule declaring that unvented gas-fired space heaters are banned hazardous products. The Commission continues to believe that these heaters present an unreasonable risk of injury from the hazard of carbon monoxide poisoning and that a consumer product safety rule addressed to this hazard is necessary to reduce or eliminate the risk.

It appears to the Commission that an oxygen depletion sensor can help reduce or eliminate the unreasonable risk of injury arising from carbon monoxide poisoning associated with unvented gas-fired space heaters. Further, it appears that the oxygen depletion sensor described in the ANSI Z.21.11.2 voluntary industry standard entitled *Gas-Fired Room Heaters, Vol. II—Unvented Room Heaters,* would be adequate for the task of reducing or eliminating this risk. Parts of this standard could be adopted by the Commission as a mandatory standard.

Section 7(c) of the CPSA, as recently amended, provides that where the Commission determines there is a standard issued by a qualified agency, organization, or institution which would eliminate or reduce an unreasonable risk of injury if issued in whole, in part, or in combination with any other standard, the Commission may publish such a standard in whole, in part or in combination and with non-material modifications, as a proposed standard. The Commission believes that parts of the existing ANSI standard would meet these requirements.

Consequently, the Commission has directed its staff to prepare for Commission review and publication a draft proposed standard for public comment to incorporate the appropriate sections of the ANSI standard dealing with oxygen depletion sensors for unvented gas-fired space heaters. The Commission also directed its staff to prepare for Commission consideration at the same time, information on the following related matters: (1) health effects of carbon monoxide at various levels; (2) economic information on what effect the addition of oxygen depletion sensors would have on the manufacture of unvented gas-fired space heaters; (3) a precise definition of an oxygen depletion sensor; and (4) a discussion of the adequacy of cautionary labeling in the ANSI standard.

Accordingly, the Commission issues this proposal to withdraw its proposal (43 FR 6235) to ban unvented gas-fired space heaters.

In order to receive and evaluate comments on the proposal to withdraw the rule proposing to ban unvented gas-fired space heaters, the Commission for good cause as an administrative matter extends from November 29, 1978 to April 2, 1979, the period in which it must either publish a final banning rule or withdraw the proposal to ban.

Interested persons are invited to submit written data views or comments regarding this proposed withdrawal on or before December 29, 1978. Comments received after this date will be considered to the extent practicable. Written submissions and any accompanying data or material should be submitted, preferably in five copies, addressed to the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207.

Dated: November 24, 1978.

SHELDON D. BUTTS,
Acting Secretary, Consumer Product Safety Commission.

[FR Doc. 78-33454 Filed 11-28-78; 8:45 am]

[4810-22-M]

DEPARTMENT OF THE TREASURY

Customs Service

[19 CFR Parts 10, 11, 127, 132, 141, 142, 143, 144, 158, 159, and 173]

ENTRY OF MERCHANDISE AND LIQUIDATION OF ENTRIES

Proposed Rule

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: Pub. L. 95-410, the "Customs Procedural Reform and Simplication Act of 1978" made numerous changes in laws administered by the Customs Service relating to the entry of imported merchandise and the liquidation of entires. This document proposes to amend the Customs Regulations to establish new procedures needed to reflect these changes.

Some of the more significant proposed changes to the regulations are:

(1) To provide for a revised entry concept under which documentation necessary to obtain the release of merchandise would be the "entry". Additional documentation necessary to appraise and classify the merchandise and to collect accurate statistics, designated as the "entry summary", with estimated duties attached, would continue to be required with 10 working days after the time of entry.

(2) To provide that the applicable rate of duty on merchandis is the rate in effect at the time of entry.

(3) To ensure the collection of accurate and timely statistics on imported merchandise.

(4) To extend the Customs bonded warehousing period from 3 to 5 years.

(5) To provide for the marking of bulk containers of distilled spirits, wines, and malt liquors at the discretion of the district director.

(6) To provide time limitations for the liquidation of entries.

(7) To set forth a uniform time period of 1 year after the date of liquidation for reliquidation an entry to correct a clerical error, mistake of fact, or other inadvertance not amounting to an error in the construction of law if the error is adverse to the importer.

(8) To provide for a preliminary review of entry summary documentation by import specialists prior to the arrival of the merchandise within the port limits to expedite the processing of those entries.

DATE: Comments must be received on or before December 29, 1978.

ADDRESS: Written comments should be addressed to the Commissioner of Customs, Attention: Regulations and Legal Publications Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2335, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT:

Legal aspects: Benjamin H. Mahoney, Entry Procedures and Penalties Division (202-566-5778); operational aspects—entry and liquidation; Herbert Geller, Duty Assessment Division (202-566-5307); operational aspects—warehousing: Harry W. Carnes, Inspection and Control Division (202-566-5607).

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pub. L. 95-410 (92 Stat. 888), the "Customs Procedural Reform and Simplification Act of 1978," approved October 3, 1978 (the "Act"), made significant changes in the Customs laws relating to the entry of imported merchandise and the liquidation of entries.

PRIOR LAW AND PROCEDURES

Under the prior statutory scheme, an importer was required to file entry documents at the customhouse within 5 working days after the entry of the importing vessel or aircraft, report of the vehicle, or arrival at the port of destination in the case of merchandise transported in bond, unless a longer time was authorized (19 U.S.C. 1484(a)). Entry documentation consisted of the appropriate entry form, proper invoices, and evidence of the right to make entry. Estimated duties were deposited when the entry documents were filed (19 U.S.C. 1505). A Customs officer then examined the entry documents to determine whether the importer had the right to receive the merchandise and whether the documents contained information necessary to assess duties and collect statistics. He also examined the merchandise, and, after examination, authorized the importing carrier to deliver the merchandise to the importer under bond. The bond covered potential duties, taxes, and other charges which may have been incurred, and remained in effect until liquidation of the entry became final.

An alternative procedure, referred to as the "immediate delivery proce-

dure", allowed for the immediate delivery of the merchandise under a special permit prior to filing the entry documents and payment of duty. The merchandise was examined before release to ensure that it conformed to the description on the invoice. Within 10 days after release, the importer was required to file the entry documents and deposit estimated duties. At that time, the entry documents were examined to determine the classification and value of the merchandise and to verify the statistical information provided concerning the merchandise.

The final determination of duties, or "liquidation", occurred after the release of the merchandise. There was no statutory or regulatory time limit on liquidation.

CHANGES IN CONCEPT

Most merchandise presently is released under the immediate delivery procedure before entry is made. The immediate delivery procedure in fact is an "exception" to the general requirement that entry shall be made and estimated duties deposited *before* release of merchandise. The Act eliminates the general requirement and provides that the filing of documents necessary to obtain the release of merchandise under 19 U.S.C. 1484(a) is the "entry".

As will be discussed more fully in the document, the entry of merchandise is a two-part process consisting of the filing of the documents necessary to determine whether merchandise may be released from Customs custody and filing the documents which contain information for duty assessment and statistical purposes.

1. This notice proposes that, with certain limited exceptions, the documentation formerly filed with an application for immediate delivery will continue to be required to obtain the release of merchandise, but now will be characterized as the "entry". The act of filing that documentation similarly will be considered "entering" the merchandise.

2. This notice also proposes that the documentation formerly characterized as the "entry" and required to be filed with estimated duties attached, within 10 working days after release of merchandise under the immediate delivery procedure, will be required within 10 working days after the "time of entry", as defined in proposed § 141.68, but will be designated as the "entry summary".

A detailed discussion by subject matter of the specific statutory changes and the related proposed amendments to the regulations follows.

SPECIFIC CHANGES TO LAW AND REGULATION

RATE OF DUTY

Section 315(a), Tariff Act of 1930, as amended (19 U.S.C. 1315(a)), formerly set the applicable rate of duty on imported merchandise as the rate in effect when the entry, with estimated duties attached, was filed.

Section 101 of the Act amends 19 U.S.C. 1315(a) by establishing the date for determining the rate of duty in those cases in which duty may be paid after filing the documents necessary to secure release of imported merchandise from Customs custody. The rate of duty is that rate in effect at the "time of entry".

FILING ENTRY DOCUMENTS

Section 484(a), Tariff Act of 1930, as amended (19 U.S.C. 1484(a)), formerly required that entry documents be filed at a customhouse within 5 working days after the entry of the importing vessel or aircraft, report of the vehicle, or arrival at the port of destination in the case of merchandise transported in bond, unless a longer time was authorized.

Section 102 of the Act amends 19 U.S.C. 1484(a) by providing that entry shall be made by filing that documentation necessary to enable Customs to determine whether the merchandise may be released from Customs custody. Section 102 also provides that documentation necessary to classify and appraise merchandise and to verify statistical information shall be filed at the time prescribed by regulation, either when entry is made, or at any time within 10 working days thereafter. Either class of documentation may be filed at any place prescribed by regulation within the Customs district where the merchandise is released. Furthermore, section 102 provides for the issuance of regulations to ensure the accuracy and timeliness of statistics under the new entry procedures, particularly statistics with regard to the classification and value of imports.

Customs is developing a computerized system designed to modernize and simplify the handling of imported merchandise. This system is referred to as the "Automated Merchandise Processing System" ("AMPS"). It is the purpose of AMPS to utilize computerization to expedite the paperwork that accompanies each commercial importation; for example, the bonding of importers, release of merchandise, payment of duties and taxes, and final disposition ("liquidation") of the transaction.

It is anticipated that AMPS will be implemented fully in the Baltimore region in 1979. Expansion to the eight remaining Customs regions is expected to occur during 1980, but may continue into 1981.

Because AMPS has not been implemented fully and because of limited resources, Customs at this time is unable to provide for entry documents to be filed at any place in the Customs district other than where now required. Therefore,

1. Documents necessary to obtain release of the merchandise shall continue to be filed at the customhouse or at the Customs location, approved by the district director, where the merchandise is to be released, and

2. Documents needed to enable Customs to classify and appraise the merchandise and to collect statistics shall continue to be filed either at the customhouse at the port where the merchandise is released or, with the approval of the district director, at a Customs station.

DEPOSIT OF ESTIMATED DUTIES

Before enactment of Pub. L. 95-410, section 505(a), Tariff Act of 1930, as amended (19 U.S.C. 1505(a)), generally required that estimated duties be deposited at the time of making entry.

Section 103 of the Act amends 19 U.S.C. 1505(a) to permit the payment of estimated duties either at the time of making entry or at a later time, as prescribed by regulation. However, estimated duties shall not be deposited later than 30 days after making entry.

For most entries, estimated duties now must be deposited within 10 days after release of the merchandise. Because the Act equates the filing of documents necessary to obtain release of the merchandise with "entry", Customs will continue to permit the deposit of estimated duties within 10 working days after the "time of entry". However, Customs is considering the possibility of requiring the deposit of estimated duties earlier than 10 working days after the "time of entry".

Accordingly, it is proposed to amend Parts 10, 11, 132, 141, 142, and 143, Customs Regulations (19 CFR Parts 10, 11, 132, 141, 142, and 143), to provide changes in the effective date of the rate of duty, the filing of entry documentation, and the time for deposit of estimated duties.

To better explain the concepts involved, the following discussion treats the various parts of the regulations which are amended out of sequence.

PROPOSED AMENDMENTS TO PARTS 142 AND 143

Part 142 would be completely revised. It would be divided into 3 subparts entitled "Entry Documentation", "Entry Summary Documentation", and "Special Permit for Immediate Delivery". The first two subparts would contain provisions relating to

the release of merchandise under 19 U.S.C. 1484(a), and the third subpart would contain provisions relating to the release of merchandise under a special permit for immediate delivery under 19 U.S.C. 1448(b). Sections 143.1, 143.2, and 143.3, which relate to entry forms and bonds, would be deleted because proposed Part 142 would incorporate their provisions in modified form.

As previously noted, most merchandise presently is released under the immediate delivery procedure before entry is made. The immediate delivery procedure is under the law an "exception" to the general requirement that entry shall be made and estimated duties deposited *before* release of merchandise. The Act converts this "exception" into the general rule. Consequently, there is less need to utilize the immediate delivery procedure. It therefore is proposed to restrict the use of a special permit for immediate delivery to specified perishable goods, to merchandise withdrawn from warehouse for consumption, and to other merchandise for which Customs Headquarters authorizes its use. Most merchandise would be released under amended 19 U.S.C. 1484(a). The documentation needed for Customs to assess duties, collect statistics, and determine whether other legal requirements are met would have to be filed within 10 working days after the "time of entry" and would be designated the "entry summary". Estimated duties generally would have to be deposited at the time of filing of the "entry summary."

ENTRY DOCUMENTATION

Proposed §§ 142.1 through 142.9, which comprise Subpart A, would contain the provisions relating to filing the "entry" documentation.

1. Proposed § 142.1 applies to Part 142 the definitions of the terms, "entry", "entry summary", "submission", "filing", and "presentation", set forth in § 141.0a.

2. Proposed § 142.2(a) would restate the 5 working day time limit for filing the entry documentation, and provide a means for extending that limit. Proposed § 142.9 would restate the provisions for the treatment of merchandise for which entry is not made timely. These provisions currently are set out in § 141.5.

Proposed § 142.2(b) would permit the submission, prior to arrival of the merchandise, of the entry or the entry summary when it serves as both entry and entry summary.

3. Proposed § 142.3(a) would specify the entry documentation required to secure release of merchandise. The importer would have to file the following:

(1) Customs Form 3461, appropriately modified, or 7533, appropriately modified and in duplicate,

(2) Evidence of the right to make entry,

(3) A commercial invoice or a substitute as authorized under § 141.83(d),

(4) A packing list, where appropriate, and

(5) Other documents required by Federal, state, or local agencies on particular shipments.

Customs Form 3461 is used currently as an application for a special permit for immediate delivery (i.e., for release before entry). Customs Form 7533 is an inward cargo manifest and could be substituted for Customs Form 3461 if the merchandise is imported from a contiguous country.

Proposed § 142.3(b) would provide that when the entry summary is filed at time of entry, that document would serve as both the entry and the entry summary and Customs Form 3461 or 7533 would not be required. Proposed § 142.3(c) would provide that the district director may require extra copies of the entry documentation.

4. Presently, Customs places entry numbers on the entry at the customhouse at the time the entry is filed. Proposed § 142.3a would provide a voluntary procedure whereby an importer or broker could obtain from the district director sufficient entry numbers for use at any port within the district during a fiscal year. These entry numbers would be placed on the entry and corresponding entry summary by the importer or broker before filing the entry or entry summary.

5. Proposed § 142.4 would provide that merchandise could not be released until a bond has been filed. The bond requirements would be the same as those currently provided by § 142.4 for merchandise release under a special permit for immediate delivery. However, it is proposed that a rider be attached to the bonds. The rider would contain language conforming to the Act and thereby would eliminate the need for new bond forms at this time. Proposed § 142.5 would contain the text of the bond rider.

6. Proposed § 142.6 would provide for filing the entry documentation and the release of merchandise from Canada or Mexico when the customhouse is closed by filing the entry documentation with the appropriate Customs officer. Currently, § 142.4(b) provides for the release of that merchandise under the immediate delivery procedure when the customhouse is closed.

7. Proposed § 142.7 would specify the contents of the commercial invoice or acceptable substitute required as part of the entry documentation under proposed § 142.3. The invoice or substitute document would be required to contain:

(1) An adequate description of the merchandise,

(2) The quantities of the merchandise,

(3) The values or approximate values of the merchandise, and

(4) The appropriate 5-digit item number from the Tariff Schedules of the United States (TSUS)—the invoice thus would be "rated."

Customs would assist the importer in ascertaining the TSUS item number if requested.

8. Proposed § 142.8 would provide for the examination or taking of samples before release of any merchandise from Customs custody.

ENTRY SUMMARY DOCUMENTATION

Proposed §§ 142.11 through 142.19, which comprise Subpart B, would contain the provisions relating to the filing of the "entry summary" documentation.

1. Proposed § 142.11 would prescribe the use of Customs Form 7501 (now used as the "entry") as the "entry summary" unless a different form is prescribed elsewhere in the regulations. The district director would be authorized to require additional copies of the entry summary.

2. Proposed §§ 142.12 and 142.13 would contain the time requirements for the filing of the entry summary. In most instances, the importer would have the option to file the entry summary at the "time of entry" or within 10 working days after the "time of entry". In addition, the importer could submit the entry summary for preliminary review before the arrival of the merchandise. After completion of Customs review of the entry summary, the entry summary would be returned to the importer for later filing. Estimated duties, if any, would have to be deposited in accordance with proposed § 141.101, Customs Regulations, which provides that estimated duties ordinarily would have to be deposited when the entry summary is filed. Estimated duties would be separated from the entry summary immediately after filing and would be deposited in the appropriate depository by Customs no later than the following business day.

3. Under proposed §§ 142.13 and 142.14, the importer could be required to file the entry summary and deposit any estimated duties before release of the merchandise, if he:

(1) Fails repeatedly to file an entry summary timely without justification;

(2) Has not taken prompt action to settle a claim for liquidated damages issued under § 142.15 for failure to file an entry summary timely;

(3) Is substantially or habitually delinquent in the payment of Customs bills; or

(4) Has repeatedly filed entry summary documentation which is incomplete or which contains erroneous information.

There is a similar provision in current § 142.7, relating to the suspension of immediate delivery privileges.

4. Proposed § 142.15 provides for liquidated damages to be assessed for failure to file the entry summary timely. This provision would parallel present § 142.15 which provides for the assessment of liquidated damages for failure to make entry timely.

5. Proposed § 142.16 would set forth the documentation to accompany the entry summary. Under paragraph (a), if the entry documentation were filed before the entry summary, one copy of the entry document and the commercial invoice, or its substitute, would be returned to the importer after Customs authorizes release of the merchandise. These documents would be filed with the entry summary. In addition, Customs Form 5101, the Entry Record, and any documents required for that particular shipment, also would be filed with the entry summary. Under paragraph (b), if the entry summary were to be filed at time of entry, Customs Form 5101 and any documents required for that particular shipment would be required to accompany the entry summary, which would serve as both the entry and the entry summary.

6. Proposed § 142.17 would contain a new procedure allowing, under limited circumstances, one entry summary to cover multiple entries. The district director could permit this procedure to be used if all the merchandise has the same country of exportation, the same country of origin, the same air carrier or the same mode of land transportation, and the same consignee, and if:

(1) The time between the date of the first and last entries does not exceed 1 week,

(2) The entry summary if filed within 10 working days of the time of the first entry, and

(3) Each entry is identified separately on the entry summary by entry number.

However, this procedure would not be available to merchandise arriving by vessel, or to quota-class merchandise, prohibited merchandise, merchandise subject to restrictions which require processing and documentation more frequently than weekly, and merchandise subject to internal revenue tax.

7. Current § 142.14 provides that prohibited merchandise, inadvertently released from Customs custody under a special permit for immediate delivery is exempt from the requirement of making entry under certain circumstances. Proposed § 142.18 would contain a similar provision rephrased to refer to the exemption from the requirement of filing an entry summary after the inadvertent release of prohibited merchandise at time of entry.

8. Current § 143.3 relates to the release of merchandise upon the filing of the entry documentation when no special permit for immediate delivery is requested. It provides that the merchandise cannot be released until an appropriate bond has been filed or the entry has been liquidated. Proposed § 142.19 would contain a similar provision rephrased to refer to the release of merchandise when the entry summary is filed at time of entry.

Special Permit for Immediate Delivery

Proposed §§ 142.21 through 142.29, which comprise Subpart C, would provide for special permits for immediate delivery.

1. Proposed § 142.21(a) would provide that an application for a special permit for immediate delivery may be filed for merchandise arriving from Canada or Mexico.

2. Proposed § 142.21(b) would provide that an application for a special permit also may be filed for the transportation of fresh fruits and vegetables for human consumption arriving from Canada or Mexico to the importer's premises within the port of importation, but removed from the area immediately contiguous to the border. This section would continue the procedures in present § 142.2(b)(2) relating to that type of merchandise.

3. Proposed §§ 142.21 (c) and (d) would state that the only other merchandise eligible for release under the immediate delivery procedure would be (1) merchandise released from warehouse to be followed by warehouse withdrawal for consumption, and (2) merchandise for which Customs Headquarters specifically gives its approval.

4. Proposed § 142.22(a) would continue the requirements under current §§ 142.2 and 142.6(a) relating to the documentation required to secure release of merchandise under the immediate delivery procedure.

5. Proposed § 142.23 would provide that a warehouse withdrawal for consumption, or an entry summary, when required, must be filed within 10 working days after authorization for the release of the merchandise, or any portion of the merchandise, under the immediate delivery procedure. Current § 142.11 provides this same general rule, but contains a different time limit for merchandise subject to tariff-rate quota. Inasmuch as it is proposed to eliminate the use of the immediate delivery procedure for that type of merchandise (see discussion of proposed amendments to Part 132, below), proposed § 142.23 need not refer to merchandise subject to a tariff-rate quota. In addition, current § 142.11 provides a time limit for the entry of merchandise subject to an absolute quota after its release is authorized by the Commissioner. This provision no longer is necessary because merchandise subject to an absolute quota may not be released under a special permit for immediate delivery. Therefore, proposed § 142.23, would not refer to that type of merchandise.

6. Proposed §§ 142.25 through 142.29 would contain the provisions now set forth in the following sections:

(1) Section 142.7, relating to suspension of immediate delivery procedures;

(2) Section 142.15, relating to failure to make entry timely;

(3) Section 142.14, relating to the elimination of the requirement to make entry for merchandise released under the immediate delivery procedure and later found to be prohibited; and

(4) Section 142.16, relating to the applicability of other provisions of the regulations to merchandise released under the immediate delivery procedure.

Proposed §§ 142.25 through 142.29 contain only stylistic and editorial changes from the current provisions. No substantive changes are made.

Proposed Amendments to Part 141

It is proposed to amend various sections of Part 141, relating to the filing of entry documentation and the deposit of estimated duties.

1. Proposed § 141.0a would define "entry", "entry summary", "submission", "filing", and "presentation".

"Entry" would mean the documentation required to secure release of merchandise from Customs custody or the act of filing that documentation.

"Entry summary" would mean the documentation needed by Customs to assess duties and collect statistics on merchandise and to determine whether other requirements of law or regulation are met.

"Submission" would mean the voluntary delivery to the appropriate Customs officer of entry summary documentation for preliminary review, or of entry documentation for other purposes, including the scheduling of examination of the merchandise to secure expeditious release.

"Filing" would mean:

(1) The delivery to Customs of the entry documentation required by section 484(a), Tariff Act of 1930, as amended (19 U.S.C. 1484(a)) to obtain release of the merchandise, or

(2) The delivery to Customs, together with the desposit of estimated duties, of the entry summary documentation required to assess duties, collect statistics, and determine

whether other requirements of law and regulation are met, or

(3) The delivery to Customs of the entry summary which would serve as both the entry and the entry summary together with the deposit of estimated duties.

"Presentation" would be used only in connection with quota-class merchandise and would be as defined in § 132.1(d), Customs Regulations.

2. It is proposed to reword § 141.61, relating to the preparation and completion of entry papers, to refer to the preparation and completion of the "entry" and "entry summary" documentation. Two substantive changes to current requirements also are proposed:

(1) The time within which to produce required statistical documents for which a bond has been given would be reduced. The importer would have 1 month from the date of entry or from the date of withdrawal from warehouse for consuption, instead of 2 months, to produce the documents. This change is necessary because the Act imposes strict requirements on the timely collection of statistical data. In addition, this section would state in detail the requirements of the general statistical headnotes of the Tariff Schedules of the United States Annotated.

(2) The requirement in current § 141.61(g) that the importer of cotton textiles from Hong Kong must include on his entry papers a cotton textile category number would be eliminated. This information no longer is needed on the entry papers because of a bilateral agreement between the United States and Hong Kong.

3. It is proposed to amend § 141.62, relating to the hours for filing entry and withdrawal documentation with Customs. Paragraphs (a) and (b) would be reworded and redesignated paragraphs (b)(1) and (b)(2)(i). New paragraph (a) would relate to the place of filing of documentation. It would provide that entries on Customs Forms 3461 or 7533, informal entries, and applications for special permits for immediate delivery may be filed, either at the customhouse or at the Customs location, approved by the district director, where the merchandise is to be released. However, entry summaries, withdrawals, and entries other than those on Customs Forms 3461 or 7533 would have to be filed at the customhouse at the port of entry unless the district director approves the filing of those documents at a Customs station. This requirement is needed because the AMPS system is not yet implemented and Customs therefore presently does not have the capability to provide for acceptance of that documentation elsewhere. Section 141.62(b)(2)(ii) would incorporate the current procedure in the regulations relating to overtime services for quota-class merchandise.

4. Section 141.63(a) would provide for the submission of entry summary documentation when it serves as both entry and entry summary, including quota-class merchandise, for preliminary review before arrival of the merchandise so as to expedite the processing of the documentation after it is filed.

Section 141.63(a) would provide for the submission of entry summary documentation for quota-class merchandise after the arrival of the merchandise so as to provide for an equitable determination of quota priority.

5. It is proposed to make conforming amendments to the following sections:

(1) Section 141.64, relating to review and correction of entry papers; and

(2) Section 141.67, relating to recall of entry papers by the importer.

6. Section 141.65, which provides that an importer may deposit duties before Customs reviews his entry and applies the rate of duty in effect on the date of deposit, would be deleted. That section no longer would be needed because the Act amends 19 U.S.C. 1315(a) to provide that for merchandise entered before the filing of an entry summary and deposit of estimated duties, the applicable rate of duty is that in effect at the time of entry.

7. It is proposed to amend § 141.68, relating to the "time of entry." Paragraph (a) would set forth the circumstances when the entry documentation is filed without an entry summary. In that case, the time of entry shall be:

(1) The time the appropriate Customs officer authorizes the release of the merchadise covered by the entry documentation filed in proper form;

(2) The time the entry documentation is filed in proper form if requested by the importer, on the entry documentation at the time of filing and the merchandise already has arrived within the port limits, or

(3) The time the merchandise arrives within the port limits, if the entry documentation is submitted before arrival, and if requested by the importer on the entry documentation at the time of submission.

Paragraph (b) would set forth the circumstances when the entry summary serves as both an entry and an entry summary. In that case, the time of entry would be the time the entry summary is filed in proper form with estimated duties attached. Paragraph (c) would set forth the time of entry for quota class merchandise as the time of presentation of the entry summary in proper form, together with the deposit of estimated duties. Paragraph (d) would contain a provision that merchandise shall not be released, and the entry documentation or entry summary shall not be considered filed or presented, until the merchandise has arrived within the port limits with the intent to unlade. Paragraphs (e) through (g) would continue the current rules as to time of entry for these special categories of entries: Informal mail entry; withdrawal from warehouse from consumption; appraisement entry; informal entry; combined entry for rewarehouse and withdrawal for consumption; and entry under carnet.

8. It is proposed to amend § 141.69, relating to applicable rates of duty, to conform to the amendments proposed for § 141.68.

9. Section 141.83 specifies the type of notice required for various shipments of merchandise and the information to be included on the required invoices. Because the Act requires Customs to improve the collection of statistical information, it is proposed to amend paragraphs (c) and (d) of § 141.83, which state what information a commercial invoice or its substitute must contain. The amended sections would require that the document substantiate the statistical information required by § 141.61(e) to be given on the entry, entry summary, or withdrawal documentation. Present paragraph (d) also lists 15 classes of merchandise excepted from the general requirement that a Special Customs Invoice or commercial invoice shall be required. Substituted documents, such as pro forma invoices, may be delivered as long as they contain the appropriate information. The exceptions under paragraphs (d)(3) and (d)(4) apply to merchandise free of duty or subject to a specific rate of duty and account for by far the largest volume of excepted merchandise. Because of the great volume of these importations, and because a Special Customs Invoice or commercial invoice is the best evidence as the accuracy of the statistical information, it is proposed to delete paragraphs (d)(3) and (d)(4) from the list of exceptions in § 141.83.

10. Section 141.86 sets out the contents and general requirements of invoices. It is proposed to amend paragraphs (a)(8) and (c), relating to information about charges and costs, to identify more clearly those charges and costs needed for statistical purposes.

11. Section 141.91 specifies the limited conditions under which importation will be allowed if a required invoice is not available and a waiver is not granted. It is proposed to amend that section to add the condition that information and documentation adequate for statistical purposes be submitted. In addition, to insure the timeliness of the collection of statistics, the appropriate bond would require the produc-

tion of the required invoice within 1 month from the date of entry, instead of 6 months, if the invoice is needed for statistical purposes.

12. Section 141.92(a)(2) authorizes the district director to waive production of the rquired invoice if he is satisfied that examination of the merchandise and determination of duties may be made without the invoice. It is proposed to add that he also must be satisfied that the relevant statistics may be compiled without the invoice. It also is proposed to amend § 141.92(b), which requires certain documents to be filed before a waiver can be given, to provide for the filing of information needed by the district director for statistical purposes.

13. Section 141.101 provides that estimated duties shall be deposited at the time of making entry except in specific cases. It is proposed to add as a new exception merchandise released under an entry before the filing of an entry summary. In that case, estimated duties would have to be deposited at the time of the filing of the entry summary unless the merchandise is entered for warehouse.

Proposed Amendments to Part 132

It is proposed to amend Part 132, Customs Regulations, relating to import quotas. An import quota is a control on the quantity of merchandise which may be imported into the United States during a specified period. Customs administers two types of import quotas—absolute and tariff-rate. Under an absolute quota, the entry of merchandise subject to the quota is prohibited if the quota for the period has been filled. Under a tariff-rate quota, merchandise subject to the quota is assessed at a higher rate of duty upon entry if the quota for the period has been filled.

Under current procedures, merchandise subject to an absolute quota may not be released from Customs custody until an entry is made and estimated duties are deposited. The quota priority (precedence of one entry over another) and quota status (whether the merchandise is subject to quota control) are determined as of the time of presentation of the entry to Customs in proper form. Merchandise subject to a tariff-rate quota may be released under the immediate delivery procedure before entry and deposit of estimated duties. However, quota priority and status are determined either: (1) When Customs accepts the entry or, (2) when the entry is presented in proper form, if the merchandise is entered at the opening of the quota period.

It is proposed to amend the procedure with respect to merchandise subject to a tariff-rate quota by requiring (1) the presentation of the entry summary documentation and (2) the deposit of estimated duties, before the merchandise may be released. This change is needed because, under the Act, the presentation of the documents needed to obtain "release" of the merchandise is the "entry". Customs needs the information presented in the entry summary documentation before releasing the merchandise because that information enables Customs to determine the quota priority and status. Therefore, under this proposal, the procedures for release of both absolute quota and tariff-rate quota merchandise would be the same. Accordingly, it is proposed to amend § 132.14, Customs Regulations, to provide that quota merchandise would not be released under a special permit for immediate delivery or under an entry before the presentation of an entry summary with estimated duties attached.

It also is proposed to provide in § 132.14 for the assessment of liquidated damages if merchandise subject to quota were released inadvertently contrary to the provisions of that section. The district director would be authorized to cancel the claim for liquidated damages upon the deposit of a minimum of $25.

It further is proposed to add new § 132.11a, relating to the time of presentation of an entry for quota purposes. It is proposed to amend § 132.12 to set forth the preliminary review procedure for quota merchandise prior to the opening of the quota period. In addition, various other sections of Part 132 would be amended to conform to the changes made by the Act.

Proposed Amendments to Part 10

Conforming amendments also would be made to the following sections of Part 10, Customs Regulations, relating to entry requirements for articles conditionally free or subject to a reduced rate:

(1) Paragraphs (d), (g), and (h) of § 10.1, relating to domestic products exported and returned;

(2) Section 10.31(a), relating to temporary importations under bond; and

(3) Section 10.91, relating to wools and hair of the camel.

Warehouse and General Order Merchandise

Section 491, Tariff Act of 1930, as amended (19 U.S.C. 1491), provides a time limitation of 1 year from the date of importation for merchandise in "general order". Merchandise considered to be general order merchandise is described in section 490, Tariff Act of 1930, as amended (19 U.S.C. 1490), and § 127.1, Customs Regulations (19 CFR 127.1).

Sections 557 and 559, Tariff Act of 1930, as amended (19 U.S.C. 1557, 1559), formerly permitted merchandise to be kept in a Customs bonded warehouse at the owner's expense for a period up to 3 years after arrival of the merchandise in the United States.

Presidential Proclamation No. 2948, 64 Stat. c41 (1951), declaring a national emergency because of the Korean War, authorized the 1-year general order period and the 3-year warehouse period to be extended by an unlimited number of successive 1-year periods. The Presidential Proclamation was terminated as of September 14, 1978, by the National Emergencies Act (90 Stat. 1255).

Section 108 of the Act amends 19 U.S.C. 1557 and 1559 to permit merchandise to remain in a Customs bonded warehouse at the owner's expense for a period up to 5 years. There is no provision for an extension of time. Merchandise in a bonded warehouse on October 3, 1978, the date of enactment of Pub. L. 95-410, may remain in the warehouse for a period up to 5 years from that date.

Amendments to Parts 127 and 144

1. Several provisions of Parts 127 and 144 (19 CFR Parts 127, 144) provide for a 1-year general order, a 3-year warehousing period, and unlimited 1-year extensions. To conform the Customs Regulations to the Act, it is proposed to delete the references to extensions of the general order and warehousing periods which appear in §§ 127.4, 127.11, 127.12, 127.14, 144.5, 144.6, and 144.7 and to change the reference to a 3-year warehousing period in §§ 127.12 and 127.14 to 5 years.

2. Sections 127.3 and 144.6, which relate exclusively to extensions of the general order and the warehousing periods, respectively, would be deleted.

3. It is proposed to amend §§ 144.11 through 144.14 and 144.36(b), relating to procedures for warehouse entry and withdrawal, to conform to the new "entry" and "entry summary" requirements.

4. It is proposed to amend § 144.36(d) to provide that when merchandise is to be withdrawn from warehouse for transportation to another port of entry, the importer shall state on the transportation entry, Customs Form 7512, whether or not the merchandise is admissible for consumption and, if not, the reasons.

Under 19 U.S.C. 1557, it formerly was provided that estimated duties shall be deposited before merchandise could be withdrawn from warehouse for consumption. Section 108 amends 19 U.S.C. 1557 to authorize the withdrawal for consumption, without the payment of duties, of merchandise entered for warehouse, if the consignee or transferee is permitted to pay duties at a later time under the regulations to be prescribed pursuant to sec-

tion 505, Tariff Act of 1930, as amended (19 U.S.C. 1505), by section 103 of the Act. However, until AMPS is fully operational, Customs will continue to require that estimated duties be deposited at the time of filing the warehouse withdrawal when merchandise is withdrawn for consumption. Therefore, no amendments to the Customs Regulations are being proposed at this time regarding this provision.

ABATEMENT OR REFUND OF DUTIES—WAREHOUSED MERCHANDISE

Section 563, Tariff Act of 1930, as amended (19 U.S.C. 1563), provides for an abatement or refund of duties:

(1) For the actual injury to, or destruction of, merchandise by fire or other casualty occurring in a bonded warehouse within 3 years from the date of importation, and

(2) For the voluntary abandonment by the importer to the Government of his merchandise in a bonded warehouse within 3 years from the date of importation.

Pub. L. 95-410 does not conform the 3-year period in 19 U.S.C. 1563 to the 5-year period for warehousing merchandise in amended sections 557 and 559, Tariff Act of 1930, as amended (19 U.S.C. 1557, 1559). Therefore, the provisions of 19 U.S.C. 1563 will continue to apply to merchandise in a bonded warehouse only for 3 years from the date of importation.

There thus will be no abatement or refund of duties for actual injury to, or destruction of, merchandise by fire or other casualty occurring after the 3-year period even though merchandise may remain in a bonded warehouse for 5 years under section 557 of the Tariff Act, as amended by Pub. L. 95-410.

Similarly, an importer may not abandon voluntarily to the Government merchandise in a bonded warehouse after the 3-year period has expired to secure an abatement or refund of duties. However, the merchandise may remain in the warehouse for 5 years, in which case it would be considered abandoned involuntarily to the Government under section 559 of the Tariff Act, as amended by Pub. L. 95-410, and treated as unclaimed merchandise under section 493, Tariff Act of 1930, as amended (19 U.S.C. 1493).

Accordingly, it is proposed to amend §§ 158.21a and 158.43, Customs Regulations, to reflect that an abatement or refund of duties for actual injury to, or destruction of, merchandise by fire or other casualty in a bonded warehouse, or for the voluntary abandonment of merchandise in a bonded warehouse to the Government, may be made only if the casualty takes place or the merchandise is voluntarily abandoned within 3 years from the date of importation. No change is proposed in § 127.12(b)(4), which sets forth the 3-year period for voluntarily abandoned warehouse merchandise.

MARKING OF BULK CONTAINERS OF DISTILLED SPIRITS, WINES, AND MALT LIQUORS

Section 11 of the Act of March 1, 1897 (19 U.S.C. 467), formerly required all bulk containers of imported distilled spirits, wines, and malt liquors to be inspected, marked, and stamped by Customs before release from Customs custody.

Section 201 of the Act eliminates the mandatory inspection, marking, and stamping requirements of 19 U.S.C. 467. The Act permits the Secretary to require by regulation any marks, brands, and stamps, or devices to be placed on any bulk container of imported distilled spirits, wines, and malt liquors as he determines to be necessary in the administration of the Federal laws applicable to those products.

Section 11.6, Customs Regulations, provides for the mandatory stamping of containers of distilled spirits, wines, and malt liquors imported in bulk. It is proposed to amend that section to provide that the district director, in his discretion, may require that bulk containers be marked or stamped in accordance with 19 U.S.C. 1467. He shall determine the acceptability of any marks, brands, stamps, or devices he requires, based on the nature, surface, and composition of the container.

LIQUIDATION

Liquidation is the final computation or ascertainment of duties due on imported merchandise. Prior to enactment of Pub. L. 95-410, there was no law requiring liquidation to be completed within a specific time period.

Section 209 of the Act adds a new section 504 to the Tariff Act of 1930. Subsection (a) of section 504 provides that an entry is deemed to be liquidated (i.e. liquidated by operation of law), if not actually liquidated within 1 year from:

1. The date of entry of the merchandise,

2. The date of final withdrawal of all the merchandise covered by a warehouse entry, or

3. The date of withdrawal from warehouse of merchandise for consumption if duties may be deposited after the filing of an entry or withdrawal from warehouse.

An entry deemed liquidated by operation of law is liquidated at the rate of duty, value, quantity, and amount of duties asserted by the importer, his consignee, or agent at the time of entry. Customs is not required to give notice of liquidation if an entry is liquidated by operation of law.

Subsection (b) permits extensions of the 1-year period for liquidation at the request of the importer for good cause shown or if Customs needs further information. Customs is required to give notice of the extension to the importer, his consignee, or agent.

Subsection (b) also provides for extensions if liquidation is suspended as required by statute or court order. Subsection (c) requires Customs to give notice of any suspension of liquidation required by statute or court order to the importer or consignee and to his authorized agent and surety.

Subsection (d) provides that an entry not liquidated at the expiration of 4 years from the applicable date set forth in subsection (a) shall be deemed liquidated unless the liquidation continues to be suspended as required by statute or court order. When the suspension is removed, the entry shall be liquidated within 90 days.

These amendments are limited to entries or withdrawals of merchandise for consumption made after March 31, 1979, 179 days after enactment, and do not include vessel repair entries or drawback entries.

Accordingly, it is proposed to amend Part 159, Customs Regulations (19 CFR Part 159), to reflect these changes.

AMENDMENTS TO PART 159

1. Proposed new § 159.11 would state the time limitations for liquidation. Paragraph (a) would set forth 2 of the 3 circumstances the Act specifies for entries deemed liquidated—1 year from date of entry, or 1 year from the date of final withdrawal of all merchandise covered by a warehouse entry.

As indicated in the legislative history of the Act, the third circumstance—1 year from the date of withdrawal from warehouse for consumption if duties may be deposited after the filing of an entry or withdrawal from warehouse—relates only to those entries to be covered by the AMPS system. When AMPS is implemented nationwide, warehouse withdrawals will be liquidated separately and not accumulated, as is now the case, until all merchandise covered by a warehouse entry is withdrawn. Because Customs will not yet be implementing that system, the third circumstance for entries deemed liquidated would not be included in the regulations at this time.

Paragraph (a) of proposed § 159.11 also would state that notice of limitation of entries deemed liquidated would be given on the bulletin notice of liquidation required under sections 159.9 and 159.10. Even though the Act does not require it, Customs believes that notice of entries deemed liquidated would be beneficial to the import-

ing community and would not be unduly burdensome to Customs.

Paragraph (b) would state that the provisions relating to time limitations for liquidation would apply only to those entries or withdrawals for consumption made after March 31, 1979.

2. Proposed new § 159.12(a) would authorize the district director to grant an extension, not to exceed 1 year, of the time period for liquidation for any of the reasons specified in the Act. If the importer requests an extension, he would have to show good cause why it should be granted. "Good cause" would be demonstrated if the importer satisfies the district director that he needs more time to gather and present information which would affect the transaction, or that Customs is considering a question similar to one in issue.

3. Under proposed § 159.12 (b) and (c), the district director would be required to give written notice or any suspension or extension to the importer or consignee and his agent and surety.

4. Proposed § 159.12(d) would provide for additional extensions, not to exceed 1 year each, for the same reasons the initial extension is given.

5. Proposed § 159.12(e) would provide that the total time for extensions may not exceed 3 years.

6. Proposed § 159.12(f) would set out the statutory time limits on extensions of the period for liquidation.

7. Proposed § 159.12(g) would make clear that bulletin notice of liquidation would be given if an entry is liquidated after an extension expires or a suspension is removed.

8. It is proposed to amend § 159.9(c) relating to the date of liquidation on the bulletin notice. This section would provide that the date of liquidation for an entry deemed liquidated by operation of law would be the date of expiration of the period for liquidation. The bulletin notice would be posted or lodged in the customhouse within a reasonable time after liquidation, and the period within which a protest must be filed would run from the date of posting or lodging.

Reliquidation To Correct Clerical Errors

Section 520(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1520(c)(1)), provides that a Customs officer may reliquidate an entry to correct a clerical error, mistake of fact, or other inadvertence not amounting to an error in the construction of law if the error is adverse to the importer. However, this section formerly provided that the error must be brought to the attention of Customs within 1 year from the date of entry or transaction, or within 90 days after the date of liquidation reflecting that error if the liquidation was made more than 9 months after the date of entry.

Section 210 of the Act amends 19 U.S.C. 1520(c)(1) to provide that a clerical error, mistake of fact, or other inadvertence must be brought to the attention of the appropriate Customs officer within 1 year after the date of liquidation or exaction regardless of when liquidation occurs. In addition, the term "appraisement" is deleted from 19 U.S.C. 1520(c)(1) because the term "liquidation", also used in that statute, includes that action.

Accordingly, it is proposed to amend § 173.4(b), Customs Regulations (19 CFR 173.4(b)), by deleting the term "appraisement." It also is proposed to amend § 173.4(c) to reflect the time period for correction of a clerical error, mistake of fact, or other inadvertence. In addition, it is proposed to add a new paragraph (d) to § 173.4 to make it clear that the term "liquidation" as used in 19 U.S.C. 1520(c)(1) includes a reliquidation of an entry.

Authority

These amendments are proposed under the authority of R.S. 251, as amended (19 U.S.C. 66); section 11, 20 Stat. 342, as amended (19 U.S.C. 467); sections 315, 484, 505, 520(c)(1), 557, 559, 624, as amended, 46 Stat. 695, as amended, 722, as amended, 732, as amended, 739, as amended, 744, as amended, 759, 92 Stat. 888 (19 U.S.C. 1315, 1484, 1504, 1505, 1520(c)(1), 1557, 1559, 1624); Pub. L. 95-410 (October 3, 1978).

Comments

Before adopting this proposal, consideration will be given to any written comments, preferably in triplicate, that are submitted timely to the Commissioner of Customs. Comments submitted will be available for public inspection in accordance with § 103.8(b), Customs Regulations (19 CFR 103.8(b)), during regular business hours at the Regulations and Legal Publications Division, Headquarters, U.S. Customs Service, 1301 Constitution Avenue NW., Room 2335, Washington, D.C. 20229.

The comment period is 30 days, instead of the 60 days ordinarily required by Executive Order 12044 of March 23, 1978 (43 FR 12661) because this proposal is designed to implement legislative changes made by Pub. L. 95-410, which generally will become effective either upon enactment or 60 or 180 days therafter.

Drafting Information

The principal authors of this document were Benjamin H. Mahoney and Charles D. Ressin, Regulations and Legal Publications Division, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Proposed Amendments

It is proposed to amend Parts 10, 11, 127, 132, 141, 142, 143, 144, 158, 159, and 173, Customs Regulations (19 CFR Parts 10, 11, 127, 132, 141, 142, 143, 144, 158, 159, 173) in the following manner:

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. It is proposed to amend §§ 10.1 (d), (g) and (h) to read as follows:

§ 10.1 Domestic products; requirements on entry.

* * * * *

(d) If the district director is satisfied, because of the nature of the articles, or production or other evidence, that the articles are imported in circumstances meeting the requirements of item 800.00 or 805.00, Tariff Schedules of the United States, and the related headnotes, he may waive the requirements for producing the documents specified in paragraphs (a) and (b) of this section except when Customs Form 3311 is used as an entry summary (as defined in § 141.0a(b) of this chapter) under paragraphs (g) or (h), or as an informal entry under paragraph (i).

* * * * *

(g) *Aircraft and aircraft parts and equipment.* (1) In the case of aircraft and aircraft parts and equipment returned to the United States under item 800.00, Tariff Schedules of the United States, by or for the account of an aircraft owner or perator and intended for use in his own aircraft operations, within or outside the United States, the entry summary may be made on Customs Form 3311. The entry summary on Customs Form 3311 shall be executed by the entrant and supported by the entry documentation required by § 142.3 of this chapter. If the Customs officer is satisfied that the articles are products of the United States, that they have not been improved in condition or advanced in value while abroad, and that no drawback has been or will be paid, the other documents described in this section shall not be required, and no bond need be filed for their production.

(2) The entrant shall show on Customs Form 3311:

(i) The name and address of the aircraft owner or operator by whom or for whose account the articles are returned to the United States, in the block headed "Articles Returned To (Name and Address)",

(ii) The name of the importing vessel or conveyance,

(iii) The date of its arrival,
(iv) A description of the articles,
(v) The value of the articles, and
(vi) That the articles are intended for use by the aircraft owner or operator in his own aircraft operations.

(3) If Customs Form 3311 is filed at time of entry, it shall serve as both the entry and the entry summary.

(h) *Nonconsumable vessel stores and equipment.* (1) In the case of nonconsumable vessel stores and equipment returned to the United States under item 800.00, Tariff Schedules of the United States, the entry summary may be made on Customs Form 3311. The entry summary on Customs Form 3311 shall be executed in duplicate by the entrant and supported by the entry documentation required by § 142.3 of this chapter. Before an entry summary on Customs Form 3311 may be accepted for nonconsumable vessel stores and equipment, the Customs officer shall be satisfied that:
(i) The articles are products of the United States,
(ii) The articles have not been improved in condition or advanced in value while abroad,
(iii) No drawback has been or will be paid, and
(iv) No duty equal to an internal revenue tax is payable under item 804.20, Tariff Schedules of the United States.

(2) The declaration of the foreign shipper described in paragraph (a)(1) of this section and the certificate of exportation described in paragraph (a)(3) of this section shall not be required in connection with an entry for nonconsumable vessel stores and equipment on Customs Form 3311.

(3) To satisfy the Customs officer that no drawback has been or will be paid on the articles in connection with their removal from the United States, the master of the vessel or other person having knowledge of the facts shall furnish a written declaration which may be made on the reverse side of Customs Form 3311 showing that the articles were:
(i) Exported as stores or equipment on a United States vessel or a vessel operated by the United States Government,
(ii) Not landed in a foreign country, except for any needed repairs, adjustments, or refilling and return to the vessel from which landed or,
(iii) For transshipment as stores or equipment to another vessel.
(4) The entrant also shall show:
(i) The name of the importing vessel,
(ii) The date of its arrival,
(iii) A description of the articles, and
(iv) The value of the articles.
(5) If Customs Form 3311 is filed at time of entry, it shall serve as both the entry and the entry summary.

2. It is proposed to amend § 10.31(a) to read as follows:

§ 10.31 Entry; bond.

(a)(1) Entry of articles brought into the United States temporarily and claimed to be exempt from duty under Schedule 8, Part 5C, Tariff Schedules of the United States (TSUS),[34] unless covered by an A.T.A. carnet as provided in Part 114 of this chapter, shall be made on Customs Form 3461 or 7533, supported by the documentation required by § 142.3 of this chapter. However, when § 10.36 or § 10.36a is applicable, or the aggregate value of the article is not over $250, the form prescribed for the informal entry of importations by mail, in baggage, or by other means, may be used. When entry is made on Customs Form 3461 or 7533, an entry summary, Customs Form 7501, shall be filed within 10 days after time of entry, in accordance with Subpart B, Part 142 of this chapter.

(2) If Customs Form 7501 is filed at time of entry, it shall serve as both the entry and entry summary, and Customs Form 3461 or 7533 shall not be required. Customs Form 7501 shall be in original only, except for entries under item 864.05, TSUS, which require a duplicate copy for statistical purposes. When articles are entered under an A.T.A. carnet, the importation voucher of the carnet shall serve as the entry.

(3) In addition to the data usually shown on a regular consumption entry summary, each temporary importation bond entry summary shall include:
(i) The TSUS item number under which entry is claimed,
(ii) A statement of the use to be made of the articles in sufficient detail to enable the district director to determine whether they are entitled to entry as claimed, and
(iii) A declaration that the articles are not to be put to any other use and that they are not imported for sale or sale on approval.

* * * * *

3. It is proposed to amend § 10.91 to read as follows:

§ 10.91 Importation under item 306.00; entry or withdrawal under bond.

(a) The entry summary for wool or hair of the camel [82] imported for use in the manufacture of any of the articles enumerated in item 306.00, Tariff Schedules of the United States (TSUS),[83] shall be made on Customs Form 7501 and filed with the entry documentation listed in § 142.3(b) of this chapter before the merchandise shall be released, unless the merchandise is to be entered for warehouse. If the merchandise is to be entered for warehouse, the entry summary shall be made on Customs Form 7502 and filed with the entry documentation listed in § 142.3(b) of this chapter. In either case, Customs Form 7501 or 7502, as appropriate, shall serve as both the entry and the entry summary.

(b) When the entry summary is made on Customs Form 7501, it shall contain the following endorsement:

> Above merchandise entered under bond for use in the manufacture of _____ (camel hair belting, felt or knit boots, floor coverings, heavy fulled lumbermen's socks, press cloth, papermakers' felts, or pressed felt for polishing plat and mirror glass) under the provision of item 306.00, Tariff Schedules of the United States.
>
> The endorsement shall be signed by the obligor on the bond.

(c) When the merchandise is entered for warehouse, withdrawals for use in the manufacture of the articles enumerated shall be made on Customs Form 7506 in the name of the obligor on the bond.

(d) Wool or hair of the camel which has been released from Customs custody shall not be restored to a Customs status from which it thereafter could be entered or withdrawn under the provisions of item 306.00, TSUS.

PART 11—PACKING AND STAMPING; MARKING [1]

1. It is proposed to amend § 11.6 to read as follows:

§ 11.6 Distilled spirits, wines, and malt liquors in bulk.

(a) The district director, in his discretion, may require marks, brands, stamps, labels, or similar devices to be placed on any bulk container used for holding, storing, transferring, or conveying imported distilled spirits, wines, and malt liquors, in accordance with 19 U.S.C. 467.[2]

(b) Marks, brands, stamps, labels, or similar devices required by Federal, state, or local statute or regulation may be affixed, and Customs inspection, gauging, marking, or measurement may be done, at the place of unlading or other suitable place, unless the district director determines that inspection, gauging, marking, or measurement shall be done at a public store, warehouse, or other appropriate facility.

(c) Marks, brands, stamps, labels, or similar devices shall be permanent in nature and not subject to obliteration or removal as a result of handling or other conditions. The district director shall determine whether a mark, brand, stamp, label, or similar device is acceptable, based on the nature, surface, and composition of the container.

2. It is proposed to amend footnote 2 to Part 11 to read as follows:

[2] "The Secretary of the Treasury may by regulation require such marks, brands, and stamps or devices to be placed on any bulk container (including a pipeline) used for holding, storing, transferring or conveying imported distilled spirits, wines, or malt liquors as he deems necessary and proper in the administration of the Federal laws applicable to such imported distilled spirits, wines, or malt liquors and may specify those marks, brands, and stamps or devices which the importer or owner shall place or have placed on such containers. Any such container of imported distilled spirits, wines, or malt liquors withdrawn from customs custody purporting to contain imported distilled spirits, wines, or malt liquors found without having thereon any mark, brand, stamp, or device the Secretary of the Treasury may require, shall be with its contents, forfeited to the United States of America." (19 U.S.C. 467)

"Beverages in this subpart, containing over 24 percent of ethyl alcohol by volume when imported, are classed as spirits under item 168.52." (Schedule 1, part 12C, headnote 1, Tariff Schedules of the United States.)

PART 127—GENERAL ORDER, UNCLAIMED, AND ABANDONED MERCHANDISE

§ 127.3 [Deleted]

1. It is proposed to amend Part 127 by deleting § 127.3.

2. It is proposed to amend § 127.4 to read as follows:

§ 127.4 General order period defined.

The general order period is that period of time during which general order merchandise, as defined in § 127.1, is not subject to sale. The general order period expires 1 year from the date of importation.

3. It is proposed to amend § 127.11 to read as follows:

§ 127.11 Unclaimed merchandise.

Any entered or unentered merchandise (except merchandise under section 557, Tariff Act of 1930, as amended (19 U.S.C. 1557), but including merchandise entered for transportation in bond or for exportation) which remains in Customs custody for 1 year from the date of importation, or a lesser period for special merchandise as provide by §§ 127.28(c), (d), and (h), and without all estimated duties and storage and other charges having been paid, shall be considered unclaimed and abandoned.

(Sec. 491, 46 Stat. 726 as amended (19 U.S.C. 1491).)

4. It is proposed to amend § 127.12(a)(2) to read as follows:

§ 127.12 Abandoned merchandise.

(a) * * *

(1) * * *

(2) Any imported merchandise upon which any duties or charges are unpaid, remaining in a bonded warehouse beyond the 5-year warehouse period.

5. It is proposed to amend § 127.14(c)(1) to read as follows:

§ 127.14 Disposition of merchandise in Customs custody beyond time fixed by law.

(c) * * *

(1) Merchandise upon which all duties and charges have been paid which remains in a bonded warehouse beyond the 5-year warehouse period.

PART 132—QUOTAS

1. It is proposed to amend § 132.1 by deleting paragraph (c) and by revising paragraph (d) to read as follows:

§ 132.1 Definitions.

* * * * * *

(d) *Presentation.* "Presentation" is the delivery in proper form to the appropriate Customs officer of:

(1) An entry summary for consumption, which shall serve as both the entry and the entry summary, with estimated duties attached (see § 141.0a(b)), or

(2) A withdrawal for consumption, with estimated duties attached.

* * * * * *

2. It is proposed to amend § 132.3 to read as follows:

§ 132.3 Observation of official hours.

An entry summary for consumption and withdrawal for consumption of quota-class merchandise shall be presented only during offical office hours, except as provided in §§ 132.12 and 141.62(b) of this chapter. For purposes of administering quotas, "official office hours" shall mean 8:30 a.m. to 5:00 p.m. in all time zones.

3. It is proposed to amend §§ 132.11(a) and (b) to read as follows:

§ 132.11 Quota priority and status.

(a) *Determination of quota priority and status.* Quota priority and status are determined as of the time of presentation of the entry summary for consumption, or withdrawal for consumption, in proper form in accordance with § 132.1(d).

(b) *Documentation and deposit of duties in proper form required.* Merchandise covered by an entry summary for consumption which serves as both the entry and the entry summary, or by a withdrawal for consumption, which is not in proper form, or for which duties have not been attached or deposited in proper form, shall not be regarded as entered for purposes of quota priority and shall not acquire quota status. See §§ 141.4, 141.63, 141.68, 141.69, and 141.101 of this chapter.

4. It is proposed to amend Part 132 by adding new § 132.11a to read as follows:

§ 132.11a Time of presentation.

(a) *general rule.* Except as provided in paragraph (b) of this section, the time of presentation of an entry for quota purposes shall be the time of delivery in proper form of:

(1) An entry summary for consumption, which serves as both the entry and the entry summary, with estimated duties attached, or

(2) A withdrawal for consumption, with estimated duties attached.

(b) *Before arrival of merchandise.* The entry summary for consumption, without estimated duties attached, may be submitted for preliminary review before the merchandise arrives within the limits of the port where entry is to be made. In that case, the time of presentation of the entry summary for consumption shall be the time estimated duties are deposited after the importing carrier arrives within the port limits.

5. It is proposed to amend § 132.12 to read as follows:

§ 132.12 Procedure on opening of potentially filled quotas.

(a) *Preliminary review before opening.* When it is anticipated that a quota will be filled at the opening of the quota period, entry summaries for consumption, or withdrawals for consumption, with estimated duties attached, shall not be presented before 12 noon Eastern Standard Time in all time zones. However, an entry summary for consumption, or withdrawal for consumption, for merchandise which has arrived within the Customs territory of the United States may be submitted for preliminary review without deposit of estimated duties within a time period before the opening approved by the district director. Submission of these documents before opening will not accord the merchandise quota priority or status.

(b) *Simultaneous presentation.* Special arrangements shall be made so that all entry summaries for consumption, or withdrawals for consumption, for quota merchandise may be presented at the exact moment of the opening of the quota in all time zones. All importers prepared to present entry summaries for consumption, or withdrawals for consumption, when the quota opens shall be given equal opportunity to do so. All entry summaries for consumption, or withdrawals for consumption, presented in proper form (including those submitted for review before opening of the quota period if accompanied by the de-

posit of estimated duties) shall be considered to have been presented simultaneously.

(c) *Proration of quantities.* (i) The quantities on all entry summaries for consumption, or withdrawals for consumption, submitted simultaneously shall be prorated by Headquarters against the quota quantity admissible to determine the percentage to be allocated to each importer under the quota. Merchandise in excess of the quota shall be disposed of in accordance with § 132.5.

(2) In the event a quota is prorated, entry summaries for consumption, or withdrawals for consumption, with estimated duties attached, shall be returned to the importer for adjustment. The time of presentation for quota purposes, in that event, shall be the exact moment of the opening of the quota: *Provided,* That—

(i) An adjusted entry summary for consumption, or withdrawal for consumption, with estimated duties attached, is deposited within 5 working days after Headquarters authorizes release of the merchandise, and

(ii) The importer takes delivery of the merchandise within 15 working days after release is authorized.

In no case, however, may the importer take delivery before he deposits estimated duties.

6. It is proposed to amend § 132.13(a) to read as follows:

§ 132.13 Quotas after opening.

(a) *Procedure prior to fulfillment.* To secure for each importer the rightful quota priority and status for his quota-class merchandise, and to close the quota simultaneously at all ports of entry—

(1) *Authorization before release.* The Commissioner of Customs may require that the authorization of Headquarters be obtained prior to the release of the merchandise. However, merchandise subject to a tariff-rate quota may be released before obtaining Headquarters authorization after the entry summary for consumption has been filed and estimated duties have been deposited with the district director at the over-quota rate.

(2) *Notation on entry papers.* The appropriate Customs officer shall note the exact date, hour, and minute of presentation on each entry summary for consumption, or withdrawal for consumption, and shall report these facts to Headquarters.

7. It is proposed to amend § 132.13(b) by deleting "or of official acceptance" in the first sentence.

8. It is proposed to amend the section heading and § 132.14 to read as follows:

§ 132.14 Special permits for immediate delivery; entry of merchandise prior to presenting entry summary for consumption; permits of delivery.

(a) *Effect of issuance of special permit for immediate delivery, or filing of entry documentation, before presentation of entry summary*—(1) *Requirements for release.* Quota-class merchandise shall not be released under a special permit for immediate delivery, or upon filing entry documentation, before presentation of an entry summary for consumption, or a withdrawal for consumption, with estimated duties attached.

(2) *Effect of inadvertent release.* Inadvertent release under a special permit for immediate delivery, or upon filing entry documentation, before presentation of an entry summary for consumption, or a withdrawal for consumption, with estimated duties attached, shall not accord the merchandise any quota priority or status or entitle it to any other quota benefit.

(3) Procedures following inadvertent release.

(i) *Quota near fulfillment.* If quota-class merchandise is released inadvertently under a special permit for immediate delivery, or under entry documentation, before the presentation of an entry summary for consumption, or a withdrawal for consumption, with estimated duties attached, and the quota is near fulfillment, the district director—

(A) May demand the return to Customs custody of the released merchandise in accordance with § 141.113 of this chapter, and

(B) Shall require the filing of the entry summary for consumption, or a withdrawal for consumption, with the estimated duties attached. If the demand is complied with, the district director may cancel the claim for liquidated damages under the entry bond upon the payment of a minimum of $25. If the entry summary for consumption, or the withdrawal for consumption with estimated duties attached is not filed timely, or if the merchandise is not redelivered to Customs custody within 30 days from the date of the demand, the district director may assess liquidated damages in an amount equal to the value of the merchandise, plus estimated duties. For tariff-rate quota merchandise, the estimated duties shall be computed at the over-quota rate.

(ii) *Quota not near fulfillment.* If quota-class merchandise is released inadvertently under a special permit for immediate delivery, or under entry documentation, before the presentation of an entry summary for consumption or a withdrawal of consumption with estimated duties attached, and the quota is not near fulfillment, the district director shall require the timely filing of the entry summary for consumption with duties attached and may assess liquidated damages under the entry bond in an amount equal to the value of the merchandise, plus estimated duties. The district director may cancel liquidated damages upon the payment of a minimum of $25.

(b) *Permit of delivery.*—(1) *Effect of filing.* The issuance of a permit of delivery shall not accord the merchandise any quota priorities or status nor entitle it to any other quota benefit.

(2) *Time of issuance.*—(i) *Absolute quota merchandise.* A permit of delivery for merchandise subject to an absolute quota shall not be issued before a determination of the quota status of the merchandise.

(ii) *Tariff-rate quota merchandise.* A permit delivery for merchandise subject to a tariff-rate quota shall not be issued before a determination of the quota status of the merchandise unless estimated duties are deposited at the over-quota rate of duty.

§ 132.15 [Amended]

9. It is proposed to amend § 132.15 by substituting "141.68(c)" for "141.68(d)", and "presentation" for "acceptance".

PART 141—ENTRY OF MERCHANDISE

1. It is proposed to amend Part 141 to add a new § 141.0a, to read as follows:

§ 141.0a Definitions.

Unless the context requires otherwise or a different definition is prescribed, the following terms shall have the meanings indicated when used in connection with the entry of merchandise:

(a) *Entry.* "Entry" means that documentation required by § 142.2 of this chapter to be filed with the appropriate Customs officer to secure the release of imported merchandise from Customs custody, or the act of filing that documentation.

(b) *Entry Summary.* "Entry summary" means any other documentation necessary to enable Customs to assess duties, and collect statistics on imported merchandise, and determine whether other requirements of law or regulation are met.

(c) *Submission.* "Submission" means the voluntary delivery to the appropriate Customs officer of the entry summary documentation for preliminary review or of entry documentation for other purposes.

(d) *Filing.* "Filing" means:

(1) The delivery to Customs of the entry documentation required by section 484(a), Tariff Act of 1930, as amended (19 U.S.C. 1484(a)), to obtain the release of merchandise, or

(2) The delivery to Customs, together with the deposit of estimated

duties, of the entry summary documentation required to assess duties, collect statistics, and determine whether other requirements of law and regulation are met, or

(3) The delivery to Customs, together with the deposit of estimated duties, of the entry summary documentation which shall serve as both the entry and the entry summary.

(e) *Presentation.* "Presentation" is used only in connection with quota-class merchandise and is defined in § 132.1(d) of this chapter.

§ 141.5 [Amended]

2. It is proposed to amend the first sentence of § 141.5 by inserting "or aircraft," after "vessel".

3. It is proposed to amend the first sentence of § 141.19(a), § 141.19(b)(1), and the first sentence of § 141.19(b)(2) to read as follows:

§ 141.19 Declaration of entry.

(a) *Declaration by consignee.* The consignee in whose name an entry is made under the provisions of section 484, Tariff Act of 1930, as amended (19 U.S.C. 1484), shall execute the declaration specified in section 485(a), Tariff Act, of 1930, as amended (19 U.S.C. 1485(a)) on:

(1) The entry summary for merchandise entered for consumption, for warehouse, or for temporary importation under bond, or

(2) The rewarehouse or the bonded manufacturing warehouse entry.

The declaration need not be under oath. * * *

(b) *Declaration by agent of consignee—(1) Authorized agent with knowledge of the facts.* When entry is made in a consignee's name by an agent who has knowledge of the facts and who is authorized under a proper power of attorney by that consignee to make declarations in accordance with section 485(f), Tariff Act of 1930, as amended (19 U.S.C. 1485(f)), a declaration on the entry or entry summary executed by that agent is sufficient and no bond to produce a declaration of the consignee is required.

(2) *Other agents.* When entry is made in a consignee's name by an agent who does not meet the qualifications in paragraph (b)(1) of this section either:

(i) A declaration of the consignee on Customs Form 3347-A shall be filed with the entry documentation or entry summary or

(ii) A charge for the production of the declaration shall be made against the entry bond.

(3) * * *

* * * * * *

4. It is proposed to amend § 141.20(a) to read as follows:

§ 141.20 Actual owner's declaration and superseding bond of actual owner.

(a) *Filing—(1) Declaration of owner.* A consignee in whose name an entry is made and who desires, under the provisions of section 485(d), Tariff Act of 1930, as amended (19 U.S.C. 1485(d)), to be relieved from statutory liability for the payment of increased and additional duties shall declare at the time of the filing of the entry summary or entry documentation, as provided in § 141.19(a), that he is not the actual owner of the merchandise, furnish the name and address of the owner, and file with the district director within 90 days from the time of entry (see § 141.68) a declaration of the actual owner of the merchandise acknowledging that the actual owner will pay all additional and increased duties. The declaration of owner shall be filed on Customs Form 3347.

(2) *Bond of actual owner.* If the consignee desires to be relieved from contractual liability for the payment of increased and additional duties voluntarily assumed by him under the single-entry bond which he filed in connection with the entry documentation and/or entry summary, or under his term bond against which the entry and/or entry summary is charged, he shall file a bond of the actual owner on Customs Form 7601 with the district director within 90 days from the time of entry.

* * * * *

5. It is proposed to amend § 141.61 to read as follows:

§ 141.61 Completion of entry and entry summary documentation.

(a) *Preparation.* (1) Entry and entry summary documentation shall be prepared on a typewriter, or with ink, indelible pencil, or other permanent medium. The entry summary shall be signed by the importer (see § 101.1(k)). Entries, entry summaries, and accompanying documentation shall be on the appropriate forms specified by the regulations and shall set forth clearly all required information. All copies shall be legible.

(2) An importer may omit from the entry summary for consumption, Customs Form 7501, the warehouse entry summary, Customs Form 7502, or the warehouse withdrawal for consumption, Customs Form 7505 or 7519, the marks and number of packages previously released or withdrawn.

(b) *"Signing of the entry".* The signing of the consignee's declaration on the entry summary for merchandise entered for consumption, for warehouse, or for temporary importation under bond, in accordance with § 141.19, shall be regarded as the "signing of the entry" required by section 484(d), Tariff Act of 1930, as amended (19 U.S.C. 1484(d)). For a rewarehouse or a bonded manufacturing warehouse entry, the signing of the consignee's declaration on the entry documentation shall satisfy 19 U.S.C. 1484(d).

(c) [Reserved]

(d) *Customs Form 5101.* An Entry Record, Customs Form 5101, shall be prepared by the importer, in triplicate, with carbon paper left in, and shall be filed with each consumption or warehouse entry summary and with each appraisement, vessel/aircraft repair, or drawback entry. The importer number shall be reported as follows:

(1) *Generally.* Except as provided in paragraph (d)(2) of this section, the importer number of the importer of record and of the ultimate consignee shall be reported for each consumption or warehouse entry summary and for each appraisement, vessel/aircraft repair, or drawback entry. When the importer of record and the ultimate consignee are the same, the importer number shall be entered in both spaces provided on Customs Form 5101.

(2) *Exception.* In the case of a consolidated entry summary covering the merchandise of more than one ultimate consignee, the importer number shall be reported on Customs Form 5101, and the notation "consolidated" shall be made in the space provided for the importer number of the ultimate consignee.

(3) *When refunds, bills, or notices of liquidation are to be mailed to agent.* If an importer of record desires to have refunds, bills, or notices of liquidation mailed in care of his agent, the agent's importer number also shall be reported on Customs Form 5101. In this case, the importer of record shall file, or shall have filed previously, a Customs Form 4811 authorizing the mailing of refunds, bills, or notices of liquidation to the agent.

(e) *Statistical information—(1) Information required on entry summary or withdrawal form.—(i) Where form provides space.* For each class or kind of merchandise subject to a separate statistical reporting number, the applicable information required by the General Statistical Headnotes, Tariff Schedules of the United States Annotated ("TSUSA"), shall be shown on the entry summary, Customs Form 7501 or 7502, the rewarehouse entry, Customs Form 7502 or 7519, the manufacturing warehouse entry, Customs Form 7521, or the withdrawal form, Customs Form 7505 or 7506, in the spaces provided. If a class or kind of merchandise from the same country of origin subject to the same statistical reporting number is included in more than one invoice, the information shall be combined and reported under one statistical reporting number.

When consolidating information from several invoices under one reporting number, a work sheet itemizing the entered value of the merchandise from each invoice in the manner prescribed in paragraph (f)(1) of this section shall be attached to the appropriate form.

(ii) *Where form does not provide space.* In addition to the information required by paragraph (e)(1)(i) of this section, statistical information for which spaces are not provided on the appropriate form, shall be shown as follows:

(A) The name, the abbreviated designation or 4 digit code of the country of registry (flag) of the vessel expressed in terms of Annex 8, TSUSA, shall be placed in the block on the entry document for the name of the importing vessel or carrier.

(B) The notation "related" or "not related", as appropriate, shall be placed at the top of columns 3, 4, and 5 of Customs Forms 7501, 7502, 7505, 7506, and 7521, and in the top right hand portion of Customs Form 7519, to identify the transaction as one between a buyer and a seller who are related in any manner specified in section 402(g)(2), Tariff Act of 1930, as amended (19 U.S.C. 1401a(g)(2)), or as one between a buyer and a seller who are not so related.

(C)(1) The transaction value, charges, and equivalent value shall be listed on Customs Forms 7501, 7502, 7505, 7506, and 7521 in column 4 immediately below the TSUSA reporting number. These amounts shall be identified by placing (in the following order) PEXT (port of exportation transaction value), CHGS (aggregate cost of freight, insurance and all other charges), and EPEX (equivalent port of exportation value) in column 3 immediately below the entered value and to the left of each statistical value and charge.

(2) The transaction value, charges, and equivalent value shall be listed on Customs Form 7519 in the rate column with the descriptions (PEXT, CHGS, EPEX) immediately to the left of each statistical value and charge.

(3) In the case of related parties, if the district director is satisfied that the person filling the form cannot reasonably ascertain or estimate the equivalent port of exportation value (EPEX) that would exist had the transaction occurred between parties who were not related, he may permit that person to use the entered value adjusted, if necessary, to the port of exportation value, as provided for in subparagraph (xv), General Statistical Headnote 1(a), TSUSA, or any other value the district director considers appropriate. However, if the transaction value between related parties is higher than the entered value, the transaction value shall be used.

(2) *Responsibility.* The person filing the form is responsible for providing the information required by paragraph (e)(1) of this section. If the information required by subparagraph (xiv), (xv), and (xvi) General Statistical Headnote 1(a), TSUSA, cannot be obtained readily, the person filing the form shall provide reasonable estimates of the required information. The acceptance of an estimate for a particular transaction does not relieve the person filing the form from obtaining the necessary information for similar future transactions. The district director may require additional documentation to substantiate the statistical information required by paragraph (e)(1) of this section. The importer shall give an appropriate bond for the production of the required documentation within 1 month after the date of withdrawal or within 20 days after the date the entry summary is required to be filed, unless a reasonable extension of time is granted by the district director for good cause shown.

(3) *Estimates of statistical information.* When the person filing the form estimates any of the values or charges, as provided for in subparagraph (v), General Statistical Headnote 1(b), TSUSA, he shall place either "(estimate)" or "(est)" after the amount of each value or charge.

(4) *Rejection of form.* The district director shall reject a form for failure to provide required statistical information if the information is omitted or if the information provided clearly appears on its face, or is shown to the Customs officer, to be erroneous.

(5) *Penalty procedures; when not invoked.* Penalty procedures relating to erroneous statistical information shall not be invoked against any person who in good faith attempts to comply with the statistical requirements of the General Statistical Headnotes, TSUSA.

(f) *Value of each invoice.*—(1) *Single invoice.* If the entry, entry summary, or withdrawal documentation, as specified in paragraph (e)(1)(i) of this section, covers a single invoice, the invoice information shall be restated to show:

(i) Gross amount of the invoice;

(ii) Deduction of the aggregate amount of any non-dutiable charges involved in the amount;

(iii) Further deduction of the aggregate of any deductions from the invoice values to make entered values: and

(iv) Addition of the aggregate of any dutiable charges not included in the gross amount of the invoice and of any other additions to the invoice values to make entered values. The final amount in the summary computations shall represent the aggregate of the entered value of all the merchandise covered by the invoice. The required information shall be shown on a worksheet attached to the form of placed across columns (2a) or (2b) on Customs Forms 7501 and 7502, and in the same general location on Customs Forms 7305, 7306, 7310 and 7321.

(2) *Multiple invoices.* If the entry, entry summary, or withdrawal documentation, as specified in paragraph (e)(1)(i) of this section, covers multiple invoices, the information required to be restated by paragraph (f)(i) of this section for a single invoice shall be restated for each invoice. The final amount in the summary computation shall represent the aggregate of the entered values of all the merchandise on each of the multiple invoices. The required information shall be shown on an attached worksheet.

(ii) The worksheet also shall contain:

(A) A statistical reporting number restatement for the merchandise from each invoice subject to the same statistical reporting number from the same country of origin, and

(B) An aggregate total value which represents the entered values.

(iii) To permit the identification of the merchandise entered under each reporting number, each class or kind of merchandise from one country reported under a single statistical reporting number shall be coded identically on each invoice and on the worksheet.

2. It is proposed to amend § 141.62 to read as follows:

§ 141.62 Place and time of filing.

(a) *Place.* Entry, entry summary, or withdrawal documentation, other than that on Customs Forms 3461 or 7533, or informal entries, shall be filed at the customhouse unless the district director approves filing at a Customs station. Entries on Customs Form 3461 or 7533, informal entries, and applications for immediate delivery may be filed at the customhouse or at the customs location, approved by the district director, where the merchandise is to be released.

(b) *Time.*—(1) *Normal business hours.* Except as provided in paragraph (b)(2) of this section and in § 142.6 of this chapter, relating to entry of merchandise from Canada or Mexico when the customhouse is closed, entry, entry, summary, withdrawal documentation, and applications for special permits for immediate delivery shall be filed only when the customhouse is open for the general transaction of business as provided in § 101.6 of this chapter.

(2) *Overtime services*—(i) *Generally.* Except as provided in paragraph (b)(2)(ii) and in § 142.6 of this chapter,

entry, entry summary, and withdrawal documentation, and applications for special permits for immediate delivery may be filed when the customhouse is not open for the general transaction of business if:

(A) The person desiring to transact business has applied for and received authorization for overtime services on a reimbursable basis, as provided for in § 24.16 of this chapter, and

(D) Overtime services of Customs officers are available.

(ii) *Quota-class merchandise.* Overtime shall not be authorized for the presentation of entry summary documentation which serves as both the entry and entry summary or withdrawal documentation, for quota-class merchandise without Headquarters authorization. If Headquarters authorization is granted, the time of delivery the entry summary or withdrawal documentation, which the estimated duties attached, shall be the time of presentation for quota purposes. However, if an entry summary of withdrawal for quota-class merchandise is delivered inadvertently during overtime hours without Headquarters authorization, the time of presentation for quota purposes shall be the opening of business on the next business day.

3. It is proposed to amend § 141.63 to read as follows:

§ 141.63 Submission of entry summary documentation for preliminary review.

(a) *Before arrival of merchandise.* Entry summary documentation may be submitted at the customhouse for preliminary review, without estimated duties attached, within such time before arrival of the merchandise as may be fixed by the district director——

(1) If the entry summary documentation will be filed at time of entry to serve as both the entry and the entry summary, as provided in § 142.3(b) of this chapter, or

(2) In the case of quota-class merchandise, if the entry summary for consumption will be presented at time of entry, as provided in § 132.11a of this chapter

Estimated duties shall not be accepted before arrival of the merchandise within the port limits.

(b) *After arrival of merchandise.* Entry summary documentation may be submitted at the customhouse for preliminary review, without estimated duties attached, within such time after arrival of quota-class merchandise as may be fixed by the district director, if the entry summary for consumption will be presented at the opening of the quota period, as provided in § 132.12(a) of this chapter. Estimated duties shall not be accepted before the opening of the quota period.

4. It is proposed to amend § 141.64 to read as follows:

§ 141.64 Review and correction of entry and entry summary documentation.

Entry and entry summary documentation shall be reviewed before acceptance to ensure that all entry and statistical requirements are complied with and that the indicated values and rates of duty appear to be correct. If any errors are found, the entry and the entry summary documentation shall not be considered to have been filed in proper form and shall be returned to the importer for correction.

§ 141.65 [Deleted]

5. It is proposed to amend Part 141 by deleting § 141.65.

6. It is proposed to amend § 141.67 to read as follows:

§ 141.67 Recall of documentation.

The importer may recall the entry and entry summary documentation at any time before the effective time of entry set forth in § 141.68. The entry shall be considered canceled, and documents shall be returned to the importer.

7. It is proposed to amend § 141.68 to read as follows:

§ 141.68 Time of entry.

(a) *When entry documentation is filed without entry summary.* When the entry documentation is filed in proper form without an entry summary, the "time of entry" shall be:

(1) The time the appropriate Customs officer authorizes the release of merchandise covered by the entry documentation, or

(2) The time the entry documentation is filed, if requested by the importer on the entry documentation at the time of filing, and the merchandise already has arrived without the port limits; or

(3) The time the merchandise arrives within the port limits, if the entry documentation is submitted before arrival, and if requested by the importer on the entry documentation at the time of submission.

(b) *When entry summary serves as entry and entry summary.* When an entry summary serves as both the entry documentation and entry summary, in accordance with § 142.3(b) of this chapter, the time of entry shall be the time the entry summary is filed in proper form with estimated duties attached.

(c) *Quota-class merchandise.* The time of entry for quota-class merchandise shall be the time of presentation of the entry summary or withdrawal for consumption in proper form, with estimated duties attached, as provided in § 132.11a of this chapter.

(d) *When merchandise has not arrived.* Merchandise shall not be authorized for release, nor shall an entry or an entry summary which serves as both the entry and entry summary be considered filed or presented, until the merchandise has arrived within the port limits with the intent to unlade.

(e) *Informal mail entry.* The time of entry of merchandise under an informal mail entry, Customs Form 3419 or 5110-A, is the time the preparation of the entry documentation by a Customs employee is completed.

(f) *Withdrawal from warehouse for consumption.* The time of entry of merchandise withdrawn from warehouse for consumption (the process preparatory to the issuance of a permit for the release of the merchandise to or upon the order of the warhouse proprietor) is when:

(1) Customs Form 7505 is executed in proper form and filed together with any related documentation required by these regulations to be filed at the time of withdrawal, and

(2) Estimated duties, if any, required to be paid at the time of withdrawal have been deposited.

Unless the requirements of this paragraph and section 315(a), Tariff Act of 1930, as amended (19 U.S.C. 1315(a)), including the deposit of estimated duties, if any, are completed within 60 days from the date of presentation of Customs Form 7505, the request for withdrawal shall be considered abandoned.

(g) *Appraisement entry, informal entry, combined entry for rewarehouse and withdrawal for consumption, and entry under carnet* The time of entry of merchandise under an appraisement entry, Customs Form 7500, an informal entry, Customs Form 5119-A, a combined entry for rewarehouse and withdrawal for consumption, Customs Form 7519, or an A.T.A. carnet issued under Part 114 of this chapter, shall be the time the specified form is executed in proper form and filed together with any related documents required by these regulations, and estimated duties, if any, have been deposited.

8. It is proposed to amend the introductory text and paragraph (a) of § 141.69 to read as follows:

§ 141.69 Applicable rates of duty.

The rates of duty applicable to merchandise shall be the rates in effect at time of entry, as specified in § 141.68, except as otherwise specifically provided for by Executive Order, and in the following cases:

(a) *Warehouse entries.* Merchandise entered for warehouse is dutiable at the rates in effect at the time with-

drawal from warehouse for consumption is made in accordance with § 141.68(f).

9. It is proposed to amend the first sentence of § 141.81 to read as follows:

§ 141.81 Invoice for each shipment.

A special Customs invoice, a special summary invoice, or a commercial invoice shall be presented for each shipment of merchandise at the time the entry summary is filed, subject to the conditions set forth in these regulations. * * *

10. It is proposed to amend § 141.83(c) to read as follows:

§ 141.83 Type of invoice required.

* * * * *

(c) *Commercial invoice.* (1) A commercial invoice shall be filed for each shipment of imported merchandise not required by paragraph (a) to have a special Customs invoice and not exempted by paragraph (d) from both a special Customs invoice and a commercial invoice. The commercial invoice shall be prepared in the manner customary in the trade, contain the information required by §§ 141.86 through 141.89, and substantiate the statistical information required by § 141.61(e) to be given on the entry, entry summary, or withdrawal documentation.

(2) The district director may accept a copy of a required commercial invoice in place of the original. A copy other than a photostatic copy shall contain a declaration by the foreign seller, the shipper, or the importer that it is a true copy.

§ 141.83 [Amended]

11. It is proposed to delete subparagraph (3) and (4) of § 141.83(d) and to amend the introductory language to read as follows:

(d) *Special Customs or commercial invoice not required.* A special Customs invoice or a commercial invoice shall not be required in connection with the filing of the entry, entry summary, or withdrawal documentation for merchandise listed in this paragraph. The importer, however, shall present any invoice, memorandum invoice, or bill pertaining to the merchandise which may be in his possession or available to him. If no invoice or bill is available, a pro forma (or substitute) invoice, as provided for in § 141.85, shall be filed, and shall contain information adequate for the examination of merchandise and the determination of duties, and information and documentation which verify the information required for statistical purposes by § 141.61(e). The merchandise subject to the foregoing requirements is as follows:

* * * * *

12. It is proposed to amend the introductory language of paragraph (a), paragraph (a)(8), and paragraph (c) of § 141.86 to read as follows:

§ 141.86 Contents of invoices and general requirements.

(a) *General information required on the invoice.* Each invoice of imported merchandise shall set forth the following information:

* * * * *

(8) All charges upon the merchandise itemized by name and amount, including freight, insurance, commission, cases, containers, coverings, and cost of packing; and if not included above, all charges, costs, and expenses incurred in bringing the merchandise from alongside the carrier at the port of exportation in the country of exportation and placing it alongside the carrier at the first United States port of entry. The cost of packing, cases, containers, and inland freight to the port of exportation need not be itemized by amount if included in the invoice price, and so identified. Where the required information does not appear on the invoice as originally prepared, it shall be shown on an attachment to the invoice; and

* * * * *

(c) *Merchandise sold in transit.* If the merchandise is sold on the documents while in transit from the port of exportation to the port of entry, the original invoice reflecting the transaction under which the merchandise actually began its journey to the United States and the resale invoice shall be filed as part of the entry, entry summary, or withdrawal documentation. If the original invoice cannot be obtained, a pro forma invoice showing the values and transaction reflected by the original invoice shall be filed together with the resale invoice. If the entry, entry summary, or withdrawal documentation is filed by or for the account of the person who purchased the merchandise while in transit, a statement showing the price paid for each item by that purchaser also shall be filed.

13. It is proposed to amend the introductory language and paragraphs (c) and (d) of § 141.91 to read as follows:

§ 141.91 Entry without required invoice.

If a required invoice is not available in proper form at the time the entry or entry summary documentation is filed and a waiver is not granted in accordance with § 141.92, the entry or entry summary documentation shall be accepted only under the following conditions:

* * * * *

(c) The invoices and other documents contain information adequate for the examination of merchandise, the determination of estimated duties, if any, and information and documentation adequate for statistical purposes; and

(d) The importer gives an appropriate bond for the required invoice, which must be delivered within 6 months after the date of the filing of the entry or entry summary documentation, unless the invoice is needed for statistical purposes. In that case, the invoice shall be produced within 20 days after the date the entry summary documentation is required to be filed, unless a reasonable extension of time is granted by the district director in accordance with § 141.61(e)(2).

14. It is proposed to amend §§ 141.92(c)(2) and (b)(4) to read as follows:

§ 141.92 Waiver of invoice requirements.

(a) *When waiver may be granted.* * * *

(2) The examination of merchandise, final determination of duties, and collection of statistics can be effected properly without the production of the required invoice.

(b) *Documents to be filed by importer.* * * *

(4) Any other information required by the district director for either appraisement or classification of the merchandise, or for statistical purposes.

15. It is proposed to amend § 141.101 by redesignating paragraphs (a), (b), (c), and (d) as paragraphs (b), (c), (d), and (e), respectively, by amending the introductory language and by adding a new paragraph (a) to read as follows:

§ 141.101 Time of deposit.

Estimated duties shall be deposited with the Customs officer designated to receive the duties at the time of the filing of the entry documentation or the entry summary documentation when it serves as both the entry and entry summary, except in the following cases:

(a) *Merchandise released under entry documentation.* In the case of merchandise released under the entry documentation listed in § 142.3 of this chapter before filing of the entry summary, deposit of estimated duties shall be made at the time the entry summary is filed unless the merchandise is entered for warehouse. If the merchandise is entered for warehouse, estimated duties shall be deposited in ac-

cordance with paragraph (b) of this section.

* * * * *

PART 142—ENTRY PROCESS

It is proposed to revise Part 142 to read as follows:

Sec.
142.0 Scope.

Subpart A—Entry Documentation

142.1 Definitions.
142.2 Time for filing entry.
142.3 Entry documentation required.
142.3a Assigned entry numbers.
142.4 Bond requirements.
142.5 Bond Rider.
142.6 Entry of merchandise from Mexico and Canada when the customhouse is closed.
142.7 Invoice requirements.
142.8 Examination of merchandise.
142.9 Failure to file entry timely.

Subpart B—Entry Summary Documentation

142.11 Entry summary form.
142.12 Time for filing or submission for preliminary review.
142.13 When entry summary must be filed at time of entry.
142.14 Delinquent payment of Customs bills.
142.15 Failure to file entry summary timely.
142.16 Entry summary documentation.
142.17 One entry summary for multiple entries.
142.18 Entry summary not required for prohibited merchandise.
142.19 Release of merchandise under the entry summary.

Subpart C—Special Permit for Immediate Delivery

142.21 Merchandise eligible for special permit for immediate delivery.
142.22 Application for special permit for immediate delivery.
142.23 Time limit for filing documentation after release.
142.24 Term special permit.
142.25 Suspension of immediate delivery privileges.
142.26 Delinquent payment of Customs bills.
142.27 Failure to file documentation timely.
142.28 Warehouse withdrawal or entry summary not required for prohibited merchandise.

PROHIBITED MERCHANDISE: NO OTHER ENTRY FILED

142.29 Other procedures applicable.

§ 142.0 Scope.

This part sets forth requirements and procedures relating to (a) the entry of merchandise, as authorized by section 484 Tariff Act of 1930, as amended (19 U.S.C. 1484), and (b) special permits for immediate delivery of merchandise, as authorized by section 448(b), Tariff Act of 1930, as amended (19 U.S.C. 1448(b)).

Subpart A—Entry Documentation

§ 142.1 Definitions.

For definitions of "entry", "entry summary", "submission", "filing", and "presentation", as these terms relate to the entry of merchandise, see § 141.0a of this chapter.

§ 142.2 Time for filing entry.

(a) *General rule: After arrival of merchandise.* Merchandise for which entry is required shall be entered by the consignee within 5 working days after the entry of the importing vessel or aircraft, report of the vehicle, or arrival at the port of destination in the case of merchandise transported in bond, unless a longer time is authorized by law or regulation, or by the district director in writing.

(b) *Before arrival of merchandise—*(1) *Entry.* The entry documentation required by § 142.3(a) may be submitted before the merchandise arrives within the limits of the port where entry is to be made, in which case the time of entry shall be the time specified in § 141.68(a).

(2) *When entry summary serves as entry.* The entry summary when it will be filed at time of entry to serve as both the entry and the entry summary, as provided in § 142.3(b), may be submitted for preliminary review in accordance with §§ 141.63(a) and 142.12(a)(2).

§ 142.3 Entry documentation required.

(a) *Contents.* Except as provided in paragraph (b) of this section, the entry documentation required to secure the release of merchandise shall consist of the following:

(1) *Entry.* Customs Form 3461 (appropriately modified), except that Customs Form 7533 (appropriately modified), in duplicate, may be used in place of Customs Form 3461 for merchandise imported from a contiguous country. The form used shall be prepared in accordance with § 141.61(a)(1) of this chapter.

(2) *Evidence of the right to make entry.* Evidence of the right to make entry, as set forth in § 141.11 of this chapter.

(3) *Commercial invoice.* A commercial invoice, except that in those instances listed in § 141.83(d) of this chapter where a commercial invoice is not required, a pro forma invoice or other acceptable documentation listed in that section may be submitted in place of a commercial invoice.

(4) *Packing list.* A packing list, where appropriate.

(5) *Other documentation.* Other documents which may be required by Customs or other Federal, state, or local agencies for a particular shipment.

(b) *Entry summary filed at time of entry.* When the entry summary is filed at time of entry, in accordance with § 142.12(a)(1) or § 142.13,

(1) Customs Form 3461 or 7533 shall not be required, and

(2) Customs Form 7501, 7502, or 3311, as appropriate (see § 142.11), shall serve as both the entry and the entry summary documentation: *Provided,* The additional documentation set out in paragraphs (a)(2), (3), (4), and (5) of this section and § 142.16(b) is filed.

(b) *Extra copies.* The district director may require additional copies of the entry documentation.

§ 142.3a Assigned entry numbers.

(a) *Request and authorization.* Upon the written request of an importer or broker, the district director shall assign sufficient entry numbers for use by the importer or broker at any port within the district during the fiscal year. Numbers shall be assigned in blocks of not less than 100. Additional requests and assignments may be made during the fiscal year if additional numbers are needed.

(b) *"Fiscal year" defined.* For purposes of this section, the initial "fiscal year" shall begin on October 3, 1978, and end on September 30, 1979. Thereafter, each fiscal year shall begin on October 1 and end on September 30.

(c) *Assigned entry number and its use.* The assigned entry number shall be a six-digit number preceded by the last two digits of the fiscal year and a space; for example, 79 100001. The importer or broker shall place the assigned entry number on the entry and the corresponding entry summary documentation. The number shall be preprinted, stamped, typed or written legibly. Each number shall be used only once.

(d) *Report.* Within 30 days after the end of the fiscal year, each importer or broker to whom entry numbers have been assigned shall account in writing to the district director for each entry number which has not been used. Entry numbers assigned but not used during the fiscal year shall be cancelled.

(e) *Refusal to assign entry numbers; cancellation.* The district director may refuse to assign entry numbers to an importer or broker, or may cancel entry numbers previously assigned and remaining unused, if the importer or broker:

(1) Fails to account satisfactorily to the district director for any numbers assigned but not used, or

(2) Misuses numbers which have been assigned to him.

(f) *Alternative procedure.* If an importer or broker does not request assignment of entry numbers, or if the district director, in accordance with paragraph (e) of this section, refuses to assign entry numbers, or cancels

entry numbers, previously assigned, the importer or broker shall obtain an entry number at the customhouse before his merchandise may be released. The entry number so obtained shall be placed on the entry and the corresponding entry summary documentation.

§ 142.4 Bond requirements.

Except as provided in § 10.101(d) of this chapter, merchandise shall not be released from Customs custody at the time Customs receives the entry documentation or the entry summary documentation which serves as both the entry and the entry summary, as required by § 142.3, unless one of the following types of bonds, executed by an approved corporate surety, or secured by cash deposits or obligations of the United States, as provided for in § 113.59(a) of this chapter, has been filed:

(a) *Single entry bond.* A single entry bond on Customs Form 7551, with the amount of the bond determined in accordance with § 113.14(g)(1) of this chapter. When any of the imported merchandise is subject to a tariff-rate quota and is to be released at a time when the applicable quota is filled, the full rates shall be used in computing the estimated duties to determine the amount of the bond.

(b) *Term bond.* A term bond on Customs Form 7553, with the amount of the bond determined in accordance with § 113.14(g)(2) of this chapter.

(c) *General term bond.* A general term bond on Customs Form 7595, with the amount of the bond determined in accordance with §§ 113.14(s) and 113.62 of this chapter.

§ 142.5 Bond Rider.

A bond rider in the following form shall be executed and attached to any entry bond provided for in § 142.4, utilized by an importer who makes entry under the provisions of section 484, Tariff Act of 1930, as amended (19 U.S.C. 1484):

RIDER

(To be attached to all entry bonds)

Whereas certain merchandise which is described in a bond-dated , in the amount of , executed by , as principal, and , as surety, to which this rider relates has been imported at the port of , and entered at said port on entry No. , dated 19 , or the principal expects to enter merchandise during the period covered by a term bond to which this rider relates dated 19 , in the amount of , executed by , as principal, and , as surety.

Whereas the merchandise, in whole or in part, may be entered under the provisions of section 464 of the Tariff Act of 1930, as amended (19 U.S.C. 1464), and duties deposited under the provisions of section 505(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1505(a)).

It is hereby expressly agreed by the principal and surety on the bond referenced above that the following condition, in addition to the conditions appearing in the bond, shall apply: And if where entry is made pursuant to section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484), the bounden principal, within the time prescribed in the Customs Regulations, shall file with the appropriate Customs officer the documentation required by the Customs Regulations to enable Customs to (1) determine whether the merchandise may be released from Customs custody, (2) properly assess duties on the merchandise, (3) collect accurate statistics with respect to the merchandise, and (4) determine whether applicable requirements of law or regulation are met; and if the bounden principal, within the time prescribed in the Customs Regulations, shall deposit the duties and taxes imposed upon or by reason of importation estimated to be due thereon; or if, in the event of failure to file the documentation or to deposit duties and taxes, he shall pay to the district director of Customs as liquidated damages an amount equal to the value of the merchandise as to which there shall have been default, plus the duties and taxes thereon (it being understood and agreed that the amount to be collected shall be based upon the quantity and value of the merchandise as determined by the district director, and that the decision of the district director as to the status of the merchandise, whether free or dutiable, together with the rate and amount of duties and taxes, also shall be binding on all parties to this obligation).

Witness our hands and seals this day of 19 .

(SEAL)

PRINCIPAL

(SEAL)

SURETY

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, certify that I am the * of the corporation named as principal in the rider; that , who signed the said rider on behalf of the principal, was then of said corporation; that I know this signature, and his signature thereto is genuine; and that said rider was duly signed, sealed, and attested for and in behalf of said corporation by authority of its governing body.

(CORPORATE SEAL)

(To be used when no power of attorney has been filed with the district director of Customs)

§ 142.6 Entry of merchandise from Mexico and Canada when the custom-house is closed.

If merchandise destined to places other than the port of arrival arrives from Canada or Mexico when the customhouse is closed, the entry documentation required by § 142.3 may be filed with the chief Customs officer on duty, and the merchandise may be released if the importer has on file in the customhouse a term bond in accordance with § 142.4(b) or (c). § 142.7 Invoice requirements.

(a) *Contents.* The commercial invoice, or the documentation acceptable in place of a commercial invoice in those instances listed in § 141.83(d) of this chapter, shall be furnished with the entry and before release of the merchandise is authorized. The commercial invoice or other acceptable documentation shall contain:

(1) An adequate description of the merchandise.

(2) The quantities of the merchandise.

(3) The values or approximate values of the merchandise.

(4) The appropriate five-digit item number from the tariff Schedules of the United States. If the importer is uncertain of the appropriate tariff item number, Customs shall assist him at his request.

(b) *Information not required when filing entry.* In addition to the information specified in paragraph (a) of this section, the commercial invoice or substitute document filed with the entry documentation also may include any other invoice information required by §§ 141.66 through 141.89 of this chapter. However, if this information does not appear on the invoice or substitute document filed with the entry documentation, shall be included in the invoice or substitute document presented at the time the entry summary documentation is filed.

§ 142.8 Examination of merchandise.

No merchandise for which the entry documentation required by § 142.3 has been filed shall be released until it has been examined, or until adequate samples have been taken in the case of merchandise which is to be classified and appraised by means of samples, unless this requirement is waived by the district director in accordance with section 499, Tariff Act of 1930, as amended (19 U.S.C. 1499).

§ 142.9 Failure to file entry timely.

Merchandise for which timely entry is not filed as required by § 142.2 shall be treated in accordance with § 4.37 and Part 127 of this chapter.

Subpart B—Entry Summary Documentation

§ 142.11 Entry summary form.

(a) *Customs Form 7501.* The entry summary shall be on Customs Form 7501 unless a different form is prescribed elsewhere in this chapter. Customs Form 7501 shall be used for both merchandise formally entered for consumption, and formally entered under a temporary importation bond under § 10.31. The entry summary for merchandise which may be entered free of duty in accordance with § 10.1(g) or

*May be executed by the secretary, assistant secretary, or other officer of the corporation.

(h) of this chapter may be on Customs Form 3311 instead of on Customs Form 7501, and the entry summary for warehouse entries shall be on Customs Form 7502.

(b) *Extra copies.* The district director may require additional copies of the entry summary.

§ 142.12 Time for filing or submission for preliminary review.

(a) *At option of importer*—(1) *Filing.* Except as provided in § 142.13, the importer may file the entry summary documentation at the time of entry in which case the entry summary, with estimated duties attached, shall serve as both the entry and the entry summary.

(2) *Submission for preliminary review.* If the importer intends to file the entry summary documentation at the time of entry, he may submit the entry summary documentation for preliminary review before arrival of the merchandise, in accordance with § 141.63(a) of this chapter. After preliminary review is completed, the entry summary shall be returned to the importer for filing in accordance with paragraph (a)(1) of this section.

(b) *When required.* If the importer is not required to file the entry summary documentation at the time of entry under the provisions of § 142.13, or if he does not elect to do so, the entry summary documentation shall be filed, with estimated duties attached, within 10 working days after the time of entry.

(c) *Estimated duties.* Estimated duties, if any, shall be deposited in accordance with the provisions of Subpart G of Part 141 of this chapter.

§ 142.13 When entry summary must be filed at time of entry.

(a) *Authority of district director.* The district director may require that the entry summary documentation be filed and that estimated duties, if any, be deposited at the time of entry before the merchandise is released if the importer:

(1) Has failed repeatedly to file timely entry summary documentation without justification,

(2) Has not taken prompt action to settle a claim for liquidated damages issued under § 142.15 for failure to file entry summary documentation timely. "Prompt action" means that the importer, within the time specified in a claim for liquidated damages, shall petition for relief or pay the amount claimed and, in appropriate cases, file the entry summary documentation and deposit estimated duties, if any, or

(3) Has repeatedly filed entry summary documentation, which is incomplete or which contains erroneous information.

(b) *Authority of regional commissioner.* The regional commissioner may require that the entry summary documentation be filed and that estimated duties, if any, be deposited at the time of entry before the merchandise is released if the importer is substantially or habitually delinquent in the payment of Customs bills. See § 142.14.

(c) *Special classes of merchandise.* Entry summary documentation shall be presented with estimated duties attached, before release of quota-class merchandise (see Part 132), or filed at the time of entry before release of any other merchandise of a class designated by Headquarters.

(d) *Brokers; restriction.* A broker shall not circumvent an action taken under this section by applying for release of the importer's merchandise in the broker's name and under the broker's bond.

§ 142.14 Delinquent payment of Customs bills.

The following procedure shall be followed if an importer is substantially or habitually delinquent in the payment of Customs bills:

(a) *Notice.* The importer shall be advised in writing by the regional commissioner of Customs for the region in which he is substantially or habitually delinquent that he shall file the entry summary documentation with estimated duties attached, before his merchandise may be released from Customs custody in that region. The notice shall state the reason for the action and advise the importer that if payment of all his delinquent Customs bills is not made within 10 working days from the date of the notice, he shall be required to file the entry summary document with estimated duties attached, before his merchandise may be released in any Customs region. In either case, the entry summary shall serve as both the entry and the entry summary.

(b) *Removal or requirement by region.* If the importer pays all his delinquent Customs bills within 10 working days after the date of the notice, the requirement shall be removed, and the importer need file only the entry documentation specified in § 142.3 to secure release of his merchandise.

(c) *Removal of requirement by Headquarters.* If the importer has not paid all his delinquent Customs bills within 10 working days after the date of the notice, he also shall be required to file the entry summary documentation, with estimated duties attached, in each Customs region. In this case, the entry summary shall serve as both the entry and the entry summary. This requirement shall remain in effect in each port of entry until notification is received from Headquarters that the requirement is removed and that the importer need submit only the entry documentation listed in § 142.3 to secure release of his merchandise.

§ 142.15 Failure to file entry summary timely.

If the entry summary documentation is not filed timely, the district director shall make an immediate demand for liquidated damages in the entire amount of the bond in the case of a single entry bond. When the transaction has been charged against a term bond, the demand shall be for the amount that would have been demanded if the merchandise had been released under a single entry bond. Any application to cancel liquidated damages incurred shall be made in accordance with Part 172 of this chapter.

§ 142.16 Entry summary documentation.

(a) *Entry summary not filed at time of entry.* When the entry documentation is filed before the entry summary documentation, one copy of the entry document and the commercial invoice, or the documentation filed in place of a commercial invoice in the instances listed in § 141.83(d) of this chapter, shall be returned to the importer after Customs authorizes release of the Merchandise. The importer may use these documents in preparing the entry summary, Customs Form 7501, and shall file them with the entry summary documentation within the time period stated in § 142.15. The entry summary documentation also shall include Customs Form 5101 and any other documents required for a particular shipment, such as a Special Customs Invoice, Customs Form 5515, unless a bond for missing documents is on file, as provided in § 141.66 of this chapter.

(b) *Entry summary filed at time of entry.* When the entry summary documentation is filed at time of entry, the documentation listed in § 142.3 shall be filed at the same time, except that Customs Form 3461 or 7533 shall not be required. The importer also shall file Customs Form 5101 and any additional invoice required for a particular shipment, such as a Special Customs invoice, Customs Form 5515.

§ 142.17 One entry summary for multiple entries.

(a) *Requirements.* Except as provided in paragraph (b) of this section, the district director may permit the filing of one entry summary document for merchandise the subject of separate entries if:

(1) The merchandise has the same country of exportation, and the same country of origin,

(2) The merchandise arrives by the same air carrier or the same mode of land transportation,

(3) The merchandise is consigned to the same consignee,

(4) The time between the date of the first entry and the date of the last entry does not exceed 1 week,

(5) The entry summary document is filed within 10 working days from the date of the first entry, and

(6) Each entry is identified separately by entry number on the entry summary.

(b) *Merchandise not eligible.* One entry summary shall not be used for multiple entries of the following:

(1) Quota-class merchandise,

(2) Prohibited merchandise,

(3) Merchandise subject to restrictions which require processing and documentation more frequently than on a weekly basis,

(4) Merchandise for which liquidation has been withheld, and

(5) Merchandise subject to internal revenue tax.

(c) *Entry documentation not in proper form.* If an entry summary for multiple entries refers to entry documentation which is not in proper form, the entry summary and the entry documentation shall be returned for correction.

§ 142.18 Entry summary not required for prohibited merchandise.

(a) *Exportation or destruction of prohibited merchandise.* If merchandise released at time of entry is later found to be prohibited, the district director shall demand its return to Customs custody in accordance with § 141.113 of this chapter, and an entry summary and the deposit of estimated duties, if any, shall not be required provided:

(1) An entry for exportation, Customs Form 7512, or an application to destroy the merchandise under Customs supervision is made within 10 days after the time of entry, and the exportation or destruction is accomplished promptly, or

(2) An entry for transportation and exportation, Customs Form 7512, is made within 10 days after the time of entry and domestic carriage of the merchandise does not conflict with the requirements of another Federal agency.

(b) *Procedures for exportation or destruction.* The exportation or destruction of prohibited merchandise as required by paragraph (a) shall be in accordance with §§ 158.41 and 158.45(c) of this chapter.

§ 142.19 Release of merchandise under the entry summary.

Merchandise, for which an entry summary serves as both an entry and an entry summary, shall not be released from Customs custody until an appropriate bond has been filed, or the entry has been liquidated, as follows:

(a) *Bond.* Merchandise not designated for examination may be released to, or upon the order of, the carrier if an entry bond is filed on Customs Form 7551, 7555, or 7595, in an amount determined in accordance with Part 113 of this chapter. Merchandise designated for examination may be released under the entry bond after examination has been completed if:

(1) It has been found to be truly and correctly invoiced,

(2) It is entitled to admission into the commerce of the United States, and

(3) Its release is not precluded by any law or regulation. If merchandise is entered by or on behalf of a United States Government department or agency, the stipulation prescribed in § 141.102(d) of this chapter shall be accepted in place of a bond.

(b) *After liquidation.* If a bond has not been filed in accordance with paragraph (a) of this section, the merchandise shall not be released before:

(1) The entry has been liquidated and the full amount of all duties and taxes due, including dumping or other special duties and charges, has been paid, or the right to free entry established,

(2) The district director determines that the merchandise may be admitted into the commerce of the United States, and

(3) All documents relating to the merchandise which are required by law or regulation have been filed.

Subpart C—Special Permit for Immediate Delivery

§ 142.21 Merchandise eligible for special permit for immediate delivery.

Merchandise may be released under a special permit for immediate delivery, in accordance with section 448(b), Tariff Act of 1930, as amended (19 U.S.C. 1448(b)), in the following circumstances:

(a) *Contiguous countries.* At the discretion of the district director, merchandise from Canada or Mexico may be released under a special permit for immediate delivery provided the importer has on file one of the types of Customs bonds described in § 142.4. An entry summary shall be filed, and estimated duties shall be deposited, within the time period specified in § 142.23 for all merchandise from contiguous countries released under a special permit except for fresh fruits and vegetables for human consumption released under the provisions of paragraph (b) of this section.

(b) *Fresh fruits and vegetables.* (1) An application for a special permit for immediate delivery may be made for the transportation of fresh fruits and vegetables for human consumption arriving from Canada or Mexico to the importer's premises within the port of importation, but removed from the area immediately contiguous to the border.

(2) The application shall be supported by a term bond on Customs Form 7553, or a general term bond on Customs Form 7595 as prescribed in § 142.4, to which a rider in the following format has been added:

Immediate Delivery of Fresh Fruits and Vegetables Arriving from Canada or Mexico—to be added to Customs Forms 7553 and 7595.

In addition to the conditions appearing in the bond dated ————, in the amount of ———, executed by ————, as principal and ————, as surety, to which this stipulation relates, it is hereby expressly agreed by the principal and surety thereon that the following additional condition shall apply:

If, pursuant to section 448(b) of the Tariff Act of 1930, as amended (19 U.S.C. 1448(b)), and § 142.21(a) of the Customs Regulations, fresh fruits and vegetables have been released for immediate delivery from ———— to the importer's premises at ———— the produce shall be transported and stored in accordance with the regulations, and may be examined and disposed of according to § 138.11(b) of the Customs Regulations; the balance of the produce shall be entered for consumption, entered for transportation and exportation, or transported in bond under an entry for immediate transportation without appraisement. In the event of failure to make an appropriate entry or deposit the estimated duties due, when so required, the above-bounden principal shall pay to the district director of Customs as liquidated damages an amount equal to the value of the merchandise plus the charges and duties thereon (it being understood and agreed that the amount to be collected shall be based upon the quantity and value of such merchandise as determined by the district director of Customs, and that the decision of the district director of Customs as to the status of such merchandise, whether free or dutiable, together with the rate and amount of duties, also shall be binding on all parties to this obligation).

Witness our hands and seals this —— day of ———, 19——.

———— (*Seal*)
PRINCIPAL ————
———— (*Seal*)
SURETY ————

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, ————, certify that I am the *———— of the corporation named as principal in the rider; that ———— , who signed the said rider on behalf of the principal, was then ———— of said corporation; that I know his signature, and his signature thereto is genuine; and that said rider was duly signed, sealed, and at-

*May be executed by the secretary, assistant secretary, or other officer of the corporation.

tested for and in behalf of said corporation by authority of its governing body.

_____ *(Corporate Seal)*

(To be used when no power of attorney has been filed with the district director of Customs)

(3) The fresh fruits and vegetables shall be transported to the importer's premises in the vehicles in which they crossed the border or, if transshipment is necessary in vehicles provided by the importer. The fresh fruits and vegetables may be examined at the importer's premises. Those portions without commercial value may be disposed of in accordance with the provisions of § 158.11(b) of this chapter, and the balance shall be entered for consumption or transported in bond under an entry for immediate transportation without appraisement or under an entry for transportation and exportation.

(c) *Release from warehouse followed by warehouse withdrawal for consumption.* At the discretion of the district director, merchandise may be released from warehouse under a special permit provided the importer has on file one of the types of Customs bonds provided for in § 142.4. The immediate delivery permit shall be annotated to state that a warehouse withdrawal for consumption will be filed for this merchandise.

(d) *When authorized by Headquarters.* Headquarters may authorize the release of merchandise under the immediate delivery procedure in circumstances other than those described in paragraphs (a), (b), and (c), of this section provided an appropriate bond is on file.

§ 142.22 Application for special permit for immediate delivery.

(a) *Form.* An application for a special permit for immediate delivery shall be made on Customs Form 3461 supported by the documentation provided for in § 142.3, except that a commercial invoice shall not be required. Instead of a commercial invoice, the importer may deliver to Customs a pro forma invoice, waybill, or other document setting forth an adequate description of the merchandise and the quantities, together with the values or approximate values when values are needed for the purpose of examination. If the merchandise is to be released under a term special permit, the documentation also shall show the term special permit number, as provided for in § 142.24.

(b) *Customs custody.* Merchandise for which a special permit for immediate delivery has been issued under § 142.21 shall be considered to remain in Customs custody until the filing of one of the following:

(1) An entry summary for consumption, with estimated duties attached;

(2) A warehouse withdrawal for consumption, with estimated duties attached;

(3) An entry for transportation and exportation, immediate transportation without appraisement, or direct exportation; or

(4) An application to destroy.

§ 142.23 Time limit for filing documentation after release.

The applicable documentation described in § 142.22(b) shall be filed, and estimated duties, if any, shall be deposited, within 10 working days after the merchandise or any part of the merchandise is authorized for release under a special permit for immediate delivery.

§ 142.24 Term special permit.

(a) *Conditions for issuance.* At the discretion of the district director, a term special permit for immediate delivery may be issued on Customs Form 5461, appropriately modified, for a class or classes of merchandise particularly described in the application for the permit, to be imported during a period not to exceed 1 year from the date of the permit.

(b) *Notation of value for each shipment.* When applying for the release of a shipment of merchandise under a term special permit for immediate delivery, the importer shall note a value for the shipment on the documentation presented. The value so noted shall not be less than the invoice value.

(a) *Authority of district director.* The district director may discontinue immediate delivery privileges if the importer:

(1) Has failed repeatedly to file the applicable Customs documentation set forth in § 142.22(b) timely without justification, or

(2) Has not taken prompt action to settle a claim for liquidation damages issued under § 142.27 for failure to file the application Customs documentation set forth in § 142.22(b) timely. "Prompt action" means that the importer, within the time specified in a claim for liquidated damages, shall petition. for relief or pay the amount claimed and, file the applicable documentation and deposit estimated duties, if any.

(b) *Authority of regional commissioner.* The regional commissioner may discontinue immediate delivery privileges if the importer is substantially delinquent in the payment of Customs bills. See § 142.26.

(c) *Brokers; restriction.* A broker shall not circumvent an action taken under this section by applying for the immediate release of the importer's merchandise in the broker's name and under the broker's bond.

§ 142.26 Delinquent payment of Customs bills.

The following procedures shall be followed if an importer is substantially or habitually delinquent in the payment of Customs bills:

(a) *Notice.* The importer shall be advised in writing by the regional commissioner of Customs for the region in which he is substantially or habitually delinquent that his immediate delivery privileges have been suspended in that region. The notice shall state the reason for the action and advise the importer that if payment of all his delinquent Customs bills is not made within 10 working days from the date of the notice, the importer's immediate delivery privileges also shall be suspended in all Customs regions.

(b) *Reinstatement of privileges by region.* If the importer pays all his delinquent Customs bills within 10 working days after the date of the notice, the suspension shall be removed, and the importer's immediate delivery privileges shall be reinstated.

(c) *Reinstatement of privileges by Headquarters.* If the importer has not paid all his delinquent Customs bills within 10 working days after the date of the notice, his immediate delivery privileges shall be suspended in all Customs regions. This suspension shall remain in effect in each port of entry until notification is received from Headquarters that the suspension is removed and that the importer's immediate delivery privileges have been reinstated.

§ 142.27 Failure to file documentation timely.

If the applicable Customs documentation set forth in § 142.22(b) is not filed within the time provided in § 142.23, the district director shall make an immediate demand for liquidated damages in the amount of the bond in the case of a single entry bond. When the transaction has been charged against a term bond, the damand shall be for the amount that would have been demanded if the merchandise had been released under a single entry bond. Any application for cancellation of liquidated damages incurred shall be made in accordance with Part 172 of this chapter.

§ 142.28 Warehouse withdrawal or entry summary not required for prohibited merchandise.

(a) *Exportation or destruction of prohibited merchandise.* If merchandise released under a special permit for immediate delivery later is found to be prohibited, the district director shall demand its recall in accordance with § 141.115 of this chapter (applica-

ble to the recall of merchandise released from Customs custody), and warehouse withdrawal or entry summary documentation and the deposit of estimated duties, if any, shall not be required provided:

(1) The merchandise is exported or destroyed under Customs supervision within the time limit for entry specified in § 142.25, or

(2) An entry for exportation or for transportation and exportation on Customs Form 7512, or an application to destroy the merchandise, is made within the specified time limit, and the exportation or destruction is accomplished promptly.

(b) *Procedures for exportation or destruction.* The exportation or destruction of prohibited merchandise required by paragraph (a) of this section shall be under the same procedures as exportation or destruction of prohibited merchandise covered by a consumption entry with remission or refund of duties. See §§ 158.41 and 158.45(c) of this chapter.

(c) *Notation on exportation entry.* An entry for exportation or for transportation and exportation of prohibited merchandise for which no entry summary for consumption has been filed shall be stamped or imprinted conspicuously with the legend:

PROHIBITED MERCHANDISE; NO OTHER ENTRY FILED

§ 142.29 Other procedures applicable.

Merchandise released under a special permit for immediate delivery shall be subject to the same procedures applicable to all other imported merchandise, unless specific procedures are set forth in this subpart.

PART—143 APPRAISEMENT AND INFORMAL ENTRIES

§§ 143.1—143.3 [Deleted]

It is proposed to delete § 143.1, 143.2, and 143.3.

PART 144—WAREHOUSE AND REWAREHOUSE ENTRIES AND WITHDRAWALS

1. It is proposed to amend § 144.5 to read as follows:

§ 144.5 Period of warehousing.

(a) *Generally.* Except as provided in paragraph (b) of this section, merchandise shall not remain in a bonded warehouse beyond 5 years from the date of importation.

(b) *Exception.* For merchandise remaining in a bonded warehouse on October 3, 1978, the date of enactment of Pub. L. 95-410 (92 Stat. 888), any period of time the merchandise was in a bonded warehouse before that date shall be disregarded and the 5-year period shall commence on that date.

§ 144.6 [Deleted]

2. It is proposed to delete § 144.6.

3. It is proposed to amend § 144.7 to read as follows:

§ 144.7 Disposition of merchandise after expiration of warehousing period.

Merchandise remaining in a bonded warehouse after the expiration of the warehousing period shall be disposed of in accordance with § 127.14 of this chapter.

4. It is proposed to amend § 144.11 to read as follows:

§ 144.11 Form of entry.

(a) *Entry.* The documentation required by § 142.3 of this chapter shall be filed at the time of entry. If the warehouse entry summary, Customs Form 7502, is filed at time of entry, it shall serve as both the entry and the entry summary, and Customs Forms 3461 or 7533 shall not be required. If the warehouse entry summary is not filed at the time of entry, it shall be filed within the time limit prescribed by § 142.12 of this chapter. If merchandise is released before the filing of the warehouse entry summary, the importer shall have a bond on file, as prescribed by § 142.4 of this chapter.

(b) *Customs Form 7502.* The entry summary for merchandise entered for warehouse shall be executed in triplicate on the Warehouse or Rewarehouse Entry, Customs Form 7502, appropriately modified, and shall include all of the statistical information required by § 141.61(e) of this chapter. The district director may require an extra copy or copies of the Warehouse or Rewarehouse Permit, Customs Form 7502-A, for use in connection with delivery of the merchandise to the bonded warehouse.

(c) *Designation of warehouse.* The importer shall deisignate on the warehouse entry summary, Customs Form 7502, the bonded warehouse in which he desires his merchandise deposited and the bonded cartman or lighterman by whom he wishes the goods transferred.

(d) *Specification list.* When packages which are not uniform in contents, quantities, values, or rates of duties are grouped together as one item on an entry summary, a specification list (original only) shall be furnished with the entry summary, showing separately opposite the marks or numbers of each package, the quantity of each class of merchandise, the entered value of each class, and the rates of duty claimed for each. However, a specification list is not needed if one withdrawal is to be filed for all the merchandise covered by the entry summary.

5. It is proposed to amend § 144.12 to read as follows:

§ 144.12 Contents of entry summary; estimated duties.

The entry summary, Customs Form 7502, shall show the value, classification, and rate of duty as approved by the district director at the time the entry summary is filed. However, no deposit of estimated duties shall be required until the merchandise is withdrawn for consumption.

6. It is proposed to amend § 144.13 to read as follows:

§ 144.13 Bond requirements.

(a) *Entry summary not filed at time of entry.* A bond on Customs Form 7551, 7553, or 7595 shall be required when the entry documentation is filed if the entry summary documentation is not filed at that time. When the entry summary is filed thereafter, as prescribed in § 142.13 of this chapter, a bond on Customs Form 755 or 7595 shall be required if a bond on Customs Form 7551 or 7553 is on file in support of the entry documentation. If a bond on Customs Form 7595 is on file in support of the entry documentation, that bond shall be sufficient to support the entry summary.

(b) *Entry summary filed at time of entry.* If the entry summary is filed at time of entry, the entry summary shall serve as both the entry and the entry summary, and a bond on Customs Form 7555 or 7595 shall be required.

7. It is proposed to amend § 144.14 to read as follows:

§ 144.14 Removal to warehouse.

When the entry summary, Customs Form 7502, and the appropriate bond have been filed, the merchandise shall be sent to the bonded warehouse, except for:

(a) Merchandise for which an immediate dock withdrawal is filed, or

(b) Packages designated for examination elsewhere than at the warehouse, which shall be sent to the warehouse after examination.

8. It is proposed to amend the first sentence of § 144.36(b) by substituting "entry summary, Customs Form 7502" for "warehouse entry".

9. It is proposed to amend § 144.36(d) to read as follows:

§ 144.36 Withdrawal for transportation.

* * * * *

(d) *Information required.* In addition to the statement of quantity required by § 144.32, Customs Form 7512 shall show the following information for the merchandise being withdrawn:

(1) The original entry number, date of entry, date of entry summary, and port at which filed;

(2) The name of the consignee at the port of destination;

(3) Any ascertained weight, gauge, or measure;

(4) The entered value of the merchandise;

(5) Estimated duties, if any;

(6) A statement that the merchandise is or is not admissible for consumption and the reason for non-admissibility, if applicable; and

(7) The statistical information required by § 141.61(d) of this chapter.

When the withdrawal is made after the merchandise has been rewarehoused, the rewarehouse entry number, date, and port at which filed also shall be shown.

PART 158—RELIEF FROM DUTIES ON MERCHANDISE LOST, DAMAGED, ABANDONED, OR EXPORTED

1. It is proposed to amend Part 158 by adding a new § 158.12a to read as follows:

§ 158.12a Time period.

An abatement or refund of duties shall be made in the case of injury to, or destruction of, merchandise in a bonded warehouse as a result of accidental fire or other casualty only if the fire or casualty occurs within 3 years from the date of importation.

§ 158.27 [Amended]

2. It is proposed to amend § 158.27(b) by inserting "the entry summary (where appropriate)," after "entry".

3. It is proposed to amend § 158.43 by changing the heading of paragraph (c) to *"Abandonment."*, by adding a new subheading entitled *"Costs."* to the existing paragraph, by redesignating the existing paragraph as "(c)(1)", and by adding a new paragraph (c)(2) to read as follows:

§ 158.43 Abandonment or destruction of merchandise in bond.

* * * * *

(c) *Abandonment.*—(1) *Costs.* * * *

(2) *Time period.* The importer may abandon his warehoused merchandise voluntarily to the Government within 3 years from the date of importation.

4. It also is proposed to amend § 158.43 by changing the heading of paragraph (d) to "Destruction", by adding a new subheading entitled "Costs." to the existing paragraph, by redesignating the existing paragraph as "(d)(1)", and by adding a new paragraph (d)(2) to read as follows:

§ 158.43 Abandonment of destruction of merchandise in bond.

* * * * *

(d) *Destruction*—(1) *Costs.* * * *

(2) *Time period.* The importer may request destruction of his warehoused merchandise within 5 years from the date of importation.

PART 159—LIQUIDATION OF DUTIES

1. It is proposed to amend § 159.9(c) to read as follows:

§ 159.9 Notice of liquidation and date of liquidation for formal entries.

* * * * *

(c) *Date of liquidation*—(1) *Generally.* The bulletin notice of liquidation shall be dated with the date it is posted or lodged in the customhouse for the information of importers. The entries for which the bulletin notice of liquidation has been prepared shall be stamped "Liquidated", with the date of liquidation, which shall be the same as the date of the bulletin notice of liquidation. This stamping shall be deemed the legal evidence of liquidation.

(2) *Exception: Entries liquidated by operation of law.* (i) Entries liquidated by operation of law at the expiration of the time limitations prescribed in section 504, Tariff Act of 1930, as amended (19 U.S.C. 1504), and set out in §§ 159.11 and 159.12, shall be deemed liquidated as of the date of expiration of the appropriate statutory period.

(ii) The bulletin notice of liquidation shall be posted or lodged in the customhouse within a reasonable period after each liquidation by operation of law and shall be dated as of the date of expiration of the statutory period.

(iii) A protest under section 514, Tariff Act of 1930, as amended (19 U.S.C. 1514), and Part 174 of this chapter shall be filed within 90 days from the date the bulletin notice of liquidation of an entry by operation of law is posted or lodged in the customhouse.

2. It is proposed to amend Part 159 by adding new §§ 159.11 and 159.12 to read as follows:

§ 159.11 Entries liquidated by operation of law.

(a) *Time limit generally.* Except as provided in § 159.12, an entry not liquidated within 1 year from the date of entry of the merchandise, or the date of final withdrawal of all merchandise covered by a warehouse entry, shall be deemed liquidated by operation of law at the rate of duty, value, quantity, and amount of duties asserted at the time of entry by the importer. Notice of liquidation shall be given on the bulletin notice of liquidation, Customs Form 4333 or 4335, as provided in §§ 159.9 and 159.10(c)(3).

(b) *Applicability.* The provisions of this section and § 159.12 shall apply to the entries or withdrawals of merchandise for consumption made after March 31, 1979.

§ 159.12 Extension of time for liquidation.

(a) *Reasons*—(1) *Extension.* The district director may extend the 1-year statutory period for liquidation for an additional period not to exceed 1 year if:

(i) *Information needed by Customs.* Information needed by Customs for the proper appraisement or classification of the merchandise is not available, or

(ii) *Importer's request.* The importer requests an extension in writing before the statutory period expires and shows good cause why the extension should be granted. "Good cause" is demonstrated when the importer satisfies the district director that more time is needed to present to Customs information which will affect the pending action, or there is a similar question under review by Customs.

(2) *Suspension.* The 1-year liquidation period may be suspended as required by statute or court order.

(b) *Notice of extension.* If the district director extends the time for liquidation, as provided in paragraph (a)(1) of this section, he promptly shall notify the importer or the consignee and his agent and surety in writing that the time has been extended and the reasons for doing so.

(c) *Notice of suspension.* If the liquidation of an entry is suspended as required by statute or court order, as provided in paragraph (a)(2) of this section, the district director promptly shall notify the importer or the consignee and his agent and surety in writing of the suspension.

(d) *Additional extensions*—(1) *Information needed by Customs.* If an extension has been granted because Customs needs more information and the district director thereafter determines that more time is needed, he may extend the time for liquidation for an additional period not to exceed 1 year provided he issues the notice required by paragraph (b) of this section before termination of the prior extension period.

(2) *At importer's request.* If the statutory period has been extended for 1 year at the importer's request, and the importer thereafter determines that additional time is necessary, he may request another extension in writing before the original extension expires, giving reasons for his request. If the district director finds that good cause (as defined in paragraph (a)(1)(ii) of

this section) exists, he shall issue a notice extending the time for liquidation for an additional period not to exceed one year.

(e) *Limitation on extensions.* The total time for which extensions may be granted by the district director may not exceed 3 years.

(f) *Time limitation*—(1) *Generally.* An entry not liquidated within 4 years from either the date of entry, or the date of final withdrawal for consumption of all the merchandise covered by a warehouse entry, shall be deemed liquidated by operation of law at the rate of duty, value, quantity, and amount of duty asserted at the time of entry by the importer, unless liquidation continues to be suspended by statute or court order.

(2) *Suspension of liquidation by statute or court order.* When liquidation of an entry continues to be suspended beyond the 4-year period specified in paragraph (f)(1) of this section due to a statute or court order, the entry shall be liquidated within 90 days after removal of the suspension.

(g) *Notice of liquidation.* If an entry is liquidated after an extension expires or a suspension is removed, notice of liquidation shall be given on the bulletin notice of liquidation, Customs Form 4333 or 4335, as provided in §§ 159.9 and 159.10(c)(3).

PART 173—ADMINISTRATIVE REVIEW IN GENERAL

It is proposed to amend the introductory language to § 173.4(b), to amend § 173.4(c) and to add a new § 173.4(d) to read as follows:

§ 173.4 Correction of clerical error, mistake of fact, or inadvertence.

* * * * *

(b) *Transactions which may be corrected.* Correction pursuant to section 520(c)(1), Tariff Act of 1930, as amended, may be made in any entry, liquidation, or other Customs transaction if the clerical error, mistake of fact, or other inadvertence:

* * * * *

(c) *Limitation on time for application.* A clerical error, mistake of fact, or other inadvertence meeting the requirements of paragraph (b) of this section must be brought to the attention of the district director at the port of entry within 1 year after the date of liquidation or exaction.

(d) *"Liquidation" includes reliquidation.* "Liquidation" when used in section 520(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1520(c)(1)), includes reliquidation of an entry.

ROBERT E. CHASEN,
Commissioner of Customs.

Approved: November 13, 1978.

RICHARD J. DAVIS,
Assistant Secretary of the Treasury.

[FR Doc. 78-33391 Filed 11-28-78; 8:45 am]

[4830-01-M]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Part 1]

INCOME TAX

Tax Treatment of Certain Option Income of Exempt Organizations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the tax treatment of certain option income of exempt organizations. Changes to the applicable tax law were made by the Act of September 3, 1976. The proposed regulations would apply to most, but not all, exempt organizations. They would provide exempt organizations with guidance needed to determine their unrelated business taxable income.

DATES: Written comments and requests for a public hearing must be delivered or mailed by Janurary 29, 1979. The amendments are proposed to be effective for options which lapse or terminate on or after January 1, 1976.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT:

David Jacobson of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-3923).

SUPPLEMENTARY INFORMATION:

BACKGROUND

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 512(b) of the Internal Revenue Code of 1954. These amendments are proposed to conform the regulations to section 1 of the Act of September 3, 1976 (90 Stat. 1201) and sections 1901(b)(8)(F) and 1951(b)(8)(A) of the Tax Reform Act of 1976 (90 Stat. 1794, 1839). The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

EXPLANATION OF PROPOSED REGULATIONS

The amendment to section 512(b)(5) provides that gain from the lapse or termination of options occuring after December 31, 1975, will not constitute unrelated business taxable income to exempt organizations if it is in connection with the investment activities of such organizations. However, the amendment does not apply to organizations described in sections 501(c)(7) or 501(c)(9), or certain organizations described in section 501(c)(2). The amendment to the regulations would conform the regulations to the amendments to section 512(b)(5) and would define what is meant by termination of an option. The amendment would also conform the regulations to reflect changes made to section 5112(b) by the Tax Reform Act of 1976.

COMMENTS AND REQUESTS FOR A PUBLIC HEARING

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferable six copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the FEDERAL REGISTER.

DRAFTING INFORMATION

The principal author of these proposed regulations is David Jacobson of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

PROPOSED AMENDMENTS TO THE REGULATIONS

The proposed amendments to 26 CFR Part 1 are as follows:

§ 1.511 [Deleted]

PARAGRAPH 1. Section 1.511 is deleted.

§ 1.511-2 [Amended]

PAR. 1A. Paragraph (a)(3)(iii) of § 1.511-2 is amended by deleting "section 512 (b) (16)", and inserting in lieu thereof "section 512(b)(14)".

§ 1.512 [Amended]

PAR. 2. Section 1.512(b) is deleted.

PAR. 3. Section 1.512(b) -1 is amended as follows:

1. Paragraph "(d)" is redesignated "(d)(1)" and paragraph (d)(2) is added as set forth below.

2. Paragraph (j)(1) is amended by deleting "educational institution (as defined in section 151(e)(4))" and inserting in lieu thereof "educational organization described in section 170(b)(1)(A)(ii))".

§ 1.511 [Deleted]

3. Paragraph (j)(1)(iii) is amended by deleting "section 512(b)(17)" and inserting in lieu thereof "section 512(b)(15)".

4. Paragraph (l)(5) is amended by deleting "section 512(b)(15)" each place that it appears, and inserting in lieu thereof "section 512(b)(13)".

§ 1.512(b)-1 Modifications.

* * * * *

(d) *Gains and losses from the sale, etc. of property.* * * *

There shall be excluded from the computation of unrelated business taxable income any gain from options to buy or sell securities (as that term is defined in section 1236(c)) which lapse or are terminated after December 31, 1975. An option is considered terminated when the organization's obligation under the option ceases by any means other than by reason of the exercise or lapse of such option. In order to exclude such income the organization must write the options in connection with its investment activities. Thus, if the organization writing the options takes an active role in this activity so that its option writing can be regarded as a trade or business or if securities upon which the options are written are held by the organization as inventory or for sale to customers in the ordinary course of a trade or business, the income from lapse or termination will not be exempt under the provisions of this paragraph. However, the exemption shall otherwise apply whether or not the organization owns the securities upon which the option is written; that is whether or not the option is "covered".

* * * * *

§ 1.514 [Amended]

PAR. 4. Section 1.514(b) is deleted.

§ 1.514(b)-1 [Amended]

PAR. 5. Paragraphs (b)(2)(ii) and example (3) of (b)(3) of § 1.514(b)-1 are amended by deleting "section 512(b)(15)" each place that it appears and inserting in lieu thereof "section 512(b)(13)".

JEROME KURTZ,
Commissioner of Internal Revenue.

[FR Doc. 78-33358 Filed 11-28-78 8:45 am]

[4830-01-M]

[26 CFR Part 1]

[CC:LR-1829]

INCOME TAX

Exemption From Taxation of Certain Cemetery Companies and Crematoria; Amendment of Notice of Proposed Rulemaking

AGENCY: Internal Revenue Service, Treasury.

ACTION: Amendment of notice of proposed rulemaking.

SUMMARY: This document contains proposed amendments to a notice of proposed rulemaking which was published in the FEDERAL REGISTER on July 8, 1975 (40 FR 28613). That notice contains proposed income tax regulations under section 501(c)(13), relating to exempt cemetery companies and crematoria. The regulations would provide the public with the guidance needed to comply with these Acts. These regulations affect certain cemetery companies and crematoria that are exempt from taxation.

DATES: Written comments and requests for a public hearing must be delivered or mailed by January 29, 1979. The amendments are proposed to be effective for taxable years ending after November 28, 1978.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR-1829), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT:

Kyllikki Kusma of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224. Attention: CC:LR:T, 202-566-3287, not a toll-free call.

SUPPLEMENTARY INFORMATION:

BACKGROUND

This document contains proposed amendments to proposed Income Tax Regulations (26 CFR Part 1) under section 501(c)(13) of the Internal Revenue Code of 1954. These proposed amendments are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

As proposed on July 8, 1975, the regulations under section 501(c)(13) recognized the exemption of cemetery companies and crematoria which issued preferred stock. Upon further consideration, it has been concluded that this rule is inconsistent with the requirement of section 501(c)(13) that no part of the net earnings of an organization otherwise described in that paragraph inure to the benefit of any private shareholder or individual. Accordingly, § 1.501(c)(13)-1(c) of the present notice is revised to provide that a cemetery company or crematorium which issues preferred stock is not exempt under section 501(c)(13). For cemetery companies and crematoria which have issued preferred stock in reliance upon the present notice or existing regulations, however, the revision of the notice would recognize the continued exempt status of such organizations if the preferred stock were issued prior to the date that these amendments are filed for publication with the FEDERAL REGISTER.

A second change made to the notice published in 1975 is the addition of a sentence to proposed § 1.501(c)(13)-1(a) to recognize the exempt status of mutual cemetery companies that limit their membership to a particular class of individuals, such as members of a family, as opposed to members of the general public. See *The John D. Rockefeller Family Cemetery Corporation*, 63 T.C. 355 (1974) (Acq., 1977-2 C.B. 2).

Finally, proposed § 1.501(c)(13)-1(d) is amended to make it clear that a cemetery company or crematorium which loses its exemption because of an outstanding equity interest can regain its exemption by retiring the equity interest or by converting it to a debt interest.

COMMENTS AND REQUESTS FOR A PUBLIC HEARING

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably six copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the FEDERAL REGISTER.

DRAFTING INFORMATION

The principal author of these proposed regulations was Kyllikki Kusma of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

PROPOSED AMENDMENTS TO THE REGULATIONS

The proposed amendments to 26 CFR Part 1 are as follows:

§ 1.501 [Amended]

PARAGRAPH 1. Section 1.501(c)(13) is deleted.

PAR. 2. Paragraph (a) of proposed § 1.501(c)(13)-1, as published in the FEDERAL REGISTER on July 8, 1975 (40 FR 28613), is amended by adding at the end thereof a new sentence to read as follows:

§ 1.501(c)(13)-1 Cemetery companies and crematoria.

(a) *Nonprofit mutual cemetery companies.* * * * Further, the fact that a mutual cemetery company limits its membership to a particular class of individuals, such as members of a family, will not affect its status as mutual so long as all the other requirements of section 501(c)(13) are met.

PAR. 3. Paragraph (c) of proposed § 1.501(c)(13)-1, as published in the FEDERAL REGISTER on July 8, 1975 (40 FR 28613), is amended to read as follows:

§ 1.501(c)(13)-1 Cemetery companies and crematoria.

* * * * *

(c) *Preferred stock*—(1) *In general.* A cemetery company or crematorium is not exempt from income tax under section 501(c)(13) if it issues preferred stock on or after November 28, 1978.

(2) *Transitional rule.* In the case of preferred stock issued prior to November 28, 1978, a cemetery company or crematorium which issued such stock shall not fail to be exempt under section 501(c)(13) solely because it issued preferred stock which entitled the holders to dividends at a fixed rate, not exceeding the legal rate of interest in the State of incorporation or 8 percent per annum, whichever is greater, on the value of the consideration for which the stock was issued, if its articles of incorporation require:

(1) That the preferred stock be retired at par as soon as sufficient funds available therefor are realized from sales, and

(2) That all funds not required for the payment of dividends upon or for the retirement of preferred stock be used by the company for the care and improvement of the cemetery property.

For purposes of this subparagraph, the term "legal rate of interest" shall mean the rate of interest prescribed by law in the State of incorporation which prevails in the absence of an agreement between contracting parties fixing a rate.

PAR. 4. Paragraph (d) of proposed § 1.501(c)(13)-1, as published in the FEDERAL REGISTER on July 8, 1975 (40 FR 28613), is amended by revising the first sentence to read as follows:

§ 1.501(c)(13)-1 Cemetery companies and crematoria.

* * * * *

(d) *Sales to exempt cemetery companies and crematoria.* Except as provided in paragraph (c)(2) of this section (relating to transitional rule for preferred stock), a cemetery company or crematorium is not exempt from income tax if property is transferred to such organization in exchange for an equity interst so long as such equity interest remains outstanding and retains its character as an equity interest. * * *

JEROME KURTZ,
Commissioner of Internal Revenue.

[FR Doc. 78-33361 Filed 11-28-78; 8:45 am]

[4830-01-M]

[26 CFR Parts 1 and 53]

[LR-63-78]

INCOME AND EXCISE TAXES

Black Lung Trusts

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to operator's trusts for the payment of black lung benefits and excise taxes on acts of self-dealing and taxable expenditures. Changes in the applicable tax law were made by the Black Lung Benefits Revenue Act of 1977. The regulations would affect persons who are liable for the payment of benefits under Black Lung Acts.

DATES: Written comments and requests for a public hearing must be delivered or mailed by January 29, 1979. The amendments are proposed to be generally effective for taxable years beginning after December 31, 1977.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR-63-78), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT:

David A. Rood of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224, Attention: CC:LR:T, 202-566-3288, not a toll-free call.

SUPPLEMENTARY INFORMATION:

BACKGROUND

This document contains proposed amendments to the Income and Excise Tax Regulations (26 CFR Parts 1 and 53) under sections 501(c)(21), 4951 and 4952 of the Internal Revenue Code of 1954. These amendments are proposed to conform the regulations to changes in the Internal Revenue Code made by sections 4 (a) and (c) of the Black Lung Benefits Revenue Act of 1977 (92 Stat. 15), and are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

OPERATOR'S TRUST FOR THE PAYMENT OF BLACK LUNG BENEFITS

Section 501(c)(21) permits the establishment of a trust for the payment of liabilities under Black Lung Acts. The term "Black Lung Acts" means Part C of title IV of the Federal Coal Mine Health and Safety Act of 1969, and any State law providing compensation for disability or death due to pneumoconiosis. A trust that meets the requirements of section 501(c)(21) is exempt from the payment of income tax. Proposed §§ 1.501(c)(21)-1 and 1.501(c)(21)-2 apply to that section.

EXCISE TAXES ON ACTS OF SELF-DEALING AND TAXABLE EXPENDITURES

Under section 4951 a tax is imposed on acts that constitute prohibited transactions between a trust described in section 501(c)(21) and certain persons who are disqualified persons. Under section 4952 a tax is imposed on a trust described in section 501(c)(21) for acts that constitute taxable expenditures. These taxes are similar to taxes on foundation self-dealing and foundation taxable expenditures imposed by sections 4941 and 4945 of the Code. Accordingly, regulations and rulings interpreting sections 4941 and 4945 provide guidance to interpretation of sections 4951 and 4952. Proposed §§ 53.4951-1 and 53.4952-1 apply to sections 4951 and 4952.

COMMENTS AND REQUESTS FOR A PUBLIC HEARING

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably six copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is to be

held, notice of the time and place will be published in the FEDERAL REGISTER.

DRAFTING INFORMATION

The principal author of these proposed regulations was Mr. Larry E. Smith of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

PROPOSED AMENDMENTS TO THE REGULATIONS

The proposed amendments to 26 CFR Parts 1 and 53 are as follows:

26 CFR PART 1

PARAGRAPH 1. Part 1 is amended by adding the following new sections §§ 1.501(c)(21)-1 and 1.501(c)(21)-2:

§ 1.501(c)(21)-1 Black lung trusts—certain terms.

(a) *Created or organized in the United States.* A trust is not "created or organized in the United States" unless it is maintained at all times as a domestic trust in the United States. For this purpose, section 7701(a)(9) limits the term "United States" to the District of Columbia and States of the United States.

(b) *Insurance company.* The term "insurance company" means an insurance, surety, bonding or other company whose liability for the kinds of claims to which section 501(c)(21)(A)(i) applies is as an insurer or guarantor of the liabilities of another.

(c) *Black Lung Acts.* The term "Black Lung Acts" includes any State law providing compensation for disability or death due to pneumoconiosis even though the State law compensates for other kinds of injuries. In such a case, section 501(c)(21) applies only to the extent that the liability is attributable to disability or death due to pneumoconiosis. For this purpose, the term "pneumoconiosis" has the same meaning as it has under federal law. See 30 U.S.C. 902.

(d) *Insurance exclusively covering such liability.* The term "insurance exclusively covering such liability" includes insurance that covers risk for liabilities in addition to the liabilities to which section 501(c)(21)(A)(i) applies. In such a case, payment for premiums may be made from the trust only to the extent of that portion of the premiums that has been separately allocated and stated by the insurer as attributable solely to coverage of the liabilities to which section 501(c)(21)(A)(i) applies.

(e) *Administrative and other incidental expenses.* The term "administrative and other incidental expenses" means expenditures that are appropriate and helpful to the trust making them in carrying out the purposes for which its assests may be used under section 501(c)(21)(B). The term includes any excise tax imposed on the trust under section 4952 (relating to taxes on taxable expenditures) and reasonable expenses, such as legal expenses, incurred by the trust in connection with an assertion against the trust of liability for a taxable expenditure. The term does not include an excise tax imposed on the trustee or on other disqualified persons under section 4951 (relating to taxes on self-dealing or under section 4953 (relating to tax on excess contributions to black lung benefit trusts) or any expenses incurred in connection with the assertion of these taxes other than expenses that are treated as part of reasonable compensation under section 4951(d)(2)(C). See §§ 53.4941 (d)-2(f)(3) and (d)-3(c) for interpretations of similar provisions under section 4941(d)(2)(E), relating to reasonable compensation for private foundation disqualified persons.

(f) *Public debt securities of the United States.* The term "public debt securities of the United States" means obligations that are taken into consideration for purposes of the public debt limit. See, for example, 31 U.S.C. 757b.

(g) *Obligations of a State or local government.* The term "obligations of a State or local government" means the obligations of a State or local governmental unit the interest on which is exempt from tax under section 103(a). See § 1.103-1(a).

(h) *Time or demand deposits.* The term "time or demand deposits" includes checking accounts, savings accounts, certificates of deposit or other time or demand deposits. The term does not include common or collective trust funds such as a common trust fund as defined in section 584.

§ 1.501(c)(21)-2 Trust instrument.

A trust does not meet the requirements of section 501(c)(21) if it is not established and maintained pursuant to a written instrument. The trust instrument must definitely and affirmatively prohibit a diversion or use of trust assets that is not permitted under section 501(c)(21)(B) or section 4953(c), whether by operation or natural termination of the trust, by power of revocation or amendment, by the happening of a contingency, by collateral arrangement, or by any other means. No particular form for the trust instrument is required. A trust may meet the requirements of section 501(c)(21) although the trust instrument fails to contain provisions the effects of which are to prohibit acts that are subject to section 4951 (relating to taxes on self-dealing), section 4952 (relating to taxes on taxable expenditures) or the retention of contributions subject to section 4953 (relating to tax on excess contributions to black lung benefit trusts).

26 CFR PART 53

PAR. 2. Part 53 is retitled and a new subpart L is added to read as follows:

PART 53—FOUNDATION AND SIMILAR EXCISE TAXES

* * * * *

Subpart L—Black Lung Benefit Trust Excise Taxes

§ 53.4951-1 Black lung trusts—taxes on self-dealing.

(a) *In general.* Section 4951 contains provisions that correspond to provisions of section 4941 (relating to taxes on foundation self-dealing) and section 4946 (relating to definitions and special rules). Regulations and rulings under these corresponding provisions apply to section 4951 where appropriate.

(b) *Transfer of property to trust.* A transfer of personal property without consideration to a trust for which a deduction is allowable under section 192 does not constitute a sale or exchange for purposes of section 4951 unless the property is subject to a mortgage or similar lien within section 4951(d)(2)(A). The transfer to a trust of a note or other evidence of indebtedness constitutes an extension of credit to the obligor for purposes of section 4951(d)(1)(B).

(c) *Deposits.* A time or demand deposit made with a bank or credit union that is a trustee or other disqualified person with respect to a trust constitutes a lending of money for purposes of section 4951(d)(1)(B) even though the deposit is of a kind generally authorized for investments by the trust.

(d) *Trustee.* The term "trustee" as used in section 4951(e)(5)(B) includes any person having powers or responsibilities with respect to a trust similar to those of trustees.

(e) *Misallocation of insurance premium.* Under section 501(c)(21)(A)(ii) and § 1.501(c)(21)-1(d), a trust may pay a portion of a premium for insurance which covers both black lung liabilities and other liabilities, so long as the requirements of section 501(c)(21)(A)(i) concerning allocation of the total premium are met. However, if an insurance company misallocates the total premium in a manner which benefits a disqualified person, the amount of misallocation constitutes a use of trust assets for the benefit of the disqualified person within section 4951(d)(1)(D). For these purposes, it is irrelevant whether the com-

bination of insurance is sold under one policy or more than one policy.

(f) *Effective date.* Section 4951 applies with respect to acts that occur after December 31, 1977, in and for trust taxable years beginning after December 31, 1977.

§ 53.4952-1 Black lung trusts—taxes on taxable expenditures.

(a) *In general.* Section 4952 contains provisions that generally correspond to provisions of section 4945 (relating to taxes on taxable expenditures by private foundations) and section 4946 (relating to definitions and special rules). Regulations and rulings under these corresponding provisions apply to section 4952 where appropriate. See section 4952(e)(1) for the definition of "correction".

(b) *Unauthorized investments.* The term "taxable expenditure" in section 4952(d) includes an investment that is not authorized under section 501(c)(21)(B)(ii).

(c) *Effective date.* Section 4952 applies with respect to expenditures made after December 31, 1977, in and for trust taxable years beginning after December 31, 1977.

JEROME KURTZ,
Commissioner of Internal Revenue.

[FR Doc. 78-33360 Filed 11-28-78; 8:45 am]

[4410-01-M]

DEPARTMENT OF JUSTICE

Parole Commission

[28 CFR Part 2]

PAROLE, RELEASE, SUPERVISION, AND RECOMMITMENT OF PRISONERS, YOUTH OFFENDERS, AND JUVENILE DELINQUENTS

Hearing and Proposed Rulemaking

AGENCY: U.S. Parole Commission.

ACTION: Public hearing on proposed rulemaking.

SUMMARY: On October 11, 1978, the U.S. Parole Commission published in the FEDERAL REGISTER a proposed rule which would make changes in the offense severity examples and in the policy instructions contained in the Commission's paroling policy guidelines. The examples and policy instructions constitute the standards and rules by which the Commission evaluates the relative seriousness of each prisoner's offense behavior in determining when to set a release date. This notice announces a series of hearings to secure comment on the proposed changes.

DATES: Hearings will be held on December 4 and 5 in Atlanta, Georgia; December 7 in Englewood, Colorado, December 7 and 8 in Denver, Colorado; and December 14 and 15 in Washington, D.C.

ADDRESSES: The hearings will be held at the following locations at the times indicated:

DECEMBER 4 AND 5, 1978

9 a.m. to 5:30 p.m.—U.S. Department of Labor, First National Bank Building, 1375 Peachtree Street, Room 276, Seminar B, Atlanta, Georgia.

DECEMBER 4, 1978

6:30 p.m. to 9:30 p.m.—U.S. Penitentiary, Atlanta, Georgia.

DECEMBER 7 AND 8, 1978

9 a.m. to 5:30 p.m.—U.S. Courthouse, Courtroom C-204, 1929 Stout Street, Denver, Colorado.

DECEMBER 7, 1978

6:30 p.m. to 9:30 p.m.—Federal Correctional Institution, Englewood, Colorado.

DECEMBER 14 AND 15, 1978

9 a.m. to 5:30 p.m.—U.S. Courthouse, Courtroom 8, 3rd and Constitution Ave., N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Barbara Meierhoefer, Research Analyst, U.S. Parole Commission, telephone 202-724-3095.

SUPPLEMENTARY INFORMATION: The purpose of these hearings is to afford interested persons an opportunity to participate in the rulemaking process of the U.S. Parole Commission through the submission of written and oral presentations on the modification of the Agency's paroling policy guidelines (28 CFR 2.20). The Commission seeks comment not only on the proposed guideline amendments published October 11, 1978 (43 FR 46859-46867), but also solicits any other suggested improvements in the guidelines system.

Various participants and experts in the criminal justice and corrections field, Federal and State, have already expressed an intention to appear and comment at one of the hearings at the Federal court locations, and the Department of Labor. Other interested parties should contact the representative named above, if they desire to speak at one of these hearings. The Commission will attempt to accommodate any other persons who appear at the locations previously indicated while the hearings are being conducted. For reasons of security, attendance and participation at hearings conducted in the federal institutions will be limited to the inmates thereof and Bureau of Prisons' officials and staff, along with accredited members of the press. All hearings will be conducted consistent with the procedures of the Government in the Sunshine Act (5 U.S.C. 552b).

Dated: November 21, 1978.

CECIL C. MCCALL,
Chairman, U.S. Parole Commission.

[FR Doc. 78-33370 Filed 11-28-78; 8:45 am]

[4110-83-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Health Resources Administration

[42 CFR Part 124]

REQUIREMENTS FOR PROVISION OF SERVICES TO PERSONS UNABLE TO PAY THEREFOR AND COMMUNITY SERVICE BY ASSISTED HEALTH CARE FACILITIES

Extension of Hearing Hours

AGENCY: Public Health Service, HEW.

ACTION: Extension of time for public hearing.

SUMMARY: This document announces an extension of the time for the public hearing to be held on the proposed rules establishing requirements for health care facilities assisted under Titles VI and XVI of the Public Health Service Act relating to compliance with their uncompensated service and community service assurances. In the proposed rules and notice of public hearing published on October 25, 1978 (43 FR 49954), it was stated that the public hearing would be held on December 5 and 6, 1978, between the hours of 9:00 a.m. and 5:00 p.m. In view of the number of requests for time to testify being received, it has been determined that the hearing hours should be extended. Accordingly, the public hearing scheduled for December 5 and 6 will be held between the hours of 9:00 a.m. and 6:00 p.m. on each day.

DATE: The public hearing will be held on December 5 and 6, 1978.

ADDRESS: The public hearing will be held at the Department Auditorium, HEW North Building, 330 Independence Ave., SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT

Albert T. Billingslea, Acting Director, Division of Facilities Compliance, Bureau of Health Facilities Financing, Compliance, and Conversion, Room 6-50, Center Building No. 1, 3700 East-West Highway, Hyattsville, MD. 20782, 301-436-6893.

Dated: November 18, 1978.

HENRY A. FOLEY,
Administrator, Health Resources Administration.

[FR Doc. 78-33393 Filed 11-28-78; 8:45 am]

[4110-02-M]

Office of Education

[45 CFR Part 116d]

PROGRAM FOR MIGRATORY CHILDREN

Decision to Develop Regulations

AGENCY: Office of Education, HEW.

ACTION: Notice of Decision to Develop Regulations.

SUMMARY: The Commissioner proposes to publish revisions to the recently-published final regulations for the program for migratory children under section 122 of Title I of the Elementary and Secondary Education Act. The revisions are required by the Education Amendments of 1978, the findings of a management audit of the program, additional program experience, and the Department's Operation Common Sense. The revised Title I Migrant Education Program regulations will:

(1) Clarify existing provisions that are still applicable;

(2) Reflect statutory changes with respect to parent advisory councils, coordination of migrant education activities, and adjustment of the formula count of children in summer-term projects; and

(3) Reflect proposed program management revisions with respect to the standards for the approval of State applications, implementation of the Commissioner's by-pass authority, implementation of the Commissioner's reallocation authority, and services to preschool children. These regulations are policy significant.

FOR FURTHER INFORMATION CONTACT:

Mr. Vidal A. Rivera, Jr., Room 3523, Regional Office Building 3, 400 Maryland Avenue SW., Washington, D.C., 20202. Telephone: 202-245-2222.

Dated: October 13, 1978.

(Catalog of Federal Domestic Assistance No. 13.429, Educationally Deprived Children—Migrants)

ERNEST L. BOYER,
U.S. Commissioner of Education.

[FR Doc. 78-33388 Filed 11-28-78; 8:45 am]

[4110-02-M]

[45 CFR Part 134]

INSTRUCTIONAL MATERIALS AND SCHOOL LIBRARY RESOURCES PROGRAM; IMPROVEMENT IN LOCAL EDUCATIONAL PRACTICES PROGRAM; GUIDANCE, COUNSELING, AND TESTING PROGRAM.

Decision To Develop Regulations

AGENCY: Office of Education, HEW.

ACTION: Notice of Decision to Develop Regulations.

SUMMARY: The Commissioner of Education proposes to publish a notice of proposed rulemaking for the Instructional Materials and School Library Resources Program; the Improvement in Local Educational Practices Program; and the Guidance, Counseling, and Testing Program, Title IV of the Elementary and Secondary Education Act of 1965, as amended, to implement the Education Amendments of 1978, and to recodify existing program regulations. The regulations govern the content of the State's plan for administering the programs, including the activities of the State advisory council, the criteria for distribution of funds, the participation of private school children, and the maintenance of State, local, and private school expenditures. These regulations are policy significant.

FOR FURTHER INFORMATION CONTACT:

For Part B—Instructional Materials and School Library Resources Program: Louise V. Sutherland (Room 3125B, ROB-3), 400 Maryland Ave., S.W., Washington, D.C. 20202, telephone (202) 245-2488.

For Part C—Improvement in Local Educational Practices Program: Allen J. King (Room 3010, ROB-3), 400 Maryland Ave., S.W., Washington, D.C. 20202, telephone (202) 245-2592.

For Part D—Guidance, Counseling, and Testing Program: Bryan T. Gray (Room 3010, ROB-3), 400 Maryland Ave., S.W., Washington, D.C. 20202, telephone (202) 472-1357.

Dated: November 1, 1978.

(Catalog of Federal Domestic Assistance Numbers: Part B—13.570 Libraries and Learning Resources; Part C—13.571 Educational Innovation and Support; Part D—Guidance, Counseling, and Testing)

ERNEST L. BOYER,
U.S. Commissioner of Education.

[FR Doc. 78-33387 Filed 11-28-78; 8:45 am]

[4110-02-M]

[45 CFR Part 160f]

WOMEN'S EDUCATIONAL EQUITY ACT

Decision To Develop Regulations

AGENCY: Office of Education, HEW.

ACTION: Notice of Decision to Develop Regulations.

SUMMARY: The Commissioner of Education proposes to develop regulations for the Women's Educational Equity Act (WEEA) Program as required to implement the Education Amendments of 1978.

Major provisions of the regulations will be to: (1) Establish new program priorities for the demonstration, developmental, and dissemination projects of national, statewide, or general significance; (2) implement those new activities authorized by the amendments which go into effect when the appropriation exceeds $15 million; (3) describe the nature and types of these awards for assistance in the operation of special programs of local significance to provide equal opportunities for both sexes, including activities related to achieving compliance with Title IX; (4) list the criteria for evaluating applications; (5) describe which costs are allowable under the awards and the amount which grantees must share with the Federal government; and (6) establish program priorities and principles for award decisions. These regulations are policy significant.

FOR FURTHER INFORMATION CONTACT:

Dr. Mary Jane Smalley, Women's Program Staff, Room 2147, U.S. Office of Education, Washington, D.C. 20202, 202-245-2181.

Dated: October 11, 1978.

(Catalog of Federal Domestic Assistance No. 13.565, Women's Educational Equity Act)

ERNEST L. BOYER,
U.S. Commissioner of Education.

[FR Doc. 78-33389 Filed 11-28-78; 8:45 am]

[4110-02-M]

[45 CFR Part 166]

ADULT EDUCATION REGULATIONS

AGENCY: Office of Education, HEW.

ACTION: Notice of Intent To Develop Regulations.

SUMMARY: The Commissioner of Education is planning to develop proposed regulations to amend the regula-

tions for the Adult Education Act. The proposed regulations will include revisions that are necessary to implement the program as required by the Education Amendments of 1978. The primary thrust of the amended regulations will be to expand the current delivery systems of adult education and to broaden the outreach of the program. The proposed regulations will also revise sections of the existing regulations in order to make them more understandable to the public. These regulations are policy significant.

FOR FURTHER INFORMATION CONTACT:

Paul V. Delker, ROB 3, Room 5056, 7th and D Streets, S.W., Washington, D.C. 20202. (202) 245-2278.

(Catalog of Federal Domestic Assistance Program No. 13.400, Adult Education—Grants to States; No. 13. ——, Adult Education—Research, Development, Dissemination, Evaluation and Information Clearinghouse; No. 13. ——, Adult Education—Program for Adult Immigrants; and No. 13.579, Emergency Adult Education Program for Indochina Refugees)

Dated: November 1, 1978.

ERNEST L. BOYER,
U.S. Commissioner of Education.

[FR Doc. 78-33414 Filed 11-28-78; 8:45 am]

[7555-01-M]

NATIONAL SCIENCE FOUNDATION

[45 CFR Part 602]

EXEMPTION OF CERTAIN FINANCIAL INTERESTS

Proposed Amendment to Regulations

AGENCY: National Science Foundation.

ACTION: Proposed amendment to regulations.

SUMMARY: The National Science Foundation proposes to amend its regulations on standards of conduct for employees to add a general exemption from the operation of Section 208(a) of Title 18, U.S. Code, for certain financial interests arising from minor contracts to provide support services to members of the National Science Board in connection with their performance of Board functions.

DATES: Comments must be received on or before February 1, 1979.

ADDRESS: Comments should be addressed to General Counsel, National Science Foundation, Washington, D.C. 20550, Attn: Harriet E. Tucker, Esq., Conflicts-of-Interest Counselor.

FOR FURTHER INFORMATION CONTACT:

Miss Tucker, at the above address or 202-634-4257.

SUPPLEMENTAL INFORMATION: Section 208(a) of Title 18, United States Code, makes it a criminal offense for an officer or employee of the Executive Branch of the United States Government, including any special Government employee, to "participate personally and substantially as a Government officer or employee through decision, approval, disapproval, recommendations, the rendering of advice, investigation, or otherwise in a . . . contract . . . or other particular matter in which, to his knowledge, he [or an] organization in which he is serving as an officer or employee . . . has any financial interest." Section 208(b)(2) provides, however, that section 208(a) will not apply, "if, by general rule or regulation published in the Federal Register, the financial interests in question have been exempted . . . as being too remote or inconsequential to affect the integrity of . . . services" provided by the officer or employee. The Foundation proposes to amend its regulations to add such a general exemption for certain financial interests arising from minor contracts to provide support services to members of the National Science Board in connection with their performance of Board functions.

The National Science Board is the governing body of the National Science Foundation. The Board meets in the Washington, D.C., area several months each year, but only for two or three days each month. During the rest of the year its members are dispersed throughout the country at the univerities, corporations, or other institutions that are their principal places of employment.

Members of the Board are occasionally assigned tasks or responsibilities for it that require substantial efforts while it is not in session—while the members are away from the Foundation at their home institutions. This situation arises particularly often for Board officers and for members who take principal responsibility for preparation of major reports. In such circumstances the Board member may require professional, clerical, and administrative services to help with Board work at or near his or her place of business.

Since neither the National Science Board nor the Foundation has any significant permanent staff outside of Washington, these services must be obtained externally. They could be obtained through personal services contracts to individuals, but because of potential difficulties with business and administrative control, the Foundation has generally avoided such contracts wherever possible. The Foundation believes the public interest would be better served if it provided such support services to Board members through contracts with their home institutions. Such an institution would be reimbursed for the allowable salary costs and expenses of those who actually assist the member and for the usual, externally determined allowable overhead, but would receive no profit or fee. No compensation would be provided through the contract for time spent by the Board member.

In some circumstances, however, this arrangement could be construed to place the member in violation of section 208(a) of Title 18. The Foundation, believing the financial interests the member's home institution might have in such an arrangement too remote and inconsequential to affect the integrity of the services provided by the member to the Foundation, is proposing this amendment to its regulations to provide a general exemption for such cases, as permitted by section 208(b)(2) of Title 18.

The National Science Foundation therefore proposes to amend Part 602 of Chapter VI, Title 45, Public Welfare, by adding a new § 602.3.

Dated: November 21, 1978.

CHARLES H. HERZ,
General Counsel.

§ 602.3 Support services for performance of National Science Board tasks and responsibilities.

With the approval of the Director and the Chairman of the National Science Board and in accordance with other laws and regulations, the Foundation may contract with the home institution of a member of the National Science Board to provide professional, clerical, and administrative services in support of the member's personal efforts to carry out National Science Board tasks and responsibilities. The institution may receive reimbursement of all allowable costs, but no profit or fee. In such circumstances the Foundation finds that any financial interests the institution might have are too remote or inconsequential to affect the integrity of the services provided by the National Science Board member and therefore generally exempts them from the operation of section 208(a) and from the formal requirements of section 208(b)(1) of Title 18, United States Code.

(Section 208(b), Title 18, United States Code, and Section 11(a), National Science Foundation Act of 1950, as amended (42 U.S.C. 1870(a))).

[FR Doc. 78-33470 Filed 11-28-78; 8:45 am]

[6712-01-M]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 67]

[Docket No. 21263; FCC 78-811]

COMMON CARRIERS BETWEEN THE UNITED STATES MAINLAND AND HAWAII, ALASKA, AND PUERTO RICO/VIRGIN ISLANDS

Integration of Rates and Services for the Provision of Communications

AGENCY: Federal Communications Commission.

ACTION: Federal-State Joint Board Memorandum Opinion and Order, Docket No. 21263.

SUMMARY: The Joint Board convened in this proceeding sets dates for filing comments and responsive pleading on the question of what changes, if any, should be made to the existing Separations formula to make it applicable to Alaska and Hawaii. The Joint Board also denies the State of Hawaii's petition for expedited consideration and motion for separate procedures.

DATES: Comments to be filed on or before February 5, 1979; Replies, on or before March 19, 1979; and Responses, on or before April 9, 1979.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Francis L. Young, Common Carrier Bureau, (202) 632-7084.

In the matter of integration of rates and services for the provision of communications by authorized common carriers between the United States Mainland and Hawaii, Alaska, and Puerto Rico/Virgin Islands; Memorandum Opinion and Order (See also 43 FR 30840, July 18, 1978).

Adopted: November 16, 1978.

Released: November 24, 1978.

By the Federal-State Joint Board:

1. Before the Joint Board for its consideration are: (a) the establishment of a pleading cycle to implement Phase II of our efforts; (b) the Petition for Expedited Consideration and Adoption of Separations Plan Proposed by State of Hawaii, filed June 9, 1978, by the State of Hawaii (State) and responsive pleadings thereto; and (c) the Motion to Establish Separate Procedures and Schedule for the Adoption of a Hawaii-Mainland Separations Plan, filed October 27, 1978, by the State. In *Memorandum Opinion and Order*, FCC 78-84, released January 31, 1978, the Joint Board adopted a two phase process, data collection and notice and comment, for the conduct of this proceeding and stated that the pleading schedule for the notice and comment phase would be established by separate order.

Notice and Comment Procedure

2. The responses to the Joint Board's data request have been filed or are scheduled to be filed in the near future. While some of the data may require updating, we believe that establishment of a pleading cycle at this time would be appropriate. The Joint Board is cognizant of the recent Federal Communications Commission, *Memorandum Opinion and Order*, FCC 78-693, which noted, *inter alia*, that the Joint Board should conclude its deliberations in the most expeditious manner. The Joint Board also recognizes that the studies undertaken in the data collection phase have enabled the parties to focus on the question before the Joint Board. Therefore, we believe that an expedited pleading period would comport with the public interest and would not offend any participant's due process rights.

3. The pleading cycle we are adopting is to permit all parties to advocate what changes, if any, should be made to the existing NARUC/FCC Separations Manual to make it applicable to Alaska and Hawaii. We emphasize that the comments should address the question of whether each of these locations should be treated the same as, or different from, Mainland points as well as the same or different among themselves. (*See Integration of Rates and Services*, 64 FCC 2d 1033 (1977)). Necessarily included in this question in what justification exists to support any advocated changes as well as adoption of the existing Manual without change. Recognizing that replies to initial comments may raise matters parties believe should be responded to, we are providing for an additional pleading to address any such matter. As discussed below, the pleadings should address both locations, separate pleadings for each location would be inappropriate.

Petition for Expedited Consideration

4. The State's Petition for Expedited Consideration and Adoption of Separations Plan Proposed by State of Hawaii seeks Joint Board consideration and recommendation to the Commission of modifications to the existing Manual. Alternatively, the State urges, as an interim measure, recommendation to the Commission of various mechanisms for separations and settlements for the period from January 1, 1979 to the adoption of a final plan for Hawaii. The State argues that such action is necessary since the final step of rate integration is scheduled for January 1, 1979. Moreover, the State contends, its proposed plan contains only minor modifications to the existing Manual for domestic traffic, and calls for full revenue and cost separations of Hawaiian Telephone Company's (HTC) international traffic. Thus, the State concludes, either adoption of its proposed plan or any of its proposed alternatives could and should be recommended immediately by the Joint Board.

5. By Order, FCC 78-480, released July 11, 1978, the Joint Board sought comments on whether the State's Petition should be considered as well as on the substance of the Petition. Responsive pleadings were filed by American Telephone and Telegraph Company (AT&T); HTC; RCA Alaskan Communications (Alascom); and the State. AT&T and HTC argued that the pleading was premature and should not be considered. Moreover, these parties argued that the State's proposed plan should not be adopted on substantive grounds. Alascom noted the State's proposal was filed outside the scope of the Joint Board's procedure. Further, Alascom contends that the proposal is confined to Hawaii and that it would be unfair and inappropriate to reach any determinations on the basis of the plan which could prejudge or cast a shadow over deliberations on Alaska separations. In reply, the State argued that adherence to a procedural schedule cannot take precedence over the carriers' commitment to rate integration on January 1, 1979, that the data submissions demonstrate that adoption of the State's proposal would not severely burden the carriers, and that arguments against the substance of its plan carry less weight than arguments for it, and thus, it should be considered.

6. As noted in paragraph 2, *supra*, the Commission has recently adopted an order which concerns our efforts. In paragraph 8 of that order, the Commission made clear ". . . that the Joint Board does not have a mandate to issue an interim separations methodology decision nor authority to recommend division of revenue or settlement agreements." Therefore, the interim solutions recommended by the State will not be considered by this Joint Board. The responsive pleadings raise many questions on the substance of the State's proposed plan. In addition, since the responsive comments were limited to the proposed plan, and were not designed to solicit each party's comments on what they would advocate, the Joint Board does not have a record upon which it can make a reasoned decision. While we have found the comments useful and will retain them as part of the record, we will deny the State's petition for expedited

consideration. We further caution all parties that adherence to the Joint Board's procedural framework enables us to proceed in the most expeditious manner and that efforts outside this framework may tend to cause a diversion of effort and resultant delay.

MOTION TO ESTABLISH SEPARATE SCHEDULE

7. In support of its motion for separate procedures, the State avers that the Joint Board might adopt differing separations plans for Alaska and Hawaii, that Hawaiian separations issues have been the subject of more attention and substantive analysis, and thus, resolution of a seprations plan for Hawaii is more ripe for Joint Board action. Additionally, the State contends that proceeding in tandem with analysis of dissimilar Alaska and Hawaii issues would serve no purpose and result in increased delay and complexity. The State asserts that grant of its motion would comply with the Commission's directives and clearly serve the public interest. On November 7, 1978, Alascom filed a Statement supporting the State's motion. Alascom avers that both the circumstances affecting the two states and the schedules available to be followed for consideration of the issues respecting separations for the two states are sufficiently different, therefore no purpose would be served by having consolidated schedules, orders, and recommended decisions.

8. In an Opposition, filed November 9, 1978, AT&T argues that the record does not support the State's assumption that different procedures are required or that different separations procedures are contemplated. AT&T asserts that there is nothing to show more complexity in Alaska on the separations question and that the State's unauthorized pleadings and responses thereto cannot be considered equivalent to analysis or development of an adequate record on Hawaii separations issues. AT&T asserts that the Phase II notice and comment process can be completed on an expedited basis and that grant of the States motion will result in delay and duplicated effort. In its reply, filed November 13, 1978, the State avers that the uncontroverted differences between Alaska and Hawaii will result in extended study, thus, delaying a final decision for Hawaii. Further, the State argues, AT&T has offered no legitimate reason for not separating consideration of Alaska and Hawaii separations issues.

9. Grant of the State's motion would appear to result in duplicative effort and will be denied. It must be noted, however, that the State's proposition is correct that separate decisions for each of the points may be reached. Pending analysis of the material filed in Phase II, the Joint Board does not have a record to determine whether differing plans should be recommended to the Commission. The expedited schedule we are adopting will permit resolution of the question before us in the most expeditious manner. In the event we find that the record supports an earlier decision for either location, we will proceed with a separate initial decision. Likewise, at such time that it appears appropriate to adopt separate procedures so as not to delay our efforts, such procedures would be adopted. Our action herein in no matter indicates any predisposition to the argument concerning the similarity or dissimilarity between the points or the appropriate separations treatment of them.

10. Accordingly, *it is ordered,* That comments, replies, and responses to the questions set forth in paragraph 3 of this Memorandum Opinion and Order shall be filed in accordance with the following schedule:

Comments—no later than February 5, 1979;
Replies—no later than March 19, 1979;
Responses—no later than April 9, 1979.

11. *It is further ordered,* That all parties shall file an original and six copies of all pleadings with the Secretary, Federal Communications Commission and one copy with each of the State Commission members of this Joint Board. Copies of these filings shall be available for public inspection during regular business hours in the Commission's Reference Room at its headquarters at 1919 M Street NW., Washington, D.C. 20554.

12. *It is further ordered,* That the Petition for Expedited Consideration and Adoption of Separations Plan Proposed by State of Hawaii, filed June 9, 1978, by the State of Hawaii, is denied.

13. *It is further ordered,* That the Motion to Establish Separate Procedures and Schedule for the Adoption of a Hawaii-Mainland Separations Plan, filed October 27, 1978, by the State of Hawaii, is denied.

FEDERAL COMMUNICATIONS COMMISSION,

WILLIAM J. TRICARICO,

Secretary.

[FR Doc. 78-33412 Filed 11-28-78; 8:45 am]

[6712-01-M]

[47 CFR Part 73]

[BC Docket No. 78-355; RM-3055; FCC 78-770]

PART-TIME PROGRAMMING BY MINORITY GROUPS

Inquiry Concerning Petition for Issuance of Policy Statement or Notice of Inquiry by National Telecommunications and Information Administration

AGENCY: Federal Communications Commission.

ACTION: Notice of inquiry.

SUMMARY: This Notice of Inquiry solicits comment on possible means for encouraging the part-time programming of existing broadcast stations by minority groups. Among the principal issues to be addressed are (i) whether existing operations (primarily, time brokerage and shared time) develop in similar or varying factual circumstances; (ii) the desirability of a new form of Commission authorization for such operations as against less regulatory oversight; and (iii) the amenability of such operations to television, where program production is considerably more expensive.

DATES: Comments must be received on or before January 22, 1979, and reply comments on or before February 23, 1979.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Stanley P. Wiggins, Broadcast Bureau 202-632-7792.

SUPPLEMENTARY INFORMATION: In the matter of petition for issuance of policy statement or notice of inquiry on part-time programming. Notice of inquiry.

Adopted: October 31, 1978.

Released: November 22, 1978.

By the Commission:

1. The Office of Telecommunications Policy (OTP) and Department of Commerce on January 31, 1978, filed with the Commission a "Petition for Issuance of Policy Statement or Notice of Inquiry" proposing a wide variety of actions to further the improved representation of minority groups in broadcasting. A separate document, *Memorandum Opinion and Order* in RM-3055, FCC 78-773, released November 22, 1978, reviews those proposals and related Commission actions as well as a variety of pending Commission proceedings which will consider specific NTIA proposals as part of broader inquiries. However, the suggestion by petitioner (since reconstituted as the Na-

tional Telecommunications and Information Administration) that the Commission act to encourage part-time operation of broadcast facilities by minority entrepreneurs warrants independent inquiry. Accordingly, by this *Notice of Inquiry* the Commission solicits comment on the potential for further encouragement of such operations.

2. Any such part-time operation clearly holds out the prospect of diversified programming, improved minority employment opportunities, and the acquisition of operational experience by minority entrepreneurs. However, unlike outright station ownership, part-time operations do not require the substantial capital outlay and administrative costs initially involved in the purchase of an existing facility or in new construction. Such part-time operations are inherently more flexible in their response to economic difficulty: a time broker whose programming begins to lose support can abandon the effort with much less procedural delay than that which necessarily accompanies the sale of a station. Such operations are also a useful alternative to outright ownership in communities where audience interest in programming is inadequate to support a station primarily focussed on one segment or programming preference of the community.[1]

3. There are presently two basic approaches to such operations. As NTIA notes, the share-time license arrangements is well established but infrequently utilized because difficulties can arise in the actual licensing of two operators to the same facility. Far more common is the wholesale brokerage of broadcast program time to an independent program producer, with ultimate responsibility for the programming remaining in the licensee. Under this arrangement, the program producer commonly seeks out advertising for his specialized programming and provides personnel for program production as well.[2] The relative flexibility of the two approaches is reflected in the respective Commission regulations governing such operations. When the same frequency is shared by two licensees, each must independently justify its renewal and otherwise comply with the requirements on regular stations. In contrast, time brokerage contracts, though required to be kept available for public inspection by the station, are not routinely submitted to the Commission and require no particularized justification at renewal.[3]

4. Noting that the Commission has expressed concern that extensive time brokering may involve an improper delegation of program control by the licensee, and hence conflict with the public interest,[4] NTIA suggests the Commission reconsider these reservations regarding extensive time brokerage, at least with respect to minority entrepreneurs. One approach proposed, if the Commission is not content with its authority to sanction licensees whose brokerage practices are so extensive (and/or independent of managerial review) as the constitute an improper delegation of responsibility,[5] is the imposition of a secondary ascertainment obligation on the broker and his "registration by" the Commission—thus lightening the licensee's responsibility. This proposal illustrates a prime difficulty confronted by the Commission in attempting to develop incentives for such operations, while keeping them a matter of ultimate licensee responsibility. Because the extent of time brokerage is unknown—either in terms of the number of stations using such arrangements or the portion such programming represents of their daily broadcast schedule—we are unsure whether licensees in general are more likely to be encouraged to explore such shared operations by a general statement of Commission policy (and no active regulatory involvement in routine situations) or by more detailed evaluation of specific proposals, resulting in some form of Commission approval. It is also possible, of course, that time brokerage (and sharing) has reached its optimal level by the operation of market demand in the present absence of Commission incentives, and no further action is necessary or appropriate.

5. The comments submitted in response to the NTIA petition establish the positive contribution to program diversity that such use of time brokerage can generate, but do not fully describe the conditions for its growth. The American Association of Advertising Agencies urges exploration of such operations for the diversification of programming they offer. The National Radio Broadcasters Association suggests the creation of a new, hybrid Commission authorization involving "something in the nature of a combination of a share-time operation [normally requiring dual licensing] and a substantial time brokerage arrangement * * * such an authorization might consist of a lease arrangement whereby substantial amounts of broadcast time would be leased to minority groups or individuals subject to FCC approval. Such an authorization would in most cases involve time commitments greater than are involved in most time brokerage arrangements, but would permit the Commission to review the qualifications of the lessor."

6. The most detailed description of an existing operation, devoting 22½ hours on weekdays to brokered Spanish-language programming and substantial additional brokered programming on weekends, comes from the licensee of WOJO(FM) in Evanston, Illinois. Broadcast Communications, Inc. (BCI) has operated under such arrangements for many years, and asserts that in addition to the entrepreneurial experience gained by independent producers, the minority businesses of community advertisers also benefit in unique ways from such operation. In this latter regard, BCI states that it provides an affordable mass advertising device with an audience appropriate for these minority businesses. BCI asserts that time brokerage is the most readily attainable means to further minority ownership in light of the presently limited financial resources of minority groups, and the limited number of stations available for outright ownership. BCI also suggests, in line with NRBA's comments, that direct Commission licensing of time brokers could forestall any concern over diminished licensee control over programming. BCI itself has a Spanish-speaking program director who is responsible for supervision of Spanish-language programing.

7. The programing offered by BCI's station WOJO(FM) is oriented primarily to ethnic communities with language barriers for which radio is a peculiarly appropriate means of mass communication.[6] Apart from its avoid-

[1] Encouragement of minority ownership clearly furthers an important national policy which warrants consideration independently of programming proposals. Our point here is simply that where market conditions are inadequate to support a specialized station, partial operations which such a focus can be an independent goal from minority ownership.

[2] One extensive time-brokerage operation is discussed in more detail *infra* at paras. 6-8.

[3] A lack of apparent necessity for Commission inspection of time brokerage contracts led to the repeal of the requirement that they be filed with the Commission.

[4] See generally, *Order Concerning the Filing of Agreements Involving the Sale of Broadcast Time for Resale*, 33 F.C.C. 2d 654 (1972). But see *Cosmopolitan Broadcasting Corp. v. F.C.C.*, D.C. No. 76-2019, decided May 31, 1978, 43 R.R. 2d 113, S1. Op. at 32: "In determining whether the past programming of WHBI may have mitigated its derelictions of character, the Commission should therefore consider [on remand] whether denying Cosmopolitan's application for a license renewal will silence a unique outlet serving 'a specialized audience that would feel its loss.'" [Footnote omitted. Numerous intervenors representing a variety of ethnic communities evidenced their concern at the prospect of nonrenewal of WHBI's license. Some 68 percent of the station's operating schedule was time brokered for specialized programming in foreign languages.]

[5] *Master Broadcasting Co.*, 6 R.R. 621, 623 (1950).

[6] We note, however that the extensive brokered programming without adequate su-

Footnotes continued on next page

ance of any literacy problems in an unfamiliar language, radio's comparatively low production costs (as opposed to television) enable specialized programming to be broadcast to relatively small and culturally distinct groups. A monograph on WOJO(FM) programming, prepared for BCI by doctoral candidate Robert Slayton, states that brokered ethnic programs devote considerable time to reports on events of special interest in both the country of origin and within the ethnic conclave in the metropolitan area. Political commentaries may address concerns insignificant to the rest of the community, such as the workings of the Immigration and Naturalization Service. Feature programs and public service announcements serve to assuage homesickness, maintain separate cultures, and unify ethnic communities around important social and political causes.

8. The latter function of political organization is said to be of special importance for the Latino community in the Chicago area, whose members come from a variety of national backgrounds and frequently have organizational difficulties as a result. Slayton cites estimates of the Spanish-speaking population of Chicago ranging from a 1970 Census report of 247,343 or 7.3 percent of the overall population, to private estimates of 870,951 or 25 percent of the overall population (including illegal aliens).[7] As a group, the Spanish-speaking segment of Chicago occupies a significantly greater proportion of lower-paying jobs, and garners a significantly lower portion of business receipts, than do Chicago's Blacks.[8] Slayton states that the Latino community in Chicago places great reliance on radio because of its immediate impact and coverage, ready availability, and the absence of any Spanish-language daily newspaper as an alternative. Fewer Latinos are said to watch television than either non-Latino whites or Blacks, reflecting the ease and relative inexpensiveness of producing radio programming directed to their particular interests and problems.

9. There is no question that time brokerage arrangements can provide programming services that otherwise would not be available, and the Commission wishes to explore possible incentives to further encourage such efforts. It seems likely that, as with more conventional radio entertainment formats, such programming will begin on an experimental basis and after demonstrating its economic potential will become a more integral part of a station's operations. Rather than risk uninformed government interference with its development, we suggest the following general questions as guidelines for comment.

To what extent are the existing devices for such special programming utilized by stations, and (in the case of time brokering) how many hours are typically brokered?

Is there a typical factual situation apparent in such operations or do the circumstances underlying such arrangements resist such generalization?

Are there any groups interested in such operations which have been frustrated in attempts to develop such arrangements? If so, what appears to prevent implementation of such an interest?

Should some new form of Commission authorization, either NRBA's proposed hybrid or a variant, be created to encourage such operations?

Should a different incentive approach be adopted (if any is) with regard to television stations? Or are television production costs so high as to foreclose such operations?

If some new form of authorization is adopted, what standards should be used to distinguish situations calling for its exercise from those amenable to existing arrangements?

Should any incentives adopted for application to minority ownership be utilized in this context to foster partial operation by minority groups?

Should some recognition be accorded minority or female employment which results from (*e.g.*) time brokerage arrangements, even though such persons are not directly employed by the licensee?

Finally, if adoption of a new form of authorization is unnecessary or undesirable, are there less serious measures which might operate to encourage such operations—such as Commission guidelines for time brokerage arrangements?

We reiterate that these questions are suggestions rather than boundaries of the inquiry, and relevant facets of part-time operations should be noted even if not clearly falling under these questions. We are naturally most interested in the experience of licensees presently operating with some form of part-time operation, as such licensees are best qualified to suggest whether Commission incentives in this area might be helpful.

10. Pursuant to applicable procedures set forth in §§ 1.415 and 1.46 of the Commission's Rules, interested parties may file comments on or before January 22, 1979, and reply comments on or before February 23, 1979. All relevant and timely comments and reply comments will be considered by the Commission before final action is taken in this proceeding.

11. In accordance with the provisions of Section 1.419 of the Commission's Rules, an original and 5 copies of all comments, replies, pleadings, briefs, and other documents shall be furnished the Commission. All filings made in this proceeding will be made available of examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street NW., Washington, D.C.

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

[FR Doc. 78-33411 Filed 11-28-78; 8:45 am]

[3510-22-M]

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[50 CFR Part 226]

CRITICAL HABITAT OF ENDANGERED AND THREATENED FISH AND WILDLIFE

Proposed Determination of Critical Habitat for the Leatherback Sea Turtle

AGENCY: National Marine Fisheries Service.

ACTION: Proposed Designation of Critical Habitat.

SUMMARY: The National Marine Fisheries Service (NMSF) proposes to designate Critical Habitat for the leatherback sea turtle (*Dermochelys coriacea*) in waters adjacent to Sandy Point Beach, St. Croix, U.S. Virgin Islands. The proposed action is being taken under the Endangered Species Act of 1973, as amended (the Act) to provide protection to sea turtles using these waters for courting, breeding, and as access to and from their nesting areas on Sandy Point Beach. Activities of Federal agencies in the proposed area must be reviewed in accordance with the provisions of the Act.

DATES: A public meeting on this proposed regulation will take place at 7:00 p.m., December 5, 1978. Requests for a public hearing must be received on or before January 15, 1979. Comments on the proposal must be received on or before January 29, 1979.

ADDRESSES: Submit comments, or a request for a public hearing, to the As-

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pervision which, among other issues, placed the license of Cosmopolitan Broadcasting's WHBI in jeopardy, was similarly oriented to linguistic minorities. *Supra* at note 4.

[7] Walton and Salces, *Political Organization of Chicago's Latino Community* (1977).

[8] While 1.7 percent of city workers are Latino as against their 7 to 23 percent representation in the population, some 23 percent of municipal jobs are held by Blacks who comprise 32.7 percent of the Chicago population. According to the 1972 Census figures cited by Slayton, the Chicago SMSA has 9,718 Black-owned businesses with gross receipts of nearly $534 million, while the 1,576 Latino-owned businesses earned gross receipts of only $70 million. The 17 largest Latino business in Chicago had combined 1975 sales of $22.1 million, just over half the sales of the single largest Black business firm in the city—Johnson Publishing Company, licensee of WJPC(AM).

sistant Administrator for Fisheries, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, 3300 Whitehaven Street, N.W., Washington, D.C. 20235. The public meeting on this proposed regulation will be held at the Fort Frederick Museum, Fredricksted, St. Croix, the Virgin Islands (Tel: 809-772-2021).

FOR FURTHER INFORMATION CONTACT:

Mr. Richard B. Roe, Acting Director, Office of Marine Mammals and Endangered Species, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Washington, D.C. 20235, (202) 634-7287.

SUPPLEMENTAL INFORMATION: The leatherback sea turtle is endangered throughout the world, and has been listed as endangered since 1970 (35 FR 19320). Though the leatherback spends most of its life at depths of 150 feet or greater, it must come ashore on sandy beaches to nest and lay eggs.

Courtship and mating are believed to occur in waters adjacent to nesting beaches just prior to the time of egg laying. Accordingly, much of the hope for the survival and recovery of the leatherback depends on the maintenance of suitable and undisturbed nesting beaches and protection of waters adjacent to those beaches.

During the early summer of 1977 the U.S. Fish and Wildlife Service (FWS) became aware of a newly discovered nesting aggregation of leatherback sea turtles occurring at the western end of the island of St. Croix, U.S. Virgin Islands. Personnel of the FWS, MNFS, U.S. Coast Guard, and Government of the Virgin Islands conducted observation on St. Croix during the month of June. In excess of 70 leatherback nests were discovered on the 0.8 mile by 0.1 mile strip of Sandy Point Beach during these observations. This area constitutes the only known beach under U.S. jurisdiction used extensively for nesting by the endangered leatherback. On March 23, 1978 (43 FR 12050) the FWS proposed to designate Sandy Point Beach on St. Croix as critical habitat for the leatherback sea turtle. The FWS published a final regulation on September 26, 1978 (43 FR 43688).

Pursuant to an agreement between the FWS and the NMFS, the FWS has jurisdiction over sea turtles, on the land and the NMFS over sea turtles in the marine environment. These proposed regulations designate as Critical Habitat an area of the marine environment adjacent to a nesting beach previously designated as Critical Habitat by the FWS.

The exact area proposed as Critical Habitat is the body of water adjacent to Sandy Point Beach, St. Croix, U.S. Virgin Islands, located up to and inclusive of the waters from the hundred fathom curve shoreward to the level of mean high tide with boundaries at 17°42'12" North and 64°50'00" West (see chart below).

The Endangered Species Act Amendments of 1978 define the term "critical habitat" for a threatened or endangered species as follows:

(i) the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of section 4 of this Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and

(ii) specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 4 of this Act, upon a determination by the Secretary that such areas are essential for the conservation of the species.

Since the area proposed as Critical Habitat is used by the leatherback for courting and mating activities and provides an access to and from its nesting beach, the NMFS believes the area is essential for the conservation of the leatherback sea turtle, and may require special management considerations. As such, these waters qualify for designation as Critical Habitat under the Endangered Species Act as amended.

As information becomes available additional areas may be proposed as Critical Habitat for this species.

Effect of the Proposed Regulations

The major effect of designating this area as Critical Habitat will be to require any Federal agency that authorizes funds or carries out activites that might result in the destruction or adverse modification of the area to comply with Section 7 of the Act. At this time there are no known federal activities planned for this area.

Private activities are not directly affected by designating an area as Critical Habitat. Private activities in the Sandy Point Beach area include commercial and recreational fishing, boating, swimming, and diving. These activities, particularly if conducted at night when leatherbacks commonly come ashore to nest, may interrupt some nesting activities.

The Sandy Point Beach is privately owned. The NMFS is not aware of any current plans to develop this area privately.

Public Notice Provisions

Notice of this proposed regulation will appear in the following newspapers:

Daily News (published in St. Thomas, V.I.)
Virgin Islands Post (published in St. Thomas, V.I.)
St. Croix Avis (published in St. Croix, V.I.)

The NMFS has also offered notice of this proposed regulation for publication in the following scientific journals:

Scientific American;
Science;
Nautilus Press publications.

NMFS has sent notice of this proposed regulation, accompanied by a copy of the environmental assessment prepared for this proposal, to the following local government officials:

Honorable Juan Luis, Governor of Virgin Islands, Office of the Governor, Government House, St. Thomas, V.I. 00801.

Virdin C. Brown, Commissioner, Department of Conservation and Cultural Affairs, Box 4340, St. Thomas, V.I. 00801.

David Benjamin, Deputy Commissioner, Department of Conservation and Cultural Affairs, Division of Parks and Recreation, 13-A Western Suburb, Chritiansted, St. Croix, V.I. 00820.

Office of Commmunity Services, Office of the Governor, P.O. Box 5138, St. Thomas, V.I. 00801.

A public meeting on this proposed regulation will be held at 7 p.m., December 5, 1978 at Fort Frederick Museum, Fredricksted, St. Croix, V.I. If requested, a public hearing will also be held on St. Croix. The time and place of this hearing will be announced if and when such a request is received.

Written public comments must be received on or before January 29, 1979. Comments are invited on the following topics:

The desirability of designating this area as Critical Habitat;
The potential economic impacts of this designation;
Other potential impacts of this designation.

Any final regulation will not take effect before the 60th day after the date on which the meeting or hearing is concluded, and if more than one public meeting or hearing is held, before the 60th day after the date on which the last such meeting or hearing is concluded. The primary author of this proposed rule is Mr. Richard B. Roe, Office of Marine Mammals and Endangered Species.

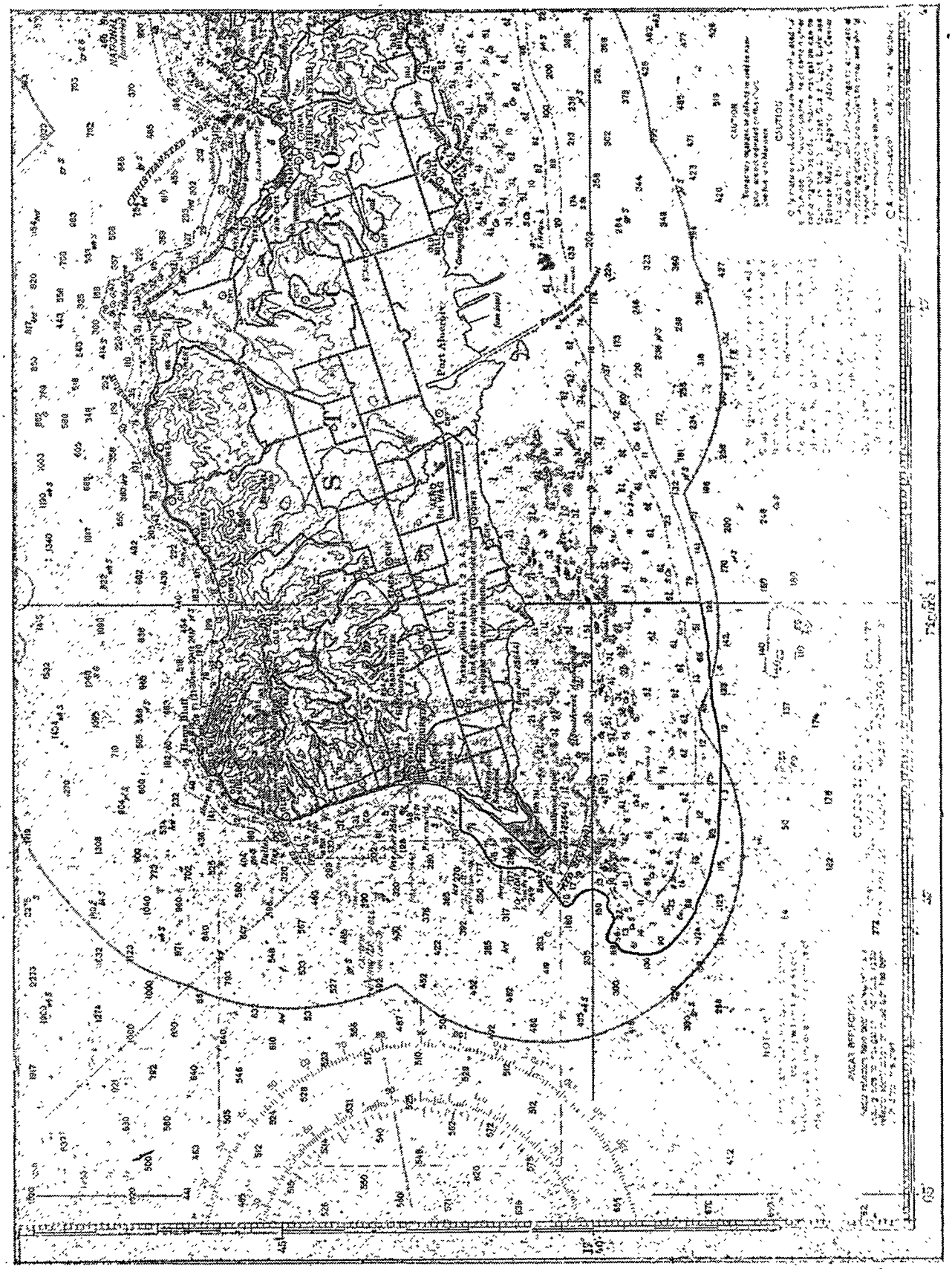
Regulations Promulgation

NMFS proposes to amend 50 CFR Part 226 as follows:

§ 226.72 Sandy Point, St. Croix, U.S. Virgin Islands.

Leatherback Sea Turtle (*Dermochelys coriacea*)

The waters adjacent to Sandy Point, St. Croix, U.S. Virgin Islands, up to and inclusive of the waters from the hundred fathom curve shoreward to the level of mean high tide with boundaries at 17° 42' 12" North and 64° 50' 00" West.



[3510-22-C]

§§ 226.73–226.99 [Reserved]

Dated: November 24, 1978.

WINFRED H. MEIBOHM,
Acting Executive Director,
National Marine Fisheries Service.

[FR Doc. 78-33451 Filed 11-28-78; 8:45 am]

[3510-22-M]

[50 CFR Part 611]

SQUID FISHERIES OF THE NORTHWESTERN ATLANTIC

Preliminary Fishery Management Plan

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Proposed amendment to preliminary fishery management plan.

SUMMARY: This amendment to the Preliminary Fishery Management Plan entitled "Squid Fisheres of the Northwestern Atlantic" (PMP), which was published on February 16, 1977, would reduce the estimate of U.S. harvesting capacity for long-finned squid (*Loligo pealei*) by 1,900 metric tons (mt) and increases the amount of long-finned squid allocated to the foreign fisheries (TALFF) by 1,900 mt.

DATE: Comments must be received on or before December 14, 1978.

ADDRESS: Send comments to the Assistant Administrator for Fisheries (F), National Oceanic and Atmospheric Administration, Washington, D.C. 20235. Please mark "Comments on Squid PMP, Attn. F36," on the outside of the envelope.

FOR FURTHER INFORMATION CONTACT:

William G. Gordon, Director, Northeast Regional Office, National Marine Fisheries Service, 14 Elm Street, Gloucester, Massachusetts 01930. Telephone: 617-281-3600.

SUPPLEMENTAL INFORMATION: In July 1978, in accordance with the 1978 Foreign Fishing Regulations, § 611.20(b), the optimum yield (OY) and U.S. harvesting capacity for long-finned squid (*Loligo pealei*) and short-finned squid (*Illex illecebrosus*) were reassessed. The reassessments indicated that for *Illex* squid the estimated U.S. harvesting capacity should be revised downward from 11,500 mt to 6,000 mt, and that the TALFF should then be increased by 5,500 mt from 23,500 mt to 29,000 mt. On July 20, 1978, amendments based on these reassessments were proposed for the PMP (43 Fr 31186). Following a public comment period of 15 days, amendments to the 1978 Foreign Fishing Regulations were published on August 11, 1978 (43 FR 35719).

Reassessments of OY and U.S. harvest capacity for long-finned (*Loligo*) squid were scheduled for September 1978, although the proposed amendment to the squid PMP published on July 20, 1978 (43 FR 31186), erroneously stated that the September reassessments would be for short-finned squid (*Illex*). The September reassessments indicated that the *Loligo* OY should remain at its present level, but that the estimate of U.S. harvest capacity could be reduced by 1,900 mt, from 25,000 mt to 23,100 mt.

The total harvest of Northwestern Atlantic squid as of August 31, 1978, is estimated to be 1,392.5 mt. Of this total 250.7 mt is *Illex*, 391.5 mt is *Loligo*, and the remaining 750.3 mt is both *Illex* and *Loligo*. The original estimate of domestic harvest for *Loligo* in 1978 was 25,000 mt. Although the National Marine Fisheries Service (NMFS) expects domestic fishermen to continue to harvest Northwestern Atlantic squid during 1978 and exceed the 1977 level of 2,430 mt, NMFS now does not expect the total domestic harvest of *Loligo* squid to exceed 23,100 mt. The surplus of 1,900 mt of *Loligo* obtained by revising the U.S. harvest estimate downward is available to be added to the 1978 TALFF, increasing it from 19,000 mt to 20,900 mt. Some of this 1,900 mt will be provided to foreign nations to augment their by-catch allocations, but most of it will be allocated among those nations still having a directed squid fishery.

This action involves no change in the OY for long-finned squid (*Loligo*). It does reduce the estimate of U.S. harvest capacity by 1,900 mt (from 25,000 mt to 23,100 mt) and allocates the surplus of 1,900 mt to foreign nations. The Assistant Administrator has determined that these changes should have no adverse impact on the U.S. squid fishery nor on future supplies of squid.

Good cause exists for implementing this amendment with only a 15-day public comment period. Any further delay will nullify this additional allocation to the foreign fleets for the following reasons: (1) several foreign nations are approaching their quotas on squid and they will have to stop fishing not only for squid but for other allocated fish species when they reach their squid quotas; and (2) failure to make surplus fishery resources available to foreign nations by early December would make it impossible for them to take advantage of the increased allocations for 1978.

The Assistant Administrator for Fisheries (Assistant Administrator), under a delegation of authority from the Secretary, has determined that an amendment to the PMP to reduce the 1978 estimate of U.S. harvest capacity for long-finned (*Loligo*) squid by 1,900 mt and to allocate the 1,900 mt additional surplus to foreign nations is necessary and appropriate to further the interest of wise utilization and management of the Northwestern Atlantic squid during the 1978 fishing season.

Signed at Washington, D.C. this 24th day of November, 1978.

WINFRED H. MEIBOHM,
Acting Executive Director, National Marine Fisheries Service.

The PMP is revised as follows:

Section IV c as revised (42 FR 39130) is amended as follows:

* * * * *

c. *Estimated Domestic Production Potential and Allowable Foreign Surplus.* The capacity of the United States to exploit squid in 1978 was estimated by NOAA, in consultation with members of the U.S. fishing industry, as 29,000 mt. Of this amount, 23,100 mt was of long-finned squid (*Loligo*), and 6,000 mt was of short-finned squid (*Illex*). This left 49,900 mt of both species as foreign surplus. Specific figures by species are given in Table 26.

TABLE 26 *Squid Optimum Yield and Allocations*

[In metric tons]

Species	Maximum sustainable yield	Optimum yield	U.S. capacity	Foreign surplus
Illex	40,000	35,000	6,000	29,000
Loligo	44,000	44,000	23,100	20,900

[FR Doc. 78-33408 Filed 11-28-78; 8:45 am]

notices

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.

[6110-01-M]

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

COMMITTEE ON GRANTS, BENEFITS, AND CONTRACTS

Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of a meeting of the Committee on Grants, Benefits and Contracts of the Administrative Conference of the United States, to be held at 10:00 a.m., Thursday, December 14, 1978, at the National Aeronautics & Space Administration, 400 Maryland Avenue, S.W., Room 5092, Washington, D.C. 20546.

The Committee will meet to consider the comments on the report by Professor Peter W. Martin entitled "Procedures Used in Forming and Carrying our Federal-State Agreements under the Supplemental Security Income Program," and to consider revisions in its proposed recommendations.

Attendance is open to the interested public, but limited to the space available. Persons wishing to attend should notify this office at least two days in advance. The Committee Chairman, if he deems it appropriate, may permit members of the public to present oral statements at the meeting: any member of the public may file a written statement with the Committee before, during or after the meeting.

For further information concerning this meeting contact Charles Pou, 202-254-7065. Minutes of the meeting will be available on request.

RICHARD K. BERG,
Executive Secretary.

NOVEMBER 22, 1978.

[FR Doc. 78-33415 Filed 11-28-78; 8:45 am]

[6110-01-M]

COMMITTEE ON INFORMAL ACTION

Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of a meeting of the Committee on Informal Action of the Administrative Conference of the United States, to be held at 10:00 a.m., Thursday, December 14, 1978, in Hearing Room B, Interstate Commerce Commission, 12th and Constitution Avenue, NW, Washington, D.C.

The Committee will meet to consider two ongoing studies: A study of federal agency assessment and mitigation of civil money penalties, and a study of agency exercise of prosecutional discretion in seeking criminal sanctions for violations of regulatory statutes.

Attendance is open to the interested public, but limited to the space available. Persons wishing to attend should notify this office at least two days in advance. The Committee Chairman, if he deems it appropriate, may permit members of the public to present oral statements at the meeting; any member of the public may file a written statement with the Committee before, during or after the meeting.

For further information concerning this meeting contact Jeffrey Lubbers, 202-254-7065. Minutes of the meeting will be available on request.

RICHARD K. BERG,
Executive Secretary.

NOVEMBER 22, 1978.

[FR Doc. 78-33416 Filed 11-28-78; 8:45 am]

[3410-11-M]

DEPARTMENT OF AGRICULTURE

Forest Service

PRESCOTT NATIONAL FOREST GRAZING ADVISORY BOARD

Meeting

The Prescott National Forest Grazing Advisory Board will meet at 10 a.m. on December 20, 1978, at the Forest Supervisor's Office in Prescott, Arizona.

The purpose of this meeting is to elect officers and review items of mutual interest to grazing permittees and the Forest Service.

The meeting will be open to the public. Persons who wish to attend should notify the Forest Supervisor, Prescott National Forest, 344 South Cortez Street, Prescott, Arizona, telephone number 602-445-1762. Written statements may be filed with the Board before or after the meeting.

The Board has established the following rules for public participation:

Members of the public will be given an opportunity for comments and questions following discussion by the Advisory Board.

JOHN W. BOHNING,
Acting Forest Supervisor.

NOVEMBER 20, 1978.

[FR Doc.78-33349 Filed 11-28-78; am]

[3410-11-M]

TONTO NATIONAL FOREST GRAZING ADVISORY BOARD

Meeting

The Tonto National Forest Grazing Advisory Board will meet January 5, 1979, at 10 a.m. at the office of the Forest Supervisor, Tonto National Forest, located at 102 South 28th Street, Phoenix, Arizona.

The purpose of this meeting is to cover the following agenda items:

1. Use of Range Betterment Funds authorized by Pub. L. 94-579—policy and distribution to date of meeting.
2. Discussion of allotment management plans (if applicable as of meeting date) upon which Forest Service and grazing permittees are not in full accord.
3. Discuss and plan spring field trip to view the results of selected range management plans.

The meeting will be open to the public. Persons who wish to attend should notify Bruce Hronek, Supervisor, Tonto National Forest, 102 South 28th Street, Phoenix, Arizona 85002, telephone 602-261-3205. Written statements may be filed with the Board before or after the meeting.

Oral statements may be made by public attendees when recognized by the Chair.

Dated: November 21, 1978.

WILLIAM E. PINT,
Acting Forest Supervisor.

[FR Doc. 78-33417 Filed 11-28-78; 8:45 am]

[3410-16-M]

Soil Conservation Service

BRIAR CREEK WATERSHED, PENNSYLVANIA

Intent To Prepare an Environmental Impact Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Serv-

ice Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is being prepared for the Briar Creek Watershed, Columbia and Luzerne Counties, Pennsylvania.

The environmental assessment of this federally-assisted action indicates that the project may cause significant local, regional or national impacts on the environment. As a result of these findings, Mr. Graham T. Munkittrick, State Conservationist, has determined that the preparation and review of an environmental impact statement is needed for this project.

The project concern a plan for watershed protection and flood prevention. About 80 percent of the land treatment measures and a multiple-purpose structure with flood prevention and recreation development have been installed. The remaining planned work of improvement is a single-purpose floodwater detention structure on Glen Brook, a tributary of the East Branch of Briar Creek.

A draft environmental impact statement will be prepared and circulated for review by agencies and the public. The Soil Conservation Service invites participation of agencies and individuals with expertise or interest in the preparation of the draft environmental impact statement.

The draft environmental impact statement will be developed by Mr. Graham T. Munkittrick, State Conservationist, Soil Conservation Service, Box 985, Federal Square Station, Harrisburg, Pennsylvania 17108; 717-782-2202.

(Catalog of Federal Domestic Assistance Progam No. 10.904, Watershed Protection and Flood Prevention Program—Pub. Law 83-566, (16 U.S.C. 1001-1008).)

Dated: November 22, 1978.

JOSEPH W. HAAS,
Assistant Administrator for Water Resources, Soil Conservation Service, Department of Agriculture.

[FR Doc. 78-33350 Filed 11-28-78; 8:45 am]

[3510-24-M]

DEPARTMENT OF COMMERCE

Economic Development Administration

U.S. KNITTING MILLS, INC., ET AL.

Petitions by Five Producing firms for Determinations of Eligibility To Apply for Trade Adjustment Assistance

Petitions have been accepted for filing from five firms: (1) U.S. Knitting Mills, Inc., 795 Main Avenue, Passaic, New Jersey 07055, a producer of fabrics and women's blouses, pants and skirts (accepted November 14, 1978); (2) Buddy Meyers, Ltd., 1290 Avenue of the Americas, New York, New York 10019, a producer of men's sport shirts (accepted November 14, 1978); (3) Farah Manufacturing Company, Inc., P.O. Box 9519, El Paso, Texas 79985, a producer of men's and boys' slacks, jeans, sportcoats and vests (accepted November 15, 1978); (4) Carmen J., Inc., 350 North 16th Street, Philadelphia, Pennsylvania 19103, a producer of slacks, skirts and other sportswear for women (amended petition accepted November 17, 1978); and (5) Wire Cloth Manufactures, Inc., 133 Kings Road, Madison, New Jersey 07940, A producer of extruder screens and wire cloth parts. The petitions were submitted pursuant to section 251 of the Trade Act of 1974 (Pub. L. 93-618) and § 315.23 of the Adjustment Assistance Regulations for Firms and Communities (13 CFR Part 315).

Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Chief, Trade Act Certification Division, Economic Development Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than the close of business on December 11, 1978.

JACK W. OSBURN, Jr.,
Chief, Trade Act Certification Division, Office of Planning and Program Support.

[FR Doc. 78-33418 Filed 11-28-78; 8:45 am]

[3510-25-M]

Foreign-Trade Zones Board

[Docket No. 12-78]

FOREIGN-TRADE ZONE—GREATER CINCINNATI AREA

Amended Application

Notice is hereby given that the Greater Cincinnati Foreign-Trade Zone, Inc., a non-profit Ohio corporation, has amended that part of its application, filed September 19, 1978 (43 FR 44875, 9-29-78), requesting approval for a general-purpose foreign-trade zone site in Campbell County, Kentucky, in the Cincinnati Customs port of entry area.

The amended part of the application concerns the proposed zone site to be operated by the H. J. Hosea and Sons Company at its warehouse/distribution complex in Wilder, Kentucky. The application originally proposed that the zone would be located on a 1.2 acre parcel with an existing warehouse. During the public hearing held by the examiners committee on October 19, 1978, the applicant indicated its desire to amend this to include a larger tract of 20.8 acres within the same facility, so that adequate space would be available to meet the expected demand for zone services. On November 2, 1978, this amendment was submitted by the applicant in writing.

Interested parties are invited to comment on the amendment. Comments should be submitted in writing to the Board's Executive Secretary, U.S. Department of Commerce, Room 6886-B, Washington, D.C. 20230, and be postmarked no later than December 11, 1978.

Dated: November 22, 1978.

JOHN J. DA PONTE, Jr.,
Executive Secretary, Foreign-Trade Zones Board.

[FR Doc. 78-33419 Filed 11-28-78; 8:45 am]

[3510-25-M]

Industry and Trade Administration

SUBCOMMITTEE ON EXPORT ADMINISTRATION OF THE PRESIDENT'S EXPORT COUNCIL

Partially Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. (1976 (ed.)), notice is hereby given that a meeting of the Subcommittee on Export Administration of the President's Export Council (PEC) will be held on Wednesday, December 13, 1978, at 9:00 a.m., in room 6043 of the Department of Commerce, Washington, D.C.

The Subcommittee on Export Administration was initially established on June 1, 1976. On January 6, 1977, the Assistant Secretary for Administration approved the recharter and extension through December 31, 1978, of the Subcommittee, Pursuant to the provisions of Section 3 of Executive Order 11753 (December 20, 1973), as extended by Section 1(k) of Executive Order 11948 (December 20, 1976), and the Federal Advisory Committee Act.

The Subcommittee advises the Secretary of Commerce on matters pertinent to those portions of the Export Administration Act of 1969, as amended (50 U.S.C. App. 2401 *et seq.*) that deal with United States policy of encouraging trade with all countries with which the United States has diplomatic or trading relations and of controlling trade for national security and foreign policy reasons. The Subcommittee meeting agenda has eight parts:

GENERAL SESSION

1. Report on Secretary's Recent Trip to Moscow
Technology Export Control Functions of the Department of Defense
3. Critical Technologies List—A Status Report
4. Changes in Commerce Export Licensing Procedures
5. U.S. Reexport Controls: Policy and Practices
6. Extension of Export Administration Act
● Foreign Policy Controls and Foreign Availability
● Confidentiality Provisions
7. Other Business
● Reorganization of the President's Export Council and Future Role of the Subcommittee

EXECUTIVE SESSION

8. COCOM Developments
● Update on List Review
● Role of Technology

The General Session (agenda items one through seven) is open to the public. To the extent time permits, members of the public may present oral statements to the Subcommittee. Written statements may be submitted at any time before or after the meeting.

With respect to agenda item eight, the Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 11, 1977, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended by Section 5(c) of the Government in the Sunshine Act (Pub. L. 94-409), that the matters to be discussed in the Executive Session should be exempt form the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1). Such matters are specifically authorized under criteria established by Executive Orders 11652 and 12065 to be kept secret in the interest of the national defense or foreign policy. Materials to be reviewed and discusses by the Subcommittee during the Executive Session of the meeting have been properly classified under those Executive Orders. All Subcommittee members have appropriate security clearances.

The complete Notice of Determination to close portions of the series of meetings of the Subcommittee on Export Administration of the President's Export Council is printed at 42 FR 3011 (January 14, 1977).

Copies of the minutes of the General Session will be available by calling Mr. Lawrence J. Brady, Deputy Director, Office of Export Administration, U.S. Department of Commerce, Washington, D.C. 20230, phone 202-377-4188.

For further information, contact Mr. Brady either in writing or by phone at the address or number shown above.

RAUER H. MEYER,
Director, Office of Export Administration, Bureau of Trade Regulation.

[FR Doc. 78-33348 Filed 11-28-78; 8:45 am]

[3510-25-M]

COMPUTER SYSTEMS TECHNICAL ADVISORY COMMITTEE

Closed Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, as amended, 5 U.S.C. App. (1976), notice is hereby given that a meeting of the Computer Systems Technical Advisory Committee will be held on Tuesday, December 19, 1978; at 9:00 a.m. in Room 3817, Main Commerce Building, 14th and Constitution Avenue, N.W., Washington, D.C.

The Computer Systems Technical Advisory Committee was initially established on January 3, 1973. On December 20, 1974, January 13, 1977, and August 28, 1978, the Assistant Secretary for Administration approved the recharter and extension of the Committee, pursuant to Section 5(c)(1) of the Export Administration Act of 1969, as amended, 50 U.S.C. App. Sec. 2404(c)(1) and the Federal Advisory Committee Act.

The Committee advises the Office of Export Administration, Bureau of Trade Regulation, with respect to questions involving (A) technical matters, (B) worldwide availability and actual utilization of production technology, (C) licensing procedures which may affect the level of export controls applicable to computer systems, including technical data or other information related thereto, and (D) exports of the aforementioned commodities and technical data subject to multilateral controls in which the United States participates including proposed revisions of any such multilateral controls.

The Committee will meet only in Executive Session to discuss matters properly classified under Executive Order 11652 or 12065, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary of Commerce for Administration, with the concurrence of the delegate of the General Counsel, formally determined on September 6, 1978, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government In The Sunshine Act, Pub. L. 94-409, that matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1). Such matters are specifically authorized under criteria established by an Executive Order to be kept secret in the interests of national defense or foreign policy. All materials to be reviewed and discussed by the Committee during the meeting have been properly classified under Executive Order 11652 or 12065. All Committee members have appropriate security clearances.

For further information, contact Mr. Charles C. Swanson, Director, Operations Division, Office of Export Administration, Industry and Trade Administration, Room 1617M, U.S. Department of Commerce, Washington, D.C. 20230, telephone: A/C 202-377-4196.

The complete Notice of Determination to close meetings or portions thereof of the series of meetings of the Computer Systems Technical Advisory Committee and of any subcommittees thereof, was published in the FEDERAL REGISTER on September 14, 1978 (43 FR 41073).

Dated: November 24, 1978.

RAUER H. MEYER,
Director, Office of Export Administration, Bureau of Trade Regulation, U.S. Department of Commerce.

[FR Doc. 78-33398 Filed 11-28-78; 8:45 am]

[3510-13-M]

National Bureau of Standards

VOLUNTARY PRODUCT STANDARDS

Intent To Withdraw

In accordance with section 10.12 of the Department's "Procedures for the Development of Voluntary Product Standards" (15 CFR Part 10), notice is hereby given of the intent to withdraw Voluntary Product Standard PS 16-69, "Types and Sizes of Forms for One-Way Concrete Joist Construction."

This withdrawal action is being proposed for the reason that PS 16-69 is adequately covered by the American National Standards Institute standard ANSI A48.1-1978, "Types and Sizes of Forms for One-Way Concrete Joist Construction," and duplication is inappropriate and not in the public interest.

Any comments or objections concerning this intended withdrawal of this standard should be made in writ-

ing to Standards Development Services, National Bureau of Standards, Washington, D.C. 20234, on or before December 29, 1978. The effective date of withdrawal will not be less than 60 days after the final notice of withdrawal. Withdrawal action terminates the authority to refer to a published standard as a voluntary standard developed under the Department of Commerce procedures from the effective date of withdrawal.

Dated: November 21, 1978.

ERNEST AMBLER,
Director.

[FR Doc. 78-33354 Filed 11-28-78; 8:45 am]

[3510-13-M]

RECOMMENDED VOLUNTARY PRODUCT STANDARD

Circulation

In accordance with the provisions of § 10.5 of the Department's "Procedures for the Development of Voluntary Product Standards" (15 CFR Part 10), the National Bureau of Standards is giving public notice and circulating for acceptance Recommended Voluntary Product Standard TS 222, "Bedding Products and Components (Mattresses, Foundations, Beds, Bed Frames, and Headboards)."

The purpose of this standard is to establish nationally recognized dimensional requirements for bedding products and components, and to provide producers, distributors, and users with a basis for common understanding of the characteristics of this product.

Copies of TS 222 may be obtained from Standards Development Services, National Bureau of Standards, Washington, D.C. 20234. Written comments concerning the standard should be submitted to Standards Development Services on or before January 15, 1979.

Dated: November 22, 1978.

THOMAS A. DILLON,
Acting Director.

[FR Doc. 78-33407 Filed 11-28-78; 8:45 am]

[3510-22-M]

National Oceanic and Atmospheric Administration

GULF OF MEXICO FISHERY MANAGEMENT COUNCIL

Meeting-Cancellation

AGENCY: National Marine Fisheries Service, NOAA.

ACTION: Notice of cancellation of public meeting.

SUMMARY: Notice is hereby given that the scheduled meeting on December 5, 1978, through December 8, 1978, of the Gulf of Mexico Fishery Management Council as published in the FEDERAL REGISTER, Vol. 43, No. 216, page 51829, Tuesday, November 7, 1978, has been cancelled.

FOR FURTHER INFORMATION CONTACT:

Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Boulevard, Tampa, Fla. 33609, telephone: 813-228-2815.

WINFRED H. MEIBOHM,
Associate Director,
National Marine Fisheries Service.

[FR Doc. 78-33409 Filed 11-28-78; 8:45 am]

[3510-22-M]

GULF OF MEXICO FISHERY MANAGEMENT COUNCIL

Meeting

AGENCY: National Marine Fisheries Service, NOAA.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council established by Section 302 of the Fishery Conservation and Management Act of 1976 (Pub. L. 95-265), will meet to: (1) review public comment on the Stone Crab Fishery Management Plan and to amend the plan as needed and (2) conduct other fishery management business.

DATES: The meeting will convene on Thursday, December 21, 1978, at 8:30 a.m. and adjourn at approximately 2:30 p.m. The meeting is open to the public.

ADDRESS: The meeting will take place at the offices of the Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881, Tampa, Florida.

FOR FURTHER INFORMATION CONTACT:

Wayne E. Swingle, Executive Director Gulf of Mexico Fishery Management Council Lincoln Center, Suite 881 5401 West Kennedy Boulevard Tampa, Florida 33609 Telephone: (813) 228-2815.

WINFRED H. MEIBOHM,
Associate Director,
National Marine Fisheries Service.

[FR Doc. 78-33410 Filed 11-28-78; 8:45 am]

[3510-04-M]

National Technical Information Service

GOVERNMENT-OWNED INVENTIONS

Availability for Licensing

The inventions listed below are owned by the U.S. Government and are available for domestic and possibly foreign licensing in accordance with the licensing policies of the agency-sponsors.

Copies of the patents cited are available from the Commissioner of Patents & Trademarks, Washington, DC 20231, for $.50 each. Requests for copies of patents must include the patent number.

Copies of the patent applications can be purchased from the National Technical Information Service NTIS), Springfield Virginia 22161 for $4.00 ($8.00 outside North American Continent). Requests for copies of patent applications must include the PAT-APPL number. Claims are deleted from patent application copies sold to the public to avoid premature disclosure in the event of an interference before the Patent and Trademark Office. Claims and other technical data will usually be made available to serious prospective licensees by the agency which filed the case.

Requests for licensing information on a particular invention should be directed to the address cited for the agency-sponsor.

DOUGLAS J. CAMPION,
Patent Program Coordinator,
National Technical Information Service.

U.S. DEPARTMENT OF AGRICULTURE, Research Agreements and Patent Branch, General Service Division, Federal Building, Agricultural Research Service, Hyattsville, Md. 20782.

Patent 4,093,510: Xanthated Starch Amine Paper Additives; filed April 7, 1977; patented June 6, 1978; not available NTIS.

Patent 4,093,637: Alkyl 9,9(10,10)-Bis(Acyloxymethyl)Octadecanoates as Primary Plasticizers for Polyvinylchloride; filed January 31, 1977; patented June 6, 1978; not available NTIS.

U.S. DEPARTMENT OF TRANSPORTATION, Patent Counsel, 400 7th Street, S.W., Washington, D.C. 20590.

Patent 3,224,713: Landing Gear System; filed June 8, 1964; patented December 21, 1965; not available NTIS.

U.S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, National Institutes of Health, Chief, Patent Branch, Westwood Building, Bethesda, Md. 20014.

Patent application 886,106: 3-Deazaadenosine as an Inhibitor of Adenosylhomocysteine Hydrolase with Antiviral Activity; filed March 13, 1978.

Patent application 886,465: Portable Instrument for Measuring Neutron Energy Spectra and Neutron Dose in a Mixed n-gamma Field; April 14, 1978.

Patent application 892,853: Capillary Cell Culture Device; filed April 3, 1978.

Patent application 895,082: Anti-Neoplastic Use of 1,4-Bis(Substituted Aminalkyl Amino)-Anthraquinones; filed April 10, 1978.

Patent application 912,946: Method of Producing Delayed Release of Sodium Fluoride; filed June 5, 1978.

Patent application 930,659: Optical Sensor of Plasma Constituents; filed August 2, 1978.

Patent 4,082,781: Synthesis of 2-Alkanoylamino-4-Nitrophenyl Phosphorylcholine-Hydroxide; filed June 4, 1976; patented April 4, 1978; not available NTIS.

[FR Doc. 78-33351 Filed 11-28-78; 8:45 am]

[3510-04-M]

GOVERNMENT-OWNED INVENTIONS

Availability for Licensing

The inventions listed below are owned by the U.S. Government and are available for domestic and possibly foreign licensing in accordance with the licensing policies of the agency-sponsors.

Copies of the patents cited are available from the Commissioner of Patents & Trademarks, Washington, DC 20231, for $.50 each. Requests for copies of patents must include the patent number.

Copies of the patent applications can be purchased from the National Technical Information Service (NTIS), Springfield, Virginia 22161 for $4.00 ($8.00 outside North American Continent). Requests for copies of patent applications must include the PAT-APPL number. Claims are deleted from patent application copies sold to the public to avoid premature disclosure in the event of an interference before the Patent and Trademark Office. Claims and other technical data will usually be made available to serious prospective licensees by the agency which filed the case.

Requests for licensing information on a particular invention should be directed to the address cited for the agency-sponsor

DOUGLAS J. CAMPION,
Patent Program Coordinator, National Technical Information Service.

U.S. DEPARTMENT OF AGRICULTURE, Research Agreements and Patent Branch, General Services Division, Federal Building, Agricultural Research Service, Hyattsville, Md. 20782.

Patent application 880,734: Automatic Astroposition Determination Apparatus; filed February 24, 1978.

Patent 4,053,712: Adaptive Digital Coder and Decoder; filed August 24, 1976; patented October 11, 1977; not available NTIS.

Patent 4,055,079: Cylinder Firing Indicator; filed August 9, 1976; patented October 25, 1977; not available NTIS.

Patent 4,056,852: Adjustable Helmet Suspension System; filed April 19, 1976; patented November 8, 1977; not available NTIS.

Patent 4,058,438: Rapid Universal Sensing Cell; filed October 28, 1976; patented November 15, 1977; not available NTIS.

Patent 4,059,052: Fuze Modulation System; filed February 21, 1957; patented November 22, 1977; not available NTIS.

Patent 4,062,126: Deadband Error Reduction in Target Sight Stabilization; filed November 8, 1976; patented December 13, 1977; not available NTIS.

Patent 4,062,598: Wedge Block Lock for Vehicle Track End Connectors; filed August 9, 1976; patented December 13, 1977; not available NTIS.

Patent 4,069,990: Ring-Wing Canard Spin-Up Control Mechanism; filed March 14, 1977; patented January 24, 1978; not available NTIS.

Patent 4,070,692: Video Digitizing System for Single Valued Functions; filed May 8, 1975; patented January 24, 1978; not available NTIS.

Patent 4,079,955: Locking Device; filed August 9, 1976; patented March 21, 1978; not available NTIS.

Patent 4,080,942: Metering Fuel by Compressibility; filed June 23, 1976; patented March 28, 1978; not available NTIS.

U.S. DEPARTMENT OF THE AIR FORCE, AF/JACP, 1900 Half Street, SW., Washington, D.C. 20324

Patent application 893,867: Gun Projectile Sensor; filed April 6, 1978.

Patent application 904,850: Turbofan Augmentor Flameholder; filed May 11, 1978.

Patent application 904,964: Metallic Grating Spatial Filter for Directional Beam Forming Antenna; filed May 11, 1978.

Patent application 904,965: Gating Apparatus for Static Crossed Field Photomultipliers; filed May 11, 1978.

Patent application 905,063: Wing Pivot Assembly for Variable Sweep Wing Aircraft; filed May 11, 1978.

Patent application 910,996: A Planar Thin Film Edge Contact Metal Oxide-Metal Device; filed May 30, 1978.

Patent application 913,187: Low Contrast Measurement Apparatus; filed June 6, 1978.

Patent application 915,708: Attitude Indicator Comparator Warning System; filed June 15, 1978.

U.S. DEPARTMENT OF TRANSPORTATION, Patent Counsel, 400 7th Street, Washington, D.C. 20240.

Patent application 916,080: A Passive DABS-CAS Design; filed June 16, 1978.

U.S. DEPARTMENT OF THE NAVY, Assistant Chief for Patents, Office of Naval Research, Code 302, Arlington, Va. 22217.

Patent application 831,278: Range Division Multiplexing; filed September 2, 1977.

Patent application 861,156: Very Low Frequency Sonobuoy (VLF Sonobuoy) Assignment; filed December 16, 1977.

Patent application 890,891: Method for Optically Distorting Readout Reticles; filed March 28, 1978.

Patent application 894,283: Global Neutrino Communication System; filed April 7, 1978.

Patent application 902,128: Safe/Arm Firing Device; filed May 2, 1978.

Patent application 905,304: Sweeping Noise Blanker; filed May 12, 1978.

Patent 4,075,622: Variable-to-Block-with-Prefix Source Coding Technique; filed January 31, 1975; patented February 21, 1978; not available NTIS.

Patent 4,079,309: Method for Determining Changes in Earth Resistivity by Measuring Phase Difference Between Magnetic Field Components; filed September 3, 1976; patented March 14, 1978; not available NTIS.

Patent 4,081,214: Low Altitude Optical Altimeter; filed July 6, 1976; patented March 28, 1978; not available NTIS.

Patent 4,083,249: Hygrometer; filed January 17, 1977; patented April 11, 1978; not available NTIS.

Patent 4,084,512: Pressure Relief Construction for Controlled Combustion of Ordnance Items; filed October 18, 1976; patented April 18, 1978; not available NTIS.

Patent 4,084,781: Fabrication of Ablator Liners in Combustors; filed March 28, 1977; patented April 18, 1978; not available NTIS.

Patent 4,086,491: Direct Measurement of the Electron Beam of a Scanning Electron Microscope; filed February 4, 1977; patented April 25, 1978; not available NTIS.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION, Assistant General Counsel for Patent Matters, NASA Code GP-2, Washington, D.C. 20546.

Patent application 928,130: A Phase Insensitive Ultrasonic Transducer; filed July 26, 1978.

Patent application 928,132: Microstrip Back-Fire Antenna; filed July 26, 1978.

Patent 3,775,570: Magneto-Optic Detection System with Noise Cancellation; filed February 25, 1972; patented November 27, 1973; not available NTIS.

[FR Doc. 78-33352 Filed 11-28-78; 8:45 am]

[3510-25-M]

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

CERTAIN WOOL TEXTILE PRODUCTS FROM THE REPUBLIC OF KOREA

Lifting of Embargo

NOVEMBER 24, 1978.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Reducing charges to the level of restraint for women's, girls', and infants' wool suits in Category 444 from the Republic of Korea by 639 dozen for the agreement year which began on January 1, 1978.

(A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the FEDERAL REGISTER on January 4, 1978 (43 FR 884), as amended on January 25, 1978, (43 FR 3421), March 3, 1978 (43 FR 8828), June 22, 1978 (43 FR 26773), and September 5, 1978 (43 FR 39408)).

SUMMARY: Pursuant to paragraph 11 of the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of December 23, 1977, as amended, between the Governments of the United States and the Republic of Korea, agreement has been reached to reduce by 639 dozen charges assessed against the level of restraint established for Category 444 during the twelve-month period which began on January 1, 1978. The reduction results from

agreement to apportion charges for 1977 overshipments in Category 444 to the levels for 1978 and 1979, in lieu of charging the full amount of the overshipment to the 1978 level.

EFFECTIVE DATE: November 29, 1978.

FOR FURTHER INFORMATION CONTACT:

Robert C. Woods, International Trade Specialist, Office of Textiles, U.S. Department of Commerce, Washington, D.C. 20230 (202/377-5423).

SUPPLEMENTARY INFORMATION: On December 30, 1977, a letter dated December 27, 1977 from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs was published in the FEDERAL REGISTER (42 FR 65246), which established import restraint levels for certain specified categories of cotton, wool and man-made fiber textile products, including Category 444, produced or manufactured in the Republic of Korea and exported to the United States during the twelve-month period which began on January 1, 1978. In the letter published below the Commissioner of Customs is directed by the Chairman of the Committee for the Implementation of Textile Agreements to reduce the charges to the level of restraint previously established for Category 444 by 639 dozen.

ARTHUR GAREL,
Acting Chairman, Committee for the Implementation of Textile Agreements.

NOVEMBER 24, 1978

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C.

DEAR MR. COMMISSIONER: To facilitate implementation of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 23, 1977, as amended, between the Governments of the United States and the Republic of Korea, you are directed, effective on November 29, 1978, to deduct the following amount from charges made to the level of restraint established for Category 444 during the agreement year which began on January 1, 1978:

Category	*Reduction in charges*
444	639 doz.

This letter will be published in the FEDERAL REGISTER.

Sincerely,

ARTHUR GAREL,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 78-33452 Filed 11-28-78; 8:45 am]

[6450-01-M]

DEPARTMENT OF ENERGY

NATIONAL PETROLEUM COUNCIL, REFINERY CAPABILITY TASK GROUP OF THE COMMITTEE ON REFINERY FLEXIBILITY

Meeting

Notice is hereby given that the Refinery Capability Task Group of the Committee on Refinery Flexibility of the National Petroleum Council will meet on Tuesday, December 12, 1978, at 9:00 a.m. in the Conference Room of National Petroleum Council, 1625 K Street, NW, Washington, DC, Suite 601. The Refinery Flexibility Committee was requested by the Secretary of Energy to undertake an analysis of factors affecting crude oil quality and availability and the capability of the refining industry to process such crudes into marketable products. The Task Group on Refinery Capability is responsible for assessing the ability of the refining industry to handle this processing. The tentative agenda for this meeting is as follows:

1. Review/summary of minutes of November 15, 1978 meeting.
2. Report on November 15, 1978 meeting of the Coordinating Subcommittee.
3. Review and adopt a form and procedure for a refinery survey.
4. Discuss the scope of work for a study of the competitive position of U.S. refineries under present system of controls.
5. Review information to be requested from the Oil Supply, Demand and Logistics Task Group.
6. Discuss future work plans and schedule future meetings.
7. Discuss any other matters pertinent to the overall assignment of the Task Group.

The meeting is open to the public. The Chairmen of the Task Group are empowered to conduct the meetings in a fashion that will, in their judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file written statement with the Task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Mr. Gene Peer, U.S. Department of Energy, (202) 566-9179, prior to the meeting and reasonable provision will be made for their appearance on the agenda. Transcripts of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room GA 152, DOE, Forrestal Bldg., 1000 Independence Avenue, SW, Washington, DC, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Any person(s) may purchase a copy of the transcripts from the reporter.

Issued at Washington, DC, on November 22, 1978.

ALVIN L. ALM,
Assistant Secretary for Policy and Evaluation.

[FR Doc. 78-33355 Filed 11-28-78; 8:45 am]

[6450-01-M]

NATIONAL PETROLEUM COUNCIL, REFINERY CAPABILITY TASK GROUP OF THE COMMITTEE ON REFINERY FLEXIBILITY

Meeting

Notice is hereby given that the Refinery Capability Task Group of the Committee on Refinery Flexibility of the National Petroleum Council will meet on Wednesday, January 10, 1979 at 9:00 a.m. in the Conference Room of National Petroleum Council, 1625 K Street NW., Washington, D.C., Suite 601. The Refinery Flexibility Committee was requested by the Secretary of Energy to undertake an analysis of factors affecting crude oil quality and availability and the capability of the refining industry to process such crudes into marketable products. The Task Group on Refinery Capability is responsible for assessing the ability of the refining industry to handle this processing. The tentative agenda for this meeting is as follows:

1. Review/summary of minutes of December 12, 1978 meeting.
2. Report on status of refinery survey.
3. Discuss status and work program on study of refinery competitive position.
4. Discuss future work plans and schedule future meetings.
5. Discuss any other matters pertinent to the overall assignment of the Task Group.

The meeting is open to the public. The Chairmen of the Task Group are empowered to conduct the meetings in a fashion that will, in their judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file written statement with the Task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Mr. Gene Peer, U.S. Department of Energy, 202-566-9179, prior to the meeting and reasonable provision will be made for their appearance on the agenda. Transcripts of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room GA 152, DOE, Forrestal Bldg., 1000 Independence Avenue SW., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Any person(s) may purchase a copy of the transcripts from the reporter.

Issued at Washington, D.C., on November 22, 1978.

ALVIN L. ALM,
Assistant Secretary for Policy and Evaluation.

[FR Doc. 78-33356 Filed 11-28-78; 8:45 am]

[6740-02-M]

Federal Energy Regulatory Commission

[Docket No. RP72-89 et al.]

COLUMBIA GAS TRANSMISSION CORP. et al.

Order Temporarily Suspending Curtailment Proceedings and Directing the Convening of Conferences

NOVEMBER 17, 1978.

In the matter of Columbia Gas Transmission Corporation (Docket No. RP72-89); El Paso Natural Gas Company (Docket No. RP72-6 (Ignition and Flame Stabilization)); Mississippi River Transmission Company (Docket No. RP73-6); Montana Dakota Utilities Company (Docket No. RP76-91); Texas Eastern Transmission Corporation (Docket No. RP71-130, et al.); Cities Service Gas Company (Docket No. RP75-62); El Paso Natural Gas Company (Docket No. RP72-6); Kansas-Nebraska Pipeline Company (Docket No. RP76-90); Lehigh Portland Cement Company v. Florida Gas Transmission Company (Docket No. RP75-79); Northern Natural Gas Company (Docket No. RP76-52 *et al.*).

The first five of the above-captioned dockets are presently awaiting decision by the Commission with respect to the establishment of permanent natural gas curtailment plans. In the other dockets administrative proceedings are on-going. All may be affected by the enactment of the Natural Gas Policy Act of 1978 (NGPA).[1]

The purpose of Title IV of the NGPA is to provide assurances that gas supplies used for certain essential agricultural uses and needed for essential industrial process or feedstock use generally will not be curtailed unless curtailment is required to protect enumerated high priority users. Section 401 directs the Secretary of Energy to issue a rule estabilishing that "to the maximum extent practicable" no essential agricultural use will be curtailed unless the gas is needed for high priority users; residences, small businesses, schools, or hospitals. Section 402 directs the Secretary to issue a rule prohibiting curtailment of any essential industrial process or feedstock use unless the gas is needed for high priority or essential agricultural uses. The two protective rules required by NGPA would be issued by the Secretary of Energy, while the Commission would be responsible for implementing and enforcing these regulations pursuant to Section 403 of the NGPA.

These legislative changes appear fundamentally to alter the nature of curtailment policy and practice. It is neither reasonable nor realistic, we adjudge, to continue adjudication of proposed curtailment plans until a fairly precise evaluation of the effects that NGPA requirements are likely to have on these proceedings has been completed. To move ahead, without first pausing to make the necessary examination, could result in substantial waste of administrative resources as well as the time and money of those parties who appear before us. Therefore, we have determined that it would be inappropriate for the Commission to rule on the five cases now pending before it. Where adjudicatory proceedings are going on before an Administrative Law Judge the same concerns apply with one addition. We have no desire to have hearings held and briefs filed when we are aware of the possibility that the proceedings may have to be duplicated in light of the NGPA.

Section 401 requires that the rule protecting essential agricultural uses from curtailment be effective within 120 days of enactment of NGPA. At that time parties will be in a better position to evaluate the impact of Title IV of NGPA on their proceedings. It is, therefore, appropriate to suspend all proceedings, including further hearings and briefs, in the above-captioned dockets for a period of 180 days effective on the date this order is issued.[2] Within 15 days of the effectiveness of the rules implementing Section 401, the Presiding Administrative Law Judge in each proceeding shall convene a conference to assess the impact of the NGPA on the status of each proceeding. The proceedings that are presently before the Commission are hereby remanded to the Presiding Administrative Law Judges for the purposes of this order. Following each conference, the Presiding Administrative Law Judge shall provide for the submittal of written comments by interested parties on the effect of the NGPA on the proceeding.

Within 20 days of the prehearing conference, the Presiding Administrative Law Judge, in each case, shall submit a report to the Commission discussing the impact of the NGPA on the proceeding. The report shall include a discussion of any comments submitted and the recommendations of the Presiding Administrative Law Judge as to the future course of the proceeding. The report should discuss, among other things, the following factors:

(1) The present status of the proceeding,

(2) The priorities of service included in the presently effective curtailment plan, any alternate plans proposed for adoption, and

(3) The major issues contested in the proceeding.

Within 30 days of the submission of these reports, the Commission will issue orders in each of the above-captioned dockets directing the future course of proceedings in a manner consistent with the requirements of the Natural Gas Act and the NGPA.[3]

We recognize, however, that specific issues in individual cases clearly may not be affected by the NGPA. It is appropriate that consideration of these issues not be unnecessarily delayed, if it is the judgment of the Administrative Law Judge that the case should go forward on such issues. We shall, therefore, provide a mechanism permitting such action. Specifically, the Administrative Law Judges, in those dockets not presently pending Commission decision, shall be free to file with the Commission at any time statements setting forth those issues which are unaffected by the NGPA and as to which administrative proceedings should promptly resume. Absent Commission objection within 10 days of the submittal of such a statement, the Administrative Law Judge shall be free to take such action as is necessary for the resumption of administrative proceedings with respect to those non-NGPA issues discussed in his statement to the Commission.

The Commission orders:

(A) The above-captioned proceedings are hereby suspended for a period of 180 days from the date of this order to permit each Presiding Judge, with the assistance of the parties and the Commission Staff, to prepare a report on the impact of the Natural Gas Policy

[1] The curtailment proceeding in *United Gas Pipeline Company*, Docket No RP71-29, *et al.* (Phase II) shall not be affected by this order. The Commission in Opinion Nos. 32 and 32-A, issued October 31, 1978 and November 2, 1978, specifically remanded the proceeding to the Presiding Administrative Law Judge for a report on the effect on NGPA. The curtailment proceeding in *Transcontinental Gas Pipeline Corporation*, Docket No. RP72-99 also shall not be affected by this order. We shall issue an order detailing the procedures to be utilized on the Transco system at the time we address the settlement proposal recently filed by Transco in that docket.

[2] However, this order shall not preclude the filing at any time of settlement proposals in the above-captioned dockets. As a general matter, settlements are favored and should not be discouraged.

[3] To the extent that procedures similar to those specified herein have already been undertaken in individual dockets, the Presiding Administrative Law Judges are free to direct such future action as is consistent with the requirements of this order but which is not unnecessarily duplicative of action already taken.

Act of 1978 on the proceeding, and to permit the Commission to issue an order based upon each such report.

(B) Columbia Gas Transmission Corporation, Docket No. RP72-89, Mississippi River Transmission Company, Docket No. RP73-6, Montana-Dakota Utilities Company, Docket No. RP76-91, and Texas Eastern Transmission Corporation, Docket No. RP71-130, *et al.* are hereby remanded to the Presiding Administrative Law Judge in each proceeding for the limited purpose of permitting the preparation of the report described herein.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-33377 Filed 11-28-78; 8:45 am]

[6740-02-M]

[Docket Nos. RP75-105 and RP76-94]

COLUMBIA GULF TRANSMISSION CORP.

Compilation of Restricted Service List

NOVEMBER 17, 1978.

At a recent hearing session in this proceeding, Commission Staff Counsel suggested the use of a restricted service list for the filing of briefs in this proceeding because there are only three active parties and the official service list is considerably longer. The Presiding Judge has told this office that he has no objection to this request.

All parties who desire to continue to receive briefs and other pleadings in this proceeding shall file with the Secretary their names and mailing addresses on or before November 28, 1978. The Secretary will then compile and serve a restricted service list for parties to use in serving such documents. The active parties, Staff, Columbia Gulf and the New York Public Service Commission, shall be automatically included on the list. The Commission will continue to serve on all parties on the current service list any official documents it issues.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-33378 Filed 11-28-78; 8:45 am]

[6740-02-M]

[Docket No. RP76-148 (PGA79-1)]

GAS GATHERING CORP.

Proposed Change in Rates Under Purchased Gas Adjustment Clause Provision

NOVEMBER 20, 1978.

Take notice that Gas Gathering Corporation (GGC), on November 10, 1978, tendered for filing proposed changes in its F.E.R.C. Gas Tariff providing for increased charges to Transcontinental Gas Pipe Line Corporation (Transco), its sole jurisdictional customer, under GGC's PGA clause. The proposed changes would increase the rate charged Transco by 51.84007 cents per Mcf over those rates presently in effect. The proposed rates are proposed to be made effective on January 1, 1979. GGC states that the filing is made to allow it to recover increased current costs of purchased gas, and to permit it to recover the balance of its Unrecovered Purchased Gas Cost Account as of September 30, 1978 through a six-month surcharge.

Also included in the filing are revised tariff sheets to conform GGC's PGA provision to Order No. 13 issued in Docket No. R-406, so as to permit monthly carrying costs on GGC's Unrecovered Purchased Gas Cost Account.

A copy of the filing has been served upon Transco.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before December 1, 1978. 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 petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-33379 Filed 11-28-78; 8:45 am]

[6740-02-M]

[Docket No. RP77-58 (TT79-1)]

MID LOUISIANA GAS CO.

Rate Increase Filing

NOVEMBER 20, 1978.

Take notice that on November 3, 1978, Mid Louisiana Gas Company (Mid Louisiana) filed revised tariff sheets incorporating a 1.86 cent per Mcf increase in jurisdictional rates. The proposed rate increase reflects the net of increases and decreases in costs incurred by Mid Louisiana for transportation, storage and compression of gas by others since settlement was reached among the parties to the rate proceeding in Docket No. RP77-58.

Mid Louisiana states that Article V of the Stipulation and Agreement in Docket No. RP77-58 provides for Mid Louisiana to adjust its rates for changes in transportation, storage and compression of gas performed by others with such adjustments in rates to become effective concurrently with PGA rate changes on either February 1 or August 1.

Mid Louisiana indicates that its tariff filing is not in technical compliance with the Stipulation and Agreement in Docket No. 77-58 since the effective date proposed is November 1, 1978, but states that it was unable to include increased transportation, storage and compression costs in its August 1, 1978, PGA filing due to the unusual and lengthy delay in approval of the Docket No. RP77-58 settlement and that the delay in the approval of the settlement has caused undue hardship to the Company.

Mid Louisiana has requested the necessary waivers to permit its November 3, 1978, filing to become effective on November 1, 1978.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 27, 1978. 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 petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

FR Doc. 78-33380 Filed 11-28-78; 8:45 am]

[6740-02-M]

[Docket No. RP78-61]

MOUNTAIN FUEL RESOURCES, INC.

Motion To Have Suspended Tariff Sheets Go Into Effect

NOVEMBER 20, 1978.

Take notice that on November 15, 1978, Mountain Fuel Resources Inc. (Resources) filed a Motion to Place Tariff Sheet Into Effect, together with attached Tariff Sheet. Resources had filed on May 15, 1978, a revised tariff sheet proposing changes in its FERC Gas Tariff which would provide for an increase in jurisdictional revenues based upon sales volumes for the 12-month period ended December 31, 1977, as adjusted. Resources states that this tariff sheet was suspended by Commission Order, issued June 15,

1978 in this docket, and the use thereof deferred until November 16, 1978.

In the Motion, Resources moves to make effective the change in rates and charges in this proceeding on November 16, 1978, when the suspension period ends. Resources also filed an Agreement and Undertaking to comply with the terms and conditions of Section 154.67 of the Commission's Rules and Regulations under the Natural Gas Act. Resources requests waiver of the notice requirements of 18 CFR 154.22 and such other regulations as are required to permit the requested effective date on November 16, 1978.

Resources states that copies of its filing were served by mail on its sole jurisdictional customer, all parties to this proceeding and interested state commissions.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 29, 1978. 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 petition to intervene. Persons presently parties to this proceeding need not file additional petitions to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-33381 Filed 11-28-78; 8:45 am]

[6740-02-M]

[Docket No. RP74-100 (PGA78-8)]

NATIONAL FUEL GAS SUPPLY CORP.

Further Extension of Time

NOVEMBER 16, 1978.

On November 8, 1978 National Fuel Gas Supply Corporation filed a motion for further extension of time for filing its case-in-chief and a request for a conference in this proceeding. The dates set by Commission order of September 29, 1978 were extended by notice issued October 27, 1978. The motion states that additional time is needed because of illness of National Fuel's counsel. The motion also requests an informal conference with Staff in order to define and narrow the issues involved in the case.

Upon consideration, an extension of time is granted to and including December 11, 1978 for National Fuel to file its case-in-chief. Staff shall file its statement of position on or before January 8, 1979. An informal conference of National Fuel, Staff and any interested persons will be held at 10:00 a.m. on November 29, 1978.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-33382 Filed 11-28-78; 8:45 am]

[6740-02-M]

[Docket No. ER79-53]

PUBLIC SERVICE CO. OF INDIANA, INC.

Proposed Tariff Change

NOVEMBER 20, 1978.

Take notice that Public Service Company of Indiana (PSCI) on November 13, 1978, tendered for filing pursuant to the Service Agreement between United Rural Electric Membership Corporation and PSCI a First Supplemental Agreement.

PSCI states that said Supplemental Agreement provides for a new delivery point designated as the Dallas-138 delivery point.

PSCI proposes an effective date of October 1, 1978, and therefore requests waiver of the Commission's notice requirements.

A copy of the filing was served upon United Rural Membership Corporation, according to PSCI.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions should be filed on or before December 18, 1978. 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 petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-33383 Filed 11-28-78; 8:45 am]

[6740-02-M]

[Docket No. ER79-54]

PUBLIC SERVICE CO. OF INDIANA, INC.

Proposed Tariff Change

NOVEMBER 20, 1978.

Take notice that Public Service Company of Indiana, Inc. (PSCI) on November 13, 1978, tendered for filing pursuant to the Service Agreement between Parke County Rural Electric Membership Corporation and PSCI a Second Supplemental Agreement.

PSCI states that said Supplemental Agreement provides for a new delivery point designated as the Marshall-138 delivery point.

PSCI proposes an effective date of October 1, 1978, and therefore requests waiver of the Commission's notice requirements.

A copy of the filing was served upon Parke County Rural Electric Membership Corporation, according to PSCI.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.89, 1.10). All such petitions should be filed on or before December 18, 1978. 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 petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-33384 Filed 11-28-78; 8:45 am]

[6740-02-M]

[Docket No. RP72-133, PGA79-1]

UNITED GAS PIPE LINE CO.

Filing of Revised Tariff Sheet

NOVEMBER 20, 1978.

Take notice that on November 15, 1978, United Gas Pipe Line Company (United) tendered for filing Forty-Seventh Revised Sheet No. 4 to its FERC Gas Tariff, First Revised Volume No. 1. This tariff sheet and supporting information are being filed 30 days before the effective date of January 1, 1979, pursuant to the Purchased Gas Adjustment Provisions set out in Section 19 of United's tariff.

Copies of the revised tariff sheet and supporting data are being mailed to United's jurisdictional customers and interested state commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.W., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before December 8, 1978. 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 petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-33385 Filed 11-28-78; 8:45 am]

[6450-01-M]

Office of Hearings and Appeals

APPLICATIONS FOR EXCEPTION AND STAY FILED BY ATLANTIC RICHFIELD CO. AND CONTINENTAL OIL CO.

Public Hearing

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of public hearing.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy (DOE) gives notice of a public hearing to be held in Washington, D.C. to receive comments with respect to an Application for Exception and an Application for Stay filed by Atlantic Richfield Company (ARCO) and an Application for Exception filed by Continental Oil Company (Conoco). In these applications, ARCO and Conoco seek relief from their obligation under the provisions of 10 CFR 211.9 to supply motor gasoline to other refiners. The purpose of this hearing is to provide all refiners and any other interested persons an opportunity to make oral presentations regarding the specific impact of the exception relief requested.

DATES: Hearing: December 15, 1978, 9:30 a.m. Request to Speak: December 12, 1978.

ADDRESSES: Request to Speak: Debra Kidwell, Office of Public Hearing Management, Box WH, 2000 M Street, N.W., Room 2313, Washington, D.C. 20461, 202-254-5201. Hearing Location: Room 2105, 2000 M Street, N.W., Washington, D.C. 20461.

COMMENTS AND FURTHER INFORMATION TO:

Thomas O. Mann, Acting Deputy Director, Office of Hearings and Appeals, 2000 M Street, N.W., Room 8014, Washington, D.C. 20461, 202-254-8606.

SUPPLEMENTARY INFORMATION: The Mandatory Petroleum Allocation Regulations, 10 CFR Part 211, generally freeze the supplier/purchaser relationships for motor gasoline that were in effect during calendar year 1972. 10 CFR Sections 211.9 and 211.105(a). During 1972 ARCO and Conoco, as well as most other petroleum refiners, made spot sales and short-term contractual sales to other refiners. The regulations therefore require these firms to continue to supply other refiners, upon request, with the same volume of motor gasoline as they supplied during the corresponding month of 1972.

In their submissions to the Office of Hearings and Appeals, both firms indicate that other refiners have not generally purchased any gasoline from them since 1974. In its submissions ARCO states that it does not have sufficient supplies of motor gasoline to satisfy demand during November and December 1978. ARCO states that the resulting disruptions to small dealers would be alleviated if it were relieved of the requirement that it satisfy its base period supply obligation to four refiners. The refiners involved are Ashland Oil Company, Continental Oil Company, Kerr-McGee Refining Corporation, and Tenneco Oil Company.

In its Application for Exception, Conoco reports a problem in satisfying the demand for motor gasoline in the Rocky Mountain States. The Conoco situation arises, however, as a result of a fire and explosion that occurred on October 3, 1978, in a refinery that Conoco operates in Denver, Colorado. As is the situation with ARCO, Conoco also states small dealers within its distribution system will be adversely affected to a significant extent unless Conoco is relieved of its motor gasoline supply obligation to certain other refiners. The refiners involved in the Conoco proceeding are American Petrofina, Inc., Getty Oil Company, Standard Oil Company (Indiana), and Tenneco Oil Company.

On November 22, 1978, the Office of Hearings and Appeals issued a Stay which grants Conoco the relief it requests pending a decision on the underlying merits of the Application for Exception.

Since a number of firms understandably have views as to the desirability of granting an exception that relieves a refiner of its base period supply obligation to other refiners, a consolidated public hearing is being convened with respect to the ARCO Application for Stay and Application for Exception, and the Conoco Application for Exception.

Any party that wishes to make an oral presentation at the hearing should contact the individual whose name appears at the beginning of this notice. The Office of Hearings and Appeals reserves the right to limit the number of persons to be heard and to establish the procedures governing the conduct of the hearing. The Director of the Office of Hearings and Appeals or his designee will preside at these hearings.

At the hearings, representatives from ARCO and Conoco will be afforded an opportunity to make an initial statement. Following those statements, interested parties, including customers affected by the exception applications, will be permitted to make statements, subject to reasonable time constraints. If any person wishes to ask a question of any person who has made an oral presentation at the hearing, he or she may submit the question, in writing, to the presiding officer. The presiding officer will determine whether the question is relevant and whether the time limitations permit it to be presented for an answer.

At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations. Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearings will be made and may be purchased from the reporter. The entire record of the hearings will be retained by DOE and will be made available for inspection at the Office of Hearings and Appeals Public Docket Room, Room B-120, 2000 M Street, N.W., Washington, D.C. 20461, between the hours of 1:00 p.m. and 5:00 p.m., e.s.t., Monday through Friday.

Issued in Washington, D.C., November 22, 1978.

MELVIN GOLDSTEIN,
Director, Office of Hearings and Appeals.

[FR Doc. 78-33397 Filed 11-24-78; 2:07 pm]

[6560-01-M]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 1015-6]

SCIENCE ADVISORY BOARD, ENVIRONMENTAL HEALTH ADVISORY COMMITTEE

Open Meeting

Under Pub. L. 92-463, notice is hereby given that a meeting of the En-

vironmental Health Advisory Committee of the Science Advisory Board will be held at 9:00 a.m. on December 19, 1978 in Conference Room A (Room 1112), Crystal Mall Building No. 2, 1921 Jefferson Davis Highway, Arlington, Virginia.

The principal purpose of the meeting will be (1) to discuss and take formal action on the report of the Committee's Study Group on Pentachlorophenol Contaminants (Draft dated December 1978); (2) to be briefed on and discuss progress reports of the Health Effects Research Review Group and the Committee's Study Group on Pesticide Tolerances; and (3) to be briefed on and discuss other Science Advisory Board activities and topics of current or future interest to the Committee.

The meeting will be open to the public. Any member of the public wishing to attend or submit a paper should contact the Secretariat, Science Advisory Board (A-101), U.S. Environmental Protection Agency, Washington, D.C. 20460, by c.o.b. December 12, 1978. Please ask for Ms. Barbara Robinson or Mrs. Ilene Stein. The telephone number is 703-557-7720.

RICHARD M. DOWD,
Staff Director,
Science Advisory Board.

NOVEMBER 22, 1978.

[FR Doc. 78-33357 Filed 11-28-78 8:45 am]

[6712-01-M]

FEDERAL COMMUNICATIONS COMMISSION

[RM-3030]

FM BROADCAST STATIONS

Table of Assignments, FM Broadcast Stations (Catonsville and Baltimore, Md.)

Memorandum opinion and order; Denial of Reconsideration on Denial of Petition for Rulemaking (see also 43 FR 41434, September 18, 1978).

Adopted: November 21, 1978.

Released: November 22, 1978.

By the Chief, Broadcast Bureau:

1. Key Broadcasting Corporation, licensee of WKTK(FM), Catonsville, Maryland, has petitioned the Commission for reconsideration of the decision taken by the Broadcast Bureau under delegated authority denying reassignment of WKTK(FM)'s Catonsville FM Channel 289 to Baltimore. Key had requested both reassignment of Channel 289 and modification of WKTK(FM)'s license to specify Baltimore as the community of license. The Bureau denied the petition on the ground that Catonsville's disappearance as a recognizable community had not been established, so that removal of the FM channel assigned there would deprive local residents of a broadcast service responsive to the particular needs of the community. In its petition for reconsideration Key proposes to submit a study of the attitudes held by persons residing in Catonsville regarding their "perceptions as to residence and community identity," and asks that in the meantime action on its petition for reconsideration be deferred.

2. We have carefully reviewed our original analysis of this matter, and believe it was properly decided. Without reiterating that determination here, we should point out that the instant petition offers no substantial basis for any allegation of error. Nonetheless, we are prepared to consider any subsequent submission of data on Catonsville residents' attitudes toward their community. However, we do not consider extension of the reconsideration period for supplemental submissions an appropriate use of Commission administrative procedures. The petition for reconsideration is designed to offer arguments in opposition to a particular action and is not conceived as a procedural device by which petitioners may attempt to remedy initial shortcomings in their petitions after a decision on the merits.

3. Accordingly, the petition for reconsideration will be denied. However, this action is entirely without prejudice to the submission of this data as part of a subsequent petition for rule making should petitioner consider this appropriate after review of its attitude research.

FEDERAL COMMUNICATIONS COMMISSION,
WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

[FR Doc. 78-33422 Filed 11-28-78; 8:45 am]

[6325-01-M]

FEDERAL PREVAILING RATE ADVISORY COMMITTEE

Cancellation

MEETING

Pursuant to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92-463) notice was published in 43 FR 202 on October 18, 1978, that meetings of the Federal Prevailing Rate Advisory Committee would be held on November 2, November 9, and November 30, 1978. Notice is hereby given that the meeting scheduled for November 30 has been cancelled.

JEROME H. MOSS,
Chairman, Federal
Prevailing Rate Advisory Committee.

NOVEMBER 28, 1978.

[FR Doc. 78-33577 Filed 11-28-78; 10:40 am]

[6210-01-M]

FEDERAL RESERVE SYSTEM

ALASKA BANCORPORATION

Proposed Retention and Acquisition of Shares of Alaska Bancshares, Inc.

Alaska Bancorporation, Anchorage, Alaska, has applied pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to retain and acquire voting shares of Alaska Bancshares, Inc., Anchorage, Alaska. Notice of the application was published in the following Alasaka newspapers: on September 6, 1978, in the *The Anchorage Daily Times,* a newspaper circulated in Anchorage; on September 8, 9 and 11, 1978, in the *Fairbanks Daily News-Miner,* a newspaper circulated in Fairbanks; and on September 17, 1978, in the *Peninsula Clarion,* a newspaper circulated in Kenai.

Applicant states that the subsidiary would engage in the activities of acting as agent or broker for the sale of credit-related life and accident and health insurance in connection with loans made by Applicant's indirect banking subsidiary, Alaska State Bank, Anchorage, Alaska. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any request for a hearing on this question should be accompanied by a statement summarizing the evidence the person requesting the hearing proposes to submit or to elicit at the hearing and a statement of the reasons why this matter should not be resolved without a hearing.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of San Francisco.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System,

Washington, D.C. 20551, not later than December 22, 1978.

Board of Governors of the Federal Reserve System, November 22, 1978.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc. 78-33433 Filed 11-28-78; 8:45 am]

[6210-01-M]

CAPITAL MANAGEMENT, INC.

Acquisition of Bank

Capital Management, Inc., Lincoln, Nebraska, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire an additional 15.8 percent or more of the voting shares of Broken Bow Enterprises, Inc., Broken Bow, Nebraska, a bank holding company. Applicant presently owns 4.9 per cent of the voting shares of Broken Bow Enterprises. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than December 22, 1978. Any comment on an application that requests a hearing must be sent to the Secretary's Office within 30 days of the date of this notice and must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, November 22, 1978.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc. 78-33434 Filed 11-28-78; 8:45 am]

[6210-01-M]

JACOMO BANCSHARES, INC.

Formation of Bank Holding Company

Jacomo Bancshares, Inc., Blue Springs, Missouri, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 87.1 per cent of the voting shares (less directors' qualifying shares) of Bank of Jacomo, Blue Springs, Missouri. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than December 21, 1978. Any comment on an application that requests a hearing must be sent to the Secretary's Office within 30 days of the date of this notice and must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, November 21, 1978.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc. 78-33435 Filed 11-28-78; 8:45 am]

[6210-01-M]

LAMB'S BANCORPORATION, LTD.

Formation of Bank Holding Company

Lamb's Bancorporation, Ltd., Michigan, North Dakota, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 87.1 per cent of the voting shares of Lamb's Bank of Michigan City, Michigan, North Dakota. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Minneapolis. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than December 20, 1978. Any comment on an application that requests a hearing must be sent to the Secretary's Office within 30 days of the date of this notice and must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, November 20, 1978.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc. 78-33436 Filed 11-28-78; 8:45 am]

[6210-01-M]

SAVINGS BANK SHARES, INC.

Formation of Bank Holding Company

Savings Bank Shares, Inc., Concord, New Hampshire, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 93.83 per cent or more of the voting shares Franklin National Bank, Franklin, New Hampshire. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Boston. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than December 22, 1978. Any comment on an application that requests a hearing must be sent to the Secretary's Office within 30 days of the date of this notice and must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, November 22, 1978.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc. 78-33437 Filed 11-27-78; 8:45 am]

[6210-01-M]

WEST PLAINS BANCSHARES, INC.

Formation of Bank Holding Company

West Plains Bancshares, Inc., West Plains, Missouri, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 100 per cent (less directors' qualifying shares) of the voting shares of West Plains Bank, West Plains, Missouri. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

West Plains Bancshares, Inc., West Plains, Missouri, has also applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR § 225.4(b)(2)), for permission to act as agent in the sale of credit life and accident insurance related to extensions of credit by West Plains Bank. Notice of the application was published on October 20, 1978, in the *West Plains Daily Quill*, a newspaper circulated in West

Plains, Missouri. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produced benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question should be accompanied by a statement summarizing the evidence the person requesting the hearing proposes to submit or to elicit at the hearing and a statement of the reasons why this matter should not be resolved without a hearing.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of St. Louis.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than December 8, 1978.

Board of Governors of the Federal Reserve System, November 20, 1978.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc. 78-33438 Filed 11-28-78; 8:45 am]

[6210-01-M]

CONSUMER ADVISORY COUNCIL

Meeting

Notice is hereby given that the Consumer Advisory Council will meet on Wednesday, December 6, and Thursday, December 7. The meeting, which will be open to public observation, will take place in Terrace Room E of the Martin Building. The December 6 session will begin at 1 p.m. and run until 6 p.m. The December 7 session will begin at 8:30 a.m. and conclude at 3:30 p.m. The Martin Building is located on C Street, Northwest, between 20th and 21st Streets in Washington, D.C.

The Council's function is to advise the Board on the exercise of the Board's responsibilities with regard to consumer credit legislation and regulation. It is anticipated that the December 6-7 meeting of the Council will include consideration of the following topics:

1. *Legislative Recommendations.* Suggestions by Council members for legislative recommendations to be made by the Board of Governors in Board's annual reports to Congress on 1978 operations of Federal consumer credit laws.

2. *Consumer Education.* Consideration of Consumer Education Task Force draft of proposed report from Council to Board of Governors on actions the Board should take to improve consumer awareness of credit costs, terms, and use of credit.

3. *EFT Regulation.* Review of issues raised in drafting Board regulation to carry out two provisions, effective in February, 1979, of the newly enacted Electronic Fund Transfer Act, Section 909 dealing with consumer liability for unauthorized fund transfers and Section 911 dealing with issuance of EFT cards to consumers.

4. *Cost-Effectiveness Statements.* Consideration of the proposal calling for inclusion by Board of cost-effective statements in all regulations dealing with consumer credit.

5. *Monitoring of Agency and Court Decisions.* Proposal that the Board, within limits of its authority, resolve or seek to resolve conflicting interpretations of Federal consumer credit laws by various enforcement agencies or by courts, to achieve greater uniformity of application.

Other matters previously considered by the Council or initiated by Council members.

Information with regard to this meeting may be obtained from Mr. Joseph R. Coyne, Assistant to the Board, at (202) 452-3204.

Board of Governors, November 22, 1978.

THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc. 78-33431 Filed 11-28-78; 8:45 am]

[6210-01-M]

FEDERAL OPEN MARKET COMMITTEE

Authorization for Domestic Open Market Operations

In accordance with the Committee's rules regarding availability of information, notice is given that on November 3, 1978, paragraph 1(a) of the Committee's authorization for domestic open market operations was amended to raise from $3 billion to $5 billion the limit on changes between Committee meetings in System Account holdings of U.S. Government and Federal Agency securities, effective immediately for the period ending with the close of business November 21, 1978.

NOTE: For paragraph 1(a) of the authorization see 36 FR 22697.

By order of the Federal Open Market Committee, November 7, 1978.

MURRAY ALTMANN,
Secretary.

[FR Doc. 78-33432 Filed 11-28-78; 8:45 am]

[4110-92-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Human Development Services

ADMINISTRATION FOR CHILDREN, YOUTH, AND FAMILIES CHILDREN'S BUREAU

Federal Shares and Allotment Percentages, Child Welfare Services State Grants

AGENCY: Office of Human Development Services, DHEW.

ACTION: Bi-annual publication of Federal shares and allotment percentages for States under the Child Welfare Services State Grants Program.

PURPOSE: Section 423 of the Social Security Act (42 U.S.C. 623) requires that the Secretary publish the Federal share and allotment percentages for each State under the Child Welfare Services State Grants every two years. These two percentages are used in the computation of the Federal grants awarded under the Program and the required State match each year.

DATES: The table indicates the percentages to be used for fiscal years 1980 and 1981.

FOR FURTHER INFORMATION CONTACT:

Mrs. Doris Lee, Child Welfare Services State Grants Division, Children's Bureau, Administration for Children, Youth, and Families, P.O. Box 1182, Washington, D.C. 20013, 202-472-4426.

SUPPLEMENTARY INFORMATION: The Federal share and allotment percentages for each State are determined on the basis of the inverse of per capita income in the State and the number of children (under the age of 21) compared to all States. The Federal share and allotment percentage for each State are as follows:

State	Federal share	Allotment percentage
Alabama	60.08	60.08
Alaska	33⅓	30.00
Arizona	53.73	53.73
Arkansas	61.18	61.18
California	43.72	43.72
Colorado	48.99	48.99
Connecticut	42.51	42.51
Delaware	44.64	44.64
District of Columbia	36.78	36.78
Florida	52.24	52.24
Georgia	57.02	57.02
Guam	66⅔	70.00
Hawaii	44.08	44.08
Idaho	56.35	56.35
Illinois	43.39	43.39
Indiana	51.28	51.28
Iowa	50.88	50.88
Kansas	49.18	49.18
Kentucky	57.88	57.88
Louisiana	58.38	58.38
Maine	58.86	58.86
Maryland	45.63	45.63
Massachusetts	48.23	48.23
Michigan	47.17	47.17

State	Federal share	Allotment percentage
Minnesota	50.36	50.36
Mississippi	64.69	64.69
Missouri	53.07	53.07
Montana	55.45	55.45
Nebraska	51.48	51.48
Nevada	43.45	43.45
New Hampshire	53.52	53.52
New Jersey	42.70	42.70
New Mexico	58.52	58.52
New York	45.59	45.59
North Carolina	57.60	57.60
North Dakota	53.72	53.72
Northern Mariannas	66⅔	70.00
Ohio	50.05	50.05
Oklahoma	55.06	55.06
Oregon	50.37	50.37
Pennsylvania	50.08	50.08
Puerto Rico	66⅔	70.00
Rhode Island	51.59	51.59
South Carolina	59.84	59.84
South Dakota	58.35	58.35
Tennessee	58.79	58.79
Texas	51.90	51.90
Utah	57.88	57.88
Vermont	58.10	58.10
Virgin Islands	66⅔	70.00
Virginia	50.86	50.86
Washington	46.32	46.32
West Virginia	57.41	57.41
Wisconsin	51.66	51.66
Wyoming	46.98	46.98

Dated: November 20, 1978.

BLANDINA C. RAMIREZ,
Commissioner for Children, Youth, and Families.

Approved:

ANNABELLA MARTINEZ,
Assistant Secretary for Human Development Services.

[FR Doc. 78-33244 Filed 11-28-78; 8:45 am]

[4110-83-M]

Health Resources Administration

NURSING RESEARCH AND EDUCATION ADVISORY COMMITTEE

Filing of Annual Reports of Federal Advisory Committees

Notice is hereby given that pursuant to section 13 of Pub. L. 92-463, the Annual Report for the following Health Resources Administration Federal Advisory Committee has been filed with the Library of Congress: Nursing Research and Education Advisory Committee.

Copies are available to the public for inspection at the Library of Congress, Special Forms Reading Room, Main Building, or weekdays between 9:00 a.m. and 4:30 p.m. at the Department of Health, Education, and Welfare, Department Library, North Building, Room 1436, 330 Independence Avenue, S.W., Washington, D.C. 20201, Telephone 202-245-6791. Copies may be obtained from Ms. Delores Basco, Bureau of Health Manpower, Room 3-50, Center Building, 3700 East-West Highway, Hyattsville, Maryland 20782, Telephone 301-436-6204.

Dated: November 21, 1978.

JAMES A. WALSH,
Associate Administrator for Operations and Management.

[FR Doc. 78-33420 Filed 11-28-78; 8:45 am]

[4110-83-M]

ALLIED HEALTH TRAINEESHIP GRANTS FOR ADVANCED TRAINING TRAINING INSTITUES

Application Anouncement for Grants

The Bureau of Health Manpower, Health Resources Administration, announces that applications for fiscal year 1979 Grants for Traineeships for Advanced Training of allied Health Personnel (Training Institutes) are now being accepted under the authority of section 797 of the Public Health Service Act.

Section 797 authorizes traineeship grants to public and nonprofit entities offering programs for the advanced training of allied health personnel to enable them to serve in teaching, administrative or supervisory positions. Training institutes must be at least 2½ days in length and offer a minimum of 18 contact hours of instruction. Traineeships cover the cost of tuition and stipends for the trainees.

In fiscal year 1979, $2.5 million has been appropirated for this authority. Approximately $2 million of this amount is committed for continuation awards leaving about $500,000 for competitive awards for training institutes.

This announcement is limited to applications for training institutes as a competitive review cycle is not anticipated in fiscal year 1979 for grants under section 797 for long-term academic training.

Requests for application materials and questions regarding grants policy should be directed to:

Grants Management Officer, Bureau of Health Manpower, Health Resources Administration, Center Building, Room 4-27, 3700 East-West Highway, Hyattsville, Maryland 20782, Phone: (301) 436-7360.

To be considered for fiscal year 1979 funding, applications must be received by the Grants Management Officer, Bureau of Health Manpower, Health Resources Administration, at the above address no later than *January 19, 1979.*

Should additional programmatic information be required, please contact:

Education Development Branch, Division of Associated Health Professions, Bureau of Health Manpower, Health Resources Administration, Center Building, Room 5-27, 3700 East-West Highway, Hyattsville, Maryland 20782, Phone (303) 436-6805.

Dated: November 16, 1978.

HENRY A. FOLEY,
Administrator, Health Resources Administration.

[FR Doc. 78-33363 Filed 11-28-78; 8:45 am]

[4110-83-M]

PHYSICIAN ASSISTANT TRAINING PROGRAMS

Application Announcement for Grants

The Bureau of Health Manpower, Health Resources Administration, announces that applications for fiscal year 1979 Grants for Physician Assistant Training Programs are now being accepted under the authority of section 783(a)(1) of the Public Health Service Act, as amended by the Health Professions Educational Assistance Act of 1976 (Pub. L. 94-484). A Notice of Proposed Rulemaking for section 783(a)(1) was published in the FEDERAL REGISTER on June 16, 1978.

Section 783 authorizes the award of grants to schools of medicine or osteopathy or other public or non-profit private entities to assist in meeting the cost of planning, developing, and operating or maintaining programs for the training of physician assistants. To receive support, programs must meet the requirements of section 701(7), Public Health Service Act, which were published as Interim-Final Regulations, in the FEDERAL REGISTER on August 30, 1977 (42 FR 43630).

Funding preference will be accorded approved applications with projects in which:

Substantial training experience is provided in a Health Manpower Shortage Area(s), as defined in section 332 of the PHS Act, or in an Area Health Education Center funded, at least in part, under section 781 of the Act; and/or

A program is established in a state which does not have such a program; and/or

A program is conducted in conjunction with other program(s) training primary care physicians in a manner which shares educational resources, and encourages the utilization of physician assistants by physicians.

Approximately $500,000 is expected to be available in fiscal year 1979 for competitive awards for Grants for Physician Assistant Training Programs under section 783(a)(1) of the Public Health Service Act.

Requests for application materials and questions regarding grants policy should be directed to: Grants Management Officer (D-21), Bureau of Health Manpower, Health Resources Administration, Center Building, Room 4-27, 3700 East-West Highway, Hyattsville, Maryland 20782, phone (301) 436-6098.

To be considered for fiscal year 1979 funding, applications must be received

by the Grants Management Officer, Bureau of Health Manpower, Health Resources Administration, at the above address no later than January 5, 1979.

Should additional programmatic information be requested, please contact: Primary Care Education Branch, Division of Medicine, Bureau of Health Manpower, Health Resources Administration, Center Building, Room 4-50, 3700 East-West Highway, Hyattsville, Maryland 20782, phone (301) 436-7350.

Dated: November 20, 1978.

HENRY A. FOLEY,
Administrator.

[FR Doc. 78-33440 Filed 11-28-78; 8:45 am]

[4110-83-M]

RESIDENCY TRAINING IN GENERAL INTERNAL MEDICINE OR GENERAL PEDIATRICS

Application Anouncement for Grants

The Bureau of Health Manpower, Health Resources Administration, announces that applications for fiscal year 1979 Grants for Residency Training in General Internal Medicine or General Pediatrics are now being accepted under the authority of section 784 of the Public Health Service Act, as amended by the Health Professions Educational Assistance Act of 1976 (Pub. L. 94-484).

Section 784 authorizes the award of grants to meet the costs of planning, developing and operating approved residency training programs in internal medicine or pediatrics which emphasize training for the practice of general internal medicine or general pediatrics and to assist participating residents who plan to practice general internal medicine or general pediatrics.

To receive support, programs must meet the requirements of the Interim-Final regulations, published in the FEDERAL REGISTER on November 18, 1977 (42 FR 59500). Eligible applicants are schools of medicine and osteopathy.

In the funding of approved applications, preference will be given to projects in which:

(1) Substantial training experience is in settings which exemplify interdependent utilization of physicians and physician assistants and/or nurse practitioners.

(2) Coordination of administrative and educational resources is to be used by a program of general internal medicine and a program of general pediatrics included in a single project or application.

(3) Substantial portions of a project are conducted in health manpower shortage area(s); especially health manpower shortage area(s) which are also in a Standard Metropolitan Statistical Area, as defined by the Office of Management and Budget or are conducted in an area Health Education Center funded, at least in part, under section 781 of the Act.

Requests for application materials and questions regarding grants policy should be directed to: Grants management Officer (D-28), Bureau of Health Manpower, Health Resources Administration, Center Building, Room 4-27, 3700 East-West Highway, Hyattsville, Maryland 20782, phone 301-436-6564.

To be considered for fiscal year 1979 funding, applications must be received by the Grants Management Officer, Bureau of Health Manpower, Health Resources Administration, at the above address no later than January 5, 1979. Approximately $3 million is expected to be available in FY 1979 for competitive grants.

Should additional programmatic information be desired, please contact: Primary Care Education Branch, Division of Medicine, Bureau of Health Manpower, Health Resources Administration, Center Building, Room 4-50, 3700 East-West Highway, Hyattsville, Maryland 20782, phone 301-436-7350.

Dated: November 20, 1978.

HENRY A. FOLEY,
Administrator, Health Resources Administration.

[FR Doc. 78-33441 Filed 11-28-78; 8:45 am]

[4110-83-M]

TRAINING OF U.S. CITIZEN FOREIGN MEDICAL STUDENTS

Application Announcement for Grants

The Bureau of Health Manpower, Health Resources Administration, announces that applications for fiscal year 1979 Grants for Training U.S. Citizen Foreign Medical Students are now being accepted under the authority of section 782 of the Public Health Service Act.

Section 782 provides for grants to public or nonprofit private accredited schools of medicine and osteopathy to plan, develop, and operate training programs for U.S. citizens who were students in foreign medical schools before October 12, 1976 (1) to enable them to meet the requirements of enrolling in schools of medicine or ostepathy in the States as fulltime students with advanced standing; or (2) to train such students who have transferred from foreign medical schools and have enrolled in schools of medicine or ostepathy in the States as fulltime students with advanced standing. Final regulations governing section 782 were published in the FEDERAL REGISTER on August 18, 1978 (42 FR 36630).

Requests for application materials and questions regarding grants policy should be directed to: Grants Management Officer (D-27), Bureau of Health Manpower, Health Resources Administration, Center Building, Room 4-27, 3700 East-West Highway, Hyattsville, Maryland 20782, phone 301-436-6564.

Approximately $200,000 is expected to be available for competing grants in FY 1979. To be considered for FY 1979 funding, applications must be received by the Grants Manpower Officer, Bureau of Health Manpower, Health Resources Administration, at the above address no later than *January 5, 1979,* Grant support beyond September 30, 1981, will not be considered.

Should additional programmatic information be required, please contact: International Education Programs Section, Division of Medicine, Bureau of Health Manpower, Health Resources Administration, Center Building, Room 3-22, 3700 East-West Highway, Hyattsville, Maryland 20782, phone 301-436-6595.

Dated: November 20, 1978.

HENRY A. FOLEY,
Administrator.

[FR Doc. 78-33442 Filed 11-28-78; 8:45 am]

[4110-02-M]

Office of Education

PRESIDENT'S COMMISSION ON FOREIGN LANGUAGE AND INTERNATIONAL STUDIES

Hearing

AGENCY: President's Commission on Foreign Language and International Studies.

ACTION: Notice of hearings.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming hearing of the President's commission on Foreign Language and International Studies. It also describes the functions of the Commission. Notice of these hearings is required under the Federal Advisory Committee Act (5 U.S. Code, Appendix I Section 10(a)(2). This document is intended to notify the general public of its opportunity to attend.

DATE: December 12, 1978.

ADDRESS: The International House, 1414 East 59th Street, Chicago, Illinois 60637.

FOR FURTHER INFORMATION CONTACT:

Nan Bell; Staff Director, 1832 M Street, N.W., Suite 837, Washington, D.C. 20036, 202-653-5817.

The President's Commission on Foreign Language and International Studies is established under Executive Order 12054 (April 21, 1978) and Section 9(a) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C.

Appendix I). The Commission is directed to:

(A) Conduct such public hearings, inquiries, and studies as may be necessary to make recommendations to the President and the Secretary of Health, Education, and Welfare.

(B) The objectives of the Commission shall be to:

(1) Recommend means for directing public attention to the importance of foreign language and international studies for the improvement of communications and understanding with other nations in an increasingly interdependent world;

(2) Assess the need in the United States for foreign language and area specialists, ways in which foreign language and international studies contribute to meeting these needs, and the job market for individuals with these skills;

(3) Recommend what foreign language area studies programs are appropriate at all academic levels and recommend desirable levels and kinds of support for each that should be provided by the public and private sectors;

(4) Review existing legislative authorities and make recommendations for changes needed to carry out most effectively the Commission's recommendations.

The hearing will take place in Chicago on December 12 from 8:45 a.m. to 4:30 p.m. and will include the following agenda:

(1) Statement on background and mandate of the Commission;

(2) Statement on work and priorities of the Commission;

(3) Presentations on topics pertinent to the Commission mandate;

(4) Concurrent panel discussions on international education in the schools and colleges, foreign language education in the U.S., international exchanges, institutional language and area studies needs, and business and international trade needs.

The hearing will close with summaries of each panel's discussions. The hearing of the Commission and panel discussions will be open to the public. Records will be kept of the proceedings and will be available for public inspection at the office of the President's Commission on Foreign Language and International Studies, 1832 M Street, N.W., Suite 837, Washington, D.C. 20036.

Signed at Washington, D.C. on November 24, 1978.

NAN P. BELL,
Staff Director.

[FR Doc. 78-33359 Filed 11-28-78; 8:45 am]

[4110-07-M]

Social Security Administration

ADVISORY COUNCIL ON SOCIAL SECURITY

Public Meetings

AGENCY: Advisory Council on Social Security, HEW.

ACTION: Notice is hereby given, pursuant to Pub. L. 92-463, that the Advisory Council on Social Security, established pursuant to section 706 of the Social Security Act, as amended, will meet on Monday, December 11, 1978, from 9 a.m. to 5 p.m. in room 800 If the Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, D.C. The meeting will be a continuation of the subject of social security disability benefits.

There will be a meeting of the Advisory Council's panel of actuaries and economists on Tuesday, December 12, 1978, from 9 a.m. to 12 p.m. in Room 507A, Hubert H. Humphrey Building. The panel will continue its review of the economic and actuarial assumptions used in social security cost projections.

These meetings are open to the public.

Individuals and groups who wish to have their interest in the social security program taken into account by the Council may submit written comments, views, or suggestions to Mr. Lawrence H. Thompson.

FOR FURTHER INFORMATION CONTACT:

Mr. Lawrence H. Thompson, Executive Director of the Advisory Council, P.O. Box 17054, Baltimore, Maryland 21235. Telephone inquiries should be directed to Mr. Edward F. Moore, telephone number 301-594-3171.

(Catalog of Federal Domestic Assistance Program Numbers 13.800-13.807 Social Security Program.)

LAWRENCE H. THOMPSON,
Executive Director, Advisory Council on Social Security.

[FR Doc. 78-33402 Filed 11-28-78; 8:45 am]

[4110-85-M]

Public Health Service

INFLUENZA IMMUNIZATON GRANT PROGRAM

Delegation of Authority

Notice is hereby given that pursuant to the May 24, 1976 delegation of authority under Section 317 of the Public Health Service Act, as amended, by the Secretary of Health, Education, and Welfare to the Assistant Secretary for Health (41 FR 22117), the Assistant Secretary for Health delegated, effective August 31, 1978, to the Director, Center for Disease Control, with authority to redelegate, the authority to award only for the 1978 fiscal year influenza immunization grants to States and, with the concurrence of the State health authority, to political subdivisions or instrumentalities of the States. It was the intention of the Assistant Secretary for Health to include in the August 31, 1978 delegation, and effective November 8, 1978, the Assistant Secretary for Health made provision to so include, the authority to make technical revisions to those grants after the expiration of fiscal year 1978.

The May 24, 1976 delegation by the Assistant Secretary for Health to the Regional Health Administrators (41 FR 22117) has been superseded only insofar as it pertains to the authority herein cited as having been delegated to the Director, Center for Disease Control.

Dated: November 8, 1978.

JULIUS B. RICHMOND,
Assistant Secretary for Health.

[FR Doc. 78-33353 Filed 11-28-78; 8:45 am]

[4310-84-M]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[W-65822]

WYOMING

Application

NOVEMBER 20, 1978.

Notice is hereby given that pursuant to section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Colorado Interstate Gas Co. of Colorado Springs, Colorado filed an application for a right-of-way to construct a 4½ inch O.D. pipeline and related facilities consisting of a meter house and dehydrator for the purpose of transporting natural gas across the following described public lands:

SIXTH PRINCIPAL MERIDIAN, WYOMING

T. 18 N., R. 93 W.,
Sec. 2, lots 16 and 17;
Sec. 10, E½NE¼ and SW¼SE¼.

The proposed pipeline and related facilities will transport natural gas from the Federal No. 1-10 well located in the NE¼ of section 10 to a point of connection with a pipeline being constructed under right-of-way application W-64692 located in the SW¼ of section 2, all within T. 18 N., R. 93 W., Carbon County, Wyoming.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved and, if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, 1300 Third Street, P.O. Box 670, Rawlins, Wyoming 82301.

HAROLD G. STINCHCOMB,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 78-33439 Filed 11-28-78; 8:45 am]

[7020-02-M]

INTERNATIONAL TRADE COMMISSION

[AA1921-188]

STEEL WIRE STRAND FOR PRESTRESSED CONCRETE FROM JAPAN

Determination of Injury

NOVEMBER 16, 1978.

On the basis of its investigation, the United States International Trade Commission (Commission) has unanimously determined (Commissioner Stern not participating) [1] that an industry in the United States is being injured by reason of the importation of steel wire strand for prestressed concrete from Japan that is being, or is likely to be, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended.

On August 22, 1978, the United States International Trade Commission received advice from the Department of the Treasury that steel wire strand for prestressed concrete from Japan, with the exception of that produced by Kawatetsu Wire Products Co., Ltd., is being, or is likely to be, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)). Accordingly, on August 29, 1978, the Commission instituted investigation No. AA1921-188 under section 201(a) of said act to determine whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States.

Notice of the institution of the investigation and of the public hearing held in connection therewith was published in the FEDERAL REGISTER of September 5, 1978 (43 FR 39454). On October 3, 1978, a hearing was held in Washington, D.C., at which all persons who requested the opportunity were permitted to appear in person or by counsel.

In arriving at its determination, the Commission gave due consideration to written submissions from interested parties and information adduced at the hearing as well as information obtained by the Commission's staff from questionnaries, personal interviews, and other sources.

STATEMENT OF REASONS OF CHAIRMAN JOSEPH O. PARKER AND COMMISSIONERS GEORGE M. MOORE AND CATHERINE BEDELL

On August 22, 1978, the U.S. International Trade Commission received advice from the Department of the Treasury that steel wire strand for prestressed concrete from Japan, with the exception of that produced by Kawatetsu Wire Products Co., Ltd., is being, or is likely to be, sold in the United States at less than fair value (LTFV) within the meaning of the Antidumping Act, 1921, as amended. Accordingly, on August 29, 1978, the Commission instituted investigation No. AA1921-188 under section 201(a) of this act to determine whether an industry in the United States is being or is likely to be injured, or is prevented from being established,[2] by reason of the importation of such merchandise into the United States.

DETERMINATION

On the basis of the information obtained in the investigation, we determine that an industry in the United States is being injured by reason of the importation of steel wire strand for prestressed concrete from Japan which the Secretary of the Treasury has determined is being, or is likely to be, sold at LTFV.

THE IMPORTED ARTICLE AND THE DOMESTIC INDUSTRY

Steel wire strand for prestressed concrete includes all steel wire strand, other than alloy steel, which has been stress-relieved and is suitable for use in prestressing concrete. Prestressed concrete is widely used in the construction of bridge girders, beams, pilings, railroad ties, and a variety of building products such as columns, roofs, and floors. In this determination, we considered the relevant domestic industry to consist of facilities in the United States devoted to the production of steel wire strand for prestressed concrete. Six U.S. firms currently produce such strand.

LTFV SALES

The Department of the Treasury examined sales of five Japanese manufacturers for the period June 1 through November 30, 1977. One of these companies, Kawatetsu Wire Products Co., Ltd., was excluded from Treasury's determination because its weighted average margin of 0.62 percent was considered minimal in relation to the total volume of its sales and because the firm gave formal assurances that it would make no future sales at LTFV. During the period examined by Treasury, 95.6 percent of the sales compared for the other four Japanese suppliers were at LTFV. The weighted average dumping margin for all the sales compared was 9.76 percent.

INJURY BY REASON OF LTFV SALES

The information obtained in the investigation clearly shows that the domestic industry producing steel wire strand for prestressed concrete is being injured by reason of LTFV sales. The domestic industry suffered a declining rate of capacity utilization, a decrease in shipments, an increase in inventories, a drop in employment, and a precipitous decline in profitability between 1974 and 1977.

The capacity utilization rate for facilities producing prestressed concrete strand in the United States fell by nearly one-half between 1974 and 1976 (from 89 to 44 percent) and improved only marginally in 1977 to 51 percent. U.S. producers' shipments fell from 120.4 million pounds in 1974 to 74.1 million pounds in 1975, or by 39 percent. Despite some recovery in the industry, shipments in 1977 were about 91.6 million pounds or 24 percent less than in 1974. Yearend inventories of steel wire strand for prestressed concrete were 39 percent higher in 1977 than in 1974. The average number of production and related workers engaged in the production of steel wire strand for prestressed concrete in 1977 was 278, 19 percent less than in 1974.

In 1974 and 1975, the domestic producers had net profits before taxes on their prestressed concrete strand operations of $6.0 million and $4.7 million, respectively. There was a precipitous decline in the financial performance of the domestic industry in 1976 and again in 1977. Net losses of $810,000 were reported in 1976; the industry's losses increased to $2.1 million in 1977. The ratio of net operating profit or loss to net sales for the prestressed concrete strand operations of the domestic producers dropped from a profit of about 20 percent in both 1974 and 1975 to a loss of 3 percent in 1976 and to an even greater loss of 7 percent in 1977, the year in which Treasury found sales of imports at LTFV. All five U.S. firms which produced strand in 1977 suffered losses on their prestressed concrete strand operations in that year.

[1] Commissioner Stern did not participate in the decision because she did not assume her duties as a Commissioner until the preliminary investigation of the economic factors and legal issues in the case had been completed.

[2] Prevention of the establishment of an industry is not an issue in this investigation and will not be discussed further because there is a domestic industry of six U.S. firms currently producing steel wire strand.

There is a direct causal relationship between the injury to the domestic industry and LTFV imports from Japan. U.S. imports of steel wire strand for prestressed concrete from Japan increased from 139.1 million pounds in 1976 to 176.5 million pounds in 1977, the year in which Treasury found that imports from Japan were sold at LTFV. In both 1976 and 1977, 61 percent of apparent U.S. consumption was accounted for by imports of this product from Japan. U.S. producers cited sales of 66 million lineal feet (about 34 million pounds) of prestressed concrete strand as being lost as a result of these LTFV imports from Japan. The Commission confirmed that eight customers purchased 6 million lineal feet of Japanese strand during the period of Treasury's investigation (June-November 1977) because of the lower price of the Japanese product. An additional 10 companies also cited price as the principal reason for increasing the proportion of their total strand purchases from Japan in 1977.

Pricing data obtained by the Commission also established a causal link between LTFV imports from Japan and the injury suffered by the domestic industry. The price of U.S.-made prestressed concrete strand in the most popular size and grade fell by 31 percent between January-March 1975 and July-December 1977, from $198 to $137 per thousand lineal feet. Japanese strand, which had been selling at a premium over U.S. strand in January-March 1975, fell by about 40 percent in the same time period from $208 to $123 per thousand lineal feet. Japanese strand undersold U.S. strand in every quarter from October 1975 through June 1978. During July-December 1977, a period approximately the same as that covered by Treasury's investigation (June-November 1977), the price of imported strand from Japan was 11 percent below the price of domestically produced strand. This margin of underselling was nearly the same as the 9.8-percent weighted average dumping margin of the Japanese producers.

CONCLUSION

On the basis of the information obtained in the Commission's investigation, we conclude that an industry in the United States is being injured by reason of the importation of steel wire strand for prestressed concrete from Japan which the Secretary of the Treasury has determined is being, or is likely to be, sold at LTFV. Having so concluded, it is not necessary to address the issue of whether an industry is likely to be injured.

STATEMENT OF REASONS OF COMMISSIONER BILL ALBERGER

In order for the United States International Trade Commission to find in the affirmative in an investigation under the Antidumping Act, 1921, as amended, (19 U.S.C. 160(a)), it is necessary to find that an industry in the United States is being or is likely to be injured, or is prevented from being established [3] and the injury or likelihood thereof must be by reason of imports at less than fair value (LTFV).

DETERMINATION

On the basis of the information obtained in the investigation, I determine that an industry in the United States is being injured by reason of the importation of steel wire strand for prestressed concrete from Japan, which the Secretary of the Treasury has determined is being, or is likely to be, sold at LTFV.

THE IMPORTED ARTICLE AND THE DOMESTIC INDUSTRY

Steel wire strand for prestressed concrete includes all steel wire strand, other than alloy steel, which has been stress-relieved and is suitable for use in prestressing concrete. Prestressed concrete is widely used in the construction of bridge girders, beams, pilings, railroad ties, and a variety of building products such as columns, roofs, and floors. In this determination, I consider the relevant domestic industry to consist of facilities in the United States devoted to the production of steel wire strand for prestressed concrete. Six U.S. firms currently produce such strand.

LTFV SALES

The Department of the Treasury (Treasury) examined sales of five Japanese manufacturers for the period June 1 through November 30, 1977. One of these companies, Kawatetsu Wire Products Company, Ltd., was excluded from Treasury's determination because its weighted average margin of 0.62 percent was considered minimal in relation to the total volume of its sales and because the firm gave formal assurances that it would make no future sales at LTFV. During the period examined by Treasury, 95.6 percent of the sales compared for the other four Japanese suppliers were at LTFV. The weighted average dumping margin for all of the sales compared was 9.76 percent.

INJURY BY REASON OF LTFV SALES

U.S. imports—Imports from Japan dropped by more than 50 percent from 1974 to 1976, but 1977 Japanese imports jumped more than 25 percent over 1976 levels. In spite of this increase, 1977 ran 40 percent lower than 1974, the peak consumption year.

Production and shipments—Production of steel wire strand by U.S. producers dropped by 35 percent from 1974 to 1975, hitting a low for the 1974-77 period of 77.4 million pounds. 1976 production was up slightly over the previous year and 1977 showed nearly an 18 percent increase over 1976. This level, however, is some 23 percent under peak 1974 levels.

Shipments by U.S. producers followed a pattern relatively similar to production, peaking in 1974, then dropping by 39 percent to a period low in 1975 before climbing back to a level in 1977 that was 24 percent below 1974 figures.

Capacity utilization—The rate of capacity utilization of U.S. producers dropped from 89 to 44 percent between 1974 and 1976. 1977 showed an improvement with a 15 percent increase in capacity utilization over 1976. One producer has almost totally withdrawn from the market, and this has lowered utilization rates.

Inventories—Inventories of U.S. producers more than doubled from 1974 to 1975, dropped by more than 40 percent in 1976, and increased slightly in 1977.

Employment—The average number of production and related workers in 1977 was 278, 19 percent below 1974. This level is slightly up from 1976 and an upward trend in employment has continued into 1978.

Profits—U.S. producers moved from a strong profit picture in their wire strand operations in 1974 and 1975 to a loss in those operations in 1976 and 1977. In fact, profits were so strong in 1974 and 1975 that the four year average 1974-77 shows a net profit to net sales ratio of 7.8 percent. From a profit of $6 million in 1974, U.S. producers dropped to a loss of $2.1 million in 1977. The latter figure represents a net operating *loss* to net sales ratio of 7 percent during the year encompassing the period of Treasury's LTFV investigation (June-November 1977). These losses for wire strand operators occurred at a time when all U.S. manufacturing was showing a stable profit ratio. Early 1978 figures show profits returning to the industry.

Price—During July-December 1977, approximately the period of Treasury's investigation, Japanese strand prices ran 11 percent below those of U.S. producers. Treasury found the weighted average dumping margin for Japanese producers during this period to be 9.8 percent, thereby accounting almost totally for the margin of underselling. Prices for U.S. producers at the end of 1977 remained depressed at early 1976 levels, but have shown some

[3] Prevention of the establishment of an industry is not an issue in this investigation and will not be discussed further.

slight upward movement in 1978. Pricing practices of Japanese producers had a strong influence on prices of other imported products, as well as domestic producers.

Lost sales—The Commission was able to confirm 8 incidents of sales lost to Japanese strand producers during the period of Treasury's LTFV investigation. In addition to these cases, 10 U.S. firms indicated they had increased their purchases of Japanese strand chiefly because of price.

Summary—Many of the economic factors in this investigation have followed a similar pattern in the 1974-77 period. Production, shipments, capacity utilization and employment peaked in 1974 before dropping significantly in 1975. Similarly, all of these factors have shown an upward trend in 1976, 1977 and continuing into 1978. Those factors do not, in my judgment, point to injury. However, domestic industry's poor financial performance in 1976 and 1977, the year during which LTFV sales occurred, the specific instances of lost sales to Japanese producers and the all but direct correlation between the weighted average margin of LTFV sales and the margin of underselling persuade me that the U.S. producers are suffering injury by reason of LTFV sales from Japan.

By order of the Commission:

Issued: November 24, 1978.

KENNETH R. MASON,
Secretary.

[FR Doc. 78-33455 Filed 11-28-89; 8:45 am]

[4410-09-M]

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

CONTROLLED SUBSTANCES IN SCHEDULES I AND II

Establishment of 1979 Aggregate Production Quotas

Section 306 of the Controlled Substances Act of 1970 (21 U.S.C. 826) requires the Attorney General to establish aggregate production quotas for all controlled substances in Schedules I and II each year. This responsibility has been delegated to the Administrator of the Drug Enforcement Administration pursuant to § 0.100 of Title 28 of the Code of Federal Regulations.

On October 5, 1978, a notice of the proposed aggregate production quotas for Schedule I and II controlled substances for 1979 was published in the FEDERAL REGISTER (43 FR 46085). All interested parties were invited to comment on or object to the proposed aggregate production quotas on or before November 3, 1978. Diamond Laboratories, Inc., of Des Moines, Iowa, Hoffman-La Roche, Inc. of Nutley, New Jersey and Mallinckrodt, Inc. of St. Louis, Missouri each submitted comments relative to the proposed quotas.

Relative to secobarbital, Diamond Laboratories, Inc. commented that during 1978, they withdrew a secobarbital-containing product from the market because of FDA action. The company hopes to re-enter the market during 1979 and requested that this fact be considered in establishing the 1979 aggregate production quota for secobarbital.

Relative to alphaprodine and levorphanol, Hoffman-La Roche, Inc. commented that based on their estimates of 1978 sales for these two substances, the proposed 1979 aggregate production quotas will be insufficient to meet legitimate 1979 needs. Hoffman-La Roche requested that the 1979 aggregate production quotas for alphaprodine and levorphanol be established at levels higher than those proposed.

Relative to Codeine (for sale), Mallinckrodt, Inc. expressed concern that the proposed 1979 aggregate production quota, which represents a substantial reduction from the 1978 aggregate production quota, appears to be unwarranted in light of their estimate that dispositions of codeine in 1979 will be equal to or greater than the 1978 level. In addition, Mallinckrodt is concerned that this proposed aggregate production quota will not provide for an adequate 1979 year-end inventory.

No specific requests for hearings were received. Pursuant to § 1303.11(c) of Title 21 Code of Federal Regulations, the Administrator of the Drug Enforcement Administration has deemed, in his sole discretion, that hearings relative to any of the above mentioned comments are not necessary.

Therefore, under the authority vested in the Attorney General by Section 306 of the Controlled Substances Act of 1970 (21 U.S.C. 826), and delegated to the Administrator of the Drug Enforcement Administration by § 0.100 of Title 28 of the Code of Federal Regulations, the Administrator of the Drug Enforcement Administration hereby orders that final aggregate production quotas for the Schedule I and II controlled substances listed below, expressed in grams of anhydrous acid or base, be established as follows:

Basic class	*Established 1979 quota*
SCHEDULE I	
2,5-dimethoxyamphetamine	36,960,000
SCHEDULE II	
Alphaprodine	59,000
Amobarbital	7,498,000
Amphetamine	3,245,000
Anileridine	251,500
Cocaine	1,482,000
Codeine (for sale)	50,473,000
Codeine (for conversion)	2,962,000
Desoxyephedrine (2,213,000 g for the production of levodesoxyephedrine for use in a noncontrolled, nonprescription product, and 359,000 g for the production of methamphetamine)	2,572,000
Dihydrocodeine	1,023,000
Diphenoxylate	1,330,000
Ecgonine (for conversion)	1,000,000
Ethylmorphine	26,000
Fentanyl	2,000
Hydrocodone	1,163,000
Hydromorphone	122,000
Levorphanol	6,000
Meperidine	11,383,000
Methadone	1,458,000
Methadone intermediate (4-cyano-2-dimethylamino-4,4-diphenylbutane).	1,970,000
Methaqualone	16,023,000
Methylphenidate	1,632,000
Mixed alkaloids of opium	20,000
Morphine (for sale)	815,000
Morphine (for conversion)	59,571,000
Opium (tinctures, extracts, etc. expressed in terms of powdered opium)	2,334,000
Oxycodone (for sale)	1,838,000
Oxycodone (for conversion)	8,000
Oxymorphone	4,000
Pentobarbital	13,984,000
Phenmetrazine	3,084,000
Secobarbital	4,596,000
Thebaine (for sale)	2,660,000
Thebaine (for conversion)	1,617,000

DEA will review the above established quotas early in 1979 to take into consideration actual 1978 sales and actual December 31, 1978 inventories as well as other information which might be available to DEA. At that time, DEA will consider those comments received in response to the proposal of October 5, 1978.

This order is effective November 28, 1978.

Dated: November 21, 1978.

PETER B. BENSINGER,
Administrator, Drug Enforcement Administration.

[FR Doc. 78-33371 Filed 11-28-78; 8:45 am]

[7555-01-M]

NATIONAL SCIENCE FOUNDATION

ADVISORY COMMITTEE FOR POLICY RESEARCH AND ANALYSIS AND SCIENCE RESOURCES STUDIES

Meeting

In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Policy Research and Analysis and Science Resources Studies.

Date and time: December 15—9 a.m. to 4:30 p.m.; December 16—9 a.m. to 1 p.m.

Place: Room 540, National Science Foundation, 1800 G Street, NW., Washington, D.C. 20550.

Type of meeting: Open.

Contact person: Mrs. Sharon Lemon, Division of Policy Research and Analysis, Directorate for Scientific, Technological and International Affairs, Room 1233, National Science Foundation, Washington, D.C.

20550. Telephone 202-632-5990. Anyone who plans to attend should contact Mrs. Lemon by December 11, 1978.

Summary minutes: May be obtained from the Committee Management Coordinator, Division of Financial and Administrative Management, Room 248, National Science Foundation, Washington, D.C. 20550.

Purpose of Committee: To provide advice, recommendations, and oversight concerning program emphasis and directions of the Divisions of PRA and SRS.

Agenda: December 15, 1978: 9 a.m.—Plenary Session; 10:15 a.m.—Subcommittee Meetings: 2 p.m.—Subcommittee Meetings; 4:30 p.m.—Adjourn. December 16, 1978: 9 a.m.—Subcommittees' Reports; 10 a.m.—Recommendations on Constant Level Budget; 1 p.m.—Adjourn.

M. REBECCA WINKLER,
Committee Management Coordinator.

NOVEMBER 24, 1978.

[FR Doc. 78-33399 Filed 11-28-78; 8:45 am]

[7590-01-M]

NUCLEAR REGULATORY COMMISSION

[Docket Nos. STN 50-592-A And STN 50-593-A]

ARIZONA PUBLIC SERVICE CO., ET AL.; PALO VERDE NUCLEAR GENERATING STATION, UNITS 4 AND 5

Receipt of Additional Antitrust Information: Time for Submission of Views on Antitrust Matters

NOVEMBER 29, 1978.

Arizona Public Service Company, pursuant to Section 103 of the Atomic Energy Act of 1954, as amended, filed on July 28, 1978, information requested by the Attorney General for Antitrust Review as required by 10 CFR Part 50, Appendix L. The information concerns additional ownership participants, Nevada Power Company, San Diego Gas and Electric Company, Los Angeles Department of Water and Power, and the Cities of Anaheim, Burbank, Glendale, Pasadena, and Riverside, California, for the Palo Verde Nuclear Generating Station, Units 4 and 5 located in Maricopa County, Arizona.

This additional Antitrust information was filed in connection with the Arizona Public Service Company's applications for construction permits and operating licenses for the Palo Verde Nuclear Generating Station, Units 4 and 5.

The original "Notice of Receipt of Antitrust Information and Application for Construction Permits and Operating Licenses: Time for Submission of Views on Antitrusts Matters" was published in the FEDERAL REGISTER on May 8, 1978 (43 FR 19729).

A copy of the Arizona Public Service Company letter, dated July 28, 1978 and the above stated documents are available for public examination and copying for a fee at the Commission's Public Document Room at 1717 H Street NW., Washington, D.C. 20555 and at the Phoenix Public Library, Science and Industry Section, 12 East McDowell Road, Phoenix, Arizona 85004.

Information in connection with the antitrust review of this application can be obtained by writing to the U.S. Nuclear Regulatory Commission, Washington, D.C., Attn: Antitrust and Indemnity Group, Office of Nuclear Reactor Regulation.

Any person who wishes to have their views on the antitrust matters with respect to the Nevada Power Company, San Diego Gas and Electric Company, Los Angeles Department of Water and Power, and the Cities of Anaheim, Burbank, Glendale, Pasadena, and Riverside, California presented to the Attorney General should submit such views for consideration to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attn: Chief, Antitrust and Indemnity Group, Office of Nuclear Reactor Regulation, on or before January 22, 1979.

Dated at Bethesda, Md., this 13th day of November 1978.

For the Nuclear Regulatory Commission.

OLAN D. PARR,
Chief, Light Water Reactors Branch No. 3, Division of Project Management.

[FR Doc. 78-32556 Filed 11-28-78; 8:45 am]

[3110-01-M]

OFFICE OF MANAGEMENT AND BUDGET

CLEARANCE OF REPORTS

List of Requests

The following is a list of requests for clearance of reports intended for use in collecting information from the public received by the Office of Management and Budget on November 21, 1978. (44 U.S.C. 3509). The purposes of publishing this list in the FEDERAL REGISTER is to inform the public.

The list includes—

The name of the agency sponsoring the proposed collection of information,

The title of each request received;

The agency form number(s), if applicable;

The frequency with which the information is proposed to be collected;

An indication of who will be the respondents to the proposed collection;

The estimated number of responses;

The estimated burden in reporting hours; and

The name of the reviewer or reviewing division or office.

Requests for extension which appear to raise no significant issues are to be approved after brief notice through this release.

Further information about the items on this daily list may be obtained from the Clearance Office, Office of Management and Budget, Washington, D.C. 20503, 202-395-4529, or from the reviewer listed.

REVISIONS

DEPARTMENT OF COMMERCE

Bureau of Census
Paint, Varnish, and Lacquer (Production and Sales)
M-28F
Monthly
Paint producers
3,600 responses; 1,200 hours
C. Louis Kincannon, 395-3211

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration
Statement Regarding Date of Birth
SSA-702
On occasion
Personnel having knowledge of facts surrounding date of birth of individuals claiming RSI benefits
50,000 responses; 8,334 hours
Reese B. F., 395-3211

Center for Disease Control
Childhood Lead Poisoning Prevention Program and Laboratory Lead Activity Quarterly Reports
CDC 7.21.1, 7.21.2
Quarterly
Lead poisoning program and laboratories
868 responses; 11,760 hours
Richard Eisinger, 395-3214

EXTENSIONS

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Administration (Office of Assistant Secretary)
Damage Report
HUD-414
On occasion
FHA approved mortgagees
5,000 responses; 1,250 hours
Strasser, Arnold, 395-6132

BRENDA A. MAYBERRY,
Acting Budget and Management Officer.

[FR Doc. 78-33459 Filed 11-28-78; 8:45 am]

[3110-01-M]

CLEARANCE OF REPORTS

List of Requests

The following is a list of requests for clearance of reports intended for use in collecting information from the

public received by the Office of Management and Budget on 11/20/78 (44 U.S.C. 3509). The purpose of publishing this list in the FEDERAL REGISTER is to inform the public.

The list includes—

The name of the agency sponsoring the proposed collection of information;

The title of each request received;

The agency form number(s), if applicable; the frequency with with the information is proposed to be collected;

An indication of who will be the respondents to the proposed collection;

The estimated number of responses;

The estimated burden in reporting hours; and

The name of the reviewer or reviewing division or office.

Requests for extension which appear to raise no significant issues are to be approved after brief notice thru this release.

Further information about the items on this daily list may be obtained from the Clearance Office, Office of Management and Budget, Washington, D.C. 20503, (202-395-4529), or from the reviewer listed.

NEW FORMS

DEPARTMENT OF THE TREASURY

Assistant Secretary (Enforcement and Operations)
Registration Form
Single-time
Consumer cooperatives & low-income community groups
2,000 responses; 1,000 hours
Geiger, Susan B., 395-5867

REVISIONS

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service
Evaluation of Interim National School Lunch Program (NSLP) Regulations and Demonstration Projects
FNS 1045-47 & 1094 to 2000
Single-time
Food service managers, students, parents, faculty
82,957 responses; 13,686 hours
Ellett, C. A., 395-6132

EXTENSIONS

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service
Annual Report of Research Facility—Laboratory
Animal Welfare
VS 18-23
Annually
Users of animals for biomedical research
2,000 responses; 2,000 hours
Ellett, C. A., 395-6132

Food Safety and Quality Service
Request for inspection of Unofficially Drawn Samples of Processed Food Products
FV-159
On occasion
Food processors, brokers and retailers
200 responses; 20 hours
Caywood, D. P., 395-3443

BRENDA A. MAYBERRY,
Acting Budget and Management Officer.

[FR Doc. 78-33460 Filed 11-28-78; 8:45 am]

[8025-01-M]

SMALL BUSINESS ADMINISTRATION

[Proposal No. 05/05-0137]

NATIONAL CITY CAPITAL CORP.

Application for a License as a Small Business Investment Company

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to § 107.102 of the SBA Regulations (13 CFR 107.102 (1978)) by National City Capital Corporation, 623 Euclid Avenue, Cleveland, Ohio 44114, for a license to operate as a small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958 (the Act), as amended (15 U.S.C. 661 *et seq.*).

The proposed officers, directors, and sole shareholder are:

Name, Address, Title and Relationship

Julian L. McCall, Director and Chairman of the Board, 623 Euclid Avenue, Cleveland, Ohio 44114.
Michael Sherwin, Director, President and General Manager, 623 Euclid Avenue, Cleveland, Ohio 44114.
Charles Robins, Director and Executive Vice President, 623 Euclid Avenue, Cleveland, Ohio 44114.
Edward B. Brandon, Director, 623 Euclid Avenue, Cleveland, Ohio 44114.
Gene F. Carpenter, Director, 623 Euclid Avenue, Cleveland, Ohio 44114.
William R. Robertson, Director, 623 Euclid Avenue, Cleveland, Ohio 44114.
David W. Hart, Secretary, 623 Euclid Avenue, Cleveland, Ohio 44114.
Thomas W. Owen, Treasurer, 623 Euclid Avenue, Cleveland, Ohio 44114.
William D. Ahonen, Assistant Secretary, 623 Euclid Avenue, Cleveland, Ohio 44114.
Richard M Arceci, Assistant Treasurer, 623 Euclid Avenue, Cleveland, Ohio 44114.
National City Corporation, Sole Shareholder, 623 Euclid Avenue, Cleveland, Ohio 44114, 100 percent of ownership.

National City Corporation is a bank holding company that has consolidated assets of approximately $3.6 billion. National City Corporation has banking subsidiaries in eight Ohio counties in northeastern Ohio and a large banking subsidiary in southwestern Ohio. Applicant expects that its affiliation with National City Corporation and its banking subsidiaries will generate many of the investment opportunities and also provide basic financial soundness.

The applicant will begin operations with a capitalization of $2.5 million and will be a source of equity capital and long term loan funds for qualified small business concerns.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management, including adequate profitability and financial soundness, in accordance with the Act and Regulations.

Notice is further given that any person may, not later than December 14, 1978, submit written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, D.C. 20416.

A copy of this Notice will be published in a newspaper of general circulation in Cleveland, Ohio 44114.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: November 22, 1978.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc. 78-33427 Filed 11-28-78; 8:45 am]

[8025-01-M]

[Proposal No. 05/05-0136]

SUPER MARKET INVESTORS, INC.

Application for a License as a Small Business Investment Company

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to § 107.102 of the SBA Regulations (13 CFR 107.102 (1978)) by Super Market Investors, Inc., 11300 Burleigh Street, Wauwatosa, Wisconsin 53222 for a license to operate as a small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958 (the Act), as amended (15 U.S.C. 661 *et seq.*).

The proposed officers, directors, and sole shareholder are:

Name, Address, Title and Relationship

John W. Andorfer, President, Treasurer, General Manager and Director, 3159 North Knoll Terrace, Wauwatosa, Wisconsin 53222.
David H. Maass, Vice President, Secretary and Director, N70 W26423 Thousand Oaks Dr., Sussex, Wisconsin 53089.
Vincent R. Little, Director, 18675 Surrey Lane, Brookfield, Wisconsin 53005.

Robert S. Schwartz, Director, 3735 San Fernado Drive, Brookfield, Wisconsin 53005.
Gerald F. Lestina, Director, 36824 Laak Lane, Dousman, Wisconsin 53118.
Roundy's, Inc., 11300 Burleigh Street, Wauwatosa, Wisconsin 53222, 100 percent of ownership.

Roundy's Inc., is a Wisconsin corporation which operates a wholesale food distributor serving stores in Wisconsin and Illinois.

The Applicant proposes to begin operations with a capitalization of $300,000 and will be a source long term loan funds for qualified small business concerns.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management, including adequate profitability and financial soundness, in accordance with the Act and Regulations.

Notice is further given that any person may, not later than December 14, 1978, submit written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, N.W., Washington, D.C. 20416.

A copy of this Notice will be published in a newspaper of general circulation in Milwaukee, Wisconsin.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: November 22, 1978.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc. 78-33428 Filed 11-28-78; 8:45 am]

[7035-01-M]

INTERSTATE COMMERCE COMMISSION

[No. 37046]

DENVER & RIO GRANDE WESTERN RAILROAD CO.

Petition for Permission to Cancel Obsolete Rates on Canned Goods

Decided November 14, 1978.

By petition filed September 27, 1978, the Denver and Rio Grande Western Railroad Company seeks permission to cancel certain obsolete rates on canned goods between Farmington, N. Mex., and Alamosa and Antonito, Colo.

The rates in issue, among others, were initially established by petitioner pursuant to conditions, prescribed by Division 3 in docket Nos. 24745 and 34843, *Denver & R.G.W.R. Co. Abandonment*, 334 I.C.C. 539 (1969), precedent to authorizing the abandonment of a portion of petitioner's lines. Petitioner specifically proposes to cancel all of the point-to-point rates on canned goods from origins and to destination specified under Section 3, Items 725 and 730, in Supplement 18 to its Freight Tariff 6372-N, ICC 1260. Section 3 of Supplement 18 is reproduced in the attached appendix.

In support, petitioner avers that it has not handled any traffic under the issue rates from 1973 to present, that the cancellation would constitute a convenience (tariff economy) to petitioner, and would not prejudice any prospective shippers of any such commodities in the future.

It appears that petitioner has made a prima facie case for granting the petition, provided there is no opposition to the sought cancellation. The Commission is therfore prepared to grant the petition unless good cause is shown why the issue rates should not be cancelled.

It is ordered:

Any interested persons who oppose the petitioner's request for permission to cancel the rates in issue are ordered to show cause why such permission to cancel should not be granted by filing, on or before December 29, 1978, statements in opposition, in docket No. 37046, addressed to: Office of the Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

This decision shall be served on all parties to docket Nos. 24745 and 34843, and in order to give notice thereof to the general public, it shall be published in the FEDERAL REGISTER.

By the Commission, Division 2, Commissioners Stafford, Gresham, and Christian.

H.G. HOMME, JR.,
Secretary.

[7035-01-C]

APPENDIX

SUPPLEMENT 18 TO TARIFF 6372-N

SECTION 3

RATES IN CENTS PER 100 POUNDS

ITEM	COMMODITY, CL	FROM	TO	RATES	VIA ROUTES (SEE ITEM 1005)
725-A	CANNED GOODS or other articles as described in Item 120 of WTL Tariff 208-J, ICC A-4351, min wt 60,000 pounds. (See Item 115).	MP Crowley - - - CO	RGMW Arboles - - - CO	▼244	134
			Chama - - - NM Dulce - - - - NM	240	
			Durango - - - CO Ignacio - - - CO Juanita - - - CO	▼244	
			Monero - - - NM	240	
730-A	CANNED GOODS or other articles as described in Item 120 of WTL Tariff 208-J, ICC A-4351, min wt 40,000 pounds, except as noted. (See Item 115).	BN Longmont - - CO CS Ft Collins - - CO Greeley - - - CO Longmont - - CO Loveland - - CO GWR Johnstown - - CO Longmont - - CO Loveland - - CO UP Ft Collins - - CO Greeley - - - CO Lupton - - - CO	RGMW Arboles - - - CO	▼253	30, 40, 118, 122, 126, 130, 168
			Chama - - - NM Dulce - - - - NM	249	
			Durango - - - CO	▼253	
			Farmington - - NM	265, @255	
			Ignacio - - - CO Juanita - - - CO	▼253	
			Monero - - - NM	249	
		UP Brighton - - - CO	RGMW Arboles - - - CO	▼246	168
			Chama - - - NM Dulce - - - - NM	243	
			Durango - - - CO	▼246	
			Farmington - - NM	265, @255	
			Ignacio - - - CO Juanita - - - CO	▼246	
			Monero - - - NM	243	

[FR Doc. 78-33291 Filed 11-28-78; 8:45 am]

[7035-01-M]

INTERSTATE COMMERCE COMMISSION

AGRICULTURAL COOPERATIVE

Notice to the Commission of Intent To Perform Interstate Transportation for Certain Nonmembers

NOVEMBER 24, 1978.

The following Notices were filed in accordance with section 208(b)(5) of the Interstate Commerce Act provided for under 49 CFR 1047.23. These rules provide that agricultural cooperatives intending to perform nonmember, nonexempt, interstate transportation must file the Notice, Form BOp 102, with the Commission within 30 days of its annual meetings each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental Notice within 30 days of such change. The name and address of the agricultural cooperative, the location of the records, and the name and address of the person to whom inquiries and correspondence should be addressed, are published here for interested persons. Submission of information that could have bearing upon the propriety of a filing should be directed to the Commission's Bureau of Investigations and Enforcement, Washington, D.C. 20423. The Notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C.

(1) Interstate Motor Freight, Inc. (Complete Legal Name of Cooperative Association or Federation of Cooperative Associations); 800 S. McGarry Street, Los Angeles, California (Principal Mailing Address—Street No., City, State, and Zip Code); 800 S. McGarry Street, Los Angeles, California (Where Are Records of Your Motor Transportation Maintained—(Street No., City, State and Zip Code); Bernard Shapiro, 800 S. McGarry Street, Los Angeles, California (Person to Whom Inquiries and Correspondence Should Be Addressed—Name and Mailing Address).

(2) Knouse Foods Cooperative, Inc. (Complete Legal Name of Cooperative Association or Federation of Cooperative Associations); Peach Glen, Pennsylvania 17306 (Principal Mailing Address—Street No., City, State, and Zip Code); Peach Glen, Pennsylvania 17306 (Where Are Records of Your Motor Transportation Maintained—Street No., City, State, and Zip Code); William H. Horner, Peach Glen, Pennsylvania 17306 (Person to Whom Inquiries and Correspondence Should Be Addressed—Name and Mailing Address).

(3) Midwest Growers Cooperative Corporation (Complete Legal Name of Cooperative Association or Federation of Cooperative Associations): 7236 East Slauson Avenue, Los Angeles, California 90022 (Principal Mailing Address—Street No., City, State, and Zip Code); 7236 East Slauson Avenue, Los Angeles, California 90022 (Where Are Records of Your Motor Transportation Maintained—Street No., City, State, and Zip Code); William Buel, Dispatcher, 7236 East Slauson Avenue, Los Angeles, California 90022 (Person to Whom Inquiries and Correspondence Should Be Addressed—Name and Mailing Address).

(4) Missouri Farmers Association, Inc. (Complete Legal Name of Cooperative Association or Federation of Cooperative Associations); 201 South Seventh Street, Columbia, Missouri 65201 (Principal Mailing Address—Street No., City, State, and Zip Code); 201 South Seventh Street, Columbia, Missouri 65201 (Where Are Records of Your Motor Transportation Maintained—Street No., City, State, and Zip Code); Dale E. Bolander, 201 South Seventh Street, Columbia, Missouri 65201 (Person to Whom Inquiries and Correspondence Should Be Addressed—Name and Mailing Address).

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 78-33447 Filed 11-28-78; 8:45 am]

[7035-01-M]

[Notice 745]

ASSIGNMENT OF HEARINGS

NOVEMBER 24, 1978.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested. No amendments will be entertained after the date of this publication.

MC 123407 (Sub-454F), Sawyer Transport, Inc., now being assigned for hearing on February 6, 1979 (1 day), at Phoenix, Arizona in a hearing room to be later designated.

MC 136602 (Sub-7F), Arizona Western Transport, Inc., now being assigned for hearing on February 7, 1979 (3 days), at Phoenix Arizona in a hearing room to be later designated.

MC 111401 (Sub-528F), Groendyke Transport, Inc., now being assigned for hearing on February 12, 1979 (1 week), at Phoenix, Arizona in a hearing room to be later designated.

MC-F-13489, Ryder Truck Lines, Inc.—Purchase (Portion)—England Transportation Co., of Texas, and MC 2900 (Sub-325F), Ryder Truck Lines, Inc.—Purchase (Portion)—England Transportation, Co., of Texas, now being assigned for continued hearing on January 9, 1979 (4 days), at San Antonio, Texas at Menger Hotel & Motor Inn, 204 Alamo Plaza.

MC 26396 (Sub-186F), Popelka Trucking Co., Inc., now being assigned for hearing on January 9, 1979 (1 day), at Columbus, Ohio in a hearing room to be later designated.

MC 217 (Sub-19), Point Transfer, Inc., No. MC 45194, (Sub-17), Lattavo Brothers, Inc., now being assigned for hearing on January 10, 1979 (1 day), at Colombus, Ohio in a hearing room to be later designated.

MC 144969 (Sub-77F), Propane Transport, Inc., now being assigned for hearing on January 11, 1979 (2 days), at Columbus, Ohio in a hearing room to be later designated.

MC 141898 (MI), Roberts Cartage of Ohio, Inc., now being assigned for hearing on January 15, 1979 (1 week), at Cleveland, Ohio in a hearing room to be later designated.

MC 144285F, Bay Haven Marina, Inc., now being assigned for hearing on January 10, 1979 (3 days), at Lansing, Michigan in a hearing room to be later designated.

MC 123631 (Sub-34F), Widing Transportation, Inc., now assigned for hearing on January 22, 1979, at Portland, Oregon and will be held in Room 3086, Federal Building.

MC 114457 (Sub-425F), Dart Transit Company, now being assigned for Prehearing Conference on December 18, 1978, at the Interstate Commerce Commission Washington, D.C.

MC 48958 (Sub-153F), Illinois-California Express, Inc., No. MC 118159 (Sub-273F), National Refrigerated, Transport, Inc., now being assigned for hearing on December 13, 1978 (1 day), at Tax Court Room 330, U.S. Post Office and Courthouse Building, Bryan and Ervay Streets, Dallas, Texas.

MC 109397 (Sub-407F), Tri-State Motor Transit Co., now assigned for hearing December 11, 1978 at Phoenix, Arizona and will be held in Adams Hotel, Central and Adams.

MC 124947 (Sub-79), Machinery Transports, Inc., now assigned December 11, 1978 at Phoenix, Arizona and will be held at Adams Hotel, Central and Adams.

MC 143496 (Sub-1), United Coach Companies of Tidewater Inc., now assigned November 27, 1978 at Norfolk, Virginia is postponed indefinitely.

MC 140024 (Sub-112F), J. B. Montgomery, Inc., now assigned December 11, 1978 at Philadelphia, Pennsylvania is postponed indefinitely.

MC 117119 (Sub-619), Willis Shaw Frozen Express, Inc., now assigned December 11, 1978 at Denver, Colorado is postponed indefinitely.

MC-10163, *Clark Transfer, Inc., v. Consolidated Productions Inc.*, now assigned November 29, 1978 at Washington, D.C. is postponed to December 12, 1978 at Washington, D.C. at the offices of the Interstate Commerce Commission for pre-hearing conference.

MC 144622 (Sub-2F), Glenn Bros. Meat Co. Inc., now assigned November 29, 1978 at New York, New York is postponed indefinitely.

MC 2228 (Sub-69F), Merchants Fast Motor Lines, Inc., now assigned January 8, 1979 (3 weeks) at Phoenix, Arizona and will be held at Sheraton Airport Inn 2901 East Sky Harbor Boulevard.

MC 90870 (Sub-5F), Glen R. Reichmann, d.b.a. Reichmann Truck Service, now assigned January 22, 1979 (3 days) at Chicago, Illinois in a hearing room to be later designated.

MC 106401 (Sub-44F), Johnson Motor Lines, Inc., now assigned December 6, 1978 at Jackson, Mississippi (3 days) in Grand Jury Room, U.S. Post Office and Courthouse Bldg., corner of Capitol and S.W. Sts.

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 78-33448 Filed 11-28-78; 8:45 am]

[7035-01-M]

[Docket No. AB-7 (Sub-38)]

STANLEY E. G. HILLMAN, TRUSTEE OF THE PROPERTY OF CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD CO., DEBTOR

Abandonment Near Garden City-Bristol, in Clark and Day Counties, S. Dak.; Findings

Notice is hereby given pursuant to Section 1a of the Interstate Commerce Act (49 U.S.C. 1a) that by a Certificate and Decision decided October 23, 1978, a finding, which is administratively final, was made by the Commission, Review Board Number 5, stating that, subject to the conditions for the protection of railway employees prescribed by the Commission in *Oregon Short Line R. Co.—Abandonment Goshen,* 354 I.C.C. 584 (1978), and for public use as set forth in said decision, the present and future public convenience and necessity permit the abandonment by Stanley E. G. Hillman, Trustee of the Property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor, of a line of railroad known as the Bristol to Garden City Branch extending 28.8 miles from milepost 73.9 near Garden City northerly to milepost 102.7 near Bristol. A certificate of public convenience and necessity permitting abandonment was issued to the Chicago, Milwaukee, St. Paul and Pacific Railroad Company. Since no investigation was instituted, the requirement of § 1121.38(a) of the Regulations that publication of notice of abandonment decisions in the FEDERAL REGISTER be made only after such a decision becomes administratively final was waived.

Upon receipt by the carrier of an actual offer of financial assistance, the carrier shall make available to the offeror the records, accounts, appraisals, working papers, and other documents used in preparing Exhibit I (§ 1121.45 of the Regulations). Such documents shall be made available during regular business hours at a time and place mutually agreeable to the parties.

The offer must be filed and served no later than December 14, 1978. The offer, as filed, shall contain information required pursuant to Section 1121.38(b) (2) and (3) of the Regulations. If no such offer is received, the certificate of public convenience and necessity authorizing abandonment shall become effective January 15, 1979.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-33445 Filed 11-28-78; 8:45 am]

[7035-01-M]

[Docket No. AB-43 (Sub-30)]

ILLINOIS CENTRAL GULF RAILROAD CO.

Abandonment Between Waggoner and Glen Carbon in Montgomery, Macoupin, and Madison Counties, Il.;[1] Findings

Notice is hereby given pursuant to Section 1a(6)(a) of the Interstate Commerce Act (49 U.S.C. 1a(6)(a)) that by a decision entered on January 31, 1978, and the decision of the Commission, Division 2, served August 8, 1978, as modified, adopted the decision of the Administrative Law Judge entered on January 31, 1978, which is administratively final, stating that, subject to the conditions for the protection of railway employees prescribed by the Commission in *Oregon Short Line R. Co.—Abandonment Goshen,* 354 I.C.C. 584 (1978) and further that the applicant may discontinue its service over the line upon the effective date of the certificate of public convenience and necessity, but shall not physically abandon the line or any portion thereof until, upon proper application, this Commission approves discontinuance of the operation of the Illinois Terminal Railroad Company over the trackage, the present and future public convenience and necessity permit the abandonment by the Illinois Central Gulf Railroad Company of its line of railroad beginning at milepost 222.5 near Waggoner, IL, and extending to milepost 276.42 at Glen Carbon, IL, a distance of 53.92 miles in Montgomery, Macoupin and Madison Counties, IL.

A certificate of abandonment will not be issued to the Illinois Central Gulf Railroad Comapny based on the above-described finding of abandonment until final determination of the proceeding by the United States Court of Appeals. During the interim, however, the procedures specified in Section 1a (6) and (7) of the Act will otherwise be followed. Thus, the Commission will be in a position to issue a certificate of abandonment 30 days after publication of this notice (December 29, 1978) unless within 30 days from the date of publication, the Commission further finds that:

(1) A financially responsible person (including a government entity) has offered financial assistance (in the form of a rail service continuation payment), to enable the rail service involved to be continued; and

(2) It is likely that such proffered assistance would:

(a) Cover the difference between the revenues which are attributable to such line of railroad and the avoidable cost of providing rail freight service on such line, together with a reasonable return on the value of such line, or

(b) Cover the acquistion cost of all or any portion of such line of railroad.

If the Commission so finds, the issuance of a certificate of abandoment will be postponed for such reasonable time, not to exceed 6 months, as is necessary to enable such person or entity to enter into a binding agreement, with the carrier seeking such abandonment, to provide such assistance or to purchase such line and to provide for the continued operation of rail services over such line. Upon notification to the Commission of the execution of such an assistance or acquisition and operating agreement, the Commission shall postpone the issuance of such a certificate for such period of time as such an agreement (including any extensions or modifications) is in effect.

However, as previously indicated no such certificate will be issued until the pending court proceeding has been finally resolved. Information and procedures regarding the financial assistance for continued rail service or the acquisition of the involved rail line are contained in the Notice of the Commission entitled "Procedures for Pending Rail Abandonment Cases" published in the FEDERAL REGISTER on March 31, 1976, at 41 FR 13691, as amended by publication of May 10, 1978, at 43 FR 20072. All interested persons are advised to follow the instructions contained therein as well as the instructions contained in the above-referenced decision.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-33446 Filed 11-28-78; 8:45 am]

[1] This proceeding is pending review in the United States Court of Appeals for the Seventh Circuit, entitled *People of the State of Illinois, Illinois Commerce Commission et. al. v. Interstate Commerce Commission and United States of America,* No. 78-2393.

[7035-01-M]

[Notice No. 225]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

NOVEMBER 24, 1978.

The following are notices of filing of applications for temporary authority under Section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the FEDERAL REGISTER publication no later than the 15th

calendar day after the date the notice of the filing of the application is published in the FEDERAL REGISTER. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

W-976 (Sub-4TA). By decision entered November 22, 1978, the Motor Carrier Board granted Lykes Bros. Steamship Co., Inc., New Orleans, LA, 90 day temporary authority to engage in the business of transportation by water vessel, in interstate commerce, in the transportation of nuclear reactor components, from the port of New Orleans, LA, to the port of Longview, WA. via the Panama Canal, by self-propelled cargoliner vessel. A. F. Babin, Lykes Bros. Steamship Co., Inc., 300 Poydras Street, New Orleans, LA 70130, for applicant. Any interested person may file a petition for reconsideration on or before December 19, 1978. Within 20 days after the filing of such petition with the Commission, any interested person may file and serve a reply thereto.

MC 56664 (Sub-4TA), filed July 14, 1978, published in the FEDERAL REGISTER of October 16, 1978 and republished this issue. Applicant: C. W. KEITH TRANSFER & WAREHOUSE CO., 2100 S. 15th Avenue, Phoenix, AZ 85007. Representative: Charles R. Hallam, 3550 N. Central Avenue, Suite 1700, Phoenix, AZ 85012. By order entered————, the Motor Carrier Board granted applicant, 180 days temporary authority commencing to operate as a contract carrier, by motor vehicle over irregular routes transporting: *General commodities*, except those of unusual value. Classes A and B explosives, household goods, commodities in bulk and those requiring special equipment, between Phoenix, AZ and Bagdad, AZ, for the the account of Cyprus Mines Corporation. Applicant was authorized to interline with other carriers at Phoenix, AR. Supporting shipper: Cyprus Bagdad Copper Company, P.O. Box 245, Bagdad, AZ 86321.

Any interested person may file a petition for reconsideration within 20 days of the date of this publication. Within 20 days after the filing of such petition with the Commission, any interested person may file and serve a reply. The purpose of this republication is to show that the authority granted broadens the commodity description to conform to the needs of the shipper and reduces the application from common carrier authority to contract carrier authority.

MC 145173TA (Republication), filed August 11, 1978, published in the FEDERAL REGISTER issue of October 13, 1978, and republished this issue. Applicant: BELDON LAMBIRTH, JR., d/b/a, L & S TRANSPORTATION, P.O Box 31534, Billings, MT 59104. Representative: Jeff Essman, 500 Midland Bank Bldg., 303 North Broadway, Billings MT 59101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Bentonite* (except in bulk), from Crook, Weston, Natrona, Washakie, and Big Horn Counties, WY, to points in Sacramento, Yolo, Kern, Colusa, Ventura, Los Angeles, Humboldt, Mendocino, Lake, Sonoma, Contra Costa, Monterey, Tehama, Fresno, San Luis Obispo, Santa Barbara, Sutter, San Joaquin, Merced, Glenn and Kings Counties, CA. Supporting shipper(s): Bill New, Pres., Northern Mud Sales & Service Co., Inc., 3400 Patton Way, P.O. Box 665, Bakersfield, CA 93308. Pete Smith, Chief Mud Inc., 6205 Dennen St., Bakersfield, CA 93307. John R. Farrow, Gen. Mgr., Calada Materials, 3501 Dock St., Terminal Island, Long Beach, CA 90731. Send protests to: D/S Paul J. Labane, ECC, 2602 First Ave., North Billings, MT 59101. The purpose of this republication is to indicate San Lous Obispo, Santa Barbara, Sutter, San Joaquin, and Merced Counties, CA, as destination counties in the authority sought, omitted in the FEDERAL REGISTER publication of October 13, 1978. Protests should be directed at those counties only.

By the Commission.

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 78-33444 Filed 11-28-78; 8:45 am]

[7035-01-M]

[Finance Docket No. 28799F]

SOUTHERN PACIFIC TRANSPORTATION CO.

Purchase (Portion)—Chicago, Rock Island & Pacific Railroad Co.

Decided: November 6, 1978.

Petition for waiver of ICC Railroad Acquisition, Control, Merger, Consolidation, Coordination Project, Trackage Rights, and Lease Procedures, 49 CFR 1111, granted.

Charles W. Brukett, Carol A. Harris and *Herbert A. Waterman*, for Southern Pacific Transportation Company.

Martin L. Cassell for Chicago, Rock Island and Pacific Railroad Company.

Nicholas G. Manos for William M. Gibbons, Trustee of the Property of Chicago, Rock Island and Pacific Railroad Company.

Southern Pacific Transportation Company (SP), and Chicago, Rock Island and Pacific Railroad Company (RI) filed a supplemental petition on September 29, 1978, pursuant to section 49 CFR 1100.99 of the ICC Revised Rules of Practice (Rules of Practice), seeking waiver of the requirements of Section 1111.2(b)(1)(ii) and clarification of section 1111.2(a)(8) of the ICC Railroad Acquisition, Control, Merger, Consolidation, Coordination Project, Trackage Rights and Lease Procedures (*Consolidation Procedures*).

In a prior petition SP and RI sought broad waiver of other requirements of the *Consolidation Procedures*. Petitioners were denied this waiver in Finance Docket No. 28799, *Southern Pacific Transportation Company-Purchase (Portion)-Chicago, Rock Island And Pacific Railroad Company*, decided August 16, 1978.

INFORMATION REQUIRED FOR THE EXHIBIT A-13, TABLE B

Section 1111.2(b)(1)(ii) of the *Consolidation Procedures* requires that applicants submit certain revenue carload interchange data in Exhibit A-13. As a separate table of Exhibit B applicants must show for each connecting line haul carrier at each major interchange point (5000 or more revenue carloads during the latest calendar year) the annual carloads handled between each origin destination state pair. Petitioners estimate that this material would comprise 750 pages and would be included in its entirety in every copy of the application.

For every interchange there are 48 possible origin-destination state combinations. Many of these pairs involve less than 100 revenue carloads per year, and would account for only a

[1] A copy of this decision will be filed in Ex. Parte No. 282 Sub-No. 1, *Railroad Consolidation Procedures*.

very small percent of the traffic flow in a transaction of this size according to the petitioners. Granting the requested waiver for state pairs of less than 100 carloads annually would reduce the size of the required table from 750 to less than 200 pages and would reduce petitioners' time and cost of distributing the contemplated application.

In *Burlington Northern, Inc.-Control & Merger-St. L.*, 354 I.C.C. 182, 187-8 (1977) we granted a similar request, and do so in this proceeding. Petitioners have presented sound reasons for waiving the requirements of Table B of Exhibit 13 for movements of less than 100 cars per year. The scope of the proposed transaction is sizable and it is our opinion that the requirements of section 1111.2(b)(ii) for state pairs of less than 100 carloads annually would not yield information that would aid the Commission or other parties in evaluating the proposed transaction.

The full requirements of section 1111.2(b)(ii) may still have relevance to smaller consolidation proposals, and therefore we will not amend the *Consolidation Procedures.*

THE MAP—SECTION 1111.2(a)(8)

Petitioners request clarification of the requirements of 49 CFR 1111.2(a)(8):

"a general or key map indicating clearly, in separate colors, or otherwise, on a suitable scale, preferably not smaller than 20 miles to the inch, the lines or lines of applicant, parts of the line or lines of each applicant in their true relation to each other, short line connections, other rail lines in the territory, and the principal geographic points of the region traversed. Whenever possible, this map should not be over 30 inches in its largest dimensions."

They believe that a map on this scale would not aid the Commission or parties in evaluating the transaction. They argue that though detail may be necessary in situations where the consolidations are small or overlapping, it would be of little use in a large scale end-to-end consolidation such as petitioners' proposed transaction.

Petitioners propose to submit a map drawn to a scale of 100 miles to the inch. The existing systems of SP, St. Louis Southern Western Railway Co. and RI would be designated in different colors. Routes of the principal competing carriers would be shown. The transaction here involves an extension of line in excess of 900 miles, and we see no reason for the detail that is required in section 1111.2(a)(8). Since this section does not make 20 miles to an inch a requirement, but rather a preferable minimum no formal waiver is required. Smaller transactions will, however require more detailed maps to allow accurate evaluation.

To notify the public this decision will be published in the FEDERAL REGISTER.

We find that this decision does not significantly affect the quality of the human environment.

It is ordered:

(1) Petitioners supplemental request for waiver 49 CFR 1111.2(b)(1)(ii) is granted; (2) Public notice of our action shall be given to the general public by delivery of a copy of this decision to the Director, Federal Register, for publication; (3) This decision shall be effective on the date it is served.

By the Commission, Chairman O'Neal, Vice Chairman Christian, Commissioners Brown, Stafford, Gresham and Clapp.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-33453 Filed 11-28-78; 8:45 am]

sunshine act meetings

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).

CONTENTS

	Item
Civil Aeronautics Board	1
Federal Reserve System	2
National Mediation Board	3
Occupational Safety and Health Review Commission	4
U.S. Railway Association	5

[6320-01-M]

1

[M-181; Nov. 22, 1978]

CIVIL AERONAUTICS BOARD.

TIME AND DATE: 10 a.m., November 30, 1978.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT:

1. Ratification of items adopted by notation.

2. Dockets 33112, 33283, Texas International-National Acquisition Case, and Pan American-National Acquisition Case. National Airlines motion to cancel or postpone airline industry merger policy seminars (Memo 8300, OGC).

3. Dockets 33107 and 33031, Petition of Aloha and Hawaiian Airlines for emergency exemption from Part 250 of the Board's new rules governing denied boarding compensation (DBC) and requiring the airlines to solicit volunteers for denied boarding. (Memo 8302, OGC).

4. Application of the Deregulation Act to Commuter/Certificated Joint Fares (OGC).

5. Docket 28178—World-Jet, Inc., d/b/a Silvas Air Lines, Certificate application for foreign charter authority (Memo 8304, OGC, BIA).

6. Docket 24847, Transavia Holland, B.V., Foreign Air Carrier Permit Renewal (Memo 8299, OGC).

7. Docket 31654, Aerolineas Dominicanas, S.A. Foreign Air Carrier Permit—(OGC).

8. Dockets 33112 and 33283, Petitions for Reconsideration of Order 78-8-150 (Memo 8114-I).

9. Docket 33400, Third-party complaint of Texas International Airlines against Pan American World Airways, Inc. and National Airlines, Inc., (Memo 8114-H, BCP).

10. Docket 32097, *Pittsburgh-Orlando-Daytona Beach Route Proceeding* (OGC).

11. Docket 31571, Northwest Alaska Service Investigation—Procedural Order (OGC).

12. Dockets 33477, 33647, 33840, 28337, 33850, 33839, 33847, 33848, 33856, 33855, 33854, 33837; *Texas/Great Lakes-Eastern Canada Service Case* Petitions for reconsideration, motions for consolidation and for intervention (Memo 8178-A OGC).

13. Dockets 25997, 28730, 28984, 28587, 28588, 29332, 29342, 31539, 31540, 31542, 32077, 32114, 32127, 32130, 33165, 33651, 33964; Applications for certificates; expanded issues in *Transatlantic Cargo Service Case*, Docket 30789; Dockets 32077, 32114, 32127, 32130, 32172, and 32857; Application for *pendente lite* exemption authority (BIA).

14. Docket 33616, Application of Laker Airways Limited to amend its foreign air carrier permit to allow its New York and Los Angeles route segment to London to be consolidated into a single route (Memo 8293, BIA, OGC).

15. Dockets 32686, 33210, 33464, 33587, 33640, 33637 and 33709, Applications of TIA, Braniff, World and Aeroamerica for exemption to serve various U.S.-Benelux, U.S.-Paris, U.S.-Germany, and U.S.-London markets; Docket 32523, Petition of World Airways for Reconsideration of Order 78-9-2 to add Los Angeles as a coterminal point to the exemption giving World authority to serve the terminal point Amsterdam, the Netherlands and various U.S. coterminal points (Memo 8303, BIA, BPDA, OGC, OEA, BCP).

16. Dockets 31929, 32732, 32914; Applications of Texas International Airlines, Inc., Braniff Airways, Inc., and United Air Lines, Inc. to serve various U.S.-Mexico routes (BIA, OGC, BALJ).

17. Dockets 32273, 32274, 32275; Trans World Airlines, Inc. (TWA) application for Certificate of Public Convenience and Necessity. Petitioner filed applications for TWA without apparent corporate authority (Memo 8044-A, BIA, OGC).

18. Request from the Department of State (DOS) for advice in the matter of consumer representation in international aviation negotiations (BIA).

19. Order 78-8-10, August 3, 1978, IATA Conditions of Carriage for Cargo. Motion for stay Memo 5710-C, BPDA, OGC, BIA).

20. Docket 32774, Norfolk's Petition for an Investigation of United's Service Cuts in the Norfolk-Washington Market (Memo 8290, BPDA, OCCR).

21. Docket 24353, Motion of Eastern for waiver of the first-class fares prescription of Orders 74-10-78 and 76-8-100 (Memo 4356-D, BPDA).

22. Docket 30777, IATA agreements proposing new U.S.-South Central America fare structure (Memo 8195-A, BPDA, BIA).

23. Docket 33276, Petition of TWA for reconsideration of the Board's suspension of transatlantic winter normal economy fare increases. The carrier argues the Board improperly used its suspension powers to get policy concessions on unbundling normal economy fares; investigation of the fares is futile and impossible without broader involvement; and unbundled fares are impractical, unacceptable to foreign governments, and financially ruinous (Memo 8137-A, BPDA, BIA).

24. Air Canada proposed tariff rule disclaiming liability for its negligence as to certain fragile, perishable and valuable articles included in baggage without its knowledge (Memo 5088-J, BPDA, BIA).

25. Petition of British Caledonian Airways, Limited for review of staff action denying its request for special tariff permission to file a one-way cargo charter charge from Houston to Singapore (Memo 8305, BPDA, BIA, OGC).

26. Proposal to publish a summary notice of those Board orders now published in the Federal Register (Memo 8306, OMD, OGC, OC, BPDA, BIA, ALJ and BCP).

27. Permission for subsidized air carriers to destroy subsidy records retained under Section 13 (e) of Part 249, "Preservation of Air Carrier Accounts, Records, and Memoranda," of the Board's Economic Regulations (Memo 8295, BAS).

STATUS: Open.

PERSON TO CONTACT:

Phyllis T. Kaylor, the Secretary, 202-673-5068.

[S-2408-78 Filed 11-27-78; 3:50 pm]

[6210-01-M]

2

FEDERAL RESERVE SYSTEM.

Board of Governors.

TIME AND DATE: 12 noon, Monday, December 4, 1978.

PLACE: 20th Street and Constitution Avenue NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Appointment of new members to the Consumer Advisory Council.

2. Any agenda items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Joseph R. Coyne, Assistant to the Board, 202-452-3204.

Dated: November 27, 1978.

THEODORE E. ALLISON,
Secretary of the Board.

[S-2406-78 Filed 11-27-78; 12:38 pm]

[7550-01-M]

3

NATIONAL MEDIATION BOARD.

TIME AND DATE: 2 p.m., Wednesday, December 6, 1978.

PLACE: Board Hearing Room, Eighth floor, 1425 K Street NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Ratification of Board actions taken by notation voting during the month of November, 1978.
2. Other priority matters which may come before the Board for which notice will be given at the earliest practicable time.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Rowland K. Quinn, Jr., Executive Secretary, 202-523-5920.

Date of notice: November 27, 1978.

[S-2405-78 Filed 11-27-78; 11:59 am]

[7600-01-M]

4

[Form 1]

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION.

TIME AND DATE: 2 p.m., December 7, 1978.

PLACE: Room 1101, 1825 K Street NW., Washington, D.C.

STATUS: Because of the subject matter, it is likely that this meeting will be closed.

MATTERS TO BE CONSIDERED: Discussion of specific cases in the Commission adjudicative process.

CONTACT PERSON FOR MORE INFORMATION:

Ms. Patricia Bausell, 202-634-7015.

Dated: November 2, 1978.

[S-2404-78 Filed 11-27-78; 11:36 am]

[8240-01-M]

5

UNITED STATES RAILWAY ASSOCIATION.

TIME AND DATE: December 7, 1978, 9 a.m.

PLACE: Board Room, Room 2-500, fifth floor 955 L'Enfant Plaza North, SW., Washington, D.C. 20595.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED BY THE BOARD OF DIRECTORS:

PORTIONS CLOSED TO THE PUBLIC (9 A.M.)

1. Consideration of internal personnel matters.
2. Review of Conrail proprietary and financial information for monitoring and investment purposes.
3. Review of Delaware and Hudson Railway Company proprietary and financial information for monitoring and investment purposes.
4. Review of Missouri-Kansas-Texas Railroad Company proprietary and financial information.
5. Litigation report.

PORTIONS OPEN TO THE PUBLIC (11 A.M.)

6. Approval of minutes of the November 1, 1978 Board of Directors meeting; the November 2, 1978 Board of Directors meeting and November 15, 1978 meeting of the Executive Committee of the Board of Directors.
7. Report on Conrail monitoring.
8. Consideration of Conrail drawdown request for December 1978.
9. Contract Actions (extensions and approvals).

[S-2407-78 Filed 11-27-78; 3:39 pm]

Federal Register

WEDNESDAY, NOVEMBER 29, 1978
PART II

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

■

AGRICULTURAL CREDIT ACT OF 1978

Insured Farmer Program Loans; Operating, Farm Ownership, Soil and Water and Recreation Insured Loan Regulations; Revision

[3410-07-M]

Title 7—Agriculture

CHAPTER XVIII—FARMERS HOME ADMINISTRATION, DEPARTMENT OF AGRICULTURE

SUBCHAPTER I—LOAN AND GRANT PROGRAMS (INDIVIDUAL)

[FmHA Instruction 1904-C]

PART 1904—LOAN AND GRANT PROGRAMS (INDIVIDUAL)

Subpart C—Farmer Program Loans

REVISION

AGENCY: Farmers Home Adminisration, USDA.

ACTION: Final Rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations pertaining to insured Farmer Program loans. The intended effect of this action is to remove from Subpart C of Part 1904 regulations for all Farmer Program insured loans, except emergency loans. This action results from recent legislation and a general administrative restructuring of program regulations.

EFFECTIVE DATE: November 29, 1978.

FOR FURTHER INFORMATION CONTACT:

Jesse Joyner (202) 447-6257.

SUPPLEMENTARY INFORMATION: Section 1904.101(a) and (b) are amended and 1904.101 (c) is added in Subpart C of Part 1904, Chapter XVIII, Title 7, Code of Federal Regulations. Sections 1904.175 and 1904.180 and Exhibits A, B, E, and F are hereby deleted and reserved. These changes are being made so that Subpart C of Part 1904 will apply only to the Emergency Loan program. Regulations pertaining to the Operating, Farm Ownership, Individual Soil and Water, and Recreation loan programs are removed from Subpart C of Part 1904. They are now found in Subpart A of Part 1941 and Subparts A, B, and C of Part 1943 respectively.

It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall be published for comment not withstanding the exemption in 5 U.S.C. 553 with respect to such rules. These changes, however, are not published for proposed rulemaking since they are administrative in nature; Therefore, notice of proposed rulemaking and public procedure thereon are unnecessary. Accordingly, § 1904.175, § 1904.180, and Exhibits A, B, E, and F of Subpart C of Part 1904 are deleted and reserved and § 1904.101 of Subpart C of Part 1904 is amended and reads as follows:

§ 1904.101 Introduction.

(a) This subpart contains regulations for making Insured Emergency (EM) loans. EM loans may be made to farmers, ranchers, and aquaculture operators unable to obtain sufficient credit elsewhere to finance their actual needs at reasonable rates and terms. See Exhibit A of Subpart A of Part 1943 of this Chapter for making EM loans on unpatented public lands.

(b) This subpart no longer applies to the operating (OL), Youth (OL-Y), Farm Ownership (FO), Soil and Water Individual (SW), and Recreation (RL) loan programs. See Subpart A of Part 1941, and Subpart A, B, and C of Part 1943 of this Chapter for regulations for making OL, OL-Y, FO, SW, and RL loans.

(c) The EM loan program, like other Farmers Home Administration (FmHA) programs, is administered by the Administrator through a State Director serving each State through a District Director to the County Supervisor. The County Supervisor is the focal point for the program and the local contact person for processing and servicing activities.

§§ 1904.175, 1904.180 and Exhibits A, B, E, and F [Reserved]

(7 U.S.C. 1989; 5 U.S.C. 301; Sec. 10, Pub. L. 93-347, 88 Stat 392; delegation of authority by the Sec. of Agri., 7 CFR 2.23; delegation of authority by the Asst. Sec. for Rural Development, 7 CFR 2.70.)

Dated: November 7, 1978.

JAMES E. THORNTON,
Associate Administrator,
Farmers Home Administration.

[FR Doc. 78-33099 Filed 11-28-78; 8:45 am]

[3410-07-M]

SUBCHAPTER I—LOAN AND GRANT MAKING

OPERATING, FARM OWNERSHIP, SOIL AND WATER AND RECREATION INSURED LOAN REGULATIONS

Redesignation and Revision

AGENCY: Farmers Home Administration.

ACTION: Final rule with comments requested.

SUMMARY: The Farmers Home Administration (FmHA) is redesignating and revising its Operating (OL), Farm Ownership (FO), Soil and Water (SW) and Recreation (RL) insured loan regulations. The intended effect is to provide separate regulations for each loan type, eliminate numerous cross-references, and incorporate provisions of the Agricultural Credit Act of 1978. This action is being taken as the result of legislation and an administrative restructuring of FmHA program regulations.

EFFECTIVE DATE: November 29, 1978. Comments are invited and must be received on or before January 29, 1979.

ADDRESSES: Submit written comments to the Office of the Chief, Directives Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6316, Washington, D.C. 20250. All written comments made pursuant to this notice will be available for public inspection at the address given above.

FOR FURTHER INFORMATION CONTACT:

Mr. James E. Lee, 202-447-4597.

SUPPLEMENTARY INFORMATION: FmHA amends its regulations for insured OL, FO, SW and RL loans by establishing new Subparts A and B of Part 1941 and Subparts A, B, and C of Part 1943, Chapter XVIII, Title 7, Code of Federal Regulations. These subparts replace portions of Subpart C of Part 1904 and Subpart C of Part 1921. The following are the major changes, by loan programs:

1. Operating (Subparts A and B of Part 1941).

(a) Section 1941.4 has been revised to include definitions of certain terms needed to implement provisions of the Agricultural Credit Act of 1978.

(b) Section 1941.12(a) has been revised to provide guidelines for making eligibility decisions on applications received from individuals with off-farm income.

(c) Section 1941.12(b) provides eligibility requirements for cooperatives, corporations, and partnerships.

(d) Section 1941.16 outlines loan purposes in detail and eliminates cross-references to guaranteed loan regulations.

(e) Section 1941.17 contains a new $100,000 loan limit as provided in the Agricultural Credit Act of 1978.

(f) Section 1941.18 establishes two levels of interest and provides guidelines for determining which interest rate is charged an applicant.

(g) Subpart B contains no substantive changes.

2. Farm Ownership (Subpart A of Part 1943).

(a) Section 1943.4 has been revised to include definitions of certain terms needed to incorporate provisions of the Agricultural Credit Act of 1978.

(b) Section 1943.12(a) has been revised to provide guidelines for making eligibility decisions on applications received from individuals having off-farm income.

(c) Section 1943.12(b) provides eligibility requirements for cooperatives, corporations, and partnerships.

(d) Section 1943.16 outlines loan purposes in detail and eliminates cross references to guaranteed loan regulations. Paragraph (b) and (c) include pollution control and energy saving measures as specific loan purposes for added emphasis.

(e) Section 1943.17 contains a new loan limit of $200,000 or the market value of the security, whichever is less. This is required by the Agricultural Credit Act of 1978.

(f) Section 1943.18(c) establishes two levels of interest and provides guidelines for determining which interest rate is charged to applicants.

(g) Section 1943.23 consists of general provisions which outline the regulatory requirements applicable to Farm Ownership loans.

3. Soil and Water (Subpart B of Part 1943).

(a) Section 1943.54 has been revised to include definitions of certain terms needed to incorporate provisions of the Agricultural Credit Act of 1978.

(b) Section 1943.62(b) provides eligibility requirements for cooperatives, corporations, and partnerships.

(c) Section 1943.66 outlines loan purposes in detail and eliminates cross references to guaranteed loan regulations. Paragraphs (a) and (b) include pollution control and energy saving measures as specific loan purposes for added emphasis.

(d) Section 1943.67 contains a new loan limit of $200,000 or the market value of the security, whichever is less. This is required by the Agricultural Credit Act of 1978.

(e) Section 1943.68(c) establishes interest rates based on the cost of borrowing money to the Government.

(f) Section 1943.69(c)(5) increases the amount that can be loaned when chattel security is the only type of security from $60,000 to $100,000.

(g) Section 1943.73 consists of general provisions which outline the regulatory requirements applicable to Soil and Water loans.

4. Recreation (Subpart C of Part 1943).

(a) Section 1943.104 has been revised to include definitions of certain terms needed to incorporate provisions of the Agricultural Credit Act of 1978.

(b) Section 1943.112(b) provides eligibility requirements for cooperatives, corporations, and partnerships.

(c) Section 1943.116 outlines loan purposes in detail and eliminates cross references to guaranteed loan regulations. Paragraph (b) includes pollution control and energy saving measures as specific loan purposes for added emphasis.

(d) Section 1943.117 contains a new loan limit of $200,000 or the market value of the security, whichever is less. This is required by the Agricultural Credit Act of 1978.

(e) Section 1943.118(c) establishes interest rates based on the cost of borrowing money to the Government.

(f) Section 1943.119(c)(5) increases the amount that can be loaned when chattel security is the only type of security from $60,000 to $100,000.

(g) Section 1943.123 consists of general provisions which outline the regulatory requirements applicable to Recreation loans.

It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall be published for comment notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules.

These regulations, however, are not being published for comment since the majority of the changes were made to restructure existing insured OL, FO, SW, and RL loan regulations and incorporate provisions of the Agricultural Credit Act of 1978. Therefore, public participation on these changes is unnecessary. Also, due to the demand for loans and the financial condition of farmers any delay in issuing these regulations would be contrary to the public interest.

"This document has been reviewed in accordance with FmHA Instruction 1901-G 'Environmental Impact Statements'. It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Policy Act of 1969, Pub. L. 91-190 and Environmental Impact Statement is not required."

PART 1921—APPROVAL AND CLOSING (INDIVIDUAL)

Subpart C—Closing Chattel Loans

§§ 1921.101-1921.150 [Reserved]

Accordingly, Subpart C of Part 1921 of this chapter is hereby deleted and reserved and Subparts A and B of Part 1941 and Subparts A, B, and C of Part 1943 of this chapter are added and read as follows:

PART 1941—OPERATING LOANS

Subpart A—Operating Loan Policies, Procedures, and Authorizations

Sec.

1941.1 Introduction.
1941.2 Objectives.
1941.3 Management assistance.
1941.4 Definitions.
1941.5 [Reserved]
1941.6 Credit elsewhere.
1941.7-1941.9 [Reserved]
1941.10 Veterans' preference.
1941.11 Applications.
1941.20 Eligibility requirements.
1941.13 Rural youth.
1941.14-1941.15 [Reserved]
1941.16 Loan purposes.
1941.17 Loan limitations.
1941.18 Rates and terms.
1941.19 Security.
1941.20-1941.22 [Reserved]
1941.23 General provisions.
1941.24 [Reserved]
1941.25 Appraisals.
1941.26-1941.28 [Reserved]
1941.29 Relationship between FmHA loans, guaranteed loans and economic emergency loans.
1941.30 Committee certification.
1941.31 [Reserved]
1941.32 Loan docket processing.
1941.33 Loan approval or disapproval.
1941.34 [Reserved]
1941.35 Actions after loan approval.
1941.36-1941.37 [Reserved]
1941.38 Loan closing.
1941.39-1941.41 [Reserved]
1941.42 Loan servicing.
1941.43-1941.49 [Reserved]
1941.50 State Supplements.
Exhibit A—Processing Guide—Insured Operating Loans

AUTHORITY: 7 U.S.C. 1989; 5 U.S.C. 301; delegation of authority by the Sec. of Agri., 7 CFR 2.23; delegation of authority by the Asst. Sec. for Rural Development 7 CFR 2.70.

Subpart A—Operating Loan Policies, Procedures, and Authorizations

§ 1941.1 Introduction.

This Subpart contains regulations for making initial and subsequent insured Operating (OL) and Youth (OL-Y) loans. OL loans may be made to eligible farmers and ranchers and farm cooperatives, private domestic corporations and partnerships that will manage and operate not larger than family farms. Youth loans may be made to rural youth to conduct modest projects in connection with their participation in 4-H, Future Farmers of America and similar organizations. See Exhibit A of Subpart A of Part 1943 for making OL loans to entrymen on unpatented public lands.

§ 1941.2 Objectives.

The basic objective of the OL loan program is to provide the credit and management assistance necessary for farmers, ranchers and rural youth to conduct successful operations. Although many varieties of family farmers are eligible for this assistance, the primary objective of the OL program is to assist limited resource operators, new operators and low-income operators. Farmers Home Administration (FmHA) assistance enables family-farm operators to make efficient use of their land, labor and other resources, to improve their living conditions and to improve their economic situation to the extent that they can obtain credit elsewhere.

§ 1941.3 Management assistance.

As provided in Subpart B of Part 1924 of this chapter, management assistance will be provided all borrowers to the extent necessary to achieve the objectives of the loan.

§ 1941.4 Definitions.

(a) *Approval official.* A field official who has been delegated loan and grant approval authorities within applicable loan programs, subject to the dollar limitations contained in Tables available in any FmHA Office.

(b) *Cooperative.* An entity which has farming as its purpose and whose members have agreed to share the profits of the farming enterprise. The entity must be recognized as a farm cooperative by the laws of the State(s) in which the entity will operate a farm.

(c) *Corporation.* For the purposes of this regulation, a private domestic corporation created and organized under the laws of the State(s) in which the entity will operate a farm.

(d) *Family farm.* A farm which:

(1) Produces agricultural commodities for sale in sufficient quantities so that it is recognized in the community as a farm rather than a rural residence.

(2) Provides enough agricultural income by itself, including rented land, or together with any other dependable income to enable the borrower to:

(i) Pay necessary family and operating expenses;

(ii) Maintain essential chattel and real property; and

(iii) Pay debts.

(3) Is managed by:

(i) The borrower when a loan is made to an individual.

(ii) The members, stockholders, or partners responsible for operating the farm when a loan is made to a cooperative, corporation or partnership.

(4) Has a substantial amount of the labor requirements for the farm and nonfarm enterprise provided by:

(i) The borrower and any family for a loan made to an individual.

(ii) The members, stockholders or partners responsible for operating the farm and the families of these members, stockholders or partners for a loan made to a cooperative, corporation or a partnership.

(5) May use a reasonable amount of full-time hired labor and seasonal labor during peakload periods.

(e) *Farm.* A tract or tracts of land, improvements, and other appurtenances considered to be farm property which is used or will be used in the production of crops or livestock, including the production of fish under controlled conditions, for sale in sufficient quantities so that the property is recognized as a farm rather than a rural residence. The term "farm" also includes any such land and improvements and facilities used in a nonfarm enterprise. It may also include a residence which, although physically separate from the farm acreage, is ordinarily treated as part of the farm in the local community.

(f) *Fish.* Any aquatic gilled animal commonly known as "fish", as well as mollusks or crustaceans, (or other invertebrates) produced under controlled conditions (that is, feeding, tending, harvesting and such other activities as are necessary to properly raise and market the products) in ponds, lakes, streams, or similar holding areas.

(g) *Limited resource applicant.* An applicant who is a farmer or rancher and is an operator of a small or family farm (a small farm is a marginal family farm) including a new operator, with a low income who demonstrates a need to maximize farm or ranch income. A limited resource applicant must meet the eligibility requirements for a farm ownership or operating loan but, due to low income, cannot pay the regular interest rate on such loans. Due to the complex nature of the problems facing this applicant, special help will be needed and more supervisory assistance will be required to assure reasonable prospects for success. The applicant may face such problems as underdeveloped managerial ability, limited education, low-producing farm due to lack of development or improved production practices and other related factors. The applicant will not have nor expect to obtain, without the special help and low-interest loan, the income needed to have a reasonable standard of living when compared to other residents of the community.

(h) *Majority interest.* Any individual or a combination of individuals owning more than a 50 percent interest in a cooperative, corporation, or partnership.

(i) *Nonfarm enterprise.* Any business enterprise which provides income to supplement farm income. It must provide goods or services for which there is a need and a reasonably reliable market.

(j) *Partnership.* An entity consisting of individuals who have agreed to operate a farm. This entity must be recognized as a partnership by the laws of the State(s) in which the partnership will operate a farm and must be authorized to own both real and personal property and to incur debts in its own name.

(k) *Recreation enterprise.* An outdoor enterprise which generates income and supplements or supplants farm or ranch income.

(l) *Rural youth.* A person who has reached the age of 10 but has not reached the age of 21 and does not reside in any city or town with a population of more than 10,000 inhabitants.

(m) *Rural youth projects.* Modest projects initiated, developed, and carried out by rural youths participating in 4-H or Future Farmers of America or similar organizations. Projects must produce enough income to meet expenses and debt repayment.

(n) *Security.* Property of any kind subject to a real or personal property lien. Any reference to collateral or security property shall be considered a reference to the term "security."

(o) *State or United States.* The United States itself, any of the fifty States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

§ 1941.5 [Reserved]

§ 1941.6 Credit elsewhere.

The applicant shall certify in writing on the appropriate forms, and the County Supervisor shall determine, that adequate credit elsewhere is not available to finance the applicant's actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near where the applicant resides for loans for similar purposes and periods of time.

(a) When, based on the County Supervisor's knowledge of other lender programs, the review of the application indicates there is no possibility for the applicant to obtain the credit needed from other lender(s), this conclusion and the basis for it will be recorded in the running record and further checks will not be necessary.

(b) If the County Supervisor questions whether the applicant is unable to obtain the credit needed from other agricultural lenders in the area, such lenders will be contacted and the findings recorded in the running record.

(c) If the County Supervisor receives letters or other written evidence from a lender(s) indicating that the applicant is unable to obtain satisfactory credit, this will be included in the loan docket.

(d) Applicants and borrowers will be encouraged to supplement operating loans with credit from other credit sources to the extent economically feasible and in accordance with sound management practices.

§1941.7 - 1941.9 [Reserved]

§1941.10 Veterans' preference.

The application on hand from a veteran as defined in Subpart A of Part 1801 of this Chapter (FmHA Instruction 410.1), will be given preference over the application of a nonveteran on file at the same time when it appears that available funds will be inadequate to meet the needs of all applicants. Veterans' preference will be determined at the county level.

§1941.11 Applications.

(a) Applications will be received and processed as provided in Subpart A of Part 1801 of this Chapter (FmHA Instruction 410.1).

(b) If the applicant is a cooperative, corporation, or partnership the following information will be obtained and included in the loan docket:

(1) A complete list of members, stockholders, or partners showing the address, citizenship, principal occupation, and the number of shares and percentage of ownership or stock held in the cooperative or corporation by each or the percentage of interest held in the partnership by each.

(2) A current personal financial statement from each of the principal members of a cooperative, partners of a partnership or stockholders of a corporation. For this purpose, a principal is one owning or controlling as much as 10 percent of the ownership, stock or interest of a cooperative, corporation, or partnership. If no member, partner, or stockholder owns or controls as much as 10 percent, each member, partner, or stockholder will be considered as a principal. Any other member, partner or stockholder whose financial statement, in the judgment of the loan approval official, would be pertinent to a consideration of the financial strength of the cooperative, corporation or partnership will also be required to provide personal financial statements.

(3) A current financial statement from the cooperative, corporation, or partnership itself.

(4) A copy of the cooperative's or corporation's charter, or any partnership agreement, any articles of incorporation and bylaws, any certificate or evidence of current registration (good standing) and a resolution(s) adopted by the Board of Directors or members or stockholders authorizing specified officers of the cooperative, corporation, or partnership to apply for and obtain the desired loan and execute required debt, security and other instruments and agreements.

(5) A copy of any written lease, contract, or agreement entered into by the cooperative, corporation, or partnership which may be pertinent to consideration of its application.

§ 1941.12 Eligibility requirements.

(a) An individual must: (1) Be a citizen of the United States (see § 1941.4(o) for the definition of "United States").

(2) Possess the legal capacity to incur the obligations of the loan.

(3) Have sufficient training or farming experience to assure reasonable prospects of success in the proposed operation. (Except for youth loans).

(4) Need to rely on farm income and any other income to provide a level of living comparable with that considered reasonably adequate for the area. (Except for youth loans.) In making this determination, the County Committee should consider:

(i) Any special family circumstances such as size, health, and education.

(ii) The estimated typical income of reasonably successful residents in the area.

(iii) Whether the off-farm work will interfere with the successful operation of the farm.

(iv) That the guidelines listed in paragraphs (a)(4) (i), (ii) and (iii) of this section are provided to permit committees to use judgment on individual cases. They are not intended to prevent making loans to applicants who already have off-farm income that is typical of other reasonably successful residents in the area when that income will be reduced significantly or end not later than three full crop years after the loan is closed.

(5) Have the character (as related solely to debt repayment ability and reliability), managerial ability and industry necessary to carry out the proposed operation.

(6) Honestly try to carry out the conditions and terms of the loan.

(7) Be unable to obtain sufficient credit elsewhere to finance actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near which the applicant resides for loans for similar purposes and periods of time.

(8) Be the owner-operator or tenant-operator of not larger than a family farm after the loan is closed (except for rural youths). In the case of a limited resource applicant see § 1941.4 (g).

(b) *A cooperative, corporation or partnership must.* (1) Be unable to obtain sufficient credit elsewhere to finance actual needs at reasonable rates and terms, taking into account prevailing private and cooperative rates and terms in or near the community for loans for similar purposes and periods of time. This applies to the entity and all of its members, stockholders, or partners, as individuals.

(2) Be controlled by farmers or ranchers engaged primarily and directly in farming or ranching in the United States after the loan is made.

(3) Consist of members, stockholders, or partners who do not as individuals have an individual FO, SW, RL or OL loan and are not members of another entity or have an interest in another entity that has an FO, SW, RL or OL loan.

(4) If the members, stockholders, or partners holding a majority interest are related by marriage (that is, the legal union of a man and woman as husband and wife) or blood:

(i) They must be citizens of the United States (see § 1941.4 (o) for the definition of "United States").

(ii) They must have sufficient training or farming experience to assure reasonable prospects of success in the proposed operation.

(iii) They and the entity itself must have the character (as related solely to debt repayment ability and reliability), managerial ability and industry necessary to carry out the proposed operation.

(iv) They and the entity itself will honestly try to carry out the conditions and terms of the loan.

(v) At least one member, stockholder, or partner must operate the family farm.

(vi) The entity must operate the farm and be authorized to do so in the State(s) in which the farm is located.

(5) If the members, stockholders, or partners holding a majority interest are *not* related by marriage or blood:

(i) The requirements of paragraphs (b) (4) (i) through (iv) of this section must be met.

(ii) They and the entity itself must operate the family farm.

(iii) The entity must operate the farm and be authorized to do so in the State(s) in which the farm is located.

(6) If applying as a limited resource applicant, as defined in § 1941.4 (g):

(i) The requirements of paragraphs (b) (4) (i) through (iv) of this section must be met.

(ii) The entity and *all* the members, stockholders, or partners must operate a small or family farm and at least one member, stockholder, or partner must operate the farm.

(iii) The entity must be authorized to operate the farm in the State(s) in which the farm is located.

§ 1941.13 Rural youth.

If otherwise eligible, a rural youth who applies for an OL loan must be recommended by a project advisor such as a 4-H club advisor, vocational teacher, home economics teacher, county extension agent, or other organizational sponsor or advisor. In addition, a youth who has not reached the age of majority under State law must obtain a written recommendation from a parent or guardian. All recommendations will be filed with the application in the borrower case file.

§ 1941.14-1941.15 [Reserved]

§ 1941.16 Loan purposes.

Loans may be made for farm, forestry, recreation and nonfarm enterprises or modest rural youth projects for the following purposes, when such purposes are essential to the operation:

(a) Purchase of farm machinery and equipment, livestock, poultry, fur bearing and other farm animals, fish, birds, worms, bees, tools, and inventories, or to purchase an individual's undivided interest in such items.

(b) Payment of annual operating expenses.

(c) Payment of family living expenses.

(d) Refinancing debts incurred for any authorized operating loan purpose other than FmHA debts.

(e) Purchase of membership and stock in a farm purchasing, marketing, or service-type cooperative association, including a grazing association.

(f) Purchase and repair of essential home equipment.

(g) Purchase of a milk base or milk quota with or without cows.

(h) Not more than $7,500 in a fiscal year for real estate improvement or repairs. The following determinations must be made before an OL loan is made for real estate improvements.

(1) OL loans will not be needed year after year for this purpose.

(2) The applicant owns the farm or has tenure arrangements, including a compensation agreement, sufficient to obtain a reasonable return on the investment.

(i) Payments to a creditor. In any one year, OL funds used to make these payments cannot exceed 20 percent of the appraised market value of the essential farm and nonfarm equipment and livestock under a prior lien to that creditor, or 20 percent of the amount owed to such creditor, whichever is less.

(j) Purchase of a franchise, contract, or privilege when necessary to the operation of the planned enterprise.

(k) Partial payment for the purchase and construction of crop storage and drying facilities when the Commodity Credit Corporation, through the Agricultural Stabilization and Conservation Service (ASCS), is providing a part of the credit under the Commodity Credit Corporation Farm Storage and Drying Equipment Loan Program.

§ 1941.17 Loan limitations.

The total outstanding insured OL principal balance may not exceed $100,000 at loan closing. Loans may not be made for the purchase of real estate, making principal payments on real estate, or refinancing any debts

incurred for the purchase of real estate. In addition, loans may not be made to pay land lease costs under any program other than cash rent.

§ 1941.18 Rates and terms.

(a) *Rates.* See part 1810 of this chapter (FmHA Instruction 440.1, Exhibit B) for the applicable interest rate. Exhibit B may be obtained from any FmHA Office. The lower rate may be established for a limited resource applicant subject to the following:

(1) An applicant will receive the lower rate provided:

(i) The applicant meets the conditions of the definition for a limited resource applicant set forth in § 1941.4 (g).

(ii) The Farm and Home Plan and/or Nonagricultural Enterprise Analysis, when appropriate, indicates that installments at the higher rate, along with other debts cannot be paid during the period of the plan.

(2) A lower interest rate borrower will be reviewed after three years from the date of the initial loan and every two years thereafter to determine the interest rate to be charged. The rate may increase in increments of whole numbers to the current rate for nonlimited resources borrowers.

(b) *Terms.* (1) The final maturity date for each loan cannot exceed 7 years from the date of the promissory note.

(2) Ordinarily, loan funds used to pay annual operating expenses or bills incurred for such purposes for the crop year being financed will be scheduled for payment on the first January 1 after the income from the year's operation is received. Under certain circumstances, these payments may be scheduled over longer periods. Circumstances which warrant an extended repayment schedule are factors such as establishing a new enterprise, developing a farm, purchasing feed while feed crops are being established or during recovery from disaster or economic reverses. Crops only are not sufficient security when repayment is scheduled over the longer period. The County Supervisor may use Form FmHA 440-9, "Supplementary Payment Agreement," for borrowers who receive substantial income from which payment is to be made before their installment due date.

(3) Advances for purposes other than annual operating expenses will be scheduled for payment over the minimum period necessary considering the applicant's ability to pay and the useful life of the security, but not in excess of 7 years.

(4) When conditions warrant, installments scheduled in accordance with paragraph (b)(2) of this section may include equal, unequal, or balloon installments. The amount ballooned should not exceed that which the borrower could reasonably expect to pay during a maximum additional 7-year period.

(c) *Consolidation, rescheduling and deferral*—(1) *General requirements.* All borrowers are expected to repay their OL loans according to the planned repayment schedule. However, circumstances may arise which will not permit borrowers to pay as scheduled. Loan approval officials are authorized to consolidate, reschedule or defer loans, up to the limitation on their approval set out in Subpart A of Part 1901 of this chapter. When the loan approval official determines that consolidation, rescheduling or deferral will assist in the orderly collection of an OL loan, the loan approval official may take such action, provided:

(i) The borrower meets the eligibility and security requirements for an initial loan as set forth in this Subpart;

(ii) Such action is not used in lieu of or to delay liquidation;

(iii) Such action is not taken to remove a delinquency;

(iv) Such action is not taken to circumvent FmHA's graduation requirements;

(v) The borrower's account is not being serviced by the Office of the General Counsel (OGC) or the U.S. Attorney, and there are no plans to have the account serviced by either of these offices in the near future;

(vi) The County Supervisor determines that the borrower is making satisfactory progress or will make satisfactory progress with revised repayment terms; and

(vii) The borrower is cooperating in servicing the account and is maintaining the security.

(2) *Consolidation and Rescheduling.* (i) Any OL loan in existence at the time another loan is made may be consolidated and rescheduled, except that a loan secured by real estate only will not be consolidated.

(ii) OL loans will be consolidated only with other OL loans. All outstanding OL loans may be consolidated so that only one note has to be serviced.

(iii) An OL loan may be rescheduled when it is in the best interests of the borrower and the government.

(iv) The amount of interest accrued at the time of consolidation will be added to principal.

(v) Consolidated and rescheduled loans will be repaid according to the borrower's repayment ability, but never in excess of seven years from the date of consolidation or rescheduling.

(vi) The interest rate for consolidation loans will be the current interest rate for OL loans made to regular or limited resource borrowers, as appropriate.

(vii) The notes which are consolidated will be retained in the borrower's case file.

(3) *Deferral.* Installments on OL loans may be deferred. the use of deferral authority will generally involve beginning farmers, applicants with limited income and resources and applicants who have had production and economic losses because of natural or economic conditions.

(i) *General requirements.* Deferred payments may be authorized if the following conditions exist:

(A) A Farm and Home Plan and, if appropriate, a Business Analysis-Nonagricultural Enterprise, show loan installments cannot be repaid according to schedule.

(B) A typical Farm and Home Plan and if appropriate, a Business Analysis-Nonagricultural Enterprise, for a full crop year following the deferral period indicate that full installments can be paid if normal conditions exist.

(C) If appropriate, a Long-time Farm and Home Plan is prepared.

(ii) *Scheduling and repaying deferred installments.* (A) Up to three installments may be deferred, but in no case will the deferral extend beyond the final due date of the note. Full payments will be scheduled at the earliest date the Farm and Home Plan indicates they can be paid.

(B) Borrowers will be advised that they are expected to make payments as soon as they have repayment ability, even though the deferral period has not expired.

(C) Borrowers will be advised that they are expected to repay all interest due on their loans. Partial payments of accrued interest will be scheduled annually during the deferral period on Form FmHA 1940-17, "Promissory Note." These annual payments of interest will be scheduled in accordance with repayment ability as indicated by the Farm and Home Plan. Deferred interest will not be capitalized.

(D) Installments of principal and interest to be paid after the deferral period will be calculated in accordance with the FMI for Form FmHA 1940-17.

§ 1941.19 Security.

Ordinarily, the security must be adequate in the opinion of the loan approval official to assure repayment of the loan. If the security alone is inadequate, then the applicant's repayment ability will also be considered by the loan approval official in determining whether the loan should be made except that the amount refinanced may not exceed the value of the security. Except as shown in paragraph (a) of this section the loan must be secured by a first lien on all property or

products acquired, produced, or refinanced with loan funds and by any additional security needed. Such additional security may consist of the best lien obtainable on chattels, real estate or other property. In unusual cases, the loan approval official may require a cosigner or a pledge of security. Generally, a pledge of security is preferable to a cosigner.

(a) *Exceptions.* (1) A lien will not be taken on property that cannot be made subject to a valid lien.

(2) A lien will not be taken on subsistence livestock, household goods, and small tools and small equipment such as hand tools, power lawn mowers and other items of like type not needed for security purposes.

(3) A second lien is acceptable on the item(s) involved in financing under § 1941.16 (i) and (k).

(4) The government's lien may be subject to the lien of another creditor for amounts advanced or to be advanced for annual operating and family living expenses for the operating or crop year. The County Supervisor will determine if the creditor will be required to execute Form FmHA 441-13, "Division of Income and Nondisturbance Agreement," or a similar form approved by the Office of the General Counsel (OGC).

(5) When title to a livestock or crop enterprise is held by a contractor under a written contract or the enterprise is to be managed by the applicant under a share lease or share agreement, an assignment of all or part of the applicant's share of the income will be taken. A form approved by OGC will be used to obtain the assignment.

(6) A lien on feed crops does not have to be taken if the crops produced by the borrower are used to feed livestock, other than livestock being fed for market, and the loan is otherwise well secured.

(b) *Real estate.* The loan approval official may require a lien on all or part of the applicant's real estate as security. Such a lien will be taken only when chattel security is *not adequate* and the borrower has or will have substantial equity in the real estate during the life of the loan. Real estate security may be taken for a portion of a loan when a separate advance and promissory note evidences such portion. Real estate security will be considered as basic security *only* when more than $10,000 equity in the real estate is needed as security for refinancing. Under any other circumstances real estate will be considered as additional security. Form FmHA 427-1 (State), "Real Estate Mortgage for ——," will be used to obtain such a lien, unless a State supplement requires a different form.

(c) *Assignment on income in Uniform Commercial Code (UCC) States.* The County Supervisor will determine whether or not such an assignment will be taken. In UCC States, an assignment of livestock or crop income constitutes a security agreement on income. The share lease, share agreement, or contract will be described specifically as "Contract Rights" or "Contract - Rights in Livestock or Crops," (or as "Accounts" or "Accounts in Livestock or Crops," if required by a State supplement), and so forth, in paragraph 1(b) of the financing statement.

(d) *Assignment of crop insurance.* Assignment of all or a part of crop insurance proceeds will be taken to protect FmHA's interests if the County Supervisor finds such an assignment is necessary.

(1) Federal Crop Insurance, when available at reasonable rates, will be required if crops are the only security. To obtain an assignment of these proceeds, Form FCI-20, "Collateral Assignment," furnished by the local representative of the Federal Crop Insurance Corporation will be prepared. The assignment must be approved by the Federal Crop Insurance Corporation.

(2) An assignment of other crop insurance proceeds is not required when the crop insurance policy contains a standard mortgage clause naming FmHA as mortgagee or secured party.

(e) *Income from products and program payments.* Assignments and consents relating to income from products and program payments will be used when necessary to protect FmHA's interest as follows:

(1) Form FmHA 441-8, "Assignment of Proceeds from the Sale of Agricultural Products," for products or income in which FmHA does not have a security interest under UCC. Other forms approved by OGC may be used when this form is not adequate.

(2) Form FmHA 441-18, "Consent to Payment of Proceeds from Sale of Farm Products," for products or income, except dairy products, in which FmHA has a security interest under UCC.

(3) Form FmHA 441-25, "Assignment of Proceeds from the Sale of Dairy Products and Release of Security Interest," for dairy products in which FmHA has a security interest under UCC.

(4) Forms provided by ASCS will be used for assignment of incentive and other agricultural program payments.

(f) *Fixtures.* A security interest may be taken in fixtures. An item is generally considered a fixture if it is attached to a building or other structure or to land in such a way that it cannot be removed without defacing or dismantling the structure, or substantially damaging the item itself. When determined necessary by OGC, a State supplement will be issued to further explain the taking of a security interest in fixtures.

(1) A security interest taken in goods *before* they become fixtures has priority over real estate interest holders.

(2) A security interest taken in goods *after* they become fixtures is valid against all persons subsequently acquiring an interest in the real estate. However, it is not valid against persons who had an interest in the real estate when the goods become fixtures, unless they execute Form FmHA 440-26, "Consent and Subordination Agreement," or Form FmHA 440-6, "Severence Agreement."

(g) *Milkbase and grazing permits.* The advice of OGC will be obtained as to how to perfect a security interest when these items are financed or taken as security.

(h) *Stock in cooperative associations.* Loans only for the acquisition of memberships or the purchase of stock in cooperative associations may be made on the basis of the borrower's promissory note without taking security except as follows:

(1) An assignment, pledge, or other security interest in stock or other evidence of membership will be obtained, provided the security interest has value to FmHA. A security interest also may be taken in dividends to be paid on stock, memberships, or patronage, or in undivided profits and other retainages. The security interest will be in the form of an assignment, pledge, or other instrument and will be taken on forms and in the manner approved by the OGC. Stock certificates and similar collateral will be kept in the County Office. A notation will be made on Form FmHA 405-1, "Management System Card—Individual," showing that such security has been retained.

(2) In individual cases, loan approval officials may require a lien on crops or chattels as security for a loan made for the acquisition of a membership or stock if they determine that such action is necessary to protect the FmHA interest.

§§ 1941.20-1941.22 [Reserved]

§ 1941.23 General provisions.

(a) *Compliance requirements.* The following will apply as appropriate.

(1) Environmental impact assessments and statements. Subpart G of Part 1901 of this chapter should be referred to for these requirements. The State Farmer Program Staff should be consulted for assistance in preparing any required statements.

(2) Equal opportunity and nondiscrimination requirements. In accordance with Title V of Pub. L. 93-495,

the Equal Credit Opportunity Act FmHA will not discriminate against any applicant on the basis of race, color, religion, sex, age, national origin or marital status with respect to any aspect of a credit transaction.

(3) National Historic Preservation Act of 1966. If a loan will affect any district, site, building, structure, or object that has been included in the National Register of Historic Places as maintained by the Department of Interior in accordance with the National Historic Preservation Act of 1966, or if the undertaking may affect properties having scientific, prehistorical, historical or archaeological significance the provisions of Subpart F of Part 1901 of this chapter will apply.

(4) Truth-in-lending. When an operating loan is $25,000 or less the provisions of Subpart I of Part 1901 of this chapter will apply.

(b) *Other considerations.* (1) FmHA employees will not guarantee repayment of advances from other credit sources, either personally or on behalf of applicants, borrowers, or FmHA.

(2) An applicant will be advised that compliance with all applicable special laws and regulations is required.

(3) An applicant receiving a loan for a nonfarm enterprise will be advised of the possibilities of incurring liability and encouraged to obtained public liability and property damage insurance.

(4) An applicant must have acceptable tenure arrangements. Unless the loan approval official determines otherwise, each applicant will obtain a satisfactory written lease. A copy of the lease will be filed in the County Office case file.

§ 1941.24 [Reserved]

§ 1941.25 Appraisals.

Real estate appraisals will be completed by an FmHA employee authorized to make farm appraisals. Chattel and real estate appraisals will be made on Forms FmHA 440-21, "Appraisal of Chattel Property," and FmHA 422-1, "Appraisal Report Farm-Tract," respectively, to determine market value and borrower equity in the following instances:

(a) A chattel appraisal is required when debts refinanced exceed $5,000 and in any case the County Supervisor determines advisable. When an appraisal is not required, an estimate of the market value of the chattels will be recorded in the running record.

(b) A real estate appraisal is required when more than $10,000 equity in the real estate is needed as security for refinancing. When an appraisal is not required, an estimate of the market value of the real estate will be recorded in the running record.

(c) An appraisal will be made if the loan approval official determines it is needed to evaluate the soundness of the loan.

§§ 1941.26-1941.28 [Reserved]

§ 1941.29 Relationship between FmHA loans, guaranteed loans and economic emergency loans.

(a) An eligible emergency loan (EM) applicant's total credit needs will be considered under the EM loan authorities.

(b) If an eligible OL loan applicant's operating credit needs can be met with an OL loan, an OL loan will be made, otherwise, an EE loan should be made. An OL loan and EE loan may be made to the same applicant or borrower.

(c) An insured OL will not be made to a borrower with an outstanding guaranteed OL loan.

(d) An insured loan will not be made to refinance a guaranteed loan, except when the following conditions are met:

(1) The circumstances resulting in the need to refinance were beyond the borrower's control.

(2) Refinancing is in the best interest of the Government and the borrower.

(e) The total combined indebtedness of an EE, farm ownership (FO), soil and water (SW), recreation RL and operating loan may not exceed $650,000.

§ 1941.30 Committee certification.

The County Committee will certify an applicant's eligibility on Form FmHA 440-2 "County Committee Certification or Recommendation," before each loan is approved. In some instances the committee may want to interview the applicant or see the farm before making any recommendations. If a farm is situated in more than one State, County or parish, the loan will be processed and serviced in the State, County or parish where the applicant's residence on the farm is located. However, if the applicant's residence is not situated on the farm, the OL loan will be processed and serviced by the County Office serving the County in which the farm or a major portion of the farm is located, unless otherwise approved by the State Office.

§ 1941.31 [Reserved]

§ 1941.32 Loan docket processing.

See Exhibit A of this Subpart for the loan docket processing guide.

§ 1941.33 Loan approval or disapproval.

(a) *Loan approval authority.* Initial and subsequent loans may be approved as authorized by Subpart A of Part 1901 of this chapter: Provided the total insured operating loan principal balance at loan closing does not exceed $100,000.

(b) *Loan approval action.*

(1) The loan approval official is responsible for reviewing the docket to determine whether the proposed loan complies with established policies and all pertinent regulations. When reviewing the docket, the loan approval official will determine that:

(i) The County Committee has certified the applicant eligible,

(ii) Committee certification has been properly completed and signed by at least two members of the Committee,

(iii) Funds are requested for authorized purposes,

(iv) The proposed loan is sound,

(v) The security is adequate,

(vi) Necessary supervision is planned, and

(vii) All other pertinent requirements have been met or will be met.

(2) When approving the loan, the approval official will:

(i) Indicate on all copies of Form FmHA 440-1, "Request for Obligation of Funds," any conditions not required by FmHA regulations that must be met for loan closing;

(ii) Specify any special security requirements;

(iii) Indicate special conditions or agreements needed with prior lienholders when appropriate;

(iv) Indicate that approval is subject to satisfactory title evidence when required, if such evidence has not been obtained;

(v) Indicate any other special requirements; and

(vi) Sign the original and one copy of Form FmHA 440-1 and insert the title of the approval official.

(c) *Distribution of forms after loan approval.* The applicable docket forms will be distributed as outlined below by the loan approval official after a loan is approved.

(1) These forms will be sent to the Finance Office:

Form FmHA 440-1 (copy).

When funds have been obligated, the Finance Office will send to the County Office the original and one copy of Form FmHA 440-57, "Acknowledgment of Obligated Funds/Check Request."

Form FmHA 492-19, "Characteristics of Approved Applicants," (original) for initial loans only. If an initial FO or SW loan is approved at the same time, only one set of forms is required.

(2) The original of Form FmHA 440-1 and the remainder of the loan docket will be sent to the County Office.

(3) These forms will be sent to the State Office:

Form FmHA 440-1 (copy).

Form FmHA 492-19 (copy) for initial loans only. If an initial FO or SW loan is approved at the same time, only one set of forms is required.

(4) A signed copy of Form FmHA 440-1 will be sent to the borrower on the date of loan approval.

(d) *Loan disapproval.* The following action will be taken when a loan is disapproved:

(1) The reasons for disapproval will be indicated on Form FmHA 440-1 by the loan approval official. The reasons may be in a letter or the running record if this form has not been completed. Suggestions of how to remedy the disapproval should be included.

(2) The County Supervisor will notify the applicant in writing of the action taken and include any suggestions that could result in favorable action when appropriate. In addition to sending out the written notice, the County Supervisor may personally discuss the action with the applicant. In that instance, the items covered in the discussion will be documented in the running record.

(3) Items furnished by the applicant during docket processing will be returned.

(4) The County Supervisor will notify any other interested parties of the disapproval.

§ 1941.34 [Reserved]

§ 1941.35 Actions after loan approval.

(a) *Requesting check.* When the County Supervisor is reasonably certain that the operating loan can be closed within 20 working days from the date of the check, loan funds may be requested at the time of loan approval by entering the amount needed in the appropriate block on Form FmHA 440-1. Loan funds may be scheduled for multiple advances, if appropriate. The amount of the initial advance will be shown on FmHA 440-1. Subsequent advances may be scheduled by using Form FmHA 440-57, "Acknowledgment of Obligated Funds/Check Request." Each advance will be limited to an amount which can be used promptly, usually within sixty days from the date of check.

(b) *Cancellation of loan check, and/or obligation.* The County Supervisor will notify the State and Finance Offices of loan cancellation by using Form FmHA 440-10, "Cancellation of Loan or Grant Check and/or Obligation," and the appropriate FMI. If a check received in the County Office is to be cancelled, the check will be returned to the Disbursing Center, U.S. Treasury Department, Post Office Box 3329, Kansas City, Kansas 66103, with a copy of Form FmHA 440-10. (See FmHA Instruction 102.1, a copy of which may be obtained from and FmHA Office.)

(c) *Cancellation of advances.* When an advance is to be cancelled the County Supervisor must take the following actions:

(1) Complete and distribute Form FmHA 440-10.

(2) When necessary, prepare and execute a substitute promissory note reflecting the revised total of the loan and the revised repayment schedule. When it is not necessary to obtain a substitute promissory note, the County Supervisor will show on Form FmHA 440-10 the revised amount of the loan and the revised repayment schedule.

(d) *Increase or decrease in loan amount.* If it becomes necessary to increase or decrease the amount of the loan prior to closing, the County Supervisor will request that all distributed docket forms be returned to the County Office for reprocessing unless the change is minor and replacement forms can be promptly completed and submitted.

§ 1941.36-1941.37 [Reserved]

§ 1941.38 Loan closing.

Operating loans will be closed in accordance with Subpart B of Part 1941 of this Chapter.

§ 1941.39-1941.41 [Reserved]

§ 1941.42 Loan servicing.

Loans will be serviced in accordance with Subpart A of Part 1930 of this Chapter.

§§ 1941.43-1941.49 [Reserved]

§ 1941.50 State supplements.

State supplements will be issued as necessary to implement this subpart.

EXHIBIT A—PROCESSING GUIDE

INSURED OPERATING LOANS

This Exhibit outlines the basic steps involved in processing a loan application and identifies the FmHA forms which should be considered for use at each step.

Consult the appropriate Forms Manual Insert (FMI) for instructions for completion, distribution, and procedural references for each form.

APPLICATION PROCESSING

A. APPLICANT INTERVIEW

Review applicant's proposed plan of operation in view of authorized loan purposes and limitations on loans.

Begin running case record.

Provide applicant with FmHA forms to be completed and returned which are needed to determine eligibility. Be sure applicant understands the purposes of the forms and knows who must complete them.

Advise applicant of other information that must be given to FmHA.

When appropriate, have applicant contact other creditors as possible credit sources for financing, or participating in the financing, of the proposed operation.

The following FmHA forms will be made available to the applicant or will be used by the County Supervisor. Forms designated with an "x" are always required and those designated with an "*" are to be used when appropriate.

Form No.	Name	
410-1	Application for FmHA Services	(x)
410-5	Request for Verification of Employment.	(*)
410-8	Applicant Reference Letter	(*)
410-9	Statement Required by the Privacy Act.	(*)
410-10	Privacy Act Statement to References.	(*)
431-1	Long-Time Farm and Home Plan.	(*)
431-2	Farm and Home Plan	(x)
431-4	Business Analysis—Nonagricultural Enterprise.	(*)
440-32	Request for Statement of Debts and Collateral.	(*)
440-50	Crop-Share-Cash Farm Lease	(*)
440-51	Crop-Share-Cash Farm Lease (with Subordination Agreement).	(*)
440-52	Cash Farm Lease	(*)
440-53	Cash Farm Lease (with Subordination Agreement).	(*)
440-54	Livestock-Share Farm Lease	(*)
440-55	Livestock-Share-Farm Lease (with Subordination Agreement).	(*)
440-56	Annual Supplement to Farm Lease.	(*)

B. FIELD VISIT

Notify applicant of planned visit and its purpose.

Evaluate the resources available to the applicant and determine whether or not they adequately fulfill the requirements of the proposed plan of operation.

Obtain information needed to complete required appraisals (chattel and real estate).

Hold landlord-tenant meeting, if necessary, to reach an agreement on the terms of the lease, resolve any problems, etc.; record in running case record.

Determine security requirements and record in running case record.

The following FmHA forms will be used as appropriate:

Form No.	Name	
440-21	Appraisal of Chattel Property.	(*)
141-2	Notice of Visit or Meeting	(x)
422-1	Appraisal Report—Farm Tract	(*)
422-2	Supplemental Report—Irrigation, Drainage, Levee, and Minerals.	(*)
422-3	Map of Property	(*)
422-10	Appraiser's Worksheet—Farm Tracts for Study of Comparable Properties.	(*)
440-13	Report of Lien Search	(*)

C. ELIGIBILITY DETERMINATION

Obtain all needed application forms, and other information from the applicant; assist the applicant in completing these forms and in obtaining needed information, as necessary.

Request copy of deed or other evidence of title, when needed.

Schedule meeting with county committee, review application and determine eligibility.

Inform applicant of the results of committee action.

The following FmHA forms will be used as appropriate in accomplishing the above actions:

Form No.	Name	
403-1	Debt Adjustment Agreement	(*)
440-2	County Committee Certification or Recommendation.	(x)

DOCKET PREPARATION

Obtain all information from the applicant, prior lienholder(s), landlord(s), etc., needed for the loan docket to be prepared.

Check to make sure all security requirements have been met or will be met by loan closing.

Prepare a loan narrative, for running record.

The following FmHA forms will be completed and utilized as necessary in preparing the loan docket for approval:

Form No.	Name	
400-4	Nondiscrimination Agreement.	(*)
427-8	Agreement with Prior Lienholder.	(*)
440-1	Request for Obligation of Funds.	(x)
440-4	Security Agreement (Chattels and Crops).	(x)
440-4A	Security Agreement (Crops)	(*)
440-6	Severance Agreement	(*)
440-9	Supplementary Payment Agreement.	(*)
440-25/ 440A25	Financing Statement	(x)
440-26	Consent and Subordination Agreement.	(*)
440-41	Disclosure Statement for Loans Secured by Real Estate.	(*)
440-41A	Disclosure Statement for Loans Not Secured by Real Estate.	(*)
440-43	Notice of Right to Rescind	(*)
440-46	Environmental Impact Assessment.	(*)
441-5	Subordination Agreement	(*)
441-7	OL-EM and Other Credit Analysis.	(x)
441-8	Assignment of Proceeds from the Sale of Agricultural Products.	(*)
441-10	Nondisturbance Agreement	(*)
441-12	Agreement for Disposition of Jointly Owned Property.	(*)
441-13	Division of Income and Nondisturbance Agreement.	(*)
441-17	Certification of Obligation to Landlord.	(*)
441-18	Consent to Payment of Proceeds from Sale of Farm Products.	(*)
441-25	Assignment of Proceeds from the Sale of Dairy Products and Release of Security Interest.	(*)
492-19	Characteristics of Approved Applicants.	(*)

LOAN APPROVAL AND CLOSING

A. LOAN APPROVAL

File financing statement or chattel mortgage, and obtain a lien search.

Request preliminary title opinion when appropriate.

Record loan closing conditions in the running record.

Execute and distribute all forms necessary for loan approval.

B. LOAN CLOSING

Request needed legal services.

Arrange for loan closing by county office, escrow agent, designated attorney, or other authorized loan closing agent; furnish loan closing agent with appropriate instructions, forms, and other needed information for loan closing.

The following FmHA forms will be used by the County Office in addition to those forms listed under docket preparation which must be executed by the borrower or other party:

Form No.	Name	
400-6	Compliance Statement	(*)
402-1	Deposit Agreement	(*)
402-2	Statement of Deposits and Withdrawals.	(*)
402-5	Deposit Agreement (NonFmHA Funds).	(*)
427-1 (State)	Real Estate Mortgage or Deed of Trust for ———.	(*)
427-5	Affidavit of Borrowers (or Transferees).	(*)
427-9	Preliminary Title Opinion	(*)
1940-17	Promissory Note	(x)

Supart B—Closing Loans Secured by Chattels

Sec.
1941.51 Purpose.
1941.52-1941.53 [Reserved]
1941.54 Promissory note.
1941.55-1941.56 [Reserved]
1941.57 Security instruments.
1941.58-1941.59 [Reserved]
1941.60 Purchase money security interest.
1941.61-1941.62 [Reserved]
1941.63 Lien search.
1941.64-1941.66 [Reserved]
1941.67 Additional requirements for perfecting security interests.
1941.68-1941.70 [Reserved]
1941.71 Fees.
1941.72-1941.74 [Reserved]
1941.75 Retention and use of security agreements.
1941.76-1941.78 [Reserved]
1941.79 Future advance and after-acquired property clauses.
1941.80-1941.83 [Reserved]
1941.84 Real estate security, title clearance and closing requirements.
1941.85-1941.87 [Reserved]
1941.88 Insurance.
1941.89-1941.91 [Reserved]
1941.92 Check delivery.
1941.93 [Reserved]
1941.94 Supervised bank accounts.
1941.95 [Reserved]
1941.96 Changes in use of loan funds.
1941.97-1941.100 [Reserved]

AUTHORITY: 7 U.S.C. 1989; 5 U.S.C. 301; delegation of authority by the Sec. of Agri., 7 CFR 2.23; delegation of authority by the Asst. Sec. for Rural Development 7 CFR 2.70.

Subpart B—Closing Loans Secured by Chattels

§ 1941.51 Purpose.

This subpart prescribes Farmers Home Administration (FmHA) policies, procedures, and authorizations for closing insured loans secured by chattels. These loans are considered closed on the date the promissory note is executed.

§ 1941.52-1941.53 [Reserved]

§ 1941.54 Promissory Note.

(a) *Executing the note.* Form FmHA 1940-17, "Promissory Note," will be executed and dated following receipt of the loan check in the county office and prior to the first withdrawal of loan funds from the supervised bank account or delivery of the loan check to the borrower.

(b) *Signatures.*—(1) *Individuals.* Only the applicant is required to sign the promissory note if a sound loan can be made based on the applicant's income and financial resources alone. If a sound loan cannot be made on this basis, and if the security is jointly owned by the applicant and someone whose income and financial resources are sufficient to allow a sound loan to be made, then this co-owner will sign the note. If a co-owner's income and financial resources are not sufficient to allow a sound loan to be made then a cosigner will sign the note. Any other signatures needed to assure the required security will be obtained as provided in State supplements. Persons who are minors (except a youth obtaining a youth loan), mental incompetents, or noncitizens will not execute a promissory note. Except when a person has only pledged property as security for a loan, the purpose and effect of signing a promissory note or other evidence of indebtedness for a loan made or insured by FmHA is to incur individual personal liability regardless of any State law to the contrary. A youth executing a promissory note shall incur full personal liability for the indebtedness evidenced by such note.

(2) *Cooperatives or corporations.* The appropriate officers will execute the note on behalf of the cooperative or corporation. Ordinarily, each principal member or stockholder will sign the note as an individual and will be personally liable for the debt. A principal member, stockholder or partner is one owning or controlling as much as 10 percent of the ownership, stock or interest of a cooperative, corporation or partnership. If no member, stockholder or partner owns or controls as much as 10 percent, each member, stockholder or partner will be considered as a principal. The State Director will determine when a principal member or stockholder does not have to sign the note.

(3) *Partnerships.* The note will be executed by the partnership as well as by all the partners as individuals.

§ 1941.55-1941.56 [Reserved]

§ 1941.57 Security instruments.

Security instruments referred to in this Subpart are financing statements, security agreements, chattel mortgages, and similar lien instruments. To obtain a security interest in chattels and crops in States which have adopted the Uniform Commercial Code (UCC), both a financing statement and a security agreement are required, although only the financing statement must be filed or recorded in public records. See paragraph (g) of this section

for filing or recording instructions. In Louisiana a Chattel Mortgage and Crop Pledge or Crop Pledge, as appropriate, is required to obtain a security interest in chattels and crops.

(a) *Executing security instruments by borrowers.* State supplements will be issued, as necessary, to carry out the provisions of this paragraph. In order to close the loan and obtain the desired lien(s), security instruments will be executed by:

(1) Appropriate cooperative or corporation officials, on behalf of a cooperative or corporation; ordinarily the instruments will also be executed by all principal members of the cooperative, principal stockholders of the corporation who will sign as individuals. The State Director will determine when a principal member or stockholder does not have to sign the security agreement; This will only occur in a very few exceptional cases, such as when the principal member or stockholder is absent from the country or suffering from a legal disability.

(2) Appropriate partners, on behalf of a partnership; the instruments will also be executed by all partners, who also sign as individuals.

(b) *Undivided interests.* An applicant obtaining a loan to finance an undivided interest in security or to refinance debts on an undivided interest in such property will secure the loan with a lien on the undivided interest in the property. All individuals having an undivided interest in the security will execute Form FmHA 441-12, "Agreement for Disposition of Jointly-Owned Property", unless a written agreement to the same affect as this form has already been signed.

(c) *Security instrument forms.* (1) Form FmHA 440-25, "Financing Statement," or Form FmHA 440A-25, "Financing Statement (Carbon-Interleaved)"; and Form FmHA 440-4, "Security Agreement (Chattels and Crops)," or Form FmHA 440-4A, "Security Agreement (Crops)," will be used to obtain security interests in chattel property in States which have adopted the Uniform Commercial Code (UCC), unless a State supplement requires the use of other forms.

(2) Form FmHA 440-4 LA, "Chattel Mortgage and Crop Pledge (Louisiana)," or Form FmHA 440-4A LA, "Crop Pledge (Louisiana)," will be used in the State of Louisiana.

(3) Other forms will be used as provided in State supplements in Puerto Rico, Guam, American Samoa and the Northern Mariana Islands.

(d) *Taking security instruments*—(1) *Financing statement.* A financing statement is effective for 5 years from the date of filing and as long thereafter as it is continued by filing a continuation statement.

(i) *Initial loan.* A financing statement will be required for every initial loan except when a filed financing statement covering the applicants property is still effective, covers all types of chattel property that will serve as security for the initial loan, and describes the land on which crops and fixtures are or will be located.

(ii) *Subsequent loan.* A financing statement will not be required unless the filed financing statement is not effective, does not cover all types of chattel property that will serve as security for the subsequent loan, or does not describe the land on which crops or fixtures are or will be located. If the loan debt is being secured for the first time, however, the procedure for securing initial loans stated in paragraph (d)(1)(i) of this section will be followed.

(2) *Security Agreements*—(i) *Initial loan.* When an intitial loan is made to an applicant, including to a paid-in-full borrower, a new security agreement will be required in all cases. The security agreement will be executed not later than the first withdrawal of loan funds from the supervised bank account or delivery of the loan check to the borrower.

(ii) *Subsequent loan.* An additional security agreement will be required if property which is to serve as security for the debt is not described either specifically or in the printed form of the previous security agreement, or if an additional agreement it is needed to obtain or maintain a security interest in crops.

(A) An additional security agreement may also be executed to reflect significant changes in security.

(B) An additional security agreement is not necessary if the existing security agreement covers all types of chattels that will serve as security for the subsequent loan, describes the land on which the crops or fixtures are or will be located, and was executed within 1 year before the crops which are offered as security became growing crops.

When determined necessary by OGC, a State supplement will be issued to further explain when a security agreement covering crops will be required.

(e) *Describing collateral in security instruments.* (1) Financing statements describe certain types of collateral. If items of collateral not covered in the printed form of the financing statement are to serve as security, they should be described by type or specifically identified.

(2) Generally, animals, birds, fish, etc., should be described by groups in the security agreement. The serial or other identification numbers of major items of equipment should be listed in the security agreement. If a security interest is to be taken in property such as inventory, supplies, recreation or other nonfarm equipment, or fixtures which cannot be readily described under the column headings of items 2 or 3 of Form FmHA 440-4, an appropriate description of such property will be inserted in item 2 or 3 below the other property, without regard to the column headings.

(3) The advice of the Office of the General Counsel (OGC) will be obtained as to how to describe in financing statements and security agreements items such as grazing permits, milk bases, and membership or stock in cooperative associations. The property to be described in security instruments should be reconciled with any existing security instruments and with Form FmHA 462-1, "Record of the Disposition of Security Property."

(4) After the initial security agreement is executed, and after the borrower obtains all the property which FmHA wants specifically described, by item, in the security agreement, a new security agreement will be executed.

(f) *Executing security instruments by County Office employees.* The County Supervisor and any County Office employee authorized by the County Supervisor may execute on behalf of the Government any legal instruments necessary to obtain or preserve security for loans. This includes financing statements, security agreements, chattel mortgages and similar lien instruments, as well as severance agreements, consent and subordination agreements, affidavits and acknowledgments.

(g) *Filing or recording security instruments.* (1) Ordinarily, in States which have adopted the UCC, financing statements may be delivered by hand or mailed to the filing officers for filing or recording when the loan is approved. However, when this is not practical, the financing statement may be filed at a later date, but not later than the first withdrawal of loan funds from the supervised bank account or delivery of the loan check to the borrower. If crops or other property of the borrower are located or will be located in a State other than that of the borrower's residence, the County Office servicing the loan will contact the County Office in the other State for information as to the security instruments to be used and the place(s) of filing or recording in the other State. The financing statement will be filed or recorded as required by State supplements.

(2) Security agreements will not be filed or recorded unless required by State supplements. Form FmHA 440-4 LA or Form FmHA 440-4A LA will be filed or recorded in Louisiana as provided by State supplements.

§§ 1941.58–1941.59 [Reserved]

§ 1941.60 Purchase money security interest.

A purchase money security interest will take priority over an earlier perfected security interest if a security agreement is taken and a financing statement is filed before the purchaser receives possession of the property or within 10 days thereafter, subject to the following limitations:

(a) *Motor vehicles.* For motor vehicles required to be licensed, any action necessary to obtain perfection in the particular State, such as having the security interest noted on the certificate of title, must be taken before the purchaser receives possession or within 10 days. In some States, it is not necessary to file a financing statement to perfect a security interest in such motor vehicles; however, FmHA will always require both a security agreement and a financing statement. A State supplement will be issued, if necessary to set out the procedure for obtaining a lien on a motor vehicle, motorboat, or any special type of security.

(b) *Farm equipment.* A purchase money security interest in farm equipment costing $2,500 or less (other than fixtures or motor vehicles required to be licensed), will take priority over an earlier perfected security interest if a security agreement is obtained, even though a financing statement is not executed or filed. FmHA, however, will always file a financing statement. State supplements will be issued, as necessary, to further explain the requirements for complying with this section.

(c) *Inventory.* A purchase money security interest in inventory will take priority over an earlier perfected security interest, provided:

(1) A security agreement is taken and a financing statement is filed not later than the time the purchaser receives possession of the property, and

(2) Before the purchaser takes possession of the property, written notice is given to the party holding the earlier perfected interest that the purchase money creditor has acquired or expects to acquire a purchase money security interest in the inventory, which must by described by item or type. When determined necessary by OGC, a State supplement will be issued to further explain the requirements for perfecting a purchase money security interest in inventory.

(d) *Fixtures.* A security interest taken in goods before they become fixtures has priority over a security interest in the real estate to which they are attached. A security interest taken in goods after they become fixtures is valid against all persons later acquiring an interest in the real estate. It is not valid against persons who had an interest in the real estate when the goods become fixtures, unless they execute a consent disclaimer or Form FmHA 440-26, "Consent and Subordination Agreement," or Form FmHA 440-6, "Severance Agreement."

(e) *Crops.* A security interest taken in crops not more than 3 months before the crops are planted or otherwise become growing crops, has priority over an earlier perfected security interest, if the obligation underlying the earlier interest was due more than 6 months before the crops became growing crops.

§§ 1941.61–1941.62 [Reserved]

§ 1941.63 Lien search.

(a) *Required lien searches.* (1) A lien search will be obtained at a time that assures that the security instruments give the Government the required security, usually at the time the financing statement (mortgage or crop pledge in Louisiana) is filed or recorded. Lien searches may be obtained after the financing statement is filed, but never after the delivery of the loan check or the first withdrawal of loan funds from the supervised bank account. Form FmHA 440-13, "Report of Lien Search," or other lien search forms will be used.

(2) Under the UCC, lien searches are necessary in making subsequent loans if an additional financing statement is required; *i.e.*, when crops or fixtures to be taken as security are or will be located on land not described in the existing financing statement, or when property not covered by the financing statement is to be taken as security for the loan.

(3) Lien searches also may be obtained in connection with processing applications when the County Supervisor determines such searches are necessary on an individual case basis.

(4) Although a lien search is not always required for youths who are minors (as defined in State supplements), the County Supervisor may determine that a search is necessary to assure the Government obtains the required security interest.

(b) *Responsibility for obtaining lien searches.* (1) Applicants should obtain and pay for lien searches. FmHA County Office employees may make lien searches (at no cost to the applicant) in exceptional cases, such as when no other person is available to provide such a service, or when experience has shown that using the service available would lead to an undue delay in closing the loan and the delay would cause undue hardship to the borrower.

(2) The State Director will issue a State supplement setting forth the requirements for lien searches, including the records to be searched and the periods to be covered.

(3) The applicant should be informed of County Clerks, local attorneys or other persons who will conduct lien searches at a reasonable cost. The applicant will select the lien searcher. The cost of a lien search can be paid from the proceeds of loan checks.

§§ 1941.64–1941.66 [Reserved]

§ 1941.67 Additional requirements for perfecting security interests.

If necessary because of provisions in State statutes, leases, land purchase contracts, or real estate mortgages commonly in use, State Directors will issue State supplements which tell how to obtain a subordination agreement, certification of obligation to landlord, severance agreement, disclaimer, and consent and subordination agreement to perfect security interest.

(a) *Form FmHA 441-5, "Subordination Agreement."* This form will be used if a subordination agreement is required by FmHA on crops, livestock, farm equipment, or other chattels. If Form FmHA 441-5 is not legally sufficient, a form recommended by OGC will be used. The time to be covered by the subordination agreement generally will be equal to the repayment period of the loan or for the unexpired period of the lease if the borrower is a tenant, but as a minimum will be for the year for which the loan is made.

(b) *Form FmHA 441-17, "Certification of Obligation To Landlord."* This form may be used instead of obtaining a subordination agreement if:

(1) It appears that the applicant is not financially obligated to the landlord except for rent for the lease year and will not incur other obligations to the landlord during that year, and

(2) A State supplement authorizing the use of Form FmHA 441-17 in such cases has been issued.

(c) *Form FmHA 440-6, "Severance Agreement."* Form FmHA 440-6 will be completed when loan funds are used to purchase property or refinance debts on property that is or may become a fixture.

(1) State Directors will issue State supplements which specify when a severance agreement is required under State law, whether the severance agreement should be filed or recorded, and whether the spouse of the borrower and the spouse(s) of the other party(ies) of interest will be required to execute the severance agreement. These supplements will tell FmHA employees what actions to take to prevent the property from becoming part of the real estate. Directions for severing the property after it has become

attached to the real estate will also be included.

(2) Severance agreements will be executed no later than the date the property purchased with loan funds is delivered to the farm. Where a loan is made to refinance debts on property, the severance agreement must be executed before the release of funds to the creditor.

(d) *Form FmHA 440-26, "Consent and Subordination Agreement."* Unless otherwise provided by a State supplement, this form rather than a severance agreement will be used in UCC States when a security interest is taken in property after it has become a fixture.

(1) If a debt on an item which has already become a fixture is being refinanced, consent and subordination agreements will be signed before releasing loan funds to the creditor. In all other cases in which a security interest is being taken on an item that already has become a fixture, consent and subordination agreements will be signed no later than the time of loan closing.

(2) Consent and subordination agreements will be taken only in those cases in which the fixture is placed on the real estate before the financing statement and security agreement covering the fixture have been executed, or before the financing statement is filed, or before the request for obligation of funds is signed by the loan approving official.

§ 1941.68-1941.70 [Reserved]

§ 1941.71 Fees.

The borrower will pay all fees for filing or recording financing statements, mortgages, or other legal instruments and will pay all notary and lien search fees incident to loan transactions. Payment will be made from personal funds or from the proceeds of the loan. Whenever FmHA employees accept cash to pay for filing or recording fees or for the cost of making a lien search, Form FmHA 440-12, "Acknowledgment of Payment for Recording, Lien Search, and Releasing Fees," will be executed. FmHA employees will make it clear to the borrower that any fee so accepted is not received by the Government as a payment on the borrower's debt, but is accepted only for paying the recording, filing, or lien search fees on behalf of the borrower.

§ 1941.72-1941.74 [Reserved]

§ 1941.75 Retention and use of security agreements.

Original executed security agreements will not be altered or destroyed, and will remain in the case file when new security agreements are taken. Changes in security property will be noted *only* on the work copy. When an additional security agreement covering all collateral for the debt is taken, the work copy of the previous security agreement may be destroyed.

§ 1941.76-1941.78 [Reserved]

§ 1941.79 Future advance and after-acquired property clauses.

The future advance and after-acquired property clauses of security agreements will be considered valid in all respects in UCC States unless otherwise provided in a State supplement.

(a) *Future advance clause.* A properly prepared, executed, and filed or recorded FmHA financing statement and a properly prepared and executed FmHA security agreement give FmHA a security interest in the property described. This security interest covers future loans, advances, and expenditures, as well as any other FmHA debts evidenced by notes and any advances or expenditures for debts evidenced by such notes. However, when a borrower's indebtedness is paid in full, a new security agreement must be taken in all cases to secure an initial loan made following the payment in full.

(b) *After-acquired property clause.* After a security interest is acquired in certain property, any property (except fixtures) acquired which is of the same type as that described in the financing statement and security agreement will also serve as security for the debt. The after-acquired property clause in the security agreement will encumber crops grown on the land described in the security agreement and financing statement, provided the crops are planted or otherwise become growing crops within 1 year of the execution date of the security agreement, or within such other period as provided in a State supplement. FmHA after-acquired security interests take priority over other security interests perfected after the FmHA financing statement is filed, except as stated in § 1941.60.

(c) *State supplements.* A State supplement concerning future advance and after-acquired property clauses will set forth requirements for filing or recording security instruments in that State. This will assist County Supervisors in other States who request such information in accordance with § 1941.57(g). A State supplement will also be issued when OGC determines that it is needed to reflect any amendments made to a State's UCC.

§§ 1941.80-1941.83 [Reserved]

§ 1941.84 Real estate security, title clearance and closing requirements.

(a) *Basic security and additional security.* Real estate is considered "basic security" when the amount of the loan exceeds the equity in chattel security by more than $10,000, and is considered "additional security" in all other cases.

(1) *Basic Security.* Basic security is all equipment (including fixtures in UCC States), and foundation herds, and flocks which secure FmHA loans and which serve as the basis for the farming or other operation. Basic security includes any equipment or animals which are acquired to replace previously held equipment or animals. It includes animals sold as a result of the normal culling process, unless the borrower has replacements to maintain long range production levels, and animals or birds sold when a borrower plans to significantly reduce the level of livestock operation. It also includes real estate when more than $10,000 equity in the real estate is needed as security for refinancing.

(2) *Additional Security.* The term "additional security" includes all security property not considered basic security, and which is not normally sold in operating the farm or other business but which was taken as security in the early life of the loan or which was taken as security when the loan became inadequately secured.

(b) *Title clearance and closing requirements—(1) Loans over $10,000 (or EM or EE loans over $25,000).* When real estate is taken as basic security title clearance is required.

(2) *Other loans.* For loans of $10,000 or less, (or EM of EE loans of $25,000 or less), and loans for which real estate is taken as additional security only, a certification of ownership and verification of equity in real estate is required. Certification of ownership may be in the form of a notarized affidavit which is signed by applicant, names the record owner of the real estate in question and lists the balances due on all known debts against the real estate. Whenever the County Supervisor is uncertain of the record owner or debts against the real estate security, a title search will be required.

(3) When real estate is taken as basic security, title clearance and loan closing requirements will be carried out in accordance with Part 1807 of this chapter (FmHA Instruction 427.1).

(4) If any prior liens against the real estate offered as security contain provisions (such as future advance clauses not limited to a specific amount) that could jeopardize either the security position of the Government or the applicant's ability to meet the obligations of the prior liens and FmHA loan, the prior lienholders involved must agree in writing, before the loan is closed, to modify, waive, or subordinate such objectionable provisions.

(5) If a lien is to be taken on real estate which is already subject to a lien, and if State law allows a prior lienholder to foreclose on a loan

(under power of sale or otherwise) without notifying a junior lienholder of the foreclosure proceedings, the prior lienholders must agree, in writing, to give FmHA advance notice of all foreclosure proceedings and of any assignment of the mortgage.

(6) Each real estate lien will be taken on Form FmHA 427-1 (State), "Real Estate Mortgage for ——," unless a State supplement requires the use of another form.

(7) If the real estate offered as security is held under a purchase contract, the following conditions must exist:

(i) The applicant must be able to provide a mortgageable interest in the real estate.

(ii) The applicant and the purchase contract holder must agree in writing that any insurance proceeds received to compensate for real estate losses will be used only to replace or repair the damaged real estate. If necessary, the applicant will negotiate with the purchase contract holder to arrive at a new contract without any provisions objectionable to either FmHA or the lender.

(iii) If a satisfactory contract of sale cannot be negotiated or if the purchase contract holder refuses to agree to apply the insurance proceeds toward the repair or replacement of the real estate and wants to retain some of the proceeds as an extra payment on the balance owed, the applicant will make every effort to refinance the existing purchase contract.

(iv) The purchase contract must not be subject to summary cancellation on default and must not contain any other provisions which might jeopardize either the Government's security position or the borrower's ability to repay the loan.

(v) The contract holder must agree, in writing, to give the Government notice of any breach by the purchaser, and must also agree to give the Government the option to rectify the conditions which amount to a breach within 30 days. The 30 days begin to run on the day the Government receives the written notice of the breach.

§ 1941.85-1941.87 [Reserved]

§ 1941.88 Insurance.

Insurance for property, public liability, and crops should be obtained before loan or at the time of closing.

(a) *Chattel property.* Borrowers should be encouraged to carry insurance on chattel property, including growing crops, which serves as security for a loan and on other chattel or real property, in order to protect themselves against losses resulting from hazards existing in an area. It is especially desirable that insurance be obtained by applicants who receive large loans and have considerable chattel property including feed, supplies, and inventory centrally stored over an extended period. Such insurance may be required by the loan approval official in individual cases or by a State supplement.

(b) *Real estate.* If essential insurable buildings are located on the property, or improvements are to be made to existing buildings, the applicant, when required, will provide adequate property insurance coverage at the time of the loan closing or as of the date materials are delivered to the property, whichever is appropriate. Real property insurance will not be required when a real estate appraisal report shows that both the present market value of the land (after deducting the value of buildings) and the owner's equity in the land exceed the amount of the debt, including the debt for the loan being made. However, the applicant will be encouraged to carry insurance. If insurance claims for loss or damage to buildings to be replaced or repaired with loan funds are outstanding at the time the loan is approved, the applicant will be required to agree in writing that when settlement of these is made, the proceeds will be used to replace or repair buildings, to apply to debts secured by prior liens, or to apply to the OL loan being made. *However, when only a crop lien is taken as security, the borrower will be required to carry Federal or other type of Crop Insurance during the repayment-period of such loan(s), if such insurance is available.*

(c) *Public liability and property damage.* Borrowers, including youths, receiving loans for farm, recreational, or nonfarm enterprises should be advised of the possibilities of incurring liability and encouraged to obtain public liability and property damage insurance, including insurance on a customer's property in the custody of the borrower.

(d) *Mortgage clause.* When insurance is required on property serving as security, Form FmHA 426-2, "Property Insurance Mortgage Clause (Without Contribution)," or a standard mortgage clause in general use in the area will be attached to or printed in the policy and will show the United States of America (Farmers Home Administration) as mortgagee or secured party.

§§ 1941.89-1941.91 [Reserved]

§ 1941.92 Check delivery.

The County Supervisor will receive and deliver loan checks. On receipt of a loan check, and after arrangements have been completed for loan closing, the applicant will be promptly notified on Form FmHA 440-8, "Notice of Check Delivery." Loan funds will be disbursed in accordance with Part 1803 of this chapter (FmHA Instruction 402.1).

§ 1941.93 [Reserved]

§ 1941.94 Supervised bank accounts.

If a supervised bank account is required, loan funds will be deposited following loan closing. Supervised bank accounts will be established in accordance with Part 1803 of this chapter (FmHA Instruction 402.1).

§ 1941.95 [Reserved]

§ 1941.96 Changes in use of loan funds.

(a) *Approval of changes.* County Supervisors, or their delegates, are authorized to approve changes in the purposes for which loan funds are to be used provided:

(1) The change is consistent with authorities, policies and limitations for making loans, and

(2) The change will not adversely affect either the workings of an ongoing operation or the Government's interest.

(b) *Recording changes.* When changes are made in the use of loan funds, the installments on Form FmHA 1940-17, "Promissory Note," will not be revised nor will a corrected Form FmHA 441-7, "OL-EM and other Credit Analysis," be prepared. When funds loaned for the purchase of capital goods are to be used for annual recurring production expenses, the funds will be repaid in accordance with the terms for such uses in Subpart A of this part. Appropriate changes with respect to the repayments will be made in Table K of Form FmHA 431-2, "Farm and Home Plan," and initialed by the borrower. Appropriate notations will be made in the "Supervisory and Servicing Actions" section of the Management System Card.

§§ 1941.97-1941.100 [Reserved]

PART 1943—FARM OWNERSHIP, SOIL AND WATER AND RECREATION

Subpart A—Insured Farm Ownership Loan Policies, Procedures, and Authorizations

Sec.

1943.1 Introduction
1943.2 Objectives.
1943.3 Management assistance.
1943.4 Definitions.
1943.5 [Reserved]
1943.6 Credit elsewhere.
1943.7-1943.9 [Reserved]
1943.10 Preference.
1943.11 Receiving and processing applications.
1943.12 Farm ownership loan eligibility requirements.
1943.13-1943.15 [Reserved]
1943.16 Loan purposes.
1943.17 Loan limitations.

Sec.
1943.18 Rates and terms.
1943.19 Security.
1943.20-1943.22 [Reserved]
1943.23 General provisions.
1943.24 Special requirements.
1943.25 Options, planning and appraisals.
1943.26 Planning and performing farm development.
1943.27 Relationship with other lenders.
1943.28 FmHA loans simultaneous with other lenders
1943.29 Relationship with other FmHA loans and guaranteed or economic emergency loans.
1943.30 County Committee certification.
1943.31 [Reserved]
1943.32 Loan docket processing and forms.
1943.33 Loan approval or disapproval.
1943.34 Requesting title service and accepting option.
1943.35 Action after loan approval.
1943.36-1943.37 [Reserved]
1943.38 Loan closing actions.
1943.39-1943.41 [Reserved]
1943.42 Servicing.
1943.43 Subsequent FO loans.
1943.44 Subordinations.
1943.45-1943.49 [Reserved]
1943.50 State supplements.

EXHIBIT A: Farmers Home Administration Loans to Entrymen on Unpatented Public Lands.

AUTHORITY: 7 U.S.C. 1989; 5 U.S.C. 301; delegation of authority by the Sec. of Agri., 7 CFR 2.23; delegation of authority by the Asst. Sec. for Rural Development 7 CFR 2.70.

Subpart A—Insured Farm Ownership Loan Policies, Procedures and Authorizations

§ 1943.1 Introduction.

This Instruction outlines the policies, procedures and authorizations for making Farm Ownership (FO) loans under the Consolidated Farm and Rural Development Act, as amended. It is the policy of this agency to make loans to any otherwise qualified applicant without regard to race, color, religion, sex, marital status or national origin. Exhibit A provides instructions for making loans to entrymen on unpatented public lands.

§ 1943.2 Objectives.

The basic objectives of the Farmers Home Administration (FmHA) in making FO loans are to assist eligible applicants to become owner-operators of family farms, to make efficient use of land, labor and other resources, to carry on sound and successful operations on the farm, and to enable farm families to have a reasonable standard of living. The operations may include establishment or enlargement of nonfarm enterprises to supplement the farm income. These objectives will be accomplished through the extension of credit and supervisory assistance, recognizing the need for additional help to limited resource farmers.

§ 1943.3 Management assistance.

Supervision will be provided borrowers to the extent necessary to achieve the objectives of the loan and to protect the interests of the Government in accordance with Subpart B of Part 1924 of this chapter. Such assistance consists of farm, home and nonfarm planning, recordkeeping; analyzing the farm and any nonfarm business; and giving management advice.

§ 1943.4 Definitions.

(a) *Approval official.* A field official who has been delegated loan and grant approval authorities within applicable loan programs, subject to the dollar limitations contained in Tables available in any FmHA Office.

(b) *Cooperative.* An entity which has farming as its purpose and whose members have agreed to share the profits of the farming enterprise. The entity must be recognized as a farm cooperative by the laws of the State(s) in which the entity will operate a farm.

(c) *Corporation.* For the purposes of this regulation, a private domestic corporation created and organized under the laws of State(s) in which the entity will operate a farm.

(d) *Family farm.* A farm which:

(1) Will produce agricultural commodities for sale in sufficient quantities so that it is recognized in the community as a farm rather than a rural residence.

(2) Will provide enough agricultural income by itself, including rented land, or together with any other dependable income, to enable the borrower to:

(i) Pay necessary family and operating expenses;

(ii) Maintain essential chattel and real property; and

(iii) Pay debts.

(3) Is managed by:

(i) The borrower, when a loan is made to an individual.

(ii) The members, stockholders or partners responsible for operating the farm when a loan is made to a cooperative, corporation or partnership.

(4) Has a substantial amount of the labor requirements for the farm and nonfarm enterprise provided by:

(i) The borrower and any family for a loan made to an individual.

(ii) The members, stockholders or partners who are responsible for operating the farm, and the families of these members, stockholders or partners, for a loan made to a cooperative, corporation or partnership.

(5) May require a reasonable amount of full-time hired labor and seasonal labor during peakload periods.

(e) *Farm.* A tract or tracts of land, improvements and other appurtenances considered to be farm property which is used or will be used in the production of crops or livestock. This includes the production of aquatic organisms under a controlled or selected environment owned or operated by the applicant or borrower. It will also include a residence which, although physically separate from the farm acreage, is ordinarily treated as part of the farm in the local community.

(f) *Fish farming.* The production of fish, mollusks, or crustaceans (or other invertebrates) under controlled conditions in ponds, lakes, streams, or similar holding areas. This involves feeding, tending, harvesting and other activities as are necessary to properly raise and market the products.

(g) *Limited Resource applicant.* An applicant who is a farmer or rancher and is an owner or operator of a small or family farm (a small farm is a marginal family farm), including a new owner or operator, with a low income who demonstrates a need to maximize farm or ranch income. A limited resource applicant must meet the eligibility requirements for a farm ownership or operating loan, but due to low income, cannot pay the regular interest rate on such loans. Due to the complex nature of the problems facing this applicant, special help will be needed and more supervisory assistance will be required to assure reasonable prospects for success. The applicant may face such problems as underdeveloped managerial ability, limited education, low-producing farm due to lack of development or improved production practices and other related factors. The applicant will not have nor expect to obtain, without the special help and low-interest loan, the income needed to have a reasonable standard of living when compared to other residents of the community

(h) *Majority interest.* Any individual or a combination of individuals owning more than a 50 percent interest in a cooperative, corporation or partnership.

(i) *Market value.* The amount which a willing buyer would pay a willing but not forced seller in a completely voluntary sale.

(j) *Mortgage.* Any form of security interest or lien upon any rights or interest in real property of any kind. In Louisiana and Puerto Rico the term "mortgage" also refers to any security interest in chattel property.

(k) *Nonfarm enterprise.* Any business enterprise, including recreation, which provides income to supplement farm income. It must provide goods or services for which there is a need and a reasonably reliable market.

(l) *Partnership.* An entity consisting of individuals who have agreed to operate a farm. The entity must be recognized as a partnership by the laws of the State(s) in which the entity will operate a farm and must be author-

ized to own both real and personal property and to incur debts in its own name.

(m) *Security.* Property of any kind subject to a real or personal property lien. Any reference to collateral or security property shall be considered a reference to the term security.

(n) *State or United States.* The United States itself, each of the several States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

§ 1943.5 [Reserved]

§ 1943.6 Credit elsewhere.

The applicant shall certify in writing on the appropriate forms, and the County Supervisor shall determine, that adequate credit elsewhere is not available to finance the applicant's actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near where the applicant resides for loans for similar purposes and periods of time.

(a) When based on the County Supervisor's knowledge of other lender programs, the review of the application indicates there is no possibility for the applicant to obtain the credit needed from other lender(s), this conclusion and the basis for it will be recorded in the running record and further checks will not be necessary.

(b) If the County Supervisor questions whether or not the applicant is able to obtain the credit needed from other agricultural lenders in the area, such lenders will be contacted and the findings recorded in the running record.

(c) If the County Supervisor receives letters or other written evidence from a lender(s) indicating that the applicant is unable to obtain satisfactory credit, these will be included in the loan docket.

(d) Property and interest in property owned and income received by an individual applicant, a cooperative and its members as individuals, a corporation and its stockholders as individuals, and a partnership and its members as individuals will be considered and used by an applicant in obtaining credit from other sources.

§§ 1943.7–1943.9 [Reserved]

§ 1943.10 Preference.

Preference will be given as between applications on file at the same time when it appears that available funds will be inadequate to meet the needs of all applicants in the following cases:

(a) An application from a veteran as defined in Subpart A of Part 1801 of this chapter (FmHA Instruction 410.1) will be given preference over one from a nonveteran.

(b) An application for a loan for land purchase from an applicant who is (1) married or has a dependent family, or (2) an owner of livestock and farm implements necessary to successfully carry on farming operations, or (3) able to make downpayments will be given preference over one from an applicant who does not meet any of these criteria.

§ 1943.11 Receiving and processing applications.

(a) Applications for FO loans will be received and processed as outlined in Subpart A of Part 1801 of this chapter (FmHA Instruction 410.1).

(b) If the applicant is a cooperative, corporation, or partnership the following information will be obtained and included in the loan docket:

(1) A complete list of members, stockholders, or partners showing the address, citizenship, principal occupation, and the number of shares and percentage of ownership or of stock held in the cooperative or corporation by each or the percentage of interest held in the partnership by each.

(2) A current personal financial statement from each of the principal members of a cooperative, partners of a partnership or stockholders of a corporation. For this purpose, a principal is one owning or controlling as much as 10 percent of the ownership, stock or interest of a cooperative, corporation, or partnership. If no member, partner, or stockholder owns or controls as much as 10 percent, each member, partner, or stockholder will be considered as a principal. Any other member, partner or stockholder whose financial statement, in the judgment of the loan approval official, would be pertinent to a consideration of the financial strength of the cooperative, corporation or partnership will also be required to provide personal financial statements.

(3) A current financial statement from the cooperative, corporation, or partnership itself.

(4) A copy of the cooperative's corporation's charter, or any partnership agreement, any articles of incorporation and bylaws, any certificate or evidence of current registration (good standing) and a resolution(s) adopted by the Board of Directors or members or stockholders authorizing specified officers of the cooperative, corporation, or partnership to apply for and obtain the desired loan and execute required debt, security and other instruments and agreements.

(5) A copy of any written lease, contract, or agreement entered into by the cooperative, corporation, or partnership which may be pertinent to a consideration of its application.

§ 1943.12 Farm ownership loan eligibility requirements.

(a) *An individual must.* (1) Be a citizen of the United States (see § 1943.4 (n) for the definition of "United States").

(2) Possess the legal capacity to incur the obligations of the loan.

(3) Have sufficient training or farming experience to assure reasonable prospects of success in the proposed operation.

(4) Need to rely on farm income and any other income to provide a level of living comparable to that considered reasonably adequate for the area. In making this determination, the County Committee should consider:

(i) Any special applicant circumstances such as size of family, health, and education.

(ii) The estimated typical income of reasonably successful residents in the area.

(iii) Whether the off-farm work will interfere with the successful operation of the farm.

(iv) That the guidelines listed in paragraphs (a)(1) (i), (ii) and (iii) of this section are provided to permit county committees to use judgment on individual cases. They are not intended to prevent making loans to an applicant who already has off-farm income that is typical of other reasonably successful residents in the area when that income as shown by a typical year Farm and Home Plan, will be reduced or end not later than three full crop years after the loan is closed.

(5) Have the character (as related solely to debt repayment ability and reliability), managerial ability and industry to carry out the proposed operation.

(6) Honestly try to carry out the conditions and terms of the loan.

(7) Be unable to obtain sufficient credit elsewhere to finance actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near which the applicant resides for loans for similar purposes and periods of time.

(8) Be the owner-operator of not larger than a family farm after the loan is closed (in the case of a limited resource applicant see § 1943.4 (g)).

(b) *A cooperative, corporation or partnership must.* (1) Be unable to obtain sufficient credit elsewhere to finance actual needs at reasonable rates and terms, taking into account prevailing private and cooperative rates and terms in or near the community for loans for similar purposes and periods of time. This applies to the entity and all of its members, stockholders, or partners, as individuals.

(2) Be controlled by farmers or ranchers engaged primarily and direct-

ly in farming or ranching in the United States after the loan is made.

(3) Consist of members, stockholders, or partners who do not as individuals have an individual FO, SW, RL or OL loan and are not members of another entity or have an interest in another entity that has an FO, SW, RL or OL loan.

(4) If the members, stockholders, or partners holding a majority interest are related by marriage (that is, the legal union of a man and woman as husband and wife) or blood:

(i) They must be citizens of the United States (see § 1943.4(n) for the definition of "United States").

(ii) They must have sufficient training or farming experience to assure reasonable prospects of success in the proposed operation.

(iii) They and the entity itself must have the character (as related solely to debt repayment ability and reliability), managerial ability and industry necessary to carry out the proposed operation.

(iv) They and the entity itself will honestly try to carry out the conditions and terms of the loan.

(v) At least one member, stockholder, or partner must operate the family farm.

(vi) The entity must own *and* operate the farm and be authorized to do so in the State(s) in which the farm is located.

(5) If the members, stockholders, or partners holding a majority interest are *not* related by marriage or blood:

(i) The requirements of paragraphs (b)(4) (i) through (iv) of this section must be met.

(ii) They and the entity itself must own *and* operate the family farm.

(iii) The entity must own *and* operate the farm and be authorized to do so in the State(s) in which the farm is located.

(6) If applying as a limited resource applicant, as defined in § 1943.4 (g):

(i) The requirements of paragraphs (b)(4) (i) through (iv) of this section must be met.

(ii) The entity and all the members, stockholders, or partners must own *or* operate a small or family farm and at least one member, stockholder, or partner must operate the farm.

(iii) The entity must be authorized to carry on the activities for which financial assistance is being sought.

§§ 1943.13–1943.15 [Reserved]

§ 1943.16 Loan purposes.

Loans that are consistent with all Federal, State and local environmental quality standards may be made to:

(a) Purchase or enlarge a farm, including any land for recreation or other nonfarm enterprise. This may include:

(1) Purchasing easements and rights-of-way needed to operate the farm or nonfarm enterprise.

(2) An applicant's portion of the cost of land which is being subdivided.

(3) Making a downpayment on the purchase of land under the following conditions:

(i) A deed is obtained by the borrower and the unpaid balance on the loan is secured by a note and mortgage or an acceptable land purchase contract or similar instrument.

(ii) The applicant can meet the loan terms under normal farm conditions.

(iii) The conditions and the requirements of any prior mortgage or contract meet the FO security requirements for taking a junior lien.

(iv) A purchase contract is signed which obligates the purchaser to pay the purchase price, gives the purchaser the rights of present possession, control, and beneficial use of the property, and entitles the purchaser to a deed upon paying all or a specific part of the purchase price.

(b) Construct, buy, or improve buildings and facilities needed on the applicant's farm, including:

(1) The construction of an essential farm dwelling and service buildings of modest design and cost, including facilities and structures for nonfarm enterprise uses or fish farming such as docks, fish hatcheries, shooting blinds, refreshment or marketing stands, processing or assembly plants, sales buildings, repair shops, lodging facilities, trailer parks, picnic areas, target ranges, tennis courts, shuffleboard courts, golf driving ranges, campsites, and modest rental housing. For dwelling improvement or construction, consideration may be given to additional space required for facilities used for food preparation and storage, vehicle storage, or laundry and office space, the size and cost of which will not exceed that owned by typical family farmers in the area.

(2) The improvement, alteration, repair, replacement, relocation, or purchase and transfer of such essential dwellings and service buildings, facilities, structures and fixtures that become part of the real estate or customarily pass with the farm when it is sold. This includes pollution control and energy saving devices.

(c) Provide land and water development, pollution control and energy saving measures, acquire water supplies and rights, and promote the use and conservation essential to the operation of the farm and any nonfarm enterprise facilities. This includes providing fencing, drainage and irrigation facilities, basic applications of lime and fertilizer, and facilities for land clearing. This also includes establishing approved forestry practices, fish ponds, trails and lakes; improving orchards; and establishing and improving permanent hay or pasture. Sources of water may be located outside the land owned provided appropriate rights or easements are obtained to ensure that the water and rights will pass with the farm when it is sold. The funds for land and water development may include the costs of machinery and equipment needed to do the development only when the total cost of the development and machinery or equipment would not exceed the cost of hiring someone to do the development work. Also, loan funds may be used to pay that part of the cost of facilities, improvements and "practices" which will be paid for in connection with participation in such programs as the Agricultural Conservation or Great Plains programs only when such costs cannot be covered by purchase orders or assignments to material suppliers or contractors. If loan funds are advanced and the portion of the payment for which the funds were advanced is likely to exceed $1,000, the applicant will assign the payment to FmHA.

(1) Funds may be used to pay for development costs on land owned with defective title (see § 1943.19 (b)) or on land in which the applicant owns an undivided interest, provided:

(i) The amount of loan funds used on such land is limited to $25,000;

(ii) There is adequate security for the loan; and

(iii) The tract with defective title or undivided interest is not to be included in the appraisal report.

(2) Funds may be used to pay for development costs on land leased by the applicant provided:

(i) The terms of the lease are such that there is reasonable assurance the applicant will have use of the improvement over its useful life;

(ii) A written lease provides for payment to the tenant or assignee of any unexhausted value of the improvement if the lease is terminated;

(iii) There is adequate security for the loan; and

(iv) The amount of loan funds used for improvements on leased land will not exceed $10,000.

(d) Refinance debts subject to the following:

(1) The applicant's present creditors will not furnish credit at rates and terms the applicant can meet.

(2) The County Supervisor, by contracting the appropriate lender, verifies and documents either in the running record or by letter from the lender, the need to refinance all secured debts and major unsecured debts. The unpaid balance on the debts to be refinanced will also be verified.

(3) FmHA debts, including FmHA guaranteed loans, will not be refi-

nanced unless such refinancing is necessary to enable borrowers to continue farming. The State Director's consent is required before FO funds can be used to refinance other FmHA debts.

(e) Pay reasonable expenses incidental to obtaining, planning, closing and making the loan, such as fees for legal, architectural and other technical services, and first year insurance premiums, which are required to be paid by the borrower and which cannot be paid from other funds. Loan funds also may be used to pay the borrower's share of Social Security taxes for labor hired by the borrower in connection with land and building development.

(f) Finance a nonfarm enterprise when it will provide another source of necessary income even though the owned or purchased acreage for such enterprise is not physically located on the farmland.

§ 1943.17 Loan limitations.

An FO loan will not be approved if:

(a) The borrower has outstanding FO, Soil and Water (SW) or Recreation (RL) loans, and making the requested loan will cause the borrower's total unpaid principal indebtedness to exceed the lesser of $200,000 or the market value of the farm or other security.

(1) The State Director or a Farmer Programs staff member may determine that the market value is different from the appraiser's recommended market value.

(2) The basis for changing the recommended market value must be documented in the comments section of the appraisal report and initialed by an employee who has been delegated authority to appraise farms.

(b) The noncontiguous character of a farm containing two or more tracts is such that an efficient farming operation and nonfarm enterprise cannot be conducted due to the distance between tracts or due to inadequate rights-of-way or public roads between tracts.

(c) The limitation fund in § 1943.29 (d) is not exceeded.

§ 1943.18 Rates and terms.

(a) *Amortization period.* Each loan will be scheduled for repayment over a period not to exceed 40 years from the date of the note or such shorter period as may be necessary to assure that the loan will be adequately secured, taking into account the probable depreciation of the security.

(b) *Deferred payments.* (1) Borrowers are expected to pay all interest that becomes due on their loans. However, if necessary, principal and interest payments may be deferred up to three installments from the date of the note. The deferral will never extend beyond the final due date of the note. An applicant will be expected to repay some interest each year beginning the first year and full payments will be scheduled at the earliest date the Farm and Home Plan indicates they can be paid. The applicant will be advised to make payments on the loan as soon as the applicant has repayment ability even though the deferral period has not expired. The use of deferral authority wil generally involve beginning farmers, applicants with limited income and resources and applicants who have had production and economic losses because of natural or ecomomic conditions. Bearing in mind the above limitations, deferred payments may be authorized under the following conditions:

(i) The initial Farm and Home Plan Business Analysis-Nonagricultural Enterprise, when appropriate, show full installments cannot be paid during the deferred period; and

(ii) A Long-Time Farm and Home Plan is prepared, when appropriate, and

(iii) A typical Farm and Home Plan and Business Analysis-Nonagricultural Enterprise, when appropriate, for a full crop year following the deferred period indicates full installments can be paid under normal conditions.

(2) Deferred interest will not be capitalized. Installments after the deferral period will be calculated in accordance with FMI for Form FmHA 1940-17.

(c) *Interest rate to borrower.* See to FmHA Instruction 440.1, Exhibit B, for the applicable interest rate. This exhibit may be obtained from any FmHA Office. A lower rate is established in this exhibit for a limited resource applicant subject to the following:

(1) The applicant meets the conditions of the definition for a limited resource application set forth in § 1943.4(g).

(2) The Farm and Home Plan and Business Analysis-Nonagricultural Enterprise, when appropriate, indicate that installments at the higher rate, along with other debts, cannot be paid during the period of the plan

(3) A lower interest rate borrower will pay the initial interest rate for 3 years. At the end of 3 years, the interest rate will automatically be increased as provided in FmHA Instruction 440.1, Exhibit B which is available in all FmHA offices. The loan will then be reviewed by the County Supervisor every two years thereafter to determine the interest rate to be charged. Before deciding whether to change the interest rate or leave it unchanged, the County Supervisor should consider.

(i) The borrower's income and repayment record during the preceding years;

(ii) The projections shown on the most recent Farm and Home Plan, in light of the previous year's projected figures and actual figures;

(iii) Whether improved production practices have been or need to be implemented;

(iv) The borrower's progress as a farmer; and

(v) All other factors which the County Supervisor believes should be considered.

The rate may increase in increments of whole numbers to the current rate for borrowers who are not limited resource borrowers. Whenever it appears that the borrower has a substantial increase in income and repayment ability or ceases farming, either the interest rate may be increased to the then current rate for FO loans or the borrower will be graduated from the program as provided in § 1943.24(l).

§ 1943.19 Security.

(a) *General.* Each FO loan will be secured by real estate only or by a combination of real estate and chattels or other security.

(b) *Real estate security.* (1) A mortgage will be taken on the entire farm owned or to be owned by the applicant, including land in which the applicant owns an undivided interest, except a portion of the farm will be excluded when:

(i) The applicant's title to that part of the farm is defective, and cannot be cured at a reasonable cost provided:

(A) The Office of the General Counsel (OGC) determines the applicant's interest is of such nature that it is not mortgageable; and

(B) To include the land would complicate loan servicing or liquidation; and

(C) Any land on which title is defective will not be included in the appraisal of the farm whether or not it is described on the mortgage.

(ii) The present lienholder on that part of the farm will not permit a junior lien or State law will not recognize or permit a lien provided:

(A) The part excluded from the security is not included in the appraisal report, and

(B) OGC advice is obtained before excluding any real estate from the security or the conditions under which real estate can be excluded are outlined by a State supplement.

(iii) Soundness of the loan will not be affected if there is defective title or part of the farm is not included as security for the loan.

(2) When the farm alone will not provide enough security, other real estate owned by the applicant may also be taken as security.

(3) Loans may be secured by a junior lien on real estate provided:

(i) Prior lien instruments do not contain provisions for future advances (except for taxes, insurance, other costs needed to protect the security, or reasonable foreclosure costs), cancellation, summary forfeiture, or other clauses that may jeopardize the Government's interest or the applicant's ability to pay the FO loan unless any such undesirable provisions are limited, modified, waived or subordinated insofar as the Government is concerned.

(ii) Agreements are obtained from prior lienholders to give notice of foreclosure to FmHA whenever State law or other arrangements do not require such a notice. Any agreements needed will be obtained as provided in Part 1807 of this chapter (FmHA Instruction 427.1), except as modified by the "Memorandum of Understanding—FHA-FCA," Exhibit B of this Subpart.

(4) The designated attorney, title insurance company, or the OGC will furnish advise on obtaining security when a life estate is involved.

(5) Any loan of $10,000 or less may be secured by the best lien obtainable without title clearance or legal service as required in Part 1807 of this chapter (FmHA Instruction 427.1): *Provided,* The County Supervisor believes from a search of the county records that the applicant can give a mortgage on the farm. This exception to title clearance will not apply when:

(i) The loan is made simultaneously with that of another lender.

(ii) Land is to be purchased.

(iii) This provision conflicts with program regulations of any other FmHA loan being made simultaneously with the FO loan.

(6) The Departments of Agriculture and Interior have agreed that FmHA loans may be made to Indians and secured by real estate when title is held in trust or restricted status. When security is taken on real estate held in trust or restricted status:

(i) The applicant will request the Bureau of Indian Affairs (BIA) to furnish Title Status Reports to the County Supervisor.

(ii) BIA approval will be obtained on the mortgage after it has been signed by the applicant and any other party whose signature is required.

(c) *Chattel security.* Loans may be secured by chattels subject to the following conditions:

(1) There is not enough real estate security for the loan and the best lien obtainable on the farm has been taken.

(2) Taking a lien on chattels will not prevent the borrower from obtaining operating credit from other sources or the FmHA.

(3) Junior liens on chattels may be taken when there is enough equity in the property. However, when practical, a first lien on selected chattel items should be obtained.

(4) A first lien will be taken on equipment or fixtures bought with loan funds whenever such property cannot be included in the real estate lien and this additional security is needed to secure the loan.

(5) Chattel security will be obtained and kept effective as notice to third parties as provided in Subpart of A of Part 1941 and Subpart A of Part 1930 of this chapter.

(d) *Other security.* (1) Items such as land, buildings, fixtures, fences, water, water stock and facilities, other improvements, easements, rights-of-way, and other appurtenances that are considered part of the farm and usually pass with the farm in a change of ownership may be taken as additional security when needed. If any of these do not pass with a change of ownership, the County Supervisor will obtain advice from the designated attorney, title insurance company, or the OGC to properly identify such items and include them in an appropriate security instrument or assignment.

(2) Other property that cannot be converted to cash without jeopardizing the borrower's farm operation may be taken as additional security when needed. Examples of such security may include case value of insurance policies, stock, memberships or stock in associations or water stocks. Any property taken as additional security must have security value and be transferable. Advice will be obtained from the designated attorney, title insurance company, or the OGC on obtaining this security or assigmnent.

(e) *State supplements.* Each State will supplement this section to provide instructions on forms and other requirements to be met in order to obtain the required security. In each State where loans will be made to Indians holding title to land in trust or restricted status, FmHA and BIA will decide on a way to exchange necessary information, and the procedure to be followed will be set out in a State supplement.

§§ 1943.20–1943.22 [Reserved]

§ 1943.23 General provisions.

(a) *Flood or mudslide hazard areas.* Flood or mudslide hazards will be evaluated whenever the farm to be financed is located in special flood or mudslide prone areas as designated by the Federal Insurance Administration (FIA). Subpart B of Part 1806 of this chapter (FmHA Instruction 426.2) will be complied with when loan funds are used to construct or improve buildings located in such areas. This will not prevent making loans on farms if the farmstead is located in a flood or mudslide prone area and funds are not included for building improvements. However, buildings will need to meet the standards set out in § 1943.24. The flood or mudslide hazard will be recognized in the appraisal report. When land development or improvements such as dikes, terrances, fences, and intake structures are planned to be located in special flool or mudslide prone areas, loan funds may be used subject to the following:

(1) The Corps of Engineers or the Soil Conservation Service (SCS) will be consulted concerning:

(i) Likelihood of flooding.

(ii) Probability of flood damage.

(iii) Recommendations on special design and specifications needed to minimize flood and mudslide hazards.

(2) FmHA representatives will evaluate the proposal and record the decision in the loan docket.

(b) *Civil rights.* The provisions of Subpart E of Part 1901 of this Chapter will be complied with on all loans made which involve:

(1) Funds used to finance nonfarm enterprises and recreation enterprises. Applicants will sign Form FmHA 400-4, "Nondiscrimination Agreement," in these cases.

(2) Any development financed by FmHA that will be performed by a contract or subcontract of more than $10,000.

(c) *Protection of historical and archaeological properties.* If there is any evidence to indicate the property to be financed has historical or archeological value, the provisions of Subpart F of Part 1901 of this chapter apply.

(d) *Environmental impact statements.* If FO loans are used in populated areas to finance a farm which has relatively large feedlots or holding facilities for livestock or fish or smaller feedlots or holding facilities which are likely to have an effect on the environment, the applicant will be requested to complete Form FmHA 449-10, "Applicant's Environmental Impact Evaluation."

(1) The County Supervisor will complete Form FmHA 440-46, "Environmental Impact Assessment," from information provided by the applicant in Form FmHA 449-10.

(2) The County Supervisor will forward a copy of the loan application, completed FmHA Forms 449-10 and 440-46, and any other information and docket material relevant to environmental considerations to the State Director. The State Director will determine whether an environmental impact statement should be prepared based on this submittal and any other available information.

(3) The provisions of Subpart G of Part 1901 of this chapter will be fol-

lowed to the extent applicable for FO loans in making decisions on farm operations that may have significant impact on the environment.

(e) *Truth in Lending—Real Estate Procedures Act.* Subpart I of Part 1901 of this chapter applies as follows:

(1) The provisions in § 1901.401 concerning Truth in Lending apply to any FO loan made to individuals if the amount of the loan is less than $25,000.

(2) The provisions of the Real Estate Procedures Act outlined in § 1901.406 apply when FO funds are used involving tracts of less than 25 acres, if:

(i) Any part of the loan is used to purchase all or part of the land to be mortgaged, and

(ii) The loan is secured by a first lien on the property where a dwelling is located.

(f) *Equal Credit Opportunity Act.* In accordance with Title V of Pub. L. 93-495, the Equal Credit Opportunity Act, the FmHA will not discriminate against any applicant on the basis of sex or marital status with respect to any aspect of a credit transaction.

(g) *Compliance with special laws and regulations.* (1) Applicants will be required to comply with Federal, State and local laws and regulations governing building construction; diverting, appropriating, and using water including use for domestic or nonfarm enterprise purposes; installing facilities for draining land; and making changes in the use of land affected by zoning regulations.

(2) State Directors and Farmer Programs Staff members will consult with SCS, U.S. Geological Survey, State Geologist or Engineer, or any board having official functions relating to water use or farm drainage requirements and restrictions for water and drainge development. State supplements will be issued to provide guidelines which:

(i) State all requirements to be met, including the acquisition of water rights.

(ii) Define areas where development of ground water for irrigation is not recommended.

(iii) Define areas where land drainage is restricted.

(3) Applicants will comply with all local laws and regulations, and obtain any special licenses or permits needed for nonfarm, recreation, specialized or fish farming enterprises.

§ 1943.24 Special requirements.

(a) *Determining suitability of farms.* The County Supervisor is responsible for making a preliminary determination as to whether a loan can be made on the farm. This determination will be based on a personal inspection of the farm and an evaluation of such factors as productivity of the land; location, conditions, and adequacy of the buildings; approximate value of the farm; roads, schools, markets, or other community facilities; tax rates; and adequacy of the water supply. A decision also will be made on the suitability of the farm for a nonfarm enterprise facility or specialized farm operation, and development needed to make it a suitable farm.

(b) *Dwellings and other essential buildings.* (1) Buildings adequate for the planned operation of the farm, including any nonfarm enterprise, must be available for the applicant's use after the loan is made. The necessary buildings will be located on the applicant's farm. Exceptions to this requirement are when:

(i) The applicant already owns an adequate, decent, safe, and sanitary dwelling, suitable for the family's needs, and located close enough to the farm so the farm may be operated successfully it will not be necessary to provide a dwelling on the farm. A real estate lien will be taken on such dwelling.

(ii) The applicant has a long-term lease on acceptable rented buildings that are adjacent to or near the farm, or the applicant occupies suitable buildings which the applicant will eventually inherit or be permitted to purchase from a relative.

(iii) The farm does not have an adequate dwelling and the applicant owns a suitable mobile home which will be used as the applicant's home, the applicant will not be required to build a dwelling. A mobile home will not be considered to add value to the farm but FO funds may be used to finance anchoring the home.

(2) When loan funds are needed for a dwelling and an applicant is eligible for a Rural Housing (RH) loan, it will be processed simultaneously with the FO loan. However, if a small amount is needed for dwelling improvements, FO funds may be used. Dwellings will meet the requirements for RH loans as provided in Subpart A of Part 1822 of this chapter (FmHA Instruction 444.1).

(c) *Land and facility development.* Development needed to make the farm and any nonfarm enterprise ready for a successful operation will be planned during loan processing. The plans should provide for completing the development at the earliest practicable date. Recommendations of representatives of the Forest Service, Soil Conservation Service, State Agricultural Extension Service, and State Planning and Development Agency or local planning groups should be included in the development plan and the Farm and Home Plan. In planning such development with the applicant, the County Supervisor will encourage the applicant to use any cost-sharing assistance that may be available through any source such as the Agricultural Stabilization and Conservation Service (ASCS) programs.

(d) *Insurance.* (1) Insurance will be obtained on buildings and other property as provided in Subpart A of Part 1806 of this chapter (FmHA Instruction 426.1).

(2) See § 1943.23(a) for information about mudslide and flood insurance.

(3) Applicants receiving loans for nonfarm enterprises will be advised of the possibility of incurring liability and will be encouraged to obtain public liability and property damage insurance.

(4) Personal property insurance will be obtained to insure against chattel security losses caused by hazards customarily insured against in the area if the loss of such security would jeopardize the interests of the Government.

(e) *Income from other than owned acreage.* When loan soundness depends on income from other sources in addition to income from owned land, it will be necessary to determine that:

(1) There is reasonable assurance that any rented land which the applicant depends on will be available; and/or

(2) Any off-farm employment the applicant depends on is likely to continue.

(f) *Income from nonfarm enterprises.* Nonfarm enterprises will be analyzed to determine soundness.

(1) Form FmHA 431-4, "Business Analysis—Nonagricultural Enterprise" will be used to document nonfarm enterprises unless the applicant uses another suitable form.

(2) The net cash income from the nonfarm enterprise will be entered as nonfarm income in the Farm and Home Plan.

(g) *Other real estate and assets.* Other assets not used directly in the farming operation will be handled as follows:

(1) FO loans may be made when essential real estate is owned, either in whole or as an undivided interest, that will not be part of the farm provided:

(i) The real estate or interests therein furnish employment or income which is essential to the applicant's success.

(ii) Sale of the property will not eliminate the need for FmHA credit.

(iii) Retention of the real estate will not cause the operation to be larger than a family farm.

(2) An applicant will dispose of nonessential real estate or an undivided interest in real estate no later than loan closing. If this is not feasible, the applicant must agree by signing Form FmHA 443-17, "Agreement to Sell Nonessential Real Estate," to dispose of the property as soon after closing as possible. Under no circumstances may

the property be held for more than three years after closing.

(3) The applicant must agree to use the proceeds from the sale of other real estate to:

(i) Pay costs and taxes connected with sale;

(ii) Reduce the FmHA debt or any prior lien;

(iii) Make essential capital purchases; or

(iv) Pay essential farm and home expenses.

(4) Real estate or an interest in real estate which is retained after loan closing, but which is not part of the farm will not be included in:

(i) The appraisal report.

(ii) The security instrument for the loan.

(iii) The total debt against the security.

(h) *Life estates.* When life estates are involved, loans may be made:

(1) To both the life estate holder and the remainderman, provided:

(i) Both have a legal right to occupy and operate the farm;

(ii) Both are eligible for the loan; and

(iii) Both parties sign the note and mortgage.

(2) To the remainderman only, provided:

(i) The remainderman has a legal right to occupy and operate the farm; and

(ii) The lien instrument is signed by the remainderman, life estate holder, and any other party having any interest in the security.

(3) To the life estate holder only, provided:

(i) There is no legal restriction placed on a life estate holder who occupies and operates a farm; and

(ii) The lien instrument is signed by the life estate holder, remainderman, and any other party having any interest in the security.

(i) *Farm or residence situated in different counties.* If a farm is situated in more than one State, county or parish, the loan will be processed and serviced in the State, country or parish in which the borrower's residence on the farm is located. However, if the borrower's residence is not situated on the farm, the FO loan will be serviced by the County Office serving the county in which the farm or a major portion of the farm is located unless otherwise approved by the State Office.

(j) *Subdivision of large tracts of farmland into family farm units.* County Supervisors should investigate any large tract that is offered for sale to determine the feasibility of making FO loans to enable several applicants to acquire the tract. In considering the feasibility of a tract for subdivision into family farms, the following are some of the factors that must be considered:

(1) Productivity of the land and its suitability for operation as a family farm;

(2) Cost of the land and improvements;

(3) Accessibility to roads, markets, schools, rights-of-way, easements, and other services.

(4) Disposition or omission of any part of the tract that is not suitable; and

(5) The number of eligible applicants in the area.

(k) *Liens junior to the FmHA lien.* A loan will not be approved if a lien junior to the FmHA lien is likely to be taken simultaneously with or immediately subsequent to the loan closing to secure any debt the borrower may have at the time of loan closing or any debt that may be incurred in connection with the FO loan, such as for a portion of the purchase price of the farm or money borrowed from others for payments on debts against the farm, unless the total debt against the security would be within its market value.

(l) *Graduation of FO borrowers.* If, at any time, it appears that the borrower may be able to obtain a refinancing loan from a cooperative or private credit source at reasonable rates and terms, comparable to those for loans for similar purposes and periods of time prevailing in the area the borrower will, upon request, apply for and accept such financing. A borrower paying a rate of interest less than the market rate will be expected to pay the current rate when able to do so.

§ 1943.25 Options, planning and appraisals.

(a) *Optioning land.* An applicant is responsible for obtaining options on real property bought. Form FmHA 440-34, "Option to Purchase Real Property" should be used if possible. Other forms may be used if acceptable to all parties concerned and to FmHA. When an FmHA form is not used, a provision should be included which makes the option contingent upon the FmHA making a loan to the buyer.

(1) The County Supervisor should advise the applicant to have an understanding with the seller on such items as:

(i) Land description and number of acres;

(ii) Buildings and fixtures included in the transaction. The applicant should determine the condition of property attached to the land and the working condition of any fixtures with movable parts;

(iii) Minerals and the effect any mineral reservation has on the land value and operating it as a farm;

(iv) Access to the land or any part of it;

(v) The party responsible for taxes and insurance; and

(vi) The party who will receive the income from the land during the crop year of the transaction.

(2) The applicant should decide if the applicant wants the option recorded and is responsible for paying any recording fees.

(3) Form FmHA 443-2, "Option for Pruchase of Farm-Land to be Subdivided" may be used if a large tract will be subdivided into separate farms.

(i) Assignment of the interest of the applicant in whose name the tract is obtained will be made to each applicant who will acquire one of the units.

(ii) Form FmHA 443-3, "Assignment of Interest in Option (Land to be Subdivided)" may be used.

(b) *Planning.* Farm and Home Plans and nonagricultural enterprise plans, when appropriate, will be completed as provided in Subpart B of Part 1924 of this chapter.

(c) *Appraisals.* (1) Real estate appraisals will be completed by an FmHA employee authorized to make farm appraisals when real estate is taken as security. Appraisals are not required if:

(i) The amount of the FmHA loan and any simultaneous loan is $10,000 or less, and

(ii) The loan approval official determines the loan is adequately secured without an appraisal, and

(iii) The County Supervisor indicates in the loan docket an estimate of the market value of the real estate to be given as security.

(2) Real estate appraisals will be completed as provided in Subpart A of Part 1809 of this chapter (FmHA Instruction 422.1).

(3) The value of stock required to be purchased by Federal Land Bank (FLB) borrowers may be added to the recommended market value of the real estate, provided:

(i) An assignment is obtained on the stock, or

(ii) An agreement is obtained which provides that:

(A) The value of the stock at the time the FLB loan is satisfied will be applied on the FLB loan, or

(B) The stock refund check is made payable to the borrower and FmHA, or

(C) The stock refund check is made payable to the borrower and mailed to the County Supervisor.

(iii) The total of the stock value and the recommended market value of real estate is indicated in the comments section of the appraisal report.

(4) In the case of nonreal estate security the following items apply:

(i) Form FmHA 440-21, "Appraisal of Chattel Property," will be used.

(ii) The property which will serve as security will be described in sufficient detail so it can be identified.

(iii) Its current market value or, if appropriate, the current cash value will be determined.

§ 1943.26 Planning and performing farm development.

The development work will be planned and completed in accordance with Part 1804 of this chapter (FmHA Instruction 424.1). The provisions of Subpart E of Part 1901 will be met in connection with FO loans involving recreational enterprises and the construction of buildings.

§ 1943.27 Relationship with other lenders.

An applicant will be requested to obtain credit from another source when information indicates such credit is available. When another lender will not make a loan for the total needs of the applicant but is willing to participate with an FO loan, consideration will be given to a participation loan. FmHA employees may not guarantee, personally or for FmHA, repayment of advances made from other credit sources. However, lenders may be assured that lien priorities will be recognized.

§ 1943.28 FmHA loans simultaneous with other lenders.

(a) Subpart R of Part 2000 of this chapter, "Memorandum of Understanding FHA-FCA" (available in any FmHA Office) will serve as a guide in processing FO loans to be made simultaneously with loans by FLB to a common applicant. State Directors may work out agreements for simultaneous loans with long-term lenders other than FLBs for eligible loan purposes. such an agreement should prohibit future advances by the first mortgage holder except for taxes, property insurance, reasonable maintenance expenditures, and reasonable foreclosure costs, but should not prohibit subsequent FmHA loans. It should also cover items such as appraisal methods, title clearance, loan closing, the disbursement of funds and, when appropriate, advance notice of foreclosure. It may also cover other items considered necessary or advisable for a sound FmHA junior lien loan.

(b) The County Supervisor and the other lender's representative should maintain a close working relationship in processing loans to a mutual applicant or borrower. When an FO loan is made at the same time as a loan from another lender, that lender's lien will have priority over the FmHA lien unless otherwise agreed upon. The lender's lien priority can cover the following in addition to principal and interest: Advances for payment of taxes, property insurance, reasonable maintenance to protect the security, and reasonable foreclosure costs including attorney's fees.

§ 1943.29 Relationship with other FmHA loans, guaranteed or economic emergency loans.

(a) Insured FO loans may be made simultaneously with other FmHA loans or to borrowers presently in debt for FmHA loans only if loan limits will not be exceeded and all requirements of the loans involved will be met.

(b) An insured FO loan will not be made to a borrower with an outstanding guaranteed FO, SW, or RL loan and paragraph (d) of this section is not intended to override this policy.

(c) FO loans will be made when funds are available instead of Economic Emergency Loans (EE).

(d) Borrowers indebted to FmHA and/or an FmHA guaranteed lender for an EE loan may be considered for FO loan(s): *Provided*, The total outstanding principal indebtedness to FmHA and/or an FmHA guaranteed lender for the EE, and any FO, SW, RL and OL loans would not exceed $650,000.

§ 1943.30 County Committee certification.

The County Committee will certify that an applicant is eligible on Form FmHA 440-2, "County Committee Certification or Recommendation," before a loan is approved. In some instances the Committee may want to interview the applicant or see the farm before making any recommendations.

§ 1943.31 [Reserved]

§ 1943.32 Loan docket processing and forms.

(a) *Forms.* The following table is a guide on the forms needed and distribution:

FmHA form No.	Name of form	Total number of copies	Signed by borrower	Loan docket	Copy for borrower
400-1	Equal Opportunity Agreement.	2	1-O	1-O	1-C
400-3	Notice to Contractors and Applicants.	3		1-C	1-C
400-4	Nondiscrimination Agreement.	2	2-O and C	1-O	1-C
400-6	Compliance Statement...	3		1-C	1-C
*403-1	Debt Adjustment Agreement.	[5]3	1-O	1-O	1-C
410-1	Application for FmHA Services.	[6]1	1-O	1-O	
410-8	Applicant Reference Letter.	1		1-O	
410-9	Statement Required by the Privacy Act.	2	2-O and C	1-C	1-O
410-10	Privacy Act Statement to References.	[12]2		1-C	
422-1	Appraisal Report—Farm Tract.	1		1-O	
*422-2	Supplemental Report—Irrigation, Drainage, Levee, and Minerals.	1		1-O	
*422-10	Appraiser's Worksheet—Farm Tracts for Study of Comparable Properties.	1		1-O	
*424-1	Development Plan	[3]2	1-O	1-O	1-C
*427-8	Agreement with Prior Lienholder.	[6]3		1-O	1-C
*431-1	Long-Time Farm and Home Plan.	2	2-O and C	1-C	1-O
431-2	Farm and Home Plan	[2]1	1-O	1-O	
*431-4	Business Analysis—Nonagricultural Enterprise.	2	1-O	1-C	1-O
440-1	Request for Obligation of Funds.	[4]4	[11]2-O+C	3-O+2C	1-O
440-2	County Committee Certification or Recommendation.	1		1-O	
*440-9	Supplementary Payment Agreement.	2	1-O	1-O	1-C
*440-21	Appraisal of Chattel Property.	1		1-O	
*440-34	Option to Purchase Real Property.	[1]3	2-O and C	1-O	1-C
*440-41	Disclosure Statement for Loans secured by Real Estate.	[9]2	1-C	1-C	1-O
*440-42	Credit Sale Disclosure Statement.	[9]2	1-C	1-C	1-O
*440-43	Notice of Right to Rescind.	[10]3	[9]1	1	2-O+1
440-45	Nondiscrimination Certificate (Individual Housing).	2	1-O	1-O	1-C
*440-46	Environmental Impact Assessment.	1		1-O	
**443-12	Farm Ownership and Individual Soil and Water Fund Analysis.	3		1-C	
*443-17	Agreement to Sell Nonessential Real Estate.	2	2-O and C	1-O	1-C
*449-10	Applicant's Environmental Impact Evaluation.	2	1-O	1-O	1-O
*492-19	Characteristics of Approved Applicants.	[7]3		1-C	

[1] Signed copy of option previously delivered to the seller.
[2] In addition to the plan for first full crop year, the interim plan, if prepared, will be included in the docket.
[3] When the contract method is used, three copies of plans and specifications will be required.
[4] An extra copy will be prepared in connection with a loan to acquire land when the Bureau of Indian Affairs must take action to have a patent issued to the purchaser. After the loan is approved, a copy of the form will be sent to the Area Director of the Bureau of Indian Affairs so that the patent can be requested from the Bureau of Land Management.
[5] Signed copy to creditor.
[6] Copy to lienholder.
[7] Copy to State director.
[8] Record of applicant investigation, availability of other credit, and so forth, which remain with the docket.
[9] In right-to-rescind cases, original and sufficient copies for each person who has a right to rescind.
[10] Original and one copy to borrower, two copies to each other person who has a right to rescind. If the right to rescind is exercised, the person exercising the right will sign one copy of the form and return it to the county office.
[11] Applicant must sign and date this form.
[12] Signed by all sources of information concerning the applicant's character and credit. Original is retained by the person who supplies the information.

O=Original; C=Copy.
* When applicable.
** Not used when a credit sale is processed without a loan.

(b) *Other docket items.* The running record and correspondence pertaining to the loan application and docket will be included. Other items may include supplementary information to farm and home plans, nonfarm enterprises, and copies of mortgages, contracts, and deeds.

(c) *Verification of veterans' preference.* If the applicant has checked the veteran block, the County Supervisor, or other County Office employee will review the applicant's evidence of discharge or release to determine whether the applicant is entitled to veterans' preference.

(d) *Information on other credit.* The docket will include, by entries in the running record or by letters, information on the need to refinance secured and major unsecured debts. Also, information will be included which shows other credit is not available in the amount needed or is not available under repayment terms which the applicant can meet.

§ 1943.33 Loan approval or disapproval.

(a) *Loan approval authority.* Initial and subsequent loans may be approved as authorized by Subpart A of Part 1901 of this chapter: *Provided:*

(1) The total debt including the loan(s) being made (unpaid principal and past due interest) against the security will not exceed the market value of the security.

(2) No significant changes have been made in the development plan considered by the appraiser when real estate will be taken as security.

(b) *Loan approval action.* (1) The loan approval official is responsible for reviewing the docket to determine whether the proposed loan complies with established policies and all pertinent regulations. When reviewing the docket, the loan approval official will determine that:

(i) The County Committee has certified the applicant eligible,

(ii) The Committee certification has been properly completed and signed by at least two members of the Committee,

(iii) Funds are requested for authorized purposes,

(iv) The proposed loan is sound,

(v) The security is adequate,

(vi) Necessary supervision is planned, and

(vii) All other pertinent requirements have been met or will be met.

(2) When approving the loan, the approval official will:

(i) Indicate on all copies of Form FmHA 440-1, "Request for Obligation of Funds," any conditions not required by FmHA regulations that must be met for loan closing;

(ii) Specify any special security requirements;

(iii) Indicate special conditions or agreements needed with prior lienholders when appropriate;

(iv) Indicate that approval is subject to satisfactory title evidence when required, if such evidence has not been obtained;

(v) Indicate any other special requirements; and

(vi) Sign the original and one copy of Form FmHA 440-1 and insert the title of the approval official.

(c) *Distribution of forms after loan approval.* The applicable docket forms will be distributed as outlined below by the loan approval official after a loan is approved.

(1) These forms will be sent to the Finance Office:

Form FmHA 440-1 (copy). When funds have been obligated, the Finance Office will send to the County Office the original and one copy of Form FmHA 440-57, "Acknowledgment of Obligated Funds/Check Request."

Form FmHA 443-12, "Farm Ownership Individual Soil and Water Fund Analysis," (original).

Form FmHA 492-19, "Characteristics of Approved Applicants," (original) for initial loans only. If an initial Operating (OL) or SW loan is approved at the same time, only one set of forms is required.

(2) The original of Form FmHA 440-1 and the remainder of the loan docket will be sent to the County Office.

(3) These forms will be sent to the State Office.

Form FmHA 440-1 (copy)
Form FmHA 443-12 (copy)
Form FmHA 443-19 (copy) for initial loans only. If an initial OL or SW loan is approved at the same time only one set of forms is required.

(4) A signed copy of Form FmHA 440-1 will be sent to the borrower on the date of loan approval.

(d) *Loan disapproval.* The following action will be taken when a loan is disapproved:

(1) The reasons for disapproval will be indicated on Form FmHA 440-1 by the loan approval official. The reasons may be in a letter or the running record if this form has not been completed. Suggestions of how to remedy the disapproval should be included.

(2) The County Supervisor will notify the applicant in writing of the action taken and include any suggestions that could result in favorable action when appropriate. In addition to sending out the written notice, the County Supervisor may personally discuss the action with the applicant. In that instance, the items covered in the discussion will be documented in the running record.

(3) Items furnished by the applicant during docket processing will be returned.

§ 1943.34 Requesting title service and accepting option.

When the loan is approved, the following action will be taken:

(a) The County Supervisor will request the applicant to obtain title clearance as provided in Part 1807 of this Chapter (FmHA Instruction 427.1) when required, if this has not been done.

(b) The applicant will sign Form FmHA 440-35, "Acceptance of Option," and send the original to the seller if land is being acquired. A copy will be kept in the case folder. If land to be acquired will be subdivided the following action will be taken:

(1) Each assignee will sign Form FmHA 443-10, "Acceptance of Option by Assignee (Land to be Subdivided)."

(2) The buyer will sign Form FmHA 443-11, "Acceptance of Option by Buyer (Land to be Subdivided)."

(3) The originals of the forms will be mailed to the seller and copies retained in the County Office file.

(c) The applicant will arrange with the seller to take possession when land is being acquired. The following forms may be used if appropriate:

(1) Form FmHA 443-5, "Short-Term Lease of Optioned Land."

(2) Form FmHA 443-6, "Short-Term Lease (Between Purchaser and Seller)."

(3) Form FmHA 443-8, "Agreement (Between Seller, Purchaser, and Tenant)."

§ 1943.35 Action after loan approval.

(a) *Requesting check.* If real estate will not be taken as security *or* if real estate is taken as security and satisfactory title evidence is obtained prior to loan approval *or* if the County Super-

visor is reasonably certain that satisfactory title evidence can be obtained so the loan can be closed within 20 working days from the date of the check, loan funds may be requested at the time of loan approval by entering the amount needed in the appropriate block of Form FmHA 440-1. If funds are not requested when the loan is approved, advances in the amount needed will be requested by using Form FmHA 440-57 in accordance with the Forms Manual Insert (FMI). The original Form FmHA 440-57 will be retained in the County Office and a copy sent to the Finance Office. The initial loan advance will be requested when loan approval conditions can be met, satisfactory title to real estate security can be provided, and a date has been set for loan closing.

(1) When all loan funds can be disbursed at, or within 30 days after, loan closing or if the amount of funds that cannot be disbursed does not exceed $5,000, the total amount of the loan will be requested in a single advance.

(2) When loan funds cannot be disbursed as outlined in paragraph (a)(1) of this section the amount needed to meet the immediate needs of the borrower will be requested by submitting a copy of Form FmHA 440-57 to the Finance Office. The amount of each advance should meet the needs of borrowers as much as possible, so that the amount in the supervised bank account will be kept at a minimum. The Finance Office will continue to supply Form FmHA 440-57 until the entire loan has been disbursed. The County Supervisor should tell the borrower to notify the County Office of amounts needed on a timely basis to avoid delays in receiving loan checks.

(b) *Handling loan checks.* (1) When the loan check or the borrower's personal funds are to be deposited in the designated loan closing agent's escrow account, this will be done no later than the date of loan closing. If loan funds or the borrower's personal funds are to be deposited in a supervised bank account, this will be done in accordance with Part 1803 of this chapter (FmHA Instruction 402.1) as soon as possible, but in no case later than the first banking day following the date of loan closing.

(2) If a loan check is received and the loan cannot be closed within 20 working days from the date of the check, the County Supervisor will take appropriate action in accordance with FmHA Instruction 102.1, a copy of which may be obtained from any FmHA Office.

(3) When a check is returned and the loan will be closed at a subsequent date, another check will be requested in accordance with FmHA Instruction 102.1, a copy of which may be obtained as stated in paragraph (b)(2) of this section.

(c) *Cancellation of loan.* Loans may be canceled before loan closing as follows:

(1) The County Supervisor will notify the State and Finance Offices of loan cancellation by using Form FmHA 440-10. The County Office will send a copy of Form FmHA 440-10 to the designated attorney, escrow agent, Regional Attorney, or the title insurance company representative providing loan closing instructions to indicate that the loan has been canceled. If a check received in the County Office is to be canceled, the check will be returned to the Disbursing Center, U.S. Treasury Department, Post Office Box 3329, Kansas City, Kansas 66103, with a copy of Form FmHA 440-10.

(2) Interested parties will be notified of the cancellation as provided in Part 1807 of this chapter (FmHA Instruction 427.1).

(d) *Cancellation of advances.* When an advance is to be canceled, the County Supervisor must take the following actions:

(1) Complete and distribute Form Fm HA 440-10 in accordance with the FMI.

(2) When necessary, prepare and execute a substitute promissory note reflecting the revised total of the loan and the revised repayment schedule. When it is not possible to obtain a substitute promissory note, the County Supervisor will show on Form FmHA 440-10 the revised amount of the loan and the revised repayment schedule.

(e) *Increase or decrease in amount of loan.* If it becomes necessary to increase or decrease the amount of the loan prior to loan closing, the County Supervisor will request that all distributed docket forms be returned to the County Office and reprocessed unless the change is minor and replacement forms can readily be completed and submitted. In the latter case, a memorandum explaining the change will be attached to the revised forms and sent to the Finance Office.

§ 1943.36–1943.37 [Reserved]

§ 1943.38 Loan closing actions.

When a loan closing date has been agree upon, the County Supervisor will notify the borrower and the seller, if any, of the loan closing date. The following appropriate actions will be taken in connection with, and after loan closing.

(a) *Real estate mortgage loans.* When a loan is to be secured by a real estate mortgage, it will be closed in accordance with the applicable provisions of Part 1807 of this chapter (FmHA Instruction 427.1) except as modified for loans of $10,000 or less in § 1943.19(b)(4).

(b) *Loans involving chattel or other nonreal estate security.* All chattel security instruments will be signed and filed as prescribed in Subpart B of Part 1941 of this Chapter for operating loans. The following forms will be used for chattel security:

(1) Form FmHA 440-15, "Security Agreement (Insured Loans to Individuals)."

(2) Form FmHA 440-25, "Financing Statement" or, when authorized, Form FmHA 440A25, "Financing Statement."

(3) State forms may be used if national forms are not legally acceptable. Such forms will require OGC and National Office clearance.

(c) *Applicant's financial condition.* The County Supervisor will review with the applicant the financial statement which was prepared at the time the docket was developed. If there have been significant changes in the applicant's financial condition, the financial statement will be revised and initialed by the applicant and the County Supervisor. When an applicant's financial condition has changed to the extent that it appears that the loan would be unsound or improper, the loan will not be closed. If a revised loan docket is needed to meet loan requirements or determine loan soundness, it will be developed and submitted to the appropriate loan approval official.

(d) *Loan approval conditions.* The County Supervisor will inform the applicant of any loan approval conditions that need to be met. These conditions will usually be included in the notice informing the applicant of the loan closing date. The loan will not be closed if the applicant is unable to meet loan approval conditions.

(e) *Change in the use of funds planned for refinancing.* (1) County Supervisors are authorized to:

(i) Transfer funds planned to be used for refinancing specific debts to other debts when there is a need to do so and

(ii) Transfer funds planned to be used for other purposes to pay small deficiencies in estimates for refinancing debts providing there are sufficient remaining funds to complete any land purchase and planned development.

(2) A revised docket will be developed when:

(i) The total amount of debts to be refinanced has increased in such an amount that planned loan purposes cannot be carried out and

(ii) The applicant is unable to make up any deficiencies from other resources.

(f) *Assignment of income from real estate to be mortgaged.* Unless other-

wise authorized by the State Director in an individual case, income to be received by the borrower from royalties, leases, or other existing agreements under which the value of the real estate security will be reduced will be assigned and disposed of in accordance with Subpart A of Part 1872 (FmHA Instruction 465.1), including provisions for written consent of any prior lienholder. Authority may be given by the State Director to refrain from taking an assignment in cases where the security is otherwise adequate, payment of the loan is reasonably assured from other sources, and the income has already been committed for other purposes or must be relied on by the applicant for essential living or operating expenses. When the County Supervisor deems it advisable, assignments also may be taken on all or a portion of income to be derived from nondepleting sources such as income from bonus payments or annual delay rentals. Such income will be assigned and disposed of in accordance with Subpart A of Part 1872 of this chapter (FmHA Instruction 465.1).

(1) For assignment of income, Form FmHA 443-16, "Assignment of Income from Real Estate Security," will be used, except if it is legally inadequate in a State it may be adapted to the State with the approval of the OGC or an authorized State form may be used instead.

(2) The County Supervisor, upon the advice of the designated attorney, escrow agent, title insurance company, or the OGC, as appropriate, may require acknowledgment and recordation of the assignment. Any cost incident thereto will be paid by the borrower.

(3) At the time form FmHA 443-16 is executed, appropriate notations will be made on Form FmHA 405-1, "Management System Card-Individual," to insure that the proceeds, or the specified portion of the proceeds assigned to FmHA from the transactions, are remitted at the proper time.

(g) *Preparation of the note.* Form FmHA 1940-17, "Promissory Note," will be used and completed in accordance with the FMI.

(1) Separate notes will be prepared for any other FmHA loan made simultaneously with the FO loan. The notes will be completed as provided in the appropriate loan regulation and FMI.

(2) All FmHA notes to be secured by real estate can be described in the same mortgage.

(3) When a loan is closed in December with an installment due on the following January 1, that installment should be collected at loan closing.

(4) The promissory note will be signed as follows:

(i) When loans are made to an individual, the note will be executed in accordance with Part 1807 of this chapter (FmHA Instruction 427.1).

(ii) When a loan is made to a cooperative or a corporation, by:

(A) The official(s) authorized to obtain the loan; and

(B) The individual(s) holding a majority interest in the cooperative or corporation, as individuals.

(iii) When a loan is made to a partnership by all partners in the partnership.

(h) *Supplementary payment agreement.* Form FmHA 440-9, "Supplementary Payment Agreement," should be used for each applicant who regularly (such as weekly, monthly, or quarterly) receives substantial income from an off-farm source, a nonfarm enterprise, or from farming.

(i) *Obtaining insurance.* The applicant will be informed of the insurance requirements set forth in §1943.24 (d).

(j) *Effective time of loan closing.* An FO loan is considered closed when the mortgage is filed for record.

(k) *Distribution of documents after loan closing.* The County Supervisor should review the forms and closing actions. Corrective action should be taken when necessary.

(1) Real estate mortgage.

(i) When the original recorded instrument is returned to County Office:

(A) File the original in County Office file, and

(B) Give a copy to the borrower.

(ii) When the original is retained by recorder:

(A) File a conformed copy in county office file, and

(B) Give a conformed copy to the borrower.

(iii) The County Supervisor will provide copies that may be needed in some cases for interested third parties.

(2) Deeds.

(i) Give the original to borrower, and

(ii) Retain one copy to file.

(3) Title insurance policies.

(i) File the Mortgagee title policy in the county office file, and

(ii) Give the Owner's title policy, if one is obtained, to the borrower.

(4) Water stock certificates or similar collateral will be retained in the county office file.

(5) Abstracts of title.

(i) Return to the borrower, except that when they were obtained from a third party with understanding they will be returned, the abstracts will be sent to the third party. A memorandum receipt will be obtained when abstracts are delivered to the third party.

(ii) Form FmHA 140-4, "Transmittal of Documents" will be used and a receipted copy kept in the County Office. The FMI should be followed for preparing this form.

§ 1943.39-1943.41 [Reserved]

§ 1943.42 Servicing.

FO loans will be serviced in accordance with Subpart A of Part 1872 of this chapter (FmHA Instruction 465.1). Chattel security for FO loans will be serviced in accordance with Subpart A of Part 1930 of this chapter.

§ 1943.43 Subsequent FO loans.

A subsequent FO loan is a loan made to a borrower who is currently in debt for an FO loan.

(a) A subsequent loan may be made for the same purposes and under the same conditions as an initial loan.

(b) The subsequent loan will be processed in the same manner as an initial loan except that a new appraisal of real estate will be required only when real estate is taken as security and one or more of the following exists:

(1) Subsequent loan funds will be used to purchase land or the mortgage will include additional land that is not presently covered by the FmHA real estate mortgage.

(2) The County Supervisor or loan approval official requests a new appraisal report.

(3) The latest appraisal report on the farm is over two years old.

(4) The physical characteristics of the farm have changed significantly.

(5) The subsequent loan will be over $10,000.

(6) There have been significant changes in the market value of real estate in the area within the last two years.

(c) When a new appraisal is not made, an employee authorized to make farm appraisals will provide an estimate of the value of the security. This value will be inserted, dated, and initialed in the comments section of the latest appraisal report.

(d) A new real estate mortgage will not be necessary provided:

(1) All the land which will serve as security for the loan is described on the present real estate mortgage, and

(2) The real estate mortgage has a future advance clause and a State supplement provides authority for using such a clause, and

(3) The required lien priority is obtained with the existing mortgage and future advance clause.

§ 1943.44 Subordinations.

Subordinations in favor of other lenders will be processed in accordance with Subpart A of Part 1872 of this chapter. (FmHA Instruction 465.1).

§ 1943.45-1943.49 [Reserved]

§ 1943.50 State supplements.

State supplements will be issued as necessary to implement this subpart.

ATTACHMENTS: EXHIBIT A

FARMERS HOME ADMINISTRATION LOANS TO ENTRYMEN ON UNPATENTED PUBLIC LANDS

I *GENERAL:* This Exhibit provides additional policies and procedures applicable to (1) insured Farmers Home Administration (FmHA) loans to homestead and desertland entrymen which are to be secured by real estate, and (2) taking of real estate mortgages on entries to secure Farm Ownership, Soil and Water, Individual Recreation, Operating, Emergency, Single Family Housing, and Farm Labor Housing loans in connection with loan making and servicing.

A *Authority.* The authorizations contained in this Exhibit clarify security and servicing for loans to entrymen and are based on Public Law 361. Attachment 1 is a Memorandum of Understanding between the Department of the Interior and the Department of Agriculture and outlines the general procedures to be followed when loans are made to entrymen. Reference to Guaranteed Loans in the Memorandum of Understanding is not applicable.

B *Cooperation Between the Department of Agriculture and the Department of the Interior.* The extension of financial assistance and taking of real estate mortgages authorized in paragraph I A will be facilitated through the cooperation of the FmHA, the Bureau of Land Management (BLM), and the Bureau of Reclamation (BR), as provided in the Memorandum of Understanding.

C *Special Policies Applicable to Dwellings, Land Improvement and Ownership.* An FmHA loan will not be made to an applicant who lacks the capital or who cannot obtain credit to provide (1) any required habitable dwellings within the statutory period specified in pargraph I D for the establishment of residence, and (2) land development sufficient for success but in no case less than that necessary to meet the entry requirements. The Notice of Allowance of Entry is adequate to meet the ownership requirement until the patent is issued.

D *Patent Requirements.* All entrymen will be expected to keep in contact with appropriate officials of the BLM, and BR and comply with pertinent laws and regulations of these Agencies relating to the issuance of patents for homestead or desertland entries. When applicable, reclamation proof must be filed by the borrower at the earliest possible date. Likewise, FmHA personnel concerned with making and securing FmHA loans to entrymen should acquaint themselves with BLM and BR representatives and keep informed of their regulations relating to the issuance of patents for homestead or desertland entries, including but not limited to the following:

1 RESIDENCE AND DEVELOPMENT REQUIREMENTS. A homestead entryman must established residence upon the tract entered within 6 months after date of the entry unless an extension of time is allowed and must maintain a residence there for 3 years. The entryman should notify the authorized officer of the BLM upon establishing residence. When an FmHA loan is made for any purpose, the requirements of the applicable FmHA regulations must be met. Likewise any residence or development requirements of BLM or BR will be met.

2 FINAL PROOF. Specific requirments for final proof for homestead entrymen is found in 43 CFR 2515.7 and final proof for desertland entrymen is found in 43 CFR 2521.6.

a Homestead Entryman: Final proof must be filed within 5 years from the date of allowance of entry. A patent will not be issued until the entryman has submitted final proof. Final proof must show that (1) a habitable dwelling is on the land at the time proof is submitted, (2) residence requirements have been met, (3) the improvements are of such character as to show good faith, and (4) the entryman is a citizen of the United States. When the entryman is ready to submit final proof the entryman should notify the BR and request instructions regarding the procedure to be followed.

b Desertland Entryman: Final proof must be made within 4 years from the date of entry. General requirements of the BLM that must be met include: (1) Filing a map at the initiation of the entry showing the method of irrigation and the proposed source of water supply, (2) an annual expenditure for 3 years of not less than $1 for each acre in the necessary development of the land, (3) filing a map at the end of the third year showing the character and extent of improvements, and (4) yearly proof of expenditures containing statements of two or more credible witnesses who have knowledge that the expenditures were made.

The County Supervisor should consult the BLM official for any additional requirements of the entryman such as preparing a notice of intention to make final proof, publication of final proof and submission of final proof.

3 RECLAMATION PROOF. Reclamation proof for homestead entryman may be submitted with, or at any time after, the submission of homestead proof. In additon to the final homestead proof mentioned in paragraph I D 2, the filing of reclamation proof is required as a condition for obtaining a patent to any entry within a reclamation project. Reclamation proof must show reclamation and cultivation of at least one-half of the irrigable area in the entry for 2 years immediately preceding the date of submission of proof and the payment of all reclamation charges due at that time. Reclamation proof, in proper form, must be submitted to the official in charge of the project accompanied by the payment of final homestead commissions.

II *LOAN PROCESSING:* When making an FmHA loan to be secured by the entryman's land, existing FmHA policies, procedures, and loan authorities applicable to the particular type of loan will be met, except as follows:

A *Applications.* 1 APPLICATIONS FROM ENTRYMEN NOT IN A FEDERAL RECLAMATION PROJECT. An application for an FmHA loan from an entryman with respect to public land not within a Federal reclamation project will be considered only after the entryman has selected a farm and received the Notice of Allowance of Entry from BLM. The original or a copy of the document showing allowance of entry must be attached to Form FmHA 410-1, "Application for FmHA Services."

2 APPLICATIONS FROM ENTRYMEN IN A FEDERAL RECLAMATION PROJECT. An application for an FmHA loan from an entryman with respect to public land within a Federal reclamation project will not be considered until after the entryman has received a Certificate of Eligibility from BR and has selected a farm. If at the time of making application the entryman has received the Notice of Allowance of Entry from BLM, he will attach the original or a copy of such document to Form FmHA 410-1. If the entryman has not received the Notice of Allowance of Entry, a copy of the Certificate of Eligibility must be attached to the FmHA application. However, the docket will not be approved until the original or a copy of the document showing Notice of Allowance of Entry has been received from the applicant and placed in the loan docket.

3 SUPPLEMENTAL INFORMATION ON APPLICANT. At the time of making application for an FmHA loan to be secured by real estate, the entryman may be requested to authorize the FmHA to obtain from BLM or BR any available information concerning the entryman's application for homestead, desertland, or reclamation entry for use by the FmHA in determining the entryman's eligibility for the loan as provided in the Memorandum of Understanding.

B *Special Items in Development of Loan Dockets for Loans to be Secured by the Entryman's Land.* Loan dockets for loans to entrymen will be prepared and distributed in accordance with the applicable FmHA regulations, except as modified by this paragraph.

1 DEVELOPMENT PLAN. An extra copy of Form FmHA 424-1, "Farm Development Plan" will be prepared and sent to BLM in each case. When the entryman's farm is located in a Federal reclamation project, any development items listed on Form FmHA 424-1 must be consistent with the overall plans for development of the reclamation project. Consequently, when Form FmHA 424-1 provides for the leveling of land or the installation of farm distribution and surface drainage systems another extra copy will be prepared and sent to the Reclamation Project Officer as soon as the County Supervisor determines that there is a reasonable likelihood that the loan will be made. If Form FmHA 424-1 conflicts with the overall BR plans for the development of the Federal reclamation project, officials of the BR will so advise the County Supervisor. The processing of the loan will not be delayed while awaiting such advice from BR but the FmHA loan will not be closed until Form FmHA 424-1 is revised to make it consistent with the BR plans. The County Supervisor will advise the Project Officer or Authorized Officer in writing whenever changes are made in the plans approved by the FmHA.

C *Title Clearance.* 1 The entryman applicant will be required to furnish and pay for a certified statement prepared by a qualified title examiner or abstractor or as otherwise required by a State supplement which will include finding with respect to any outstanding land leveling contracts and any other claims of any kind on record against the entry. This certified statement will be included in the loan docket. Where there is an outstanding land leveling contract, the applicant's copy of such contract also will be included in the loan docket and returned to the borrower when the loan is closed.

2 The State Director, upon advice from the Office of the General Counsel, will inform the County Supervisor regarding the acceptable form of certified statement required in paragraph II C 1.

D *Loan Closing.* Except as provided by this Exhibit, FmHA loans will be closed in accordance with the applicable FmHA regulation.

1 REAL ESTATE MORTGAGE FORMS. Whenever the entry is located within a Federal reclamation project two extra copies of Form FmHA 427-1, "Real Estate Mortgage," will be prepared. If the entry is not within a Federal reclamation project, one extra copy of the real estate mortgage will be prepared. After the loan has been closed, a conformed copy of the real estate mortgage will be sent to BLM and, if the entry is located in a Federal reclamation project, a conformed copy of the mortgage also will be sent to the BR. The entyman's serial number which appears on the original document showing Notice of Allowance of Entry will be typed on the original, and the conformed copies of the Mortgage for BLM and BR will indicate the date and place of recordation and the book and page numbers.

2 COUNTY OFFICE RECORD OF ALLOWANCE OF ENTRY. When the loan is closed a copy will be made of the original document showing Notice of Allowance of Entry for the borrower's county office case folder, unless a copy was funished. The County Supervisor will sign the following certification which will be typed on this copy:

"I hereby certify that this is an exact copy of the Notice of Allowance of Entry issued by the BLM to ——— (Entryman's Name) residing at ——— (Entryman's Address)

" ———
County Supervisor

When the original document showing allowance of entry is furnished, it will be returned to the borrower.

3 ENTRIES REQUIRED ON MANAGEMENT SYSTEM CARDS. Upon closing the loan, the County Supervisor will enter a notation on the borrower's Management System Card (Form FmHA 405-1) as to the date when the borrower must submit final proof to the BLM in fulfillment of the requirements to obtain a patent. If residence has not been established, a notation also will be made on the Management System Card of the date such residence must be commenced. It will be the responsibility of the County Supervisor to follow through to see that the borrower completes these actions.

III MORTGAGE ON REAL ESTATE FOR ADDITIONAL SECURITY. When it is deemed advisable to take a mortgage on the homestead or desertland entry as additional security or to otherwise protect the interests of the FmHA, a real estate mortgage will be taken on such entry. The mortgage will be taken as authorized in Subpart A of Part 1872 of this chapter (FmHA Instruction 465.1). In such a case, a copy of the real estate mortgage will be sent to BLM and, if the farm is located in a Federal reclamation project, a copy of the mortgage also will be sent to the BR.

IV *DEFAULT AND DISPOSAL OF UNITS:* The County Supervisor will coordinate with the local BLM and BR representatives and keep the State Director currently advised on any cases in default or where default is anticipated. The State Director will be guided by Attachment I and advice of the Office of the General Counsel in fulfilling FmHA's responsibilities for disposal of any units on which a patent has not been issued. Units on which a patent has been issued will be serviced by applicable FmHA procedures.

EXHIBIT A

ATTACHMENT I

MEMORANDUM OF UNDERSTANDING BETWEEN THE DEPARTMENT OF AGRICULTURE AND THE DEPARTMENT OF THE INTERIOR RELATING TO FINANCIAL ASSISTANCE BY THE FARMERS HOME ADMINISTRATION TO ENTRYMEN ON PUBLIC LANDS

PART I—PURPOSE AND DEFINITIONS

A. *Purpose.* The purpose of this memorandum is to outline the general procedure to be followed by the Farmers Home Administration (FHA), the Bureau of Land Management (BLM), and the Bureau of Reclamation (BR), when FHA extends financial assistance to entrymen on unpatented public lands, including public land in reclamation projects.

B. *Definitions.* Unless otherwise indicated in this memorandum:

(1) The term "unit" will be used to describe an adequate family farm, less than adequate family farm, a portion of a farm or any other tract of land.

(2) The term "FHA" also includes its insured lenders and guaranteed lenders.

(3) The term "outstanding balance" includes (a) the unpaid indebtedness under the FHA mortgage, (b) any unpaid costs owed to BR for construction by it of a special distribution system to serve a unit where such costs have been allocated to the unit as a separate item, and (c) any portion of an SW association loan made by FHA for construction of a domestic water system to serve the unit and secured by a lien on the unit. It does not include any portion of an SW association loan made by the FHA for construction of a domestic water system to serve the unit and not secured by a lien on the unit, nor project construction costs charged to the unit.

(4) Pub. L. 361, 81st Congress (7 U.S.C. 1006a and 1006b), is referred to as "Pub. L. 361." It applies to Farm Ownership (FO), Operating (OL), Soil and Water Conservation (SW) loans made to individuals and Recreation (RL) loans to individuals under the Consolidated Farm and Rural Development Act of 1972 (7 U.S.C. 1921) and prior laws. It does not apply to Emergency (EM) loans made under that act or prior laws, nor to Housing (RH) loans made under Title V of the Housing Act of 1949 (42 U.S.C. 1471), or to any other loans made or administered by FHA.

(5) Pub. L. 419 (86 Stat. 675) amended Pub. L. 361 to add desertland entrymen as eligible for the same loans as indicated in (4) above.

(6) The term "Project Officer" refers to the BR Officer who may properly hold the requisite responsibility for the project or area in question.

(7) The term "authorized officer" refers to the BLM Officer to whom has been delegated the required responsibility for the area in question.

(8) The term "County Supervisor" means County Supervisor for FHA.

(9) The term "State Director" means State Director for FHA.

PART II—GENERAL PROVISIONS

A. FHA regulations will govern making and servicing FHA loans, including the taking of mortgages as additional security for existing FHA loans.

B. In connection with applications for FHA loans or credit sales to eligible applicants, the Project Officer of BR or the authorized officer of BLM, upon written request of the County Supervisor, will furnish the following:

1. Written consent to make the applicant an FHA loan or to secure an existing FHA loan.

2. Any information which BR or BLM has concerning the applicant, provided, in the case of BR information, the request has the following authorizations attached to it:

Date———, 19—

I hereby authorize the Bureau of Reclamation to make available to the Farmers Home Administration any information the Bureau may have concerning my transactions with it. This information may be used by the Farmers Home Administration in determining my eligibility and qualifications for a loan, and is to be treated as confidential.

(Type name of applicant below signature)

signed ———
(applicant)

signed ———
(spouse)

3. A statement of account, showing the applicant's outstanding balance if there is a debt owed to BR (principal balance, accrued unpaid interest, and daily interest accrual rate, any other charges and any unpaid special distribution system costs, and the amount, delinquent).

4. A report on any development and residence requirements which have not been completed and on eligibility of the unit for water, including full information on the status of any excess land.

5. Advice as to whether the applicant is in default because of failure to pay water charges, or because of breach of any other agreements with the Bureau of Reclamation.

C. A homestead or desertland entryman on public land not in a reclamation project may apply to the County Supervisor for an FHA loan when his entry has been allowed. The original or a copy of the Notice of Allowance of Entry from BLM must be attached to the application for a loan from FHA. Upon request of the County Supervisor, the authorized officer of the BLM, to the extent applicable will furnish any information that office has with respect to the applicant entryman.

An applicant for a homestead on a reclamation project likewise may apply to the County Supervisor for an FHA loan when he has received from the BR a Certificate of Eligibility and has selected a unit. A copy of the Certificate of Eligibility must be attached to the application for a loan from the FHA unless the unit has been entered, in which case the Notice of Allowance of Entry will be attached to the application for a loan. Each application for such a loan filed by an entryman will be processed in substantially the same manner as other application of a similar character, including the preparation of the loan docket, certifications by the FHA County Committee, and approval by the duly authorized loan approving official. If any conflict exists between the development plans of FHA and BR or BLM, the difference must be reconciled prior to loan closing. A copy of the Notice of Allowance of the Entry will be required in the loan docket before a loan is closed.

D. Upon closing of a loan to an entryman, when real estate security is taken, the

County Supervisor will send copies of the real estate mortgage to the authorized officer of BLM, and to BR if appropriate. The County Supervisor will indicate on the mortgage the date such instrument was filed for record and the entryman's homestead or desertland entry serial number. Copies of these instruments will serve as notification to BLM or BR that a loan has been made by FHA and may be used in connection with the servicing of such loans as indicated herein.

PART III—LOAN SERVICING

A. If the entryman-borrower repays his indebtedness in full to FHA before a patent is issued to him by BLM, the County Supervisor will promptly notify the BLM authorized officer of the release of the mortgage lien.

B. When final homestead or desertland entry proof or homestead proof and reclamation proof submitted by an entryman-borrower is accepted by the BLM and a patent is issued before BLM is notified of the full repayment of the indebtedness to FHA, the patent issued will make reference to the FHA mortgage as follows:

"This patent is issued subject to the rights of the United States under a certain mortgage or deed of trust executed by ——— and ——————— under date of ———————, 19 —, recorded in Book ———, Page ——— of the records of the Recorder of Deeds for ———."

In such cases, if the patent is issued to a person other than the mortgager or the purchaser at foreclosure of the mortgage, there shall also be inserted after the recital of recordation of the mortgage the following words: "Which the patentee assumes and agrees to pay."

C. Upon issuance of the patent to the entryman-borrower, the authorized officer of BLM will notify the State Director that the patent has been issued and mailed to the entryman-borrower. Upon such notification, the County Supervisor will advise the entryman-borrower to record the patent promptly in the real estate records in the county in which his unit is located, and will check the records to determine that the recordation has been accomplished. The issuance of the patent will terminate any further relationship between BLM and FHA insofar as the entryman-borrower is concerned.

D. In the event that an entryman-borrower has not submitted Final Proof within the statutory period from the date of allowance of his entry, BLM will send to the County Supervisor a copy of the Notice of Expiration of the statutory period of entry when it is mailed to the entryman-borrower. The copy of the notice will be used by the County Supervisor in urging the entryman-borrower to submit final proof with appropriate explanation of his failure to do so before the expiration of the statutory period.

PART IV—DEFAULTS

When an entryman-borrower is in default in the terms of his mortgage to FHA, in complying with requirements to obtain a patent, or in meeting the requirements to make reclamation proof, the following procedures will apply:

A. *Default on Mortgage.* BLM will issue a decision canceling any entry upon which there is an FHA mortgage when so requested in writing by the State Director. FHA may request a cancellation whenever any default occurs in the terms, conditions, covenants, and obligations contained in the mortgage. Included among the terms, conditions, covenants, and obligations in the mortgage taken by FHA will be the provision that the entryman-borrower must comply with the legal and administrative regulations for the issuance of a patent and, if the entry is located in a reclamation project, with the legal and administrative regulations for making reclamation proof.

1. The State Director will furnish the authorized officer of BLM with an explanation of the need for cancellation. When the entry is located in a reclamation project, the State Director also will notify the BR Regional Director and furnish him with an explanation of the need for cancellation.

2. The BR Regional Director may request the State Director to reconsider the necessity for cancellation of the entry when (a) BR can furnish information which may not have been considered by FHA, (b) there is an outstanding contract between BR and the entryman borrower for the repayment of charges for land leveling, or (c) the entryman-borrower has not made reclamation proof. If such a request is made, a copy will be furnished to the BLM which shall suspend action on the FHA request until further notified by the FHA. Ordinarily, BR will not request a reconsideration of the necessity for cancellation unless there appears to be a reasonable basis upon which a solution can be worked out so that the entryman-borrower may retain possession of his unit.

3. If BR does not ask the State Director to reconsider his request to cancel within 30 days, BLM will issue a decision cancelling the entry.

4. If BR asks for a reconsideration of the request to cancel, it will furnish the State Director immediately new information which it believes should be considered by FHA in reaching a decision. When FHA has reached a final decision, it will notify the BLM and the BR of the decision reached. Within 30 days after receiving notice of the final decision of the State Director that the entry should be canceled, BLM will notify the entryman-borrower of the cancellation of his entry in accordance with the usual procedure. A copy of the notice of the cancellation will be mailed to the State Director at the same time.

B. *Default in Meeting Entry Requirments.* If BLM proposes to take any action toward cancellation of an entryman-borrower's entry, it will notify the State Director and the BR Regional Director if the unit is located in a reclamation project, in writing at least 30 days before any action is commenced. The notification will be accompanied by an explanation as to why cancellation will be made. Within the 30-day period either or both FHA and BR may present any new information for the consideration of the BLM in reaching a decision to, or not to, cancel the entry. When BLM has reached a final decision, it will inform the State Director and the BR Regional Director.

C. *Default in Meeting Reclamation Requirements.* In the event BR intends to recommend cancellation of an entryman-borrower's entry, the Superintendent of the Reclamation Project will notify the State Director in writing at least 30 days before such recommendation is to be submitted to BLM for cancellation. The notification will be accompanied by an explanation as to why cancellation of entry is to be requested. FHA may request a reconsideration of BR's intended recommendation to cancel within the 30-day period and will furnish any new information which it believes should be considered by BR when reaching a final decision. When BR has reached a final decision, it will notify the State Director.

PART V—DISPOSAL OF UNITS AFTER CANCELLATION OR RELINQUISHMENT

After cancellation or relinquishment of an entry upon land on which FHA holds a mortgage, such land shall be opened to reentry only to persons eligible for an original entry, and eligible for an FHA loan unless the FHA Loan is paid in full. Any unit disposed of hereunder shall be subject to the outstanding balance owed to FHA and BR, or to that portion of the outstanding balance as agreed upon by the FHA and BR or BLM, as appropriate, if the entryman is eligible for an FHA loan.

A. *One Year Limit.* Under Pub. L. 361, BLM or BR can permit a new entry only during one year after cancellation or relinquishment of the old entry where the FHA mortgage is subject to Pub. L. 361 (FO, OL, and SW). In other cases such as RH and EM, the one-year limitation does not apply, but BLM or BR will nevertheless arrange for a new entry within the one-year period if it is practicable to do so.

B. *Custody and Expenses.* While BLM or BR has disposal authority it will assume custodial responsibility for the unit, but the County Supervisor and the Project Officer will determine the actions necessary to protect the interests of both FHA and BLM or BR. Any expenses incurred for protection of FHA's interest will be paid by FHA and added to the mortgage debt.

C. *Disposal of Units.*—1. *Within a Reclamation Project.* As soon as possible, after cancellation or relinquishment, FHA will make an appraisal to determine the value of the property and will report its findings to BR on appropriate FHA appraisal forms. The State Director and the BR Regional Director after receipt of the report by BR will jointly participate in determining the amount of indebtedness owed to the United States which shall be required in accordance with the existing law to be paid and the terms under which repayment will be made.

a. BR will, thereafter, for that particular unit, proceed to inform the public of the availability of the unit in accordance with its established procedures. However, before BR issues a Certificate of Eligibility to any applicant for re-entry it will submit to the County Supervisor (a) a list of the names of the applicants who can qualify for a Certificate of Eligibility and the order in which such applicants shall be considered, and (b) the information submitted by each of the qualified applicants in support of his application for the entry.

b. The County Supervisor and the County Committee will examine the list and the information to determine which of the applicants are eligible for an FHA loan. The list of any documentary information furnished will be returned to BR with a written statement setting forth the names in the list which are eligible for FHA assistance. Upon receiving such information from FHA, BR will proceed to select, in accordance with established procedures, from among the applicants determined to be eligible for a Certificate of Eligibility and an FHA loan, one ap-

plicant but not to exceed two alternate applicants, to whom the unit may be awarded upon qualifying to assume the indebtedness.

c. BR will issue a Certificate of Eligibility to the selected applicant. The Certificate of Eligibility will be sent to the FHA County Supervisor who will instruct the applicant to file his Certificate of Eligibility and application for entry with BLM which will issue a Notice of Allowance of Entry if the applicant is qualified to make entry. The applicant will be allowed to occupy the unit when he has received the Notice of Allowance of Entry and has completed arrangements to assume the required amount of indebtedness owed to FHA or to refinance such indebtedness. FHA will send a copy of the assumption agreement or note and mortgage, if any, executed by the new occupant to BR and BLM.

d. FHA may permit an eligible person to whom the unit is awarded to assume that part of the indebtedness determined to be within the value of the property.

2. *Units Not Within a Reclamation Project.* As soon as possible, after cancellation or relinquishment, FHA will make an appraisal to determine the value of the property and to determine the amount of indebtedness owed on FHA loans that is to be paid by the new entryman. The FHA will report the amount of the FHA debt to be assumed to the BLM.

a. The BLM will, thereafter, for that particular entry, proceed to inform the public of the availability of the land in accordance with its established procedures. BLM will, following the opening of the land to application, submit to the County Supervisor (a) a list of the names of the applicants who can qualify for the allowance and the order in which such applicants shall be considered, and (b) the information submitted by each of the applicants in support of his application.

b. Thereafter the FHA will select from the list the first applicant for the entry who can qualify for an FHA loan.

c. FHA will then notify BLM of the applicant selected. The authorized Officer will, as soon as possible after notification, issue the Notice of Allowance. The Allowance of Entry or an attachment thereto will show that entry is conditioned upon payment or assumption of the FHA debt. A copy of appropriate notice will be mailed to the State Director.

d. Upon receipt of the Notice of Allowance of Entry by the applicant, FHA will instruct him to occupy the unit and will complete arrangements for him to assume or refinance the indebtedness or the part thereof determined to be within the value of the property. FHA will send a copy of the assumption agreement or note and the mortgage, if any, executed by the new occupant to BLM.

e. FHA may permit an eligible person to whom the unit is awarded to assume that part of the indebtedness determined to be within the value of the property.

D. *Disposal of Units By Farmers Home Administration.* 1. If no entry is allowed within one year after cancellation or relinquishment of a prior entry on which FHA holds a mortgage and the property was security for an FHA loan subject to Pub. L. 361 even though it also was security for a loan not subject to that law, FHA will dispose of the unit in accordance with the FHA regulations. If the unit is located on a reclamation project, such disposition shall be subject, however, to outstanding reclamation charges on the land due the United States.

2. If the property cannot be sold immediately, the FHA will arrange for a lease or caretaker agreement as necessary to protect the Government's interests.

3. When FHA prepares to sell a unit, it will also advise BLM or BR, as appropriate, of the name of the purchaser and will request issuance of a patent to the purchaser. If the unit is in a reclamation project, BR will furnish, as soon as possible to FHA, information concerning any outstanding reclamation charges on the land due the United States.

4. The sale may be for cash or on credit. In the event the sale is on credit, FHA will furnish a copy of the mortgage to BLM or BR, as appropriate, which shall make reference, in any patent issued thereafter, to the outstanding mortgage of FHA.

This memorandum of understanding supersedes the earlier memorandum of understanding signed on February 17, 1950, and March 25, 1950, respectively, by the Secretaries of Agriculture and Interior.

Approved:

JACK O. HORTON,
Assistant Secretary of the Interior.

Date: October 22, 1974.

Approved:

WILLIAM ERWIN,
Assistant Secretary of Agriculture.

Date: December 16, 1974.

Subpart B—Insured Soil and Water Loan Policies, Procedures, and Authorizations

Sec.
1943.51 Introduction.
1943.52 Objectives.
1943.53 Management assistance.
1943.54 Definitions.
1943.55 [Reserved]
1943.56 Credit elsewhere.
1943.57-1943.59 [Reserved]
1943.60 Preference.
1943.61 Receiving and processing applications.
1943.62 Soil and Water loan eligibility requirements.
1943.63-1943.65 [Reserved]
1943.66 Loan purposes.
1943.67 Loan limitations.
1943.68 Rates and terms.
1943.69 Security.
1943.70-1943.72 [Reserved]
1943.73 General provisions.
1943.74 Special requirements.
1943.75 Options, planning and appraisals.
1943.76 Planning and performing development.
1943.77 Relationship with other lenders.
1943.78 [Reserved]
1943.79 Relationship with other FmHA loans and guaranteed or economic emergency loans.
1943.80 County Committee certification.
1943.81 [Reserved]
1943.82 Loan docket processing.
1943.83 Loan approval or disapproval.
1943.84 Requesting title service.
1943.85 Action after loan approval.
1943.86-1943.87 [Reserved]
1943.88 Loan closing actions.
1943.89-1943.91 [Reserved]
1943.92 Servicing.
1943.93 Subsequent SW loans.
1943.94 Subordinations.
1943.95-1943.99 [Reserved]
1943.100 State supplements.

Exhibit A—Memorandum of Understanding Between the Bureau of Reclamation, Department of the Interior and the Farmers Home Administration, Department of Agriculture.

AUTHORITY: 7 U.S.C. 1989; 5 U.S.C 301; delegation of authority by the Sec. of Agri., 7 CFR 2.23; delegation of authority by the Asst. Sec. for Rural Development 7 CFR 2.70.

Subpart B—Insured Soil and Water Loan Policies, Procedures and Authorizations

§ 1943.51 Introduction.

This Subpart outlines the policies, procedures, and authorizations for making Soil and Water (SW) loans under the Consolidated Farm and Rural Development Act, as amended. It is the policy of this Agency to make loans to any otherwise qualified applicant without regard to race, color, religion, sex, marital status, age or national origin. See Exhibit A of Subpart A of this part for making SW loans to entrymen on unpatented public lands. See Subpart R of Part 2000 of this chapter for the Memorandum of Understanding between the Farm Credit Administration (FCA) and the Farmers Home Administration (FmHA).

§ 1943.52 Objectives.

The basic objectives of the SW loans are to encourge and facilitate the improvement, protection, and proper use of farmland by providing financing for soil conservation, water development, conservation, and use; forestation; drainage of farmland; the establishment and improvement of permanent pasture; pollution abatement and control; and other related measures consistent with all Federal, State and local environmental quality standards. Achieving these objectives should help farmers to make needed land-use adjustments and should lessen the impact of adverse weather conditions on farming operations.

§ 1943.53 Management assistance.

Supervision will be provided borrowers to the extent necessary to achieve loan objectives and protect the Government's interests, in accordance with Subpart B of Part 1924 of this chapter.

§ 1943.54 Definitions.

(a) *Approval official.* A field official who has been delegated loan and grant approval authorities within applicable loan programs, subject to the dollar limitations contained in tables available in any FmHA office.

(b) *Cooperative.* An entity which has farming as its purpose and whose members have agreed to share the

profits of the farming enterprise. The entity must be recognized as a farm cooperative by the laws of the State(s) in which the entity will operate a farm.

(c) *Corporation.* For the purposes of this regulation, a private domestic corporation created and organized under the laws of the State(s) in which the entity ill operate a farm.

(d) *Farm.* A tract or tracts of land, improvements, and other appurtenances considered to be farm property which is used or will be used in the production of crops or livestock. This includes the production of aquatic organisms under a controlled or selected environment owned or operated by the applicant or borrower. It will also include a residence which, although physically separate from the farm acreage, is ordinarily treated as a part of the farm in the local community.

(e) *Fish farming.* The production of fish, mollusks, or crustaceans (or other invertebrates) under controlled conditions in ponds, lakes, streams, or similar holding areas. This involves feeding, tending, harvesting and other activities as are necessary to properly raise and market the products.

(f) *Indefinite parole.* To verify that applicants other than citizens are legally admitted to the U.S. on indefinite parole, such applicants must provide their Form I-94, "Immigrants on Indefinite Parole" card.

(g) *Leasehold.* A right to use farm property for a specific period of time under conditions provided for in a lease agreement.

(h) *Majority interest.* Any individual or a combination of individuals owning more than a 50 percent interest in a cooperative, corporation or partnership.

(i) *Mortgage.* Any form of security interest or lien upon any rights or interest in real property of any kind. In Louisiana and Puerto Rico the term "mortgage" also refers to any security interest in chattel property.

(j) *Partnership.* An entity consisting of individuals who have agreed to operate a farm. The entity must be recognized as a partnership by the laws of the State(s) in which the entity will operate a farm and must be authorized to own both real and personal property and to incur debts in its own name.

(k) *Security.* Property of any kind subject to a real or personal property lien. Any reference to collateral or security property shall be considered a reference to the term security.

(l) *State or United States.* The United States itself, each of the several States, the Commonwealth of Puerto Rico., The Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

§ 1943.55 [Reserved]

§ 1943.56 Credit elsewhere.

The applicant shall certify in writing on the appropriate forms, and the County Supervisor shall determine, that adequate credit elsewhere is not available to finance the applicant's actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near where the applicant resides for loans for similar purposes and periods of time.

(a) When based on the County Supervisor's knowledge of other lender programs, the review of the application indicates there is no possibility for the applicant to obtain the credit needed from other lender(s), this conclusion and the basis for it will be recorded in the running record and further checks will not be necessary.

(b) If the County Supervisor questions whether the applicant is unable to obtain the credit needed from other agricultural lenders in the area, such lenders will be contacted and the findings recorded in the running record.

(c) If the County Supervisor receives letters or other written evidence from a lender(s) indicating the applicant is unable to obtain satisfactory credit, these will be included in the loan docket.

(d) Property and interests in property owned and income received by an individual applicant, a cooperative and its members as individuals, a corporation and its stockholders as individuals, and a partnership and its members as individuals will be considered and used by an applicant in obtaining credit from other sources.

§§ 1943.57–1943–59 [Reserved]

§ 1943.60 Preference.

An application on hand from a veteran as defined in Subpart A of Part 1801 of this chapter (FmHA Instruction 410.1) will be given preference over an application from a non-veteran on file at the same time when it appears that available funds will be inadequate to meet the needs of all applicants.

§ 1943.61 Receiving and processing applications.

(a) Applications will be received and processed in accordance with Subpart A of Part 1801 of this chapter (FmHA Instruction 410.1).

(b) If the applicant is a cooperative, corporation, or partnership the following information will be obtained and included in the loan docket:

(1) A complete list of members, stockholders, or partners showing the address, citizenship, principal occupation, and the number of shares and percentage of ownership or of stock held in the cooperative or corporation by each or the percentage of interest held in the partnership by each.

(2) A current personal financial statement from each of ths principal members of a cooperative, partners of a partnership or stockholders of a corporation. For this purpose, a principal is one owning or controlling as much as 10 percent of the ownership, stock or interest of a cooperative, corporation, or partnership. If no member, partner, or stockholder owns or controls as much as 10 percent, each member, partner, or stockholder will be considered as a principal. Any other member, partner or stockholder whose financial statement, in the judgment of the loan approval official, would be pertinent to a consideration of the financial strength of the cooperative, corporation or partnership will also be required to provide personal financial statements.

(3) A current financial statement from the cooperative, corporation, or partnership itself.

(4) A copy of the cooperative or corporation's charter, or any partnership agreement, any articles of incorporation and bylaws, any certificate or evidence of current registration (good standing) and a resolution(s) adopted by the Board of Directors, members or stockholders authorizing specified officers of the cooperative, corporation, or partnership to apply for and obtain the desired loan and execute required debt, security and other instruments and agreements.

(5) A copy of any written lease, contract, or agreement entered into by the cooperative, corporation, or partnership which may be pertinent to a consideration of its application.

§ 1943.62 Soil and water loan eligibility requirements.

(a) *An individual must.* (1) Be a citizen of the United States (see § 1943.54 (1) for the definition of "United States"), legally admitted as a permanent resident of the United States or on indefinite parole.

(2) Possess the legal capacity to incur the obligations of the loan.

(3) Have the character (as related solely to debt repayment ability and reliability), managerial ability and industry to carry out the proposed operation.

(4) Honestly try to carry out the conditions and terms of the loan.

(5) Be unable to obtain sufficient credit elsewhere to finance actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near which the applicant resides for loans for similar purposes and periods of time.

(6) Be the owner or operator of a farm after the loan is closed.

(7) If a tenant, have a satisfactory written lease for a sufficient period of time and under terms that will enable the operator to obtain reasonable returns on the improvements to be made with the SW loan. In addition, the lease or separate agreement should provide for compensating the tenant for any unexhausted value of the improvements upon termination of the lease.

(b) *A cooperative, corporation or partnership must.* (1) Have the character (as related solely to debt repayment ability and reliability), management ability and industry to carry out the proposed operation; and

(2) Honestly try to carry out the conditions and terms of the loan.

(3) Consist of members, stockholders or partners holding a majority interest who are citizens of the United States (see § 1943.54 (1) for the definition of "United States"), legally admitted as permanent residents of the United States or on indefinite parole *and* who meet the requirements of paragraphs (b) (1) and (2) of this section.

(4) Be authorized to own and/or operate a farm in the State(s) in which the farm is located.

(5) Be unable to obtain sufficient credit elsewhere, either as an entity or as individual members, stockholders or partners, to finance actual needs at reasonable rates and terms taking into account prevailing private and cooperative rates and terms in or near the community for loans for similar purposes and periods of time.

(6) Be controlled by individuals engaged primarily and directly in farming or ranching in the United States after the loan is made.

(7) Be the owner or operator of the farm after the loan is made.

(8) If a tenant, have a satisfactory written lease for a sufficient period of time and under terms that will enable the applicant to obtain reasonable returns on the improvements made with the loan. In addition, the lease or separate agreement should provide for compensating the tenant for any unexhausted value of the improvements upon termination of the lease.

(9) Consist of members, stockholders or partners who do not as individuals have an FO, SW, RL, or OL loan and are not members of another entity that has an FO, SW, RL, or OL loan.

§ 1943.63–1943.65 [Reserved]

§ 1943.66 Loan purposes.

Loans that are consistent with all Federal, State and local environmental quality standards may be made to:

(a) Pay costs for construction, materials, supplies, equipment, and services related to land and water development, use, conservation; and energy saving measures related to soil and water conservation, such as:

(1) Terraces, dikes, reservoirs, ponds, tanks, cisterns, liquid and solid waste disposal facilities, wells, pipelines, pumping and irrigation equipment, ditches and canals for drainage, waterways, and erosion control structures.

(2) Drainage of land which is part of an operating farm unit.

(3) Land clearing.

(4) Sodding, subsoiling, land leveling, liming and fencing.

(5) Fertilizer and seed used in connection with a soil conservation practice or to establish or improve permanent vegetation.

(6) Forestation for sustained yield and tree planting for erosion control or shelter belt purposes.

(7) Gasoline, oil, and equipment rental or hire connected with establishing or completing the development.

(8) Reasonable expenses incidental to obtaining, planning, closing and making the loan, such as fees for legal, engineering or other technical services and first year insurance premiums which are required to be paid by the borrower and which cannot be paid from other funds. Loan funds may also be used to pay the borrower's share of Social Security taxes for labor hired by the borrower in connection with making any planned improvements.

(9) Purchase or repair of special-purpose equipment such as terracing, land leveling and ditching equipment, provided;

(i) Such equipment is needed and will facilitate the completion or maintenance of the planned improvement, and

(ii) The cost of the equipment plus the other costs related to improvement will not be more than if performed by a contractor or by another method.

(b) Pay the costs of meeting Federal, State or local requirements for agricultural, animal, or poultry waste pollution abatement and control facilities, including construction, modification, or relocation of the farm or farm structures if necessary to comply with such pollution abatement requirements.

(c) Acquire a source of water to be used on land the applicant owns, will acquire, or operates including:

(1) The purchase of water stock or membership in an incorporated water users association.

(2) The acquisition of a water right through appropriation, agreement, permit, or decree.

(3) The acquisition of water supply or right, and the land on which it is presently being used, when the water supply or right cannot be purchased without the land, provided:

(i) The value of the land without the water supply or right is only an incidental part of the total price, and

(ii) The water supply will be transferred to, and used more effectively on, other land owned or operated by the applicant.

(d) Refinance debts subject to the following:

(1) The debts were incurred for authorized SW loan purposes.

(2) All development or repair work conforms to FmHA standards or those standards will be met with the SW loan.

(3) The applicant's present creditors will not furnish credit at rates and terms the applicant can meet.

(4) The County Supervisor, by contacting the appropriate lender, verifies and documents, either in the running record or by letter from the lender, the need to refinance all secured debts and major unsecured debts. The unpaid balance on the debts to be refinanced will be verified.

(e) Purchase land or an interest therein for sites or rights-of-way and easements upon which a water or drainage facility will be located.

(f) Pay that part of the cost of facilities, improvements, and "practices" which will be paid for in connection with participation in programs administered by agencies such as the Agricultural Stabilization and Conservation Service or the Soil Conservation Service only when such costs cannot be covered by purchase orders or assignments to material suppliers or contractors. If loan funds are advanced and the portion of the payment for which the funds were advanced is likely to exceed $1,000, the applicant will assign the payment to the Farmers Home Administration (FmHA).

(g) Provide water supply facilities for dwellings and farm buildings, including such facilities as wells, pumps, farmstead distribution systems, and home plumbing.

(h) Pay costs of land and water development, use, and conservation essential to the applicant's farm, subject to the following:

(1) Such a loan may be made on land with defective title owned by the applicant (see § 1943.69 (b)) or on land in which the applicant owns an undivided interest providing:

(i) The amount of funds used on such land is limited to $25,000,

(ii) There is adequate security for the loan, and

(iii) The tract is not included in the appraisal report.

(2) Such a loan may be made on land leased by the applicant providing:

(i) The terms of the lease are such that there is reasonable assurance the

applicant will have use of the improvement over its useful life.

(ii) A written lease provides for payment to the tenant or assignee any unexhausted value of the improvement if the lease is terminated.

(iii) There is adequate security for the loan.

§ 1943.67 Loan limitations.

An SW loan will not be approved if:

(a) The borrower has outstanding SW, Farm Ownership (FO) or Recreation (RL) loans, and making the requested loan will cause the borrower's total unpaid principal indebtedness to exceed the lesser of $200,000 or the market value of the farm or other security.

(1) The State Director or a Farmer Programs staff member may determine the market value is different from the appraiser's recommended market value.

(2) The basis for changing the recommended market value must be documented in the comments section of the appraisal report and initialed by an employee who has been delegated authority to appraise farms.

(b) The noncontiguous character of a farm containing two or more tracts is such that an efficient farming operation and nonfarm enterprise cannot be conducted due to the distance between tracts or due to inadequate rights-of-way or public roads between tracts.

(c) The limitation found in § 1943.79 (c) is not exceeded.

§ 1943.68 Rates and terms.

(a) *Amortization period.* Each loan will be scheduled for repayment over a period not to exceed 40 years from the date of the note or such shorter period as may be necessary to assure the loan will be adequately secured, taking into account the probable depreciation of the security.

(b) *Deferred payments.*—(1) *General policy and conditions.* Borrowers are expected to pay all interest that becomes due on their loans. However, if necessary, principal and interest payments may be deferred up to three installments from the date of the note. The deferral will never extend beyond the final due date of the note. An applicant will be expected to repay some interest each year beginning the first year and, bearing in mind the above limitations, full payments will be scheduled at the earliest date the Farm and Home Plan indicates they can be paid. The applicant will be advised to make payments on the loan as soon as the applicant has repayment ability even though the deferral period has not expired. The use of deferral authority will generally involve beginning farmers, applicants with limited income and resources and applicants who have had production and economic losses because of natural or economic conditions. Deferred payments may be authorized under the following conditions:

(i) The initial Farm and Home Plan and Business Analysis-Nonagricultural Enterprise, when appropriate, show full installments cannot be paid during the deferred period; and

(ii) A long-time Farm and Home Plan is prepared, when appropriate; and

(iii) A typical Farm and Home Plan and Business Analysis-Nonagricultural Enterprise, when appropriate for a full crop year following the deferred period indicates full installments can be paid under normal conditions.

(2) *Scheduling installments.* Annual installments will be scheduled in accordance with repayment ability as indicated on Table K of the Farm and Home Plan, Form FmHA 431-2. Deferred interest will not be capitalized. Installments after the deferred period will be calculated in accordance with the FMI for Form FmHA 1940-17.

(c) *Interest rate to borrower.* See Exhibit B of FmHA Instruction 440.1 for the applicable interest rate. This exhibit may be obtained from any FmHA office.

§ 1943.69 Security.

(a) *General.* Each SW loan will be secured by real estate, chattels, other security, leaseholds, or a combination of these.

(b) *Real estate security.* (1) A mortgage will be taken on the entire farm to be improved which is owned by the applicant, including land in which the applicant owns an undivided interest, except a portion of the farm will be excluded when:

(i) The applicant's title to that part of the farm is defective, and cannot be cured at a reasonable cost, provided:

(A) The Office of the General Counsel (OGC) determines the applicant's interest is of such nature that it is not mortgageable; and

(B) To include the land would complicate loan servicing or liquidation; and

(C) Any land on which title is defective will not be included in the appraisal of the farm whether or not it is described on the mortage.

(ii) The present lienholder on that part of the farm will not permit a junior lien or State law will not recognize or permit a lien provided:

(A) The part excluded from the security is not included in the appraisal report; and

(B) OGC advice is obtained before excluding any real estate from the security or the conditions under which real estate can be excluded are outlined by a State supplement.

(iii) Soundness of the loan will not be affected if there is defective title or part of the farm is not included as security.

(2) When the farm alone will not provide enough security, other real estate owned by the applicant may also be taken as security.

(3) Loans may be secured by a junior lien on real estate provided:

(i) Prior lien instruments do not contain provisions for future advances (except for taxes, insurance, other costs needed to protect the security, or reasonable foreclosure costs), cancellation, summary forfeiture, or other clauses that may jeopardize the Government's interest or the applicant's ability to pay the SW loan unless any such undesirable provisions are limited, modified, waived or subordinated insofar as the Government is concerned.

(ii) Agreements are obtained from prior lienholders to give notice of foreclosure to FmHA whenever State law or other arrangements do not require such a notice. Any agreements needed will be obtained as provided in Part 1807 of this chapter (FmHA Instruction 427.1).

(4) The designated attorney, title insurance company, or OGC will furnish advice on obtaining security when a life estate is involved.

(5) Any loan of $10,000 or less may be secured by the best lien obtainable without title clearance or legal services as required in Part 1807 of this chapter (FmHA Instruction 427.1): *Provided,* The County Supervisor believes from a search of the county records that the applicant can give a mortgage on the farm. This exception to title clearance will not apply when:

(i) The loan is made simultaneously with that of another lender.

(ii) This provision conflicts with program regulations of any other FmHA loan being made simultaneously with the SW loan.

(6) The Departments of Agriculture and Interior have agreed that FmHA loans may be made to Indians and secured by real estate when title is held in trust or restricted status. When security is taken on real estate held in trust or restricted status:

(i) The applicant will request the Bureau of Indian Affairs (BIA) to furnish Title Status Reports to the County Supervisor.

(ii) BIA approval will be obtained on the mortgage after it has been signed by the applicant and any other party whose signature is required.

(c) *Chattel security.* Loans may be secured by chattels subject to the following conditions:

(1) Real estate security is inadequate to secure the loan or is not available at all.

(2) Taking a lien on chattels will not prevent the borrower from obtaining operating credit from other sources or the FmHA.

(3) Junior liens on chattels may be taken when there is enough equity in the property. However, when practical, a first lien on selected chattel items should be obtained.

(4) A first lien will be taken on equipment or fixtures bought with loan funds whenever such property cannot be included in the real estate lien and this additional security is needed to secure the loan.

(5) When a loan is made only for the purchase of shares of water stock, such stock will be pledged or assigned as security for the loan. No other security need be required if the stock represents the right to receive water and is transferable separately from the land, provided:

(i) There is a market for the stock.

(ii) The purchase price is no greater than the price at which stock in the water company is normally sold.

(6) If secured by chattels only, the loan cannot be over $100,000 and must be scheduled for repayment within 20 years or the useful life of the security, whichever is less.

(7) Chattel security will be obtained and kept effective as notice to third parties as provided in Subpart A of Part 1930 and Subpart B of Part 1941 of this chapter.

(d) *Other security.* (1) Items such as land, buildings, fixtures, fences, water, water stock and facilities, other improvements easements, rights-of-way, and other appurtenances that are considered part of the farm and usually pass with the farm in a change of ownership may be taken as additional security when needed. If any of these do not pass with a change of ownership, the County Supervisor will obtain advice from the designated attorney, title insurance company of OGC to properly identify such items and include them in an appropriate security instrument or assignment.

(2) Other property that cannot be converted to cash without jeopardizing the borrower's farm operation may be taken as additional security when needed. Examples of such security may include cash value of insurance policies, stock, memberships or stock in associations or water stocks. Any property taken as additional security must have security value and be transferable. Advice will be obtained from the designated attorney, title insurance company or the OGC on obtaining this security or assignment.

(e) *Loans secured by leaseholds.* A loan may be secured by a mortgage on the leasehold if it has negotiable value and is able to be mortgaged, subject to the following:

(1) The unexpired term of the lease should extend beyond the repayment period of the loan for a period sufficient to ensure the objectives of the loan will be achieved. If the loan repayment period is equal to or greater than the period covered by the lease, the borrower must provide other security to secure the loan or the lessor must agree in writing to compensate the borrower for any unexhausted value of the improvements when the lease expires or is terminated.

(2) The lessor must have good and marketable title to the real estate, which may be subject to a prior lien, or the lessor must have signed a contract to purchase the real estate. The contract to sell and the lien instruments must not contain convenants, such as short redemption periods or rights to cancel, which may jeopardize the Government's security. Any provisions which may jeopardize the Government's security must be limited, modified, waived or subordinated in favor of the Government.

(3) With respect to achieving the purpose of the loan, obtaining adequate security, and being able to service the loan and enforce its rights, the Government, as holder of a mortgage upon a lease or leasehold interest, must be in a position substantially as good as if it held a second mortgage on the real estate. Besides the lessor's consent to the SW mortgage on the leasehold interest, FmHA should consider whether or not:

(i) There is reasonable security of tenure. The borrower's interest should not be subject to summary forfeiture or cancellation.

(ii) The right to foreclose the SW mortgage and sell without restrictions would adversely affect the salability or market value of the security.

(iii) FmHA has a right to bid at a foreclosure sale or to accept voluntary conveyance in lieu of foreclosure.

(iv) FmHA has the right, after acquiring the leasehold through foreclosure or voluntary conveyance in lieu of foreclosure, or in event of abandonment by the borrower, to occupy the property or sublet it, and to sell it for cash or credit. In case of a credit sale, the FmHA should take a vendor's mortgage with rights similar to those under the original SW mortgage.

(v) The borrower has the right, in the event of default or inability to continue with the lease and the SW loan, to transfer the leasehold, subject to the SW mortgage, to an eligible transferee who will assume the SW debt.

(vi) Advance notice will be given to FmHA of the lessor's intention to cancel, terminate or foreclose upon the lease. Such advance notice should be long enough to permit FmHA to ascertain the amount of delinquencies, the total amount of the lessor's and any other prior interest, the market value of the leasehold interest and, if litigation is involved, to refer the case with a report of the facts to the United States Attorney for appropriate action.

(vii) There are express provisions covering the question of FmHA's obligation to pay unpaid rental or other charges accrued at the time it acquires possession of the property or title to the leasehold, and those which become due during FmHA's occupancy or ownership, pending further servicing or liquidation.

(viii) There are any necessary provisions to assure fair compensation to the lessee for any part of the premises taken by condemnation.

(ix) Any other provisions are necessary to obtain an interest which can be mortgaged.

(4) A State supplement will be issued in any State in which real estate or chattel liens may be taken on leasehold interests in farmland and recorded so as to protect the mortgagee.

(5) The following language or similar language which, in the opinion of OGC or the designated attorney, is legally adequate, will be inserted on the lien instrument:

"All Borrower's right, title, and interest in and to the leasehold estate for a term of —— years beginning on ——, 19—— , created and established by a certain Lease dated ——, 19 ——, executed by ——— as lessor(s), recorded on ——— , 19 —— , in Book ———, page ——— of the ——— Records of said County and State, and any renewals and extensions thereof, and all Borrower's right, title, and interest in and to said Lease, covering the following real estate:" (To be inserted just before the legal description.)

This additional covenant will be inserted in the mortgage:

"Borrower will pay when due all rents and any and all other charges required by said Lease, will comply with all other requirements of said Lease, and will not surrender or relinquish without the Government's written consent, any of the Borrower's right, title or interest in or to said leasehold estate or under said Lease while this instrument remains in effect."

(f) *State supplements.* Each State will supplement this section to provide instructions on forms to be completed and other requirements to be met in order to obtain the required security. In each State where loans will be made to Indians holding title to land in trust or restricted status, FmHA and BIA will decide on a way to exchange necessary information, and the procedure to be followed will be set out in a State supplement.

§ 1943.70-1943.72 [Reserved]

§ 1943.73 General provisions.

(a) *Flood and mudslide hazard areas.* Flood and mudslide hazards will be evaluated whenever the farm to be financed is located in special flood or mudslide prone areas as designated by the Federal Insurance Administration (FIA). Subpart B of Part 1806 of this chapter (FmHA Instruction 426.2) will be complied with when loan funds are used to construct, modify, or relocate buildings in such areas. This will not prevent making loans on farms when the farmstead is located in a flood or mudslide prone area and if funds are not included in the loan for building improvements. However, the hazard will need to be noted in the appraisal report. When land development or improvements such as dikes, terraces, fences, and intake structures are planned to be located in special flood or mudslide prone areas, loan funds may be used subject to the following:

(1) The Corps of Engineers or the Soil Conservation Service (SCS) will be consulted concerning:

(i) Likelihood of flooding.

(ii) Probability of flood damage.

(iii) Recommendations on special design and specifications needed to minimize flood and mudslide hazards.

(2) FmHA representatives will evaluate the proposal and record the decision in the loan docket.

(b) *Civil Rights.* The provisions of Subpart E of Part 1901 of this Chapter will be complied with on all loans made which involve any development financed by FmHA that will be performed by a contract or subcontract of more than $10,000.

(c) *Protection of historical and archaeological properties.* If there is any evidence to indicate the property to be financed has historical or archaeological value, the provisions of Subpart F of Part 1901 of this chapter apply.

(d) *Environmental impact statements.* If SW loans are used in densely populated areas to finance a farm which has relatively large feedlots or holding facilities for livestock or fish or smaller feedlots or holding facilities which are likely to have an effect on the environment, the applicant will be requested to complete Form FmHA 449-10, "Applicant's Environmental Impact Evaluation."

(1) The County Supervisor will complete Form FmHA 440-46, "Environmental Impact Assessment," from information provided by the applicant in form FmHA 449-10.

(2) The County Supervisor will forward a copy of the loan application, completed FmHA Forms 449-10 and 440-46, and any other information and docket material relevant to environmental considerations to the State Director. The State Director will determine whether or not an environmental impact statement should be prepared based on this submittal and any other available information.

(3) The provisions of Subpart G of Part 1901 of this Chapter will be followed to the extent applicable for SW loans in making decisions on farm operations that may have a significant impact on the environment.

(e) *Truth in Lending—Real Estate Procedures Act.* The provisions of Subpart I of Part 1901 of this chapter concerning Truth in Lending apply to any SW loan made to an individual if the amount of the loan is $25,000 or less.

(f) *Equal Credit Opportunity Act.* In accordance with Title V of Pub. L. 93-495, the Equal Credit Opportunity Act, the FmHA will not discriminate against any applicant on the basis of sex or marital status, with respect to any aspect of a credit transaction.

(g) *Compliance with Special Laws and Regulations.* (1) Applicants will be required to comply with Federal, State and local laws and regulations governing construction; diverting, appropriating, and using water including use for domestic purposes; installing facilities for draining land; and making changes in the use of land affected by zoning regulations.

(2) State Directors and Farmer Programs Staff members will consult with SCS, U.S. Geological Survey, State Geologist or Engineer, or any board having official functions relating to water use or farm drainage requirements and restrictions for water and drainage development. State supplements will be issued to provide guidelines which:

(i) State all requirements to be met, including the acquisition of water rights.

(ii) Define areas where development of ground water for irrigation is not recommended.

(iii) Define areas where land drainage is restricted.

(3) Applicants will comply with all local laws and regulations, and will obtain any special licenses or permits needed for nonfarm, recreation, specialized or fish farming enterprises.

§ 1943.74 Special requirements.

(a) *Land development.* When possible, recommendations for land development will be obtained from the Forest Service, State Agricultural Extension Service, and the Soil Conservation Service and included in the development plan, and in the farm and home plans. In planning such development with the applicant, the County Supervisor will encourage the applicant to use any cost-sharing assistance that may be available through any source such as the Agricultural Stabilization and Conservation Service (ASCS) programs.

(b) *Technical assistance.* Applicants are responsible for obtaining all the technical assistance required in connection with an SW loan, such as that needed to plan, construct, or establish the improvement or facility to be financed.

(c) *Loans for irrigation purposes.* Evidence or documentation of the following should be obtained when loan funds are to be used for irrigation purposes:

(1) The land to be irrigated is suitable for irrigation.

(2) The applicant has a right to use water for irrigation.

(3) The water is suitable to use for irrigation and is available in sufficient quantities to irrigate a specified amount of land.

(4) If irrigation specialists have prepared any feasibility studies, copies of these studies have been submitted to FmHA.

(d) *Insurance.* (1) Insurance will be obtained on buildings and other property as provided in Subpart A of Part 1806 of this chapter (FmHA Instruction 426.1) when the loan is secured by real estate.

(2) See § 1943.73(a) for information about mudslide and flood insurance.

(3) Chattel security should be insured against hazards customarily insured against in the area if the loss of such security would jeopardize the interests of the Government.

(e) *Life estates.* When life estates are involved, loans may be made:

(1) To both the life estate holder and the remainderman, provided:

(i) Both have a legal right to occupy and operate the farm; and

(ii) Both are eligible for the loan; and

(iii) Both parties sign the note and mortgage.

(2) To the remainderman only: *Provided:*

(i) The remainderman has a legal right to occupy and operate the farm; and

(ii) The lien instrument is signed by the remainderman, life estate holder, and any other party having any interest in the security.

(3) To the life estate holder only, provided:

(i) There is no legal restriction placed on a life estate holder who occupies and operates a farm; and

(ii) The lien instrument is signed by the life estate holder, remainderman, and any other party having any interest in the security.

(f) *Farm or residence situated in different counties.* If a farm is situated in more than one State, county, or parish, the loan will be processed and serviced in the State, county, or parish in which the borrower's residence on the farm is located. However, if the residence is not situated on the farm,

the loan will be serviced by the County Office serving the county in which the farm or a major portion of the farm is located unless otherwise approved by the State Office.

(g) *Liens junior to the FmHA lien.* A loan will not be approved if a lien junior to the FmHA lien is likely to be taken simultaneously with or immediately subsequent to the loan closing to secure any debt the borrower may have at the time of loan closing or any debt that may be incurred in connection with the SW loan, unless the total debt against the security would be within its market value.

(h) *Graduation of SW borrowers.* If, at any time, it appears that the borrower may be able to obtain a refinancing loan from a cooperative or private credit source at reasonable rates and terms, comparable to those for loans for similar purposes and periods of time prevailing in the area the borrower will, upon request, apply for and accept such financing.

§ 1943.75 Options, planning and appraisals.

(a) *Options.* An applicant is responsible for obtaining options on real property. Form FmHA 440-34, "Option to Purchase Real Property," may be used. Other forms may be used if acceptable to all parties concerned and to FmHA. When an FmHA form is not used, a provision should be included which makes the option contingent upon FmHA making a loan to the buyer.

(b) *Planning.* Farm and Home Plans and nonagricultural enterprise plans, when appropriate, will be completed as provided in Subpart B of Part 1924 of this chapter.

(c) *Appraisals.* (1) Real estate appraisals will be completed by an FmHA employee authorized to make farm appraisals when real estate is taken as security. Appraisals are not required if:

(i) The amount of the FmHA loan and any simultaneous loan is $10,000 or less; and

(ii) The loan approval official determines the loan is adequately secured without an appraisal; and

(iii) The County Supervisor indicates in the loan docket an estimate of the market value of the real estate to be given as security.

(2) Real estate appraisals will be completed as provided in Subpart A of Part 1809 of this chapter (FmHA Instruction 422.1).

(3) The value of stock required to be purchased by Federal Land Bank (FLB) borrowers may be added to the recommended market value of the security, provided:

(i) An assignment is obtained on the stock, or

(ii) An agreement is obtained which provides that:

(A) The value of the stock at the time the FLB loan is satisfied will be applied on the FLB loan, or

(B) The stock refund check is made payable to the borrower and FmHA, or

(C) The stock refund check is made payable to the borrower and mailed to the County Supervisor.

(iii) The total of the stock value and the recommended market value of real estate is indicated in the comments section of the appraisal report.

(4) In the case of nonreal estate security, the following items apply:

(i) Form FmHA 440-21, "Appraisal of Chattel Property," will be used.

(ii) The property which will serve as security will be described in sufficient detail so it can be identified.

(iii) Its current market value or, if appropriate, the current cash value will be determined.

§ 1943.76 Planning and performing development.

The development work will be planned and completed in accordance with Part 1804 of this chapter (FmHA Instruction 424.1).

§ 1943.77 Relationship with other lenders.

(a) An applicant will be requested to obtain credit from another source when information indicates such credit is available. When another lender will not make a loan for the total needs of the applicant but is willing to participate with an SW loan, consideration will be given to a participation loan. FmHA employees may not guarantee, personally or for FmHA, repayment of advances made from other credit sources. However, lenders may be assured that lien priorities will be recognized.

(b) The County Supervisor and the other lender's representative should maintain a close working relationship in processing loans to a mutual applicant or borrower. When an SW loan is made at the same time as a loan from another lender, that lender's lien will have priority over the FmHA lien unless otherwise agreed upon. The lender's lien priority can cover the following in addition to principal and interest: Advances for payment of taxes, property insurance, reasonable maintenance to protect the security, and reasonable foreclosure costs including attorney's fees.

§ 1943.78 [Reserved]

§ 1943.79 Relationship with other FmHA loans guaranteed or economic emergency loans.

(a) Insured SW loans may be made simultaneous with other FmHA loans or to borrowers presently in debt on FmHA loans, only if the loan limits involved will not be exceeded and all requirements of the loans involved will be met.

(b) If an applicant is eligible for an SW loan and Economic Emergency (EE) loan for the same purposes and the SW loan will meet the needs of the applicant, it will be the policy to process the SW loan, provided loan funds are available. If the SW loan will not meet the *total* needs of the applicant, it will normally be the policy to process an EE loan only.

(c) Borrowers indebted to FmHA and/or an FmHA guaranteed lender for an EE loan may be considered for SW loan(s): *Provided,* The total outstanding principal indebtedness to FmHA and/or an FmHA guaranteed lender for the EE and any SW, RL, FO, and OL loans would not exceed $650,000.

(d) An insured SW loan will not be made to a borrower with an outstanding guaranteed FO, SW or RL loan, and paragraph (c) of this section is not intended to override this policy.

§ 1943.80 County Committee certification.

The County Committee will certify that an applicant is eligible on Form FmHA 440-2, "County Committee Certification or Recommendation," before a loan is approved. In some instances the Committee may want to interview the applicant or see the farm before making any recommendations.

§ 1943.81 [Reserved]

§ 1943.82 Loan docket processing.

(a) *Forms.* The following table is a guide to the forms needed and shows how they are distributed.

FmHA form No.	Name of form	Total number of copies	Signed by borrower	Loan docket	Copy to borrower
400-1	Equal Opportunity Agreement.	2	1-O	1-O	1-C
400-3	Notice to Contractors and Applicants.	3		*1-C	1-C
400-4	Nondiscrimination Agreement.	2	2-O and C	1-O	1-C
400-6	Compliance Statement	3		1-C	1-C
*403-1	Debt Adjustment Agreement.	*3	1-O	1-O	1-C
410-1	Application for FmHA Services.	*1	1-O	1-O	
410-8	Applicant Reference Letter.	1		1-O	
410-9	Statement Required by the Privacy Act.	2	2-O and C	1-C	1-O

FmHA form No.	Name of form	Total number of copies	Signed by borrower	Loan docket	Copy to borrower
410-10	Privacy Act Statement to References.	[12]2		1-C	
*422-1	Appraisal Report Farm Tract.	1		1-C	
*422-2	Supplemental Report—Irrigation, Drainage, Levee, and Minerals.	1		1-O	
*422-10	Appraiser's Worksheet Farm Tracts for Study of Comparable Properties.	1		1-O	
*424-1	Development Plan	[2]2	1-O	1-O	1-C
*427-8	Agreement with Prior Lienholder.	[6]3		1-O	1-C
*431-1	Long-Time Farm and Home Plan.	2	2-O and C	1-C	1-O
431-2	Farm and Home Plan	[1]1	1-O	1-O	
*431-4	Business Analysis—Nonagricultural Enterprise.	2	1-O	1-C	1-O
440-1	Request for Obligation of Funds.	[4]4	[11]2-O and C	1-O	1-C
440-2	County Committee Certification or Recommendation.	1		1-O	
*440-9	Supplementary Payment Agreement.	2	1-O	1-O	1-C
*440-21	Appraisal of Chattel Property.	1		1-O	
*440-34	Option to Purchase Real Property.	[13]	2-O and C	1-O	1-C
*440-41	Disclosure Statement for Loans Secured by Real Estate.	[9]2	1-C	1-C	1-O
*440-42	Credit Sale Disclosure Statement.	[9]2	1-C	1-C	1-O
*440-43	Notice of Right to Rescind.	[10][3]	*1	1	2-O and C
440-45	Nondiscrimination Certificate (Individual Housing).	2	1-O	1-O	1-C
*440-46	Environmental Impact Assessment.	1		1-O	
**443-12	Farm Ownership and Individual Soil and Water fund Analysis.	3		1-C	
*449-10	Applicant's Environmental Impact Evaluation.	2	1-O	1-O	1-C
*492-19	Characteristics of Approved Applicants.	[7]3		1-C	

[1]Signed copy of option previously delivered to the seller.
[2]In addition to the plan for first full crop year, the interim plan, if prepared, will be included in the docket.
[3]When the contract method is used, three copies of plans and specifications will be required.
[4]Signed copy to creditor.
[5]Copy to lienholder.
[6]Copy to State director.
[7]Records of applicant investigation, availability of other credit, and so forth, which remain with the docket.
[8]In right-to-rescind cases, original and sufficient copies for each person who has a right to rescind.
[9]Original and one copy to borrower, two copies to each other person who has a right to rescind. If the right to rescind is exercised, the person exercising the right will sign one copy of the form and return it to the county office.
[10]Applicant must sign and date this form.
[11]Signed by all sources of information concerning the applicant's character and credit. Original is retained by the person who supplies the information.
[12]Signed by all sources of information concerning the applicant's character and credit. Original is retained by the person who supplies the information.

O=Original; C=Copy.
*When applicable.
**Not used when a credit sale is processed without a loan.

(b) *Other docket items.* The running record and correspondence pertaining to the loan application and docket will be included. Other items may include supplementary information to farm and home plans; nonfarm enterprises; and copies of mortgages, contracts, and deeds.

(c) *Verification of veterans' preference.* If the applicant has checked the veteran block, the County Supervisor, or other County Office employee will review the applicant's evidence of discharge or release to determine whether the applicant is entitled to veterans' preference.

(d) *Information on other credit.* The docket will include, by entries in the running record or by letters, information on the need to refinance secured and major unsecured debts. Also, information will be included which shows other credit is not available in the amount needed or is not available under repayment terms which the applicant can meet.

§ 1943.83 Loan approval or disapproval.

(a) *Loan approval authority.* Initial and subsequent loans may be approved as authorized by Subpart A of Part 1901 of this chapter, provided:

(1) Section 1943.67(a), containing loan limitations, is not violated.

(2) No significant changes have been made in the development plan considered by the appraiser when real estate will be taken as security.

(b) *Loan approval action.* (1) The loan approval official is responsible for reviewing the docket to determine whether the proposed loan complies with established policies and all pertinent regulations. When reviewing the docket, the loan approval official will determine that:

(i) The County Committee has certified the applicant eligible,

(ii) The Committee certification has been properly completed and signed by at least two members of the Committee,

(iii) Funds are requested for authorized purposes,

(iv) The proposed loan is sound,

(v) The security is adequate,

(vi) Necessary supervision is planned, and

(vii) All other pertinent requirements have been met or will be met.

(2) When approving the loan, the approval official will:

(i) Indicate on all copies of Form FmHA 440-1, "Request for Obligation of Funds," any conditions not required by FmHA regulations that must be met for loan closing;

(ii) Specify any special security requirements; and

(iii) Indicate special conditions or agreements needed with prior lien holders, when appropriate; or

(iv) Indicate that approval is subject to satisfactory title evidence when required, if such evidence has not been obtained;

(v) Indicate any other special requirements; and

(vi) Sign the original and one copy of Form FmHA 440-1 and insert the title of the approval official.

(c) *Distribution of forms after loan approval.* The applicable docket forms will be distributed as outlined below by the loan approval official after a loan is approved.

(1) the following forms will be sent to the Finance Office:

(i) Form FmHA 440-1 (copy).

(ii) When funds have been obligated the Finance Office will send to the County Office an original and one copy of Form FmHA 440-57, "Acknowledgment of Obligated Funds/Check Request."

(iii) Form FmHA 443-12, "Farm Ownership and Individual Soil and Water Fund Analysis," (original).

(iv) Form FmHA 442-19, "Characteristics of Approved Applicants," (original) for initial loans only. If an initial Operating Loan (OL) or FO loan is approved at the same time, only one set of forms is required.

(2) The original of Form FmHA 440-1 and the remainder of the loan docket will be sent to the County Office.

(3) The following forms will be sent to the State Office:

(i) Form FmHA 440-1 (copy).

(ii) Form FmHA 443-12 (copy).

(iii) Form FmHA 492-19 (copy) for initial loans only. If an initial FO or OL loan is approved at the same time, only one set of forms is required.

(4) A signed copy of Form FmHA 440-1 will be sent to the borrower on the date of loan approval.

(d) *Loan disapproval.* The following action will be taken when a loan is disapproved:

(1) The reason(s) for disapproval will be indicated on form FmHA 440-1 by the loan approval official. The reason(s) may be in a letter or the running record if this form has not been completed. Suggestions which could remedy the reasons for disapproval should be included.

(2) The County Supervisor will notify the applicant in writing of the action taken and include any suggestions that could result in favorable action when appropriate. In addition to sending out written notice, the County Supervisor may personally discuss the action with the applicant. In that instance, the items covered in the discussion will be documented in the running record.

(3) Items furnished by the applicant during docket processing will be returned.

§ 1943.84 Requesting title service.

When the loan is approved and real estate will serve as security, the County supervisor will request the applicant to obtain title clearance as provided in Part 1807 of this chapter (FmHA Instruction 427.1), when required, if this has not been done. If an option is involved, the applicant will sign and send to the seller Form FmHA 440-35, "Acceptance of Option," or other suitable forms.

§ 1943.85 Action after loan approval.

(a) *Requesting check.* If real estate will not be taken as security *or* if real estate is taken as security and satisfactory title evidence is obtained prior to loan approval *or* if the County Supervisor is reasonably certain that satisfactory title evidence can be obtained so the loan can be closed within 20 working days from the date of the check, loan funds may be requested at the time of loan approval by entering the amount needed in the appropriate block of Form FmHA 440-1. If funds are not requested when the loan is approved, advances in the amount needed will be requested by using form FmHA 440-57 in accordance with the Forms Manual Insert (FMI). The original Form FmHA 440-57 will be retained in the County Office and a copy sent to the Finance Office. The initial loan advance will be requested when loan approval conditions can be met, satisfactory title to real estate security can be provided, and a date has been set for loan closing.

(1) When all loan funds can be disbursed at, or within 30 days after loan closing or if the amount of funds that cannot be disbursed does not exceed $5,000, the total amount of the loan will be requested in a single advance.

(2) When loan funds cannot be disbursed as outlined in paragraph (a)(1) of this section, the amount needed to meet the immediate needs of the borrower will be requested by submitting a copy of Form FmHA 440-57 to the Finance Office. The amount of each advance should meet the needs of the borrower as much as is possible, so the amount in the supervised bank account will be kept to a minimum. The Finance Office will continue to supply Form FmHA 440-57 until the entire loan has been disbursed. The County Supervisor should tell the borrower to notify the County Office of amounts needed on a timely basis to avoid delays in receiving loan checks.

(b) *Handling loan checks.* (1) When the loan check or the borrower's personal funds are to be deposited in the designated loan closing agent's escrow account, this will be done no later than the date of loan closing. If loan funds or the borrower's personal funds are to be deposited in a supervised bank account, this will be done in accordance with Part 1803 of this chapter (FmHA Instruction 402.1) as soon as possible, but in no case later than the first banking day following the date of loan closing.

(2) If a loan check is received and the loan cannot be closed within 20 working days from the date of the check, the County Supervisor will take appropriate action in accordance with FmHA Instruction 102.1, a copy of which may be obtained from any FmHA Office.

(3) When a check is returned and the loan will be closed at a subsequent date, another check will be requested in accordance with FmHA Instruction 102.1, a copy of which may be obtained as stated in paragraph (b)(2) of this section.

(c) *Cancellation of loan.* Loans may be cancelled before loan closing as follows:

(1) The County Supervisor will notify the State and Finance Offices of loan cancellation by using Form FmHA 440-10. The County Office will send a copy of Form FmHA 440-10 to the designated attorney, escrow agent, Regional Attorney, or the title insurance company representative providing loan closing instructions to indicate the loan has been cancelled. If a check received in the County Office is to be cancelled, the check will be returned to the Disbursing Center, U.S. Treasury Department, Post Office Box 3329, Kansas City, Kansas 66103, with a copy of form FmHA 440-10.

(2) Interested parties will be notified of the cancellation as provided in Part 1807 of this chapter (FmHA Instruction 427.1).

(d) *Cancellation of advances.* When an advance is to be cancelled the County Supervisor must take the following actions:

(1) Complete and distribute Form FmHA 440-10 in accordance with the FMI.

(2) When necessary, prepare and execute a substitute promissory note reflecting the revised total of the loan and the revised repayment schedule. When it is not possible to obtain a substitute promissory note, the County Supervisor will show on Form FmHA 440-10 the revised amount of the loan and the revised repayment schedule.

(e) *Increase or decrease in amount of loan.* If it becomes necessary to increase or decrease the amount of the loan prior to loan closing, the County Supervisor will request that all distributed docket forms be returned to the County Office and reprocessed unless the change is minor and replacement forms can readily be completed and submitted. In the latter case, a memorandum explaining the change will be attached to the revised forms and sent to the Finance Office.

§ 1943.86-1943.87 [Reserved]

§ 1943.88 Loan closing actions.

When a loan closing date has been agreed upon, the County Suprvisor will notify the borrower of the loan closing date. The following appropriate actions will be taken in connection with, and after, loan closing:

(a) *Real estate mortgage loans.* When a loan is to be secured by a real estate mortgage, it will be closed in accordance with the applicable provisions of Part 1807 of this chapter (FmHA Instruction 427.1) except as modified for loans of $10,000 or less in paragraph § 1943.69(b)(5).

(b) *Loans involving chattel or other nonreal estate security.* All chattel security instruments will be signed and filed as prescribed in Subpart B of Part 1941 of this Chapter for Operating loans. The following forms will be used for chattel security:

(1) Form FmHA 440-15, "Security Agreement (Insured Loans to Individuals)."

(2) Form FmHA 440-A25, "Financing Statement" or, when authorized, Form FmHA 440-25, "Financing Statement".

(3) State forms may be used if national forms are not legally acceptable. Such forms will require OGC and National Office clearance.

(c) *Applicant's financial condition.* The County Supervisor will review with the applicant the financial statement which was prepared at the time the docket was developed. If there have been significant changes in the applicant's financial condition, the financial statement will be revised and initialed by the applicant and the County Supervisor. When an applicant's financial condition has changed to the extent that it appears the loan would be unsound or improper, the loan will not be closed. If a revised loan docket is needed to meet loan requirements or determine loan soundness, it will be developed and submitted to the appropriate loan approval official.

(d) *Loan approval conditions.* The County Supervisor will inform the applicant of any loan approval condi-

tions that need to be met. These conditions will usually be included in the notice informing the applicant of the loan closing date. The loan will not be closed if the applicant is unable to meet loan approval conditions.

(e) *Change in the use of funds planned for refinancing.* (1) County Supervisors are authorized to:

(i) Transfer funds planned to be used for refinancing specific debts to other debts when there is a need to do so; and

(ii) Transfer funds planned to be used for other purposes to pay small deficiencies in estimates for refinancing debts, providing there are sufficient remaining funds to complete any land purchase and planned development.

(2) A revised docket will be developed when:

(i) The total amount of debts to be refinanced has increased in such an amount that planned loan purposes cannot be carried out; and

(ii) The applicant is unable to make up any deficiencies from other resources.

(f) *Assignment of income from real estate to be mortgaged.* Unless otherwise authorized by the State Director in an individual case, income to be received by the borrower from royalties, leases, or other existing agreements under which the value of the real estate security will be reduced will be assigned and disposed of in accordance with Subpart A of Part 1872 of this chapter (FmHA Instruction 465.1), including provisions for written consent of any prior lienholder. Authority may be given by the State Director to refrain from taking an assignment in cases where the security is otherwise adequate, payment of the loan is reasonably assured from other sources, and the income has already been committed for other purposes or must be relied on by the applicant for essential living or operating expenses. When the County Supervisor deems it advisable, assignments also may be taken on all or a portion of income to be derived from nondepleting sources such as income from bonus payments or annual delay rentals. Such income will be assigned and disposed of in accordance with Subpart A of Part 1872 of this chapter (FmHA Instruction 465.1).

(1) For assignment of income, Form FmHA 443-16, "Assignment of Income from Real Estate Security," will be used, except, if it is legally inadequate in a State, it may be adapted to that State with the approval of the OGC or an authorized State form may be used instead.

(2) The County Supervisor, upon the advice of the designated attorney, escrow agent, title insurance company, or the OGC, as appropriate, may require acknowledgement and recordation of the assignment. Any cost incident thereto will be paid by the borrower.

(3) At the time Form FmHA 443-16 is executed, appropriate notations will be made on Form FmHA 405-1, "Management System Card—Individual," to insure the proceeds, or the specified portion of the proceeds assigned to FmHA from the transactions are remitted at the proper time.

(g) *Preparation of the note.* Form FmHA 1940-17, "Promissory Note," will be used and completed in accordance with the FMI.

(1) Separate notes will be prepared for any other FmHA loan made simultaneously with the SW loan. The notes will be completed as provided in the appropriate loan regulation and FMI.

(2) All FmHA notes to be secured by real estate can be described in the same mortgage.

(3) When a loan is closed in December with an installment due on the following January 1, that installment should be collected at loan closing.

(4) The promissory note will be signed as follows:

(i) When a loan is made to an individual, the note will be executed in accordance with Part 1807 of this chapter (FmHA Instruction 427.1).

(ii) When a loan is made to a cooperative or a corporation, the note will be executed by:

(A) The official(s) authorized to obtain the loan; and

(B) The individual(s) holding a majority interest in the cooperative or corporation, as individuals.

(iii) When a loan is made to a partnership, the note will be executed by all partners in the partnership.

(h) *Supplementary payment agreement.* Form FmHA 440-9, "Supplementary Payment Agreement," should be used for each applicant who regularly (such as weekly, monthly, or quarterly) receives substantial income from an off-farm source, a nonfarm enterprise, or from farming.

(i) *Obtaining insurance.* The applicant will be informed of the insurance requirements set forth in § 1943.74(d).

(j) *Effective time of loan closing.* An SW loan is considered closed when the mortgage is filed for record.

(k) *Distribution of documents after loan closing.* The County Supervisor should review the forms and closing actions. Corrective action should be taken when necessary.

(1) Real estate mortgages:

(i) When the original recorded instrument is returned to the County Office:

(A) File the original in County Office file, and

(B) Give a copy to borrower.

(ii) When the original is retained by recorder:

(A) File a conformed copy in county office file, and

(B) Give a conformed copy to borrower.

(iii) The County Supervisor will provide copies that may be needed in some cases for interested third parties.

(2) Deeds:

(i) Give the original to borrower, and

(ii) Retain one copy to file.

(3) Title insurance policies:

(i) File the Mortgagee title policy in the county office file, and

(ii) Give the owner's title policy, if one is obtained, to the borrower.

(4) Water stock certificates or similar collateral will be retained in the county office file.

(5) Abstracts of title:

(i) Return to the borrower, except when they were obtained from a third party with the understanding they would be returned, the abstracts will be sent to the third party. A memorandum receipt will be obtained when abstracts are delivered to the third party.

(ii) Form FmHA 140-4, "Transmittal of Documents" will be used and a receipted copy kept in the County Office. The FMI should be followed for preparing this form.

§§ 1943.89-1943.91 [Reserved]

§ 1943.92 Servicing.

SW loans will be serviced in accordance with Subpart A of Part 1872 of this Chapter (FmHA Instruction 465.1). Chattel security for SW loans will be serviced in accordance with Subpart A of Part 1930 of this chapter. Bureau of Reclamation (BR) loans made during the period August 19, 1977, through September 30, 1977, will be serviced in the same manner as Soil and Water loans. See Exhibit A, "Memorandum of Understanding Between the Bureau of Reclamation, Department of Interior, and the Farmers Home Administration, Department of Agriculture" for additional information on these loans.

§ 1943.93 Subsequent SW loans.

A subsequent SW loan is a loan made to a borrower who is currently in debt for an SW loan.

(a) A subsequent loan may be made for the same purposes and under the same conditions as an initial loan.

(b) The subsequent loan will be processed in the same manner as an initial loan except a new appraisal of real estate will be required only when real estate is taken as security and one or more of the following exists:

(1) Subsequent loan funds will be used to purchase land or the mortgage will include additional land not pres-

ently covered by the FmHA real estate mortgage.

(2) The County Supervisor or loan approval official requests a new appraisal report.

(3) The latest appraisal report on the farm is over two years old.

(4) The physical characteristics of the farm have changed significantly.

(5) The subsequent loan will be over $10,000.

(6) There have been significant changes in the market value of real estate in the area within the last two years.

(c) When a new appraisal is not made, an employee authorized to make farm appraisals will provide an estimate of the value of the security. This value will be inserted, dated, and initialed in the comments section of the latest appraisal report.

(d) A new real estate mortgage will not be necessarily provided:

(1) All the land which will serve as security for the loan is described on the present real estate mortgage; or,

(2) The real estate mortgage has a future advance clause and a State supplement provides authority for using such a clause; or

(3) The required lien priority is obtained with the existing mortgage and future advance clause.

§ 1943.94 Subordinations.

Subordinations in favor of other lenders will be processed in accordance with Subpart A of Part 1872 of this chapter (FmHA Instruction 465.1).

§§ 1943.95-1943.99 [Reserved]

§ 1943.100 State supplements.

State supplements will be issued as necessary to implement this Subpart.

ATTACHMENT: EXHIBIT A

MEMORANDUM OF UNDERSTANDING BETWEEN THE BUREAU OF RECLAMATION, DEPARTMENT OF THE INTERIOR AND THE FARMERS HOME ADMINISTRATION, DEPARTMENT OF AGRICULTURE

Whereas, under section 8 of the 1977 Drought Emergency Act (P.L. 95-18), hereafter referred to as "the Act," the Bureau of Reclamation (BR) is authorized to make loans to irrigators for the purpose of undertaking construction, management, conservation activities, or the acquisition and transportation of water, which can be expected to have an effect in mitigating losses and damages resulting from the 1976-1977 drought period;

Whereas, the Farmers Home Administration (FmHA) has an existing soil and water program (SW) authorized by section 304 of the Consolidated Farm and Rural Development Act for loans to individuals that accomplish purposes similar to those in the Act;

Whereas, it is more efficient and in the best interests of the United States, and in accordance with section 6 of the Act, for BR to procure the services of FmHA pursuant to the terms of the Economy Act of 1932 (31 U.S.C. 686) to make and service loans to individual irrigators as authorized by the Act.

Now therefore the parties agree:

1. For purposes of this Memorandum the term "irrigators" shall mean any person or legal entity who holds a valid existing water right for irrigation purposes within the Federal reclamation projects. Federal reclamation projects means any project constructed or funded under Federal reclamation law and specifically including projects having approved loans under the Small Reclamation Projects Act of 1956, as amended.

2. FmHA shall make and service loans to individual irrigators as authorized by the Act pursuant to its SW program and applicable FmHA regulations except as modified hereby.

3. The loans shall be only for the purposes relating specifically to irrigation and set forth in FmHA Instruction 443.2, IVA1, A8, B1, B2, and C. The loans shall be interest free. Loans for water acquisition and transportation shall be repaid over a period not to exceed 5 years. Other loans shall be repaid over a period not to exceed 5 years except such loans which generate benefits which are usable beyond 1977 shall be repaid within a period which shall be the shorter of the estimated useful life of the facilities or the reasonable payment capacity of the irrigator but in no event to exceed 40 years. All loans shall be obligated not later than September 30, 1977, and any construction related to any loan must be completed by November 30, 1977.

4. Services rendered by FmHA pursuant to this Memorandum of Understanding shall be on a nonreimbursable basis to the irrigator. For services rendered, BR shall pay to FmHA a charge of 5 percent of principal of each loan. BR directs that FmHA disburse such service charge to itself directly upon the closing of each loan.

5. Three million dollars shall be transferred to FmHA by Standard Form 1151, which amount shall be available for construction, management, and conservation activities. An additional sum of $5 million may be made available upon request of FmHA for the acquisition and transportation of water.

6. *Monthly Report:* FmHA shall submit a Standard Form 133, "Report on Budget Execution", in accordance with OMB Circular A-34, to the Bureau of Reclamation, Washington, D.C. 20240, attention code 370.

7. *Accomplishment:* FmHA shall submit to the Bureau of Reclamation, Washington, D.C. 20240, attention code 400, a complete report on expenditures and accomplishments under this Memorandum on January 16, 1978. Date of June 29, 1977.

Bureau of Reclamation, Department of the Interior,

R. KEITH HIGGINSON,
Commissioner.

Dated: July 15, 1977.

Farmers Home Administration, Department of Agriculture,

MARTY HOLLERAN,
for Gordon Cavanaugh,
Administrator.

ATTACHMENT

AMENDATORY-MEMORANDUM OF UNDERSTANDING BETWEEN THE BUREAU OF RECLAMATION, DEPARTMENT OF THE INTERIOR AND THE FARMERS HOME ADMINISTRATION, DEPARTMENT OF AGRICULTURE

WHEREAS, the Bureau of Reclamation (BR) and the Farmers Home Administration (FmHA) consummated a Memorandum of Understanding on July 15, 1977, whereby BR would procure the services of FmHA pursuant to the terms of the Economy Act of 1932 (31 U.S.C. 686) to make and service loans to individual irrigators as authorized by section 8 of the 1977 Drought Emergency Act (Pub. L. 95-18); and

WHEREAS, item 3 of that Memorandum of Understanding provides in part that all loans shall be obligated not later than September 30, 1977, and any construction related to any loan must be completed by November 30, 1977; and

WHEREAS, Pub. L. 95-107, enacted on August 17, 1977, amends Pub. L. 95-18 to accomplish, among other things, an extension of the time for completing construction activities under the authorities of Pub. L. 95-18 from November 30, 1977, to January 31, 1978.

NOW THEREFORE the parties agree that the date November 30, 1977, in the last sentence of item 3 of the Memorandum of Understanding executed by BR on June 29, 1977, and FmHA on July 15 1977, be revised to January 31, 1978, so that the sentence will read, "All loans shall be obligated not later than September 30, 1977, and any construction related to any loan must be completed by January 31, 1978."

Date of September 6, 1977.

Bureau of Reclamation, Department of the Interior,

R. KEITH HIGGINSON,
Commissioner.

Farmers Home Administration, Department of Agriculture,

GORDON CAVANAUGH,
Administrator.

SEPTEMBER 7, 1977.

Subpart C—Insured Recreation Loan Policies, Procedures, and Authorizations

Sec.

1943.101 Introduction.
1943.102 Objectives.
1943.103 Management assistance.
1943.104 Definitions.
1943.105 [Reserved].
1943.106 Credit elsewhere.
1943.107-1943.109 [Reserved].
1943.110 Preference.
1943.111 Receiving and processing applications.
1943.112 Recreation loan eligibility requirements.
1943.113-1943.115 [Reserved].
1943.116 Loan purposes.
1943.117 Loan limitations.
1943.118 Rates and terms.
1943.119 Security.
1943.120-1943.122 [Reserved].
1943.123 General provisions.

Sec.
1943.124 Special requirements.
1943.125 Options, planning and appraisals.
1943.126 Planning and performing development.
1943.127 Relationships with other lenders.
1943.128 [Reserved].
1943.129 Relationship with other FmHA loans and guaranteed or economic emergency loans.
1943.130 County Committee certification.
1943.131 [Reserved].
1943.132 Loan docket processing.
1943.133 Loan approval or disapproval.
1943.134 Requesting title service and accepting option(s).
1943.135 Action after loan approval.
1943.136-1943.137 [Reserved].
1943.138 Loan closing actions.
1943.139-1943.141 [Reserved].
1943.142 Servicing.
1943.143 Subsequent recreation loans.
1943.144 Subordinations.
1943.145-1943.149 [Reserved].
1943.150 State supplements.

AUTHORITY: 7 U.S.C. 1989; 5 U.S.C. 301; delegation of authority by the Sec. of Agri., 7 CFR 2.23; delegation of authority by the Asst. Sec. for Rural Development 7 CFR 2.70.

Subpart C—Insured Recreation Loan Policies, Procedures and Authorizations

§ 1943.101 Introduction.

This subpart outlines the policies, procedures, and authorizations for making Recreation (RL) loans under the Consolidated Farm and Rural Development Act, as amended. It is the policy of this agency to make loans to any otherwise qualified applicant without regard to race, color, religion, sex, marital status, age or national origin. See Exhibit A of Subpart A of this part for making RL loans to entrymen on unpatented public lands. See Subpart R of Part 2000 of this chapter for the Memorandum of Understanding between Farm Credit Administration (FCA) and Farmers Home Administration (FmHA).

§ 1943.102 Objectives.

The basic objectives of RL loans are to assist eligible farm and ranch owners or tenants to convert all or a portion of the farms or ranches they own or operate to outdoor income-producing recreation enterprises, which will supplement or supplant farm or ranch income and permit carrying on sound and successful operations. These objectives will be accomplished through the extension of credit and management assistance.

§ 1943.103 Management assistance.

Supervision will be provided borrowers to the extent necessary to achieve the objectives of the loan and to protect the interests of the Government in accordance with Subpart B of Part 1924 of this chapter. Such assistance consists of farm, home, and nonfarm planning; recordkeeping; analyzing the farm and any nonfarm business; and giving management advice.

§ 1943.104 Definitions.

(a) *Approval official.* A field official who has been delegated loan and grant approval authorities within applicable loans programs, subject to the dollar limitations contained in tables available in any FmHA office.

(b) *Cooperative.* An entity which has farming as its purpose and whose members have agreed to share the profits of the farming enterprise. The entity must be recognized as a farm cooperative by the laws of the State(s) in which the entity will operate a farm.

(c) *Corporation.* For the purposes of this regulation, a private domestic corporation created and organized under the laws fo the State(s) in which the entity will operate a farm.

(d) *Farm.* A tract or tracts of land, improvements, and other appurtenances considered to be farm property which is used or will be used in the production of crops or livestock. This includes the production of acquatic organisms under a controlled or selected environment owned or operated by the applicant or borrower. It will also include a residence which, although physically separate from the farm acreage, is ordinarily treated as a part of the farm in the local community.

(e) *Fish farming.* The production of fish, mollusks, or crustaceans (or other invertebrates) under controlled conditions in ponds, lakes, streams or similar holding areas. This involves feeding, tending, harvesting and other activities as are necessary to properly raise and market the products.

(f) *Leasehold.* A right to use property for a specific period of time under conditions provided for in a lease agreement.

(g) *Majority interest.* Any individual or a combination of individuals owning more than a 50 percent interest in a cooperative, corporation or partnership.

(h) *Market value.* The amount which a willing buyer would pay a willing but not forced seller in a complete voluntary sale.

(i) *Mortgage.* Any form of security interest or lien upon any rights or interest in real property of any kind. In Louisiana and Puerto Rico the term "mortgage" also refers to any security interest in chattel property.

(j) *Partnership.* Any entity consisting of individuals who have agreed to operate a farm. The entity must be recognized as a partnership by the laws of the State(s) in which the entity will operate a farm and must be authorized to own both real and personal property and to incur debts in its own name.

(k) *Security.* Property of any kind subject to a real or personal property lien. Any reference to collateral or security property shall be considered a reference to the term security.

(l) *State or United States.* The United States itself, each of the several States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

§ 1943.105 [Reserved]

§ 1943.106 Credit elsewhere.

The applicant shall certify in writing on the appropriate forms, and the County Supervisor shall determine, that adequate credit elsewhere is not available to finance the applicant's actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near where the applicant resides for loans for similar purposes and periods of time.

(a) When based on the County Supervisor's knowledge of other lender programs, the review of the application indicates there is no possibility for the applicant to obtain the credit needed from other lender(s), this conclusion and the basis for it will be recorded in the running record and further checks will not be necessary.

(b) If the County Supervisor questions whether the applicant is unable to obtain the credit needed from other agricultural lenders in the area such lenders will be contacted and the findings recorded in the running record.

(c) If the County Supervisor receives letters or other written evidence from a lender(s) indicating that the applicant is unable to obtain satisfactory credit, these will be included in the loan docket.

(d) Property and interests in property owned and income received by an individual applicant, a cooperative and its members as individuals, a corporation and its stockholders as individuals, and a partnership and its members as individuals will be considered and used by an applicant in obtaining credit from other sources.

§§ 1943.107-1943.109 [Reserved]

§ 1943.110 Preference.

An application on hand from a veteran as defined in Subpart A of Part 1801 of this Chapter (FmHA Instruction 410.1) will be given preference over an application from a nonveteran on file at the same time when it appears that available funds will be inadequate to meet the needs of all applicants.

§ 1943.111 Receiving and processing applications.

(a) Applications will be received and processed in accordance with Subpart A of Part 1801 of this chapter (FmHA Instructions 410.1).

(b) If the applicant is a cooperative, corporation, or partnership the following information will be obtained and included in the loan docket:

(1) A complete list of members, stockholders, or partners showing the address, citizenship, principal occupation, and the number of shares and percentage of ownership or of stock held in the cooperative or corporation by each or the percentage of interest held in the partnership by each.

(2) A current personal financial statement from each of the principal members of a cooperative, partners of a partnership or stockholders of a corporation. For this purpose, a principal is one owning or controlling as much as 10 percent of the ownership, stock or interest of a cooperative, corporation, or partnership. If no member, partner, or stockholder owns or controls as much as 10 percent, each member, partner, or stockholder will be considered as a principal. Any other member, partner or stockholder whose financial statement, in the judgment of the loan approval official, would be pertinent to a consideration of the financial strength of the cooperative, corporation or partnership will also be required to provide personal financial statements.

(3) A current financial statement from the cooperative, corporation, or partnership itself.

(4) A copy of the cooperative or corporation's charter, or any partnership agreement, any articles of incorporation and bylaws, a certificate or evidence of current registration (good standing) and a resolution(s) adopted by the Board of Directors or members or stockholders authorizing specified officers of the cooperative, corporation, or partnership to apply for and obtain the desired loan and execute required debt, security and other instruments and agreements.

(5) A copy of any written lease, contract, or agreement entered into by the cooperative, corporation or partnership which may be pertinent to a consideration of its application.

§ 1943.112 Recreation loan eligibility requirements.

(a) *An individual must.* (1) Be a citizen of the United States (see § 1943.104(1) for the definition of "United States").

(2) Possess the legal capacity to incur the obligations of the loan.

(3) Have the character (as related solely to debt repayment ability and reliability) managerial ability, and industry to carry out the proposed operation.

(4) Honestly try to carry out the conditions and terms of the loan.

(5) Be unable to obtain sufficient credit elsewhere to finance actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near which the applicant resides for loans for similar purposes and periods of time.

(6) Be an owner or operator engaged in farming at the time the application is filed.

(7) Be the manager and operator of the recreation enterprise after the loan is closed.

(8) If a tenant, have a satisfactory written lease for a sufficient period of time and under terms that will enable the applicant to obtain reasonable returns on the improvements made with the loan. In addition, the lease or separate agreement should provide for compensating the tenant for any unexhausted value of the improvements upon termination of the lease.

(b) A cooperative, corporation or partnership must:

(1) Have the character (as related solely to debt repayment ability and reliability), management ability and industry to carry out the proposed operation.

(2) Honestly try to carry out the conditions and terms of the loan.

(3) Consist of members, stockholders or partners holding a majority interest who are citizens of the United States (see § 1943.104 (1) for the definition of "United States") and who meet the requirements of paragraphs (b) (1) and (2) of this section.

(4) Be authorized to own and/or operate the farm in the State(s) in which the farm and the recreation enterprise are located.

(5) Be unable to obtain sufficient credit elsewhere, either as an entity or as individual members, stockholders or partners, to finance actual needs at reasonable rates and terms, taking into account prevailing private and cooperative rates and terms in or near the community for loans for similar purposes and periods of time.

(6) Be an owner or operator engaged in farming at the time the application is filed.

(7) Be the manager and operator of the recreation enterprise after the loan is closed and at least one member, stockholder or partner must actively participate in the operation of the enterprise.

(8) Consist of members, stockholders or partners who do not as individuals have an FO, SW, RL or OL loan and are not members of another entity that has an FO, SW, RL or OL loan.

(9) If a tenant, have a satisfactory written lease for a sufficient period of time and under terms that will enable the applicant to obtain reasonable returns on the improvements made with the loan. In addition, the lease or separate agreement should provide for compensating the tenant for any unexhausted value of the improvements upon termination of the lease.

§§ 1943.113–1943.115 [Reserved]

§ 1943.116 Loan purposes.

Loans that are consistent with all Federal, State and local environmental quality standards may be made to:

(a) Purchase land needed for an outdoor recreation enterprise. This may include:

(1) Purchasing easements and rights-of-way needed to operate the enterprise.

(2) Making a down payment on the purchase of land under the following conditions:

(i) A deed is obtained by the borrower and the unpaid balance on the loan is secured by a note and mortgage or an acceptable purchase contract or similar instrument.

(2) Making a downpayment on the purchase of land under the following conditions:

(i) A deed is obtained by the borrower and the unpaid balance on the loan is secured by a note and mortgage or an acceptable purchase contract or similar instrument.

(ii) The applicant can meet the loan terms under normal farm conditions.

(iii) The conditions and the requirements of any prior mortgage or contract meet the security requirements for taking a junior lien set out in § 1943.119(b)(2) of this Subpart.

(iv) A purchase contract is signed which obligates the purchaser to pay the purchase price, gives the purchaser the rights of present possession, control, and beneficial use of the property, and entitles the purchaser to a deed upon paying all or a specific part of the purchase price.

(b) Pay the costs of meeting Federal, State or local requirements for agricultural, animal, or poultry waste pollution abatement and control facilities including construction, modification, or relocation of the farm or farm structures if necessary to comply with such pollution abatement requirements.

(c) Construct, buy, or improve buildings and facilities needed for the applicant's outdoor recreation enterprise, including:

(1) The construction of essential buildings of modest design and cost including facilities and structures such as docks, fish hatcheries, shooting blinds, lodging facilities, trailer parks, picnic areas, target ranges, tennis

courts, shuffleboard courts, golf driving ranges, and campsites.

(2) The improvement, alteration, repair, replacement, relocation, or purchase and transfer of essential service buildings, facilities, structures and fixtures that become part of the real estate or customarily pass with the farm when it is sold. This includes provisions for pollution control and energy saving devices.

(3) The purchase and/or installation of water and sewage systems, other equipment, including pollution control and energy saving devices necessary to operate the recreation enterprise(s), provided the items upon installation become part of the real estate or customarily pass with the farm when it is sold.

(d) Provide land and water development, needed for the applicant's outdoor recreation enterprise. This includes providing fencing; drainage and irrigation facilities, basic applications of lime and fertilizer; and facilities for tree planting, land clearing and landscaping. It also includes establishing and improving permanent vegetation, and facilities for fish ponds, trails and lakes. Loan funds may be used to acquire water supplies and rights, and promote conservation and efficient use of these supplies and rights. Sources of water may be located outside the land owned provided appropriate rights or easements are obtained to ensure that the water and rights will pass with the land when it is sold. The funds for land and water development may include the costs of machinery and equipment needed to do the development only when the total cost of the development and machinery or equipment would not exceed the cost of hiring someone to do the development work. Also, loan funds may be used to pay that part of the cost of facilities, improvements, and practices which will be paid for in connection with participation in programs such as the Agricultural Conservation or Great Plains programs only when such costs cannot be covered by purchase orders or assignments to material suppliers or contractors. If loan funds are advanced and the portion of the payment for which the funds were advanced is likely to exceed $1,000, the applicant will assign the payment to FmHA.

(1) Funds may be used for development costs on land owned with a defective title (see § 1943.119(b)(1)(i)) or on land in which the applicant owns an undivided interest: *Provided:*

(i) The amount of loan funds used on such land is limited to $25,000;

(ii) There is adequate security for the loan; and

(iii) The tract of land is not included in the appraisal report.

(2) Funds may be used for development costs on land leased by the applicant: *Provided:*

(i) The terms of the lease are such that there is reasonable assurance the applicant will have use of the improvement over its useful life;

(ii) A written lease provides for payment to the tenant or assignee any unexhausted value of the improvement if the lease is terminated;

(iii) There is adequate security for the loan; and

(iv) The amount of loan funds used for improvement on leased land will not exceed $10,000.

(e) Refinance secured and unsecured debts subject to the following:

(1) The applicant's present creditors will not furnish credit at rates and terms the applicant can meet.

(2) The County Supervisor, by contacting the appropriate lender, verifies and documents, either in the running record or by letter from the lender, the need to refinance all secured debts and major unsecured debts. The unpaid balance on the debts to be refinanced will be verified.

(3) FmHA debts, including FmHA guaranteed loans, will not be refinanced unless such refinancing is necessary to enable the borrower to continue farming. The State Director's consent is required before RL funds can be used to refinance other FmHA debts.

(f) Pay reasonable expenses incidental to obtaining, planning, closing, and making the loan, such as fees for legal, architectural, other technical services and first year insurance premiums which are required to be paid by the borrower and which cannot be paid from other funds. Loan funds also may be used to pay the borrower's share of Social Security taxes for labor hired by the borrower in connection with land and building development.

§ 1943.117 Loan limitations.

An RL loan will not be approved if:

(a) The borrower has outstanding RL, Soil and Water (SW), or Farm Ownership (FO) loans, and making the requested loan will cause the borrower's total unpaid principal indebtedness to exceed the lesser of $200,000, or the market value of the farm or other security.

(1) The State Director or a Farmer Programs staff member may determine that the market value is different from the appraiser's recommended market value.

(2) The basis for changing the recommended market value must be documented in the comments section of the appraisal report and initialed by an employee who has been delegated authority to appraise farms.

(b) The noncontiguous character of a farm contining two or more tracts is such that an efficient farming operation or recreation enterprise cannot be conducted due to the distance or inadequate rights-of-way or public roads between tracts.

(c) The limitation found in § 1943.129(c) is not exceeded.

§ 1943.118 Rates and terms.

(a) *Amortization period.* Each loan will be scheduled for repayment over a period not to exceed 40 years from the date of the note or such shorter period as may be necessary to assure that the loan will be adequately secured, taking into account the probable depreciation of the security.

(b) *Deferred payments*—(1) *General policy and conditions.* Borrowers are expected to pay all interest that becomes due on their loans. However, if necessary, principal and interest payments may be deferred up to three installments from the date of the note. The deferral will never extend beyond the final due date of the note. An applicant will be expected to repay some interest each year beginning the first year and, bearing in mind the above limitations, full payments will be scheduled at the earliest date the Farm and Home Plan indicates they can be paid. The applicant will be advised to make payments on the loan as soon as the applicant has repayment ability even though the deferral period has not expired. The use of deferral authority will generally involve beginning farmers, applicants with limited income and resources and applicants who have had production and economic losses because of natural or economic conditions. Deferred payments may be authorized under the following conditions:

(i) The initial Farm and Home Plan and Business Analysis-Nonagricultural Enterprise, when appropriate, show full installments cannot be paid during the deferred period;

(ii) A long-time Farm and Home Plan is prepared, when appropriate; and

(iii) A typical Farm and Home Plan and Business Analysis-Nonagricultural Enterprise, when appropriate for a full crop year following the deferred period indicates full installments can be paid under normal conditions.

(2) *Scheduling installments.* Annual installments will be scheduled in accordance with repayment ability as indicated on Table K of Form FmHA 431-2, "Farm and Home Plan". Deferred interest will not be capitalized. Installments after the deferred period will be calculated in accordance with the FMI for Form FmHA 1940-17.

(c) *Interest rate to borrower.* See Exhibit B of FmHA Instruction 440.1 for the applicable interest rate. This ex-

hibit may be obtained from any FmHA Office.

§ 1943.119 Security.

(a) *General.* Each RL loan will be secured by real estate only or by a combination of real estate and chattels or other security, including leaseholds.

(b) *Real estate security.* (1) A mortgage will be taken on the entire farm owned or to be owned by the applicant including land in which the applicant owns an undivided interest, except a portion of the farm will excluded when:

(i) The applicant's title to that part of the farm is defective, and cannot be cured at a reasonable cost, provided:

(A) The Office of the General Counsel (OGC) determines the applicant's interest is of such nature that it is not mortgageable;

(B) To include the land would complicate loan servicing or liquidation; and

(C) Any land on which title is defective will not be included in the appraisal of the farm whether or not it is described on the mortgage.

(ii) The present lienholder on that part of the farm will not permit a junior lien or State law will not recognize or permit a lien provided:

(A) The part excluded from the security is not included in the appraisal report; and

(B) OGC advice is obtained before excluding any real estate from the security or the conditions under which real estate can be excluded are outlined by a State supplement.

(iii) Soundness of the loan will not be affected if there is defective title or part of the farm is not included as security for the loan.

(2) Loans may be secured by a junior lien on real estate provided:

(i) Prior lien instruments do not contain provisions for future advances (except for taxes, insurance, other cost needed to protect the security, or reasonable foreclosure costs), cancellation, summary forfeiture, or other clauses that may jeopardize the Government's interest or the applicant's ability to pay the RL loan unless any such undesirable provisions are modified, limited, waived, or subordinated insofar as the Government is concerned.

(ii) Agreements are obtained from prior lienholders to give notice of foreclosure to FmHA whenever State law or other arrangements do not require such a notice. Any agreements needed will be obtained as provided in Part 1807 of this chapter (FmHA Instruction 427.1).

(3) The designated attorney, title insurance company, or OGC will furnish advice on obtaining security when a life estate is involved.

(4) Any loan of $10,000 or less may be secured by the best lien obtainable without title clearance or legal services as required in Part 1807 of this chapter (FmHA Instruction 427.1): *Provided,* The County Supervisor believes from a search of the county records that the applicant can give a mortgage on the farm. This exception to title clearance will not apply when:

(i) The loan is made simultaneously with that of another lender.

(ii) Land is to be purchased.

(iii) This provision conflicts with program regulations of any other FmHA loan being made simultaneously with the RL loan.

(c) *Loans to Indians on trust land.* The Departments of Agriculture and Interior have agreed that FmHA loans may be made to Indians and secured by real estate when title is held in trust or restricted status. When security is taken on real estate held in trust or restricted status:

(1) The applicant will request the Bureau of Indian Affairs (BIA) to furnish Title Status Reports to the County Supervisor.

(2) BIA approval will be obtained on the mortgage after it has been signed by the applicant and any other party whose signature is required.

(d) *Chattel security.* Loans may be secured by chattels subject to the following conditions:

(1) Real estate security is inadequate to secure the loan or is not available at all.

(2) Taking a lien on chattels will not prevent the borrower from obtaining operating credit from other sources or the FmHA.

(3) Junior liens on chattels may be taken when there is enough equity in the property. However, when practical, a first lien on selected chattel items should be obtained.

(4) A first lien will be taken on equipment or fixtures bought with loan funds whenever such property cannot be included in the real estate lien and this additional security is needed to secure the loan.

(5) If secured by chattels only, the loan cannot be over $100,000 and must be scheduled for repayment within 20 years or the useful life of the security, whichever is less.

(6) Chattel security will be obtained and kept effective as notice to third parties as provided in Subpart A of Part 1930 and Subpart B of Part 1941 of this chapter.

(e) *Other security.* (1) Items such as land, buildings, fixtures, fences, water, water stock and facilities, other improvements, easements, rights-of-way, and other appurtenances are considered part of the farm and usually pass with the farm in change of ownership may be taken as additional security when needed. If any of these do not pass with a change of ownership, the County Supervisor will obtain advice from the designated attorney, title insurance company, or OGC to identify such items and include them in appropriate security instruments or assignments.

(2) Other property that cannot be converted to cash without jeopardizing the borrower's farm operation may be taken as additional security when needed. Examples of such security may include cash value of insurance policies, stock, memberships or stock in associations or water stocks. Any property taken as additional security must have security value and be transferrable. Advice will be obtained from the designated attorney title insurance company, or OGC on obtaining this security or assignment.

(f) *Loans secured by leaseholds.* A loan may be secured by a mortgage on the leasehold if it has negotiable value and is able to be mortgaged, subject to the following:

(1) The unexpired term of the lease should extend beyond the repayment period of the loan for a period sufficient to ensure that the objectives of the loan will be achieved. If the loan repayment period is equal to or greater than the period covered by the lease, the borrower must provide other security to secure the loan or the lessor must agree in writing to compensate the borrower for any unexhausted value of the improvements when the lease expires or is terminated.

(2) The lessor must have good and marketable title to the real estate which may be subject to a prior lien, or the lessor must have signed a contract to purchase the real estate. The contract to sell and the lien instruments must not contain covenants, such as short redemption periods or rights to cancel, which may jeopardize the Government's security. Any provisions which may jeopardize the Government's security must be limited, modified, waived or subordinated in favor of the Government.

(3) With respect to achieving the purpose of the loan, obtaining adequate security, and being able to service the loan and enforce its rights, the Government, as holder of a mortgage upon a lease or leasehold interest must be in a position substantially as good as if it held a second mortgage on the real estate. Besides the lessor's consent to the RL mortgage on the leasehold interest, FmHA should consider whether or not:

(i) There is reasonable security of tenure. The borrower's interest should not be subject to summary forfeiture or cancellation.

(ii) The right to foreclose the RL mortgage and sell without restrictions

would adversely affect the salability or market value of the security.

(iii) FmHA has a right to bid at a foreclosure sale or to accept voluntary conveyance in lieu of foreclosure.

(iv) FmHA has the right, after acquiring the leasehold through foreclosure or voluntary conveyance in lieu of foreclosure, or in event of abandonment by the borrower, to occupy the property or sublet it, and to sell it for cash or credit. In case of a credit sale, the FmHA should take a vendor's mortgage with rights similar to those under the original RL mortgage.

(v) The borrower has the right, in the event of default or inability to continue with the lease and the RL loan, to transfer the leasehold, subject to the RL mortgage, to an eligible transferee who will assume the RL debt.

(vi) Advance notice will be given to FmHA of the lessor's intention to cancel, terminate or foreclosure upon the lease. Such advance notice should be long enough to permit FmHA to ascertain the amount of delinquencies, the total amount of the lessor's and any other prior interest, the market value of the leasehold interest and, if litigation is involved, to refer the case with a report of the facts to the United States Attorney for appropriate action.

(vii) There are express provisions covering the question of FmHA's obligation to pay unpaid rental or other charges accrued at the time it acquires possession of the property or title to the leasehold, and those which become due during FmHA's occupancy or ownership, pending further servicing or liquidation.

(viii) There are any necessary provisions to assure fair compensation to the lessee for any part of the premises taken by condemnation.

(ix) Any other provisions are necessary to obtain an interest which can be mortgaged.

(4) A State supplement will be issued in any State in which real estate or chattel liens may be taken on leasehold interests in farmland and recorded so as to protect the mortgagee.

(5) The following language or similar language which, in the opinion of OGC or the designated attorney, is legally adequate, will be inserted on the lien instrument:

"All Borrower's right, title, and interest in and to the leasehold estate for a term of —— years beginning on ————, 19——, created and established by a certain Lease dated ————, 19——, executed by ———————— as lessor(s), recorded on ————, 19——, in Book ————, page —— of the ———— Records of said County and State, and any renewals and extensions thereof, and all Borrower's right, title, and interest in and to said Lease, covering the following real estate:" (To be inserted just before the legal description.)

This additional covenant will be inserted in the mortgage:

"Borrower will pay when due all rents and any and all other charges required by said Lease, will comply with all other requirements of said Lease, and will not surrender or relinquish without the Government's written consent, any of the Borrower's right, title or interest in or to said leasehold estate or under said Lease while this instrument remains in effect."

(g) *State supplements.* Each State will supplement this section to provide instructions on forms to be completed and other requirements to be met in order to obtain the required security. In each State where loans will be made to Indians holding title to land in trust or restricted status, FmHA and BIA will decide on a way to exchange necessary information, and the procedure to be followed will be set out in a State supplement.

§ 1943.120–1943.122 [Reserved]

§ 1943.123 General provisions.

(a) *Flood and mudslide hazard areas.* Flood and mudslide hazards will be evaluated whenever the farm to be financed is located in special flood or mudslide prone areas as designated by the Federal Insurance Administration (FIA). Subpart B of Part 1806 of this chapter (FmHA Instruction 426.2) will be complied with when loan funds are used to construct or improve buildings located in such areas. This will not prevent making loans on farms if the farmstead is located in a flood or mudslide prone area and funds are not included for building improvements. The hazard will be noted in the appraisal report. When land development or improvements such as dikes, terraces, fences, and intake structures are planned to be located in special flood or mudslide prone areas, loan funds may be used subject to the following:

(1) The Corps of Engineers or the Soil Conservation Service (SCS) will be consulted concerning:

(i) Likelihood of flooding.

(ii) Probability of flood damage.

(iii) Recommendations on special design and specifications needed to minimize flood and mudslide hazards.

(2) FmHA representatives will evaluate the proposal and record the decision in the loan docket.

(b) *Civil rights.* The provisions of Subpart E of Part 1901 of this Chapter will be complied with on all loans using RL funds.

(c) *Protection of historical and archaeological properties.* If there is any evidence to indicate the property to be financed has historical or archaeological value, the provisions of Subpart F of Part 1901 of this chapter apply.

(d) *Environmental impact statements.* If RL loans are used to finance an operation which is likely to have an effect on the environment, the applicant will be requested to complete Form FmHA 449-10, "Applicant's Environmental Impact Evaluation."

(1) The County Supervisor will complete Form FmHA 440-46, "Environmental Impact Assessment," from information provided by the applicant in Form FmHA 449-10.

(2) The County Supervisor will forward a copy of the loan application, completed FmHA Forms 449-10 and 440-46, and any other information and docket material relevant to environmental considerations to the State Director. The State Director will determine whether or not an environmental impact statement should be prepared based on this submittal and any other available information.

(3) The provisions of Subpart G of Part 1901 of this chapter will be followed to the extent applicable for RL loans in making decisions on operations that may have a significant impact on the environment.

(e) *Truth in Lending—Real Estate Procedures Act.* The provisions of Subpart I of Part 1901 of this Chapter applies as follows:

(1) The provisions in § 1901.401 concerning Truth in Lending apply to any RL loan made to an individual if the amount of the loan is less than $25,000.

(2) The provisions of the Real Estate Procedures Act outlined in § 1901.406 apply to any applicant when RL funds are used and less than 25 acres of land are involved, if:

(i) Any part of the loan is used to purchase all or part of the land to be mortgaged, and

(ii) The loan is secured by a first lien on the property where a dwelling is located.

(f) *Equal Credit Opportunity Act.* In accordance with Title V of Pub. L. 93-495, the Equal Credit Opportunity Act, the FmHA will not discriminate against any applicant on the basis of sex or marital status with respect to any aspect of a credit transaction.

(g) *Compliance with special laws and regulations.* (1) Applicants will be required to comply with Federal, State and local laws and regulations including those governing building construction; diverting, appropriating, and using water including use for domestic or recreational enterprise purposes; installing facilities for draining land; and making changes in the use of land affected by zoning regulations.

(2) State Directors and Farmer Programs Staff members will consult with the SCS, U.S. Geological Survey, State Geologist or Engineer, or any board having official functions relating to water use or farm drainage requirements and restrictions for water and drainage development. State supple-

ments will be issued to provide guidelines which:

(i) State all requirements to be met, including the acquisition of water rights.

(ii) Define areas where development of ground water for irrigation is not recommended.

(iii) Define areas where land drainage is restricted.

(3) Applicants will comply with all local laws and regulations and obtain any special licenses or permits required by State or local laws or regulations for operating a recreation enterprise.

§ 1943.124 Special requirements.

(a) *Land, building and facility development.* Adequate land resources and development needed to make the recreation enterprise ready for a successful operation will be provided at the outset in connection with each loan. Recommendations of representatives of the Forest Service, Soil Conservation Service, State Agricultural Extension Service, and State Planning and Development Agency or local planning groups should be obtained and included in the development plan as well as the Farm and Home Plan. In planning such development with the applicant, the County Supervisor will encourage the use of any cost-sharing assistance that may be available through any source such as the Agricultural Stabilization and Conservation Service (ASCS) programs.

(b) *Technical assistance.* Applicants are responsible for obtaining all the technical assistance required in connection with an RL loan, such as that needed to plan, construct, or establish the improvement or facility to be financed.

(c) *Insurance.* (1) Insurance will be obtained on buildings and other property as provided in Subpart A of Part 1806 of this chapter (FmHA Instruction 426.1).

(2) See § 1943.123 (a) for information about flood and mudslide insurance.

(3) Applicants receiving RL loans will be advised of the possibility of incurring liability and will be encouraged to obtain public liability and property damage insurance.

(4) Chattel security should be insured against losses caused by hazards customarily insured against in the area if the loss of such security would jeopardize the interests of the Government.

(d) *Life estates.* When life estates are involved, loans may be made:

(1) To both the life estate holder and the remainderman: *Provided:*

(i) Both have a legal right to occupy and operate the farm; and

(ii) Both are eligible for the loan; and

(iii) Both parties sign the note and mortgage.

(2) To the remainderman only: *Provided:*

(i) The remainderman has a legal right to occupy and operate the farm; and

(ii) The lien instrument is signed by the remainderman, life estate holder, and any other party having any interest in the security.

(3) To the life estate holder only, provided:

(i) There is no legal restriction placed on the life estate holder who occupies and operates a farm; and

(ii) The lien instrument is signed by the life estate holder, remainderman, and any other party having any interest in the security.

(e) *Farm or residence situated in different counties.* If a farm is situated in more than one State, county, or parish, the loan will be processed and serviced in the State, county, or parish in which the borrower's residence on the farm is located. However, if the borrower's residence is not situated on the farm, the RL loan will be serviced by the County Office serving the county in which the farm or a major portion of the farm is located unless otherwise approved by the State Office.

(f) *Liens junior to the FmHA lien.* A loan will not be approved if a lien junior to the FmHA lien is likely to be taken simultaneously with, or immediately subsequent to, the loan closing to secure any debt the borrower may have at the time of loan closing or any debt that may be incurred in connection with the RL loan, such as for a portion of the purchase price of the property or money borrowed from others for payments on debts against the property, unless the total debt against the security would be within its market value.

(g) *Graduation of recreation loan borrowers.* If, at any time, it appears that the borrower may be able to obtain a refinancing loan from a cooperative or priviate credit source at reasonable rates and terms, comparable to those for loans for similar purposes and periods of time prevailing in the area the borrower will, upon request, apply for and accept such financing.

§ 1943.125 Options, planning and appraisals.

(a) *Options.* An applicant is responsible for obtaining options on real property. Form FmHA 440-34, "Option to Purchase Real Property" should be used if possible. Other forms may be used if acceptable to all parties concerned and to FmHA. When an FmHA form is not used, a provision should be included which makes the option contingent upon the FmHA making a loan to the FmHA making a loan to the buyer.

(1) The County Supervisor should advise the applicant to have an understanding with the seller on such items as:

(i) Land description and number of acres;

(ii) Buildings and fixtures included in the transaction. The applicant should determine the condition of property attached to the land and the working condition of any fixtures with movable parts;

(iii) Minerals and the effect any mineral reservation has on the land value and operating it as a farm or recreation enterprise.

(iv) Access to the land or any part of it;

(v) The party responsible for taxes and insurance; and

(vi) The party who will receive the income from the land during the crop year of the transaction.

(2) The applicant will decide if the option should be recorded and will be responsible for paying any recording fees.

(b) *Planning.* Form FmHA 431-4, "Business Analysis—Nonagricultural Enterprise," or other suitable forms and Farm and Home Plans, when appropriate, will be completed as provided in Subpart B of Part 1924 of this chapter.

(c) *Appraisals.* (1) Real estate appraisals will be completed by an FmHA employee authorized to make farm appraisals when real estate is taken as security. Appraisals are not required if:

(i) The amount of the FmHA loan and any simultaneous loan is $10,000 or less; and

(ii) The loan approval official determines the loan is adequately secured without an appraisal; and

(iii) The County Supervisor indicates in the loan docket an estimate of the market value of the real estate to be given as security.

(2) Real estate appraisals will be completed as provided in Subpart A of Part 1809 of this chapter (FmHA Instruction 422.1).

(3) The value of stock required to be purchased by Federal Land Bank (FLB) borrowers may be added to the recommended market value of the real estate provided:

(i) An assignment is obtained on the stock, or

(ii) An agreement is obtained which provides that:

(A) The value of the stock at the time the FLB loan is satisfied will be applied on the FLB loan, or

(B) The stock refund check is made payable to the borrower and FmHA, or

(C) The stock refund check is made payable to the borrower and mailed to the County Supervisor.

(iii) The total of the stock value and the recommended market value of real estate is indicated in the comments section of the appraisal report.

(4) In the case of nonreal estate security the following items apply:

(i) Form FmHA 440-21, "Appraisal of Chattel Property," will be used.

(ii) The property which will serve as security will be described in sufficient detail so it can be identified.

(iii) Its current market value or, if appropriate, the current cash value will be determined.

§ 1943.126 Planning and performing development.

The development work will be planned and completed in accordance with Part 1804 of this chapter (FmHA Instruction 424.1). The provisions of Subpart E of Part 1901 will be met on all recreation loans.

§ 1943.127 Relationships with other lenders.

(a) An applicant will be requested to obtain credit from another source when information indicates such credit is available. When another lender will not make a loan for the total needs of the applicant but is willing to participate with an RL loan, consideration will be given to a participation loan. FmHA employees may not guarantee, personally or for FmHA, repayment of advances made from other credit sources. However, lenders may be assured that lien priorities will be recognized.

(b) The County Supervisor and the other lender representative should maintain a close working relationship in processing loans to mutual applicants or borrowers. When an RL loan is made at the same time as a loan from another lender, that lender's lien will have priority over the FmHA lien unless otherwise agreed upon. In addition to principal and interest, the lender's lien priority can cover advances for payment of taxes, property insurance, reasonable maintenance to protect the security, and reasonable foreclosure costs including attorney's fees.

§ 1943.128 [Reserved]

§ 1943.129 Relationship with other FmHA loans, guaranteed or economic emergency loans.

(a) Insured RL loans may be made simultaneously with other FmHA loans, or to borrowers presently in debt on FmHA loans only if the loan limits involved will not be exceeded and all requirements of the loans involved will be met.

(b) If an applicant is eligible for an RL loan and an Economic Emergency (EE) loan for the same purposes and the RL loan will meet the needs of the applicant, it will be the policy to process the RL loan, provided loan funds are available. If the RL loan will not meet the *total* needs of the applicant, it will normally be the policy to process an EE loan only.

(c) Borrowers indebted to FmHA and/or an FmHA guaranteed lender for an EE loan may be considered for RL loan(s): *Provided,* The total outstanding principal indebtedness to FmHA and/or and FmHA guaranteed lender for the EE and any FO, SW and OL loans would not exceed $650,000.

(d) An insured RL loan will not be made to a borrower with an outstanding guaranteed FO, SW or RL loan, and paragraph (c) of this section is not intended to override this policy.

§ 1943.130 County Committee certification.

The County Committee will certify that an applicant is eligible on Form FmHA 440-2, "County Committee Certification or Recommendation" before a loan is approved. In some instances the Committee may want to interview the applicant or see the farm before making any recommendations.

§ 1943.131 [Reserved]

§ 1943.132 Loan docket processing.

(a) *Forms.* The following table is a guide to the forms needed and shows how they are distributed:

FmHA form No.	Name of form	Total number of copies	Signed by borrower	Loan docket	Copy to borrower
400-1	Equal Opportunity Agreement.	2	1-O	1-O	1-C
400-3	Notice to Contractors and Applicants.	3		1-C	1-C
400-4	Nondiscrimination Agreement.	2	2-O and C	1-O	1-C
400-6	Compliance Statement	3		1-C	1-C
*403-1	Debt Adjustment Agreement.	*3	1-O	1-O	1-C
410-1	Application for FmHA Services.	*1	1-O	1-O	
410-8	Applicant Reference Letter.	1		1-O	
410-9	Statement Required by the Privacy Act.	2	2-O and C	1-C	1-O
410-10	Privacy Act Statement to References.	**2		1-C	

FmHA form No.	Name of form	Total number of copies	Signed by borrower	Loan docket	Copy to borrower
422-1	Appraisal Report Farm Tract.	1		1-O	
*422-2	Supplemental Report—Irrigation, Drainage, Levee, and Minerals.	1		1-O	
*422-10	Appraiser's Worksheet—Farm Tracts for Study of Comparable Properties.	1		1-O	
*424-1	Development Plan	[3]2	1-O	1-O	1-C
*427-8	Agreement with Prior Lienholder.	[6]3		1-O	1-C
*431-1	Long-Time Farm and Home Plan.	2	2-O and C	1-C	1-O
*431-2	Farm and Home Plan	[2]1	1-O	1-O	
431-3	Family Budget	[5]2	2-O and C	1-C	1-O
*431-4	Business Analysis—Nonagricultural Enterprise.	2	1-O	1-C	1-O
440-1	Request for Obligation of Funds.	[4]4	[11]2-O+C	1-O	1-C
440-2	County Committee Certification or Recommendation.	1		1-O	
*440-9	Supplementary Payment Agreement.	2	1-O	2-O and C	1-C
*440-21	Appraisal of Chattel Property.	2		1-O	
*440-34	Option to Purchase Real Property.	[1]3	2-O and C	1-O	1-C
*440-41	Disclosure Statement for Loans Secured by Real Estate.	[9]2	1-C	1-C	1-O
*440-42	Credit Sale Disclosure Statement.	[9]2	1-C	1-C	1-O
*440-43	Notice of Right to Rescind.	[10]3	*1	1	2-O+1
*440-46	Environmental Impact Assessment.	1		1-O	
**443-18	Recreation Loan Fund Analysis.	3		3-O and 2C	1-C
*443-17	Agreement to Sell Nonessential Real Estate.	2	2-O and C	1-O	1-C
*449-10	Applicants Environmental Impact Evaluation.	2	1-O	1-O	1-C

[1]Signed copy of option previously delivered to the seller.
[2]In addition to the plan for first full crop year, the interim plan, if prepared, will be included in the docket.
[3]When the contract method will be used, three copies of plans and specifications will be required.
[4]An extra copy will be prepared in connection with a loan to acquire land when the Bureau of Indian Affairs must take action to have a patent issued to the purchaser. After the loan is approved, a copy of the form will be sent to the Area Director of the Bureau of Indian Affairs so that the patent can be requested from the Bureau of Land Management.
[5]Signed copy to creditor.
[6]Copy to lienholder.
[7]Copy to State Director.
[8]Record of applicant investigation, availability of other credit, and so forth, which remain with the docket.
[9]In right-to-rescind cases, original and sufficient copies for each person who has a right to rescind.
[10]Original and one copy to borrower, two copies to each other person who has a right to rescind. If the right to rescind is exercised, the person exercising the right will sign one copy of the form and return it to the county office.
[11]Applicant must sign and date this form.
[12]Signed by all sources of information concerning the applicant's character and credit. Orginial is retained by the person who supplies the information.

O=Original; C=Copy.
*When applicable.
**Not used when a credit sale is processed without a loan.

(b) *Other docket items.* The running record and correspondence pertaining to the loan application and docket will be included. Other items may include supplementary information about the recreation enterprises, copies of mortgages, contracts, and deeds.

(c) *Verification of veterans' preference.* If the applicant has checked the veteran block, the County Supervisor, or other County Office employee will review the applicant's evidence of discharge or release to determine whether the applicant is entitled to veteran's preference.

(d) *Information on other credit.* The docket will include, by entries in the running record or by letters, information on the need to refinance secured and major unsecured debts. Also, information will be included which shows other credit is not available in the amount needed or is not available under repayment terms which the applicant can meet.

§ 1943.133 Loan approval or disapproval.

(a) *Loan approval authority.* Initial and subsequent loans may be approved as authorized by Subpart A of Part 1901 of this chapter provided:

(1) Section 1943.117(a), containing loan limitations, is not violated.

(2) No significant changes have been made in the development plan considered by the appraiser when real estate will be taken as security.

(b) *Loan approval action.* (1) The loan approval official is responsible for reviewing the docket to determine whether the proposed loan complies with established policies and all pertinent regulations. When reviewing the docket, the loan approval official will determine that:

(i) The County Committee has certified the applicant eligible,

(ii) The Committee certification has been properly completed and signed by at least two members of the Committee,

(iii) Funds are requested for authorized purposes,

(iv) The proposed loan is sound,

(v) The security is adequate,

(vi) Necessary supervision is planned, and

(vii) All other pertinent requirements have been met or will be met.

(2) When approving the loan, the approval official will:

(i) Indicate on all copies of Form FmHA 440-1, "Request for Obligation of Funds," any conditions not required by FmHA regulations that must be met for loan closing;

(ii) Specify any special security requirements;

(iii) Indicate special conditions or agreements needed with prior lien holders, when appropriate;

(iv) Indicate that approval is subject to satisfactory title evidence when required, if such evidence has not been obtained;

(v) Indicate any other special requirements; and

(vi) Sign the original and one copy of Form FmHA 440-1 and insert the title of the approval official.

(c) *Distribution of forms after loan approval.* The applicable docket forms will be distributed as outlined below by the loan approval official after a loan is approved.

(1) The following forms will be sent to the Finance Office:

(i) Form FmHA 440-1 (copy).

(ii) When funds have been obligated the Finance Office will send to the County Office an original and one copy of Form FmHA 440-57, "Acknowledgement of Obligated Funds/Check Request."

(iii) Form FmHA 443-12 (original).

(iv) Form FmHA 449-19 (original) for initial loans only. If an inital OL or SW loan is approved at the same time, only one set of forms is required.

(2) The original of Form FmHA 440-1 and the remainder of the loan docket will be sent to the County Office.

(3) The following forms will be sent to the State Office:

(i) Form FmHA 440-1 (copy).

(ii) Form FmHA 443-12 (copy).

(4) A signed copy of Form FmHA 440-1 will be sent to the borrower on the date of loan approval.

(d) *Loan disapproval.* The following action will be taken when a loan is disapproved:

(1) The reason(s) for disapproval will be indicated on Form FmHA 440-1 by the loan approval official. The reason(s) may be in a letter or the running record if this form has not been completed. Suggestions which could remedy the reason(s) for disapproval should be included.

(2) The County Supervisor will notify the applicant in writing of the action taken and include any suggestions that could result in favorable action when appropriate. In addition to sending out the written notice the County Supervisor may personally discuss the action with the applicant. In that instance, the items covered in the discussion will be documented in the running record.

(3) Items furnished by the applicant during docket processing will be returned.

§ 1943.134 Requesting title service and accepting option(s).

When a loan is approved, and real estate will serve as security, the following actions will be taken:

(a) The County Supervisor will request the applicant to obtain title clearance as provided in Part 1807 of this chapter (FmHA Instruction 427.1), when required, if this has not been done.

(b) If an option is involved, the applicant will sign Form FmHA 440-35, "Acceptance of Option" and send the original to the seller. A copy will be kept in the case folder.

(c) The applicant will arrange with the seller to take possession. The following forms may be used if appropriate:

(1) Form FmHA 443-5, "Short-Term Lease of Optioned Land."

(2) Form FmHA 443-6, "Short-Term Lease (Between Purchaser and Seller)."

(3) Form FmHA 443-8, "Agreement (Between Seller, Purchaser, and Tenant)."

§ 1943.135 Action after loan approval.

(a) *Requesting check.* If real estate will not be taken as security *or* if real estate is taken as security and satisfactory title evidence is obtained prior to loan approval *or* when the County Supervisor is reasonably certain that satisfactory title evidence can be obtained so the loan can be closed within 20 working days from the date of the check, loan funds may be requested at the time of loan approval by entering the amount needed in the appropriate block of Form FmHA 440-1. If funds are not requested when the loan is approved, advances in the amount needed will be requested by using Form FmHA 440-57 in accordance with the Forms Manual Insert (FMI). The original Form FmHA 440-57 will be retained in the County Office and a copy sent to the Finance Office. The initial loan advance will be requested when loan approval conditions can be met, satisfactory title to real estate security can be provided, and a date has been set for loan closing.

(1) When all loan funds can be disbursed at, or within 30 days after, loan closing or if the amount of funds that cannot be disbursed does not exceed $5,000, the total amount of the loan will be requested in a single advance.

(2) When loan funds cannot be disbursed as outlined in paragraph (a)(1) of this section, the amount needed to meet the immediate needs of the borrower will be requested by submitting a copy of Form FmHA 440-57 to the Finance Office. The amount of each

advance should meet the needs of the borrower as much as possible, so that the amount in the supervised bank account will be kept at a minimum. The Finance Office will continue to supply Form FmHA 440-57 until the entire loan has been disbursed. The County Supervisor should tell the borrower to notify the County Office of amounts needed on a timely basis to avoid delays in receiving loan checks.

(b) *Handling loan checks.* (1) When the loan check or the borrower's personal funds are to be deposited in the designated loan closing agent's escrow account, this will be done no later than the date of loan closing. If loan funds or the borrower's personal funds are to be deposited in a supervised bank account, this will be done in accordance with Part 1803 of this chapter (FmHA Instruction 402.1) as soon as possible, but in no case later than the first banking day following the date of loan closing.

(2) If a loan check is received and the loan cannot be closed within 20 working days from the date of the check, the County Supervisor will take appropriate action in accordance with FmHA Instruction 102.1, a copy of which may be obtained from any FmHA ofice.

(3) When a check is returned and the loan will be closed at a subsequent date, another check will be requested in accordance with FmHA Instruction 102.1, a copy of which may be obtained as stated in paragraph (b)(2) of this section.

(c) *Cancellation of loan.* Loans may be cancelled before loan closing as follows:

(1) The County Supervisor will notify the State and Finance Offices of loan cancellation by using Form FmHA 440-10. The County Office will send a copy of Form FmHA 440-10 to the designated attorney, escrow agent, Regional Attorney, or the title insurance company representative providing loan closing instructions to indicate that the loan has been cancelled. If a check received in the County Office is to be cancelled, the check will be returned to the Disbursing Center, U.S. Treasury Department, Post Office Box 3329, Kansas City, Kansas 66103, with a copy of Form FmHA 440-10.

(2) Interested parties will be notified of the cancellation as provided in Part 1807 of this Chapter (FmHA Instruction 427.1).

(d) *Cancellation of advances.* When an advance is to be cancelled, the County Supervisor must take the following actions:

(1) Complete and distribute Form FmHA 440-10 in accordance with the FMI.

(2) When necessary, prepare and execute a substitute promissory note reflecting the revised total of the loan and the revised repayment schedule. When it is not possible to obtain a substitute promissory note, the County Supervisor will show on Form FmHA 440-10 the revised amount of the loan and the revised repayment schedule.

(e) *Increase or decrease in amount of loan.* If it becomes necessary to increase or decrease the amount of the loan prior to loan closing, the County Supervisor will request that all distributed docket forms be returned to the County Office and reprocessed unless the change is minor and replacement forms can readily be completed and submitted. In the latter case, a memorandum explaining the change will be attached to the revised forms and sent to the Finance Office.

§ 1943.136-1943.137 [Reserved]

§ 1943.138 Loan closing actions.

When a loan closing date has been agreed upon, the County Supervisor will notify the borrower and the seller, if any, of the loan closing date. The following appropriate actions will be taken in connection with and after loan closing.

(a) *Real estate mortgage loans.* When a loan is to be secured by a real estate mortgage, it will be closed in accordance with the applicable provisions of Part 1807 of this chapter (FmHA Instruction 427.1) except as modified for loans of $10,000 or less in § 1943.119(b)(4).

(b) *Loans involving chattel or other nonreal estate security.* All chattel security instruments will be signed and filed as prescribed in Subpart B of Part 1941 of this chapter and for operating loans. The following forms will be used for chattel security:

(1) Form FmHA 440-15, "Security Agreement (Insured loans to Individuals)."

(2) Form FmHA 440-25, "Financing Statement," or when authorized, Form FmHA 440A25, "Financing Statements".

(3) State forms may be used if national forms are not legally acceptable. Such forms will require OGC and National Office clearance.

(c) *Applicant's financial condition.* The County Supervisor will review with the applicant the financial statement which was prepared at the time the docket was developed. If there have been significant changes in the applicant's financial condition, the financial statement will be revised and initialed by the applicant and the County Supervisor. When an applicant's financial condition has changed to the extent that it appears that the loan would be unsound or improper, the loan will not be closed. If a revised loan docket is needed to meet loan requirements or determine loan soundness, it will be developed and submitted to the appropriate loan approval official.

(d) *Loan approval conditions.* The County Supervisor will inform the applicant of any loan approval conditions that need to be met. These conditions will usually be included in the notice informing the applicant of the loan closing date. The loan will not be closed if the applicant is unable to meet loan approval conditions.

(e) *Change in the use of funds planned for refinancing.* (1) County Supervisors are authorized to:

(i) Transfer funds planned to be used for refinancing specific debts to other debts when there is a need to do so; and

(ii) Transfer funds planned to be used for other purposes to pay small deficiencies in estimates for refinancing debts, providing there are sufficient remaining funds to complete any land purchase and planned development.

(2) A revised docket will be developed when:

(i) The total amount of debts to be refinanced has increased in such an amount that planned loan purposes cannot be carried out: and

(ii) The applicant is unable to make up any deficiencies from other resources.

(f) *Assignment of income from real estate to be mortgaged.* Unless otherwise authorized by the State Director in an individual case, income to be received by the borrower from royalties, leases, or other existing agreements under which the value of the real estate security will be reduced will be assigned and disposed of in accordance with Subpart A of Part 1872 of this chapter (FmHA Instruction 465.1), including provisions for written consent of any prior lienholder. Authority may be given by the State Director to refrain from taking an assignment in cases where the security is otherwise adequate, payment of the loan is reasonably assured from other sources, and the income has already been committed for other purposes or must be relied on by the applicant for essential living or operating expenses. When the County Supervisor deems it advisable, assignments also may be taken on all or a portion of income to be derived from nondepleting sources such as income from bonus payments or annual delay rentals. Such income will be assigned and disposed of in accordance with Subpart A of Part 1872 of this chapter (FmHA Instruction 465.1).

(1) For assignment of income, Form FmHA 443-16, "Assignment of Income from Real Estate Security," will be used, except if it is legally inadequate in a State it may be adapted to that State with the approval of the OGC or

an authorized State form may be used instead.

(2) The County Supervisor, upon the advice of the designated attorney, escrow agent, title insurance company, or the OGC, as appropriate, may require acknowledgement and recordation of the assignment. Any cost incident thereto will be paid by the borrower.

(3) At the time Form FmHA 443-16 is executed, appropriate notations will be made on Form 405-1, "Management System Card—Individual," to insure that the proceeds, or the specified portion of the proceeds assigned to FmHA from the transactions are remitted at the proper time.

(g) *Preparation of the note.* Form FmHA 1940-17, "Promissory Note" will be used and completed in accordance with the FMI.

(1) Separate notes will be prepared for any other FmHA loan made simultaneously with the RL loan. The notes will be competed as provided in the appropriate loan regulation and FMI.

(2) All FmHA notes to be secured by real estate can be described in the same mortgage.

(3) When a loan is closed in December with an installment due on the following January 1, that installment should be collected at loan closing.

(4) The promissory note will be signed as follows:

(i) When a loan is made to an individual, the note will be executed in accordance with Part 1807 of this chapter (FmHA Instruction 427.1).

(ii) When a loan is made to a cooperative or a corporation, the note will be executed by:

(A) The official(s) authorized to obtain the loan; and

(B) The individual(s) holding a majority interest in the cooperative or corporation, as individuals.

(iii) When a loan is made to a partnership, the note will be executed by all partners in the partnership.

(iii) When a loan is made to a partnership, the note will be executed by all partners in the partnership.

(h) *Supplementary payment agreement.* Form FmHA 440-9, "Supplementary Payment Agreement," should be used for each applicant who regularly (such as weekly, monthly, or quarterly) receives substantial income from an off-farm source, a nonfarm enterprise, or from farming.

(i) *Obtaining insurance.* The applicant will be informed of the insurance requirements set forth in § 1943.124.

(j) *Effective time of loan closing.* An RL loan is considered closed when the mortgage is filed for record.

(k) *Distribution of documents after loan closing.* The County Supervisor should review the forms and closing actions. Corrective action should be taken when necessary.

(1) Real estate mortgages:

(i) When the original recorded instrument is returned to County Office:

(A) File the original in County Office file, and

(B) Give a copy to borrower.

(ii) When the original is retained by recorder:

(A) File a conformed copy in county office file, and

(B) Give a conformed copy to borrower.

(iii) the County Supervisor will provide copies that may be needed in some cases for interested third parties.

(2) Deeds:

(i) Give the original to borrower, and

(ii) Retain one copy to file.

(3) Title insurance policies:

(i) File the Mortgagee title policy in the county office file, and

(ii) Give the owner's title policy, if one is obtained, to the borrower.

(4) Water stock certificates or similar collateral will be retained in the county office file.

(5) Abstracts of title:

(i) Return to the borrower, except that when they were obtained from a third party with the understanding that they would be returned, the abstracts will be sent to the third party. A memorandum receipt will be obtained when abstracts are delivered to the third party.

(ii) Form FmHA 140-4 "Transmittal of Documents" will be used and a receipted copy kept in the County Office. The FMI should be follow for preparing this form.

§ 1943.139-1943.141 [Reserved]

1943.142 Servicing.

Recreation loans will be serviced in accordance with Subpart A of Part 1872 (FmHA Instruction 465.1). Chattel security for RL loans will be serviced in accordance with Subpart A of Part 1930 of this chapter.

§ 1943.143 Subsequent recreation loans.

A subsequent recreation loan is a loan made to a borrower who is currently in debt for a recreation loan.

(a) A subsequent loan may be made for the same purposes and under the same conditions as an initial loan.

(b) The subsequent loan will be processed in the same manner as an initial loan except that a new appraisal of real estate will be required only when real estate is taken as security and one or more of the following exists:

(1) Subsequent loan funds will be used to purchase land or the mortgage will include additional land that is not presently covered by the FmHA real estate mortgage.

(2) The County Supervisor or loan approval official requests a new appraisal report.

(3) The latest appraisal report on the farm is over two years old.

(4) The physical characteristics of the farm have changed significantly.

(5) The subsequent loan will be over $10,000.

(6) There have been significant changes in the market value of real estate in the area within the last two years.

(c) When a new appraisal is not made, an employee authorized to make farm appraisals will provide an estimate of the value of the security. This value will be inserted, dated, and initialed in the comments section of the latest appraisal report.

(d) A new real estate mortgage will not be necessary provided:

(1) All the land which will serve as security for the loan is described on the present real estate mortgage; or

(2) The real estate mortgage has a future advance clause and a State supplement provides authority for using such a clause; or

(3) the required lien priority is obtained with the existing mortgage and future advance clause.

§ 1943.144 Subordinations.

Subordinations in favor of other lenders will be processed in accordance with Subpart A of Part 1872 of this chapter (FmHA Instruction 465.1).

§ 1943.145-1943.149 [Reserved]

§ 1943.150 State supplements.

State supplements will be issued as necessary to implement this subpart.

(7 U.S.C 1989; 5 U.S.C. 301; delegation of authority by the Sec. of Agri., 7 CFR 2.23; delegation of authority by the Asst. Sec. for Rural Development 7 CFR 2.70.)

Dated: November 7, 1978.

JAMES E. THORNTON,
Associate Administrator,
Farmers Home Administration.

[FR Doc. 78-33099 Filed 11-28-78; 8:45 am]

Federal Register

WEDNESDAY, NOVEMBER 29, 1978
PART III

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Health Care Financing Administration

■

PROFESSIONAL STANDARD REVIEW

California PSRO Area; Clarification and Redesignation

[4110-35-M]

Title 42—Public Health

CHAPTER IV—HEALTH CARE FINANCING ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PART 460—PROFESSIONAL STANDARDS REVIEW

California PSRO Area Redesignation

AGENCY: Health Care Financing Administration (HCFA), DHEW.

ACTION: Final Regulation.

SUMMARY: This regulation redesignates PSRO Area XXII of California to include postal zone 90067. The revision will permit initiation of PSRO review in Century City Hospital, located within a zone inadvertently omitted from the original designation of PSRO areas. This regulation also provides clarifying language indicating that the city, community, and postal zone boundaries which were in effect in 1974, and not currently existing boundaries, are being used to describe the limits of PSRO areas XVIII through XXV.

DATE: The amendment is effective on November 29, 1978.

FOR FURTHER INFORMATION, CONTACT:

Ann Flurry, 301-443-6477.

SUPPLEMENTARY INFORMATION: Professional Standards Review Organizations are independent physician organizations mandated under Title XI, Part B of the Social Security Act to review the medical necessity, appropriateness, and quality of health care services funded through the Medicare, Medicaid, and Maternal and Child Health programs. Specific PSRO areas must be designated before review activities can be undertaken.

Redesignation of Area XXII

California PSRO Area designations, published on March 18, 1974 at 39 FR 10207, used postal zones, unincorporated communities and counties to establish the PSRO boundaries, but inadvertently omitted postal zone 90067. Therefore, on November 10, 1977, we published a Notice (42 FR 58544) proposing to designate postal zone 90067 as part of California PSRO Area XXII. This would place Century City Hospital under the review authority of the PSRO for Area XXII.

Eleven comments were received, all of which objected to the proposed designation and recommended instead that postal zone 90067, and particularly Century City Hospital, be included in Area XXV. The basis for their recommendation was their belief that Century City Hospital is a part of the medical service area of Area XXV rather than Area XXII.

In support of their position, they stated that 48 percent of the physicians on the Century City Hospital staff are members of the Area XXV PSRO; and that the patterns of practice at Century City Hospital are the same as those in Area XXV.

However, we found that more than half of the Century City Hospital staff are members of the Area XXII PSRO; that the hospital is linked more closely to medical institutions in Area XXII than in area XXV, specifically the UCLA Hospital, a regional medical center, and Brotman Memorial Hospital; and that the PSRO in Area XXII has been working closely with Century City Hospital for three years, anticipating that we would confirm our original intent to include postal zone 90067 in Area XXII.

On the basis of the latter information, we have decided to include postal zone 90067 in PSRO Area XXII. This will also achieve a better balance of total number of physicians in the two areas. There are already approximately 1500 more physicians in Area XXV than in area XXII.

Clarification of Permanent Boundaries for Areas XVIII Through XXV

Areas XVIII through XXV were designated by city, community, and postal zone boundaries which were in effect in 1974, but the original regulation did not indicate that this was the date that the boundaries were fixed. Postal zones and community boundaries have changed since 1974. These changes have created confusion as to the correct PSRO area boundaries. To eliminate this confusion, the regulation now expressly states that the PSRO boundaries are those which were in effect in 1974 and will remain fixed regardless of subsequent changes in postal zones or communities.

Because we believe it is desirable to initiate PSRO review promptly in any area where review has not yet been possible, we are adopting the amendment to be effective immediately.

A detailed description of the boundaries of California Areas XVIII through XXV is being published today as Part III. Copies of Part III may be obtained from HCFA.

42 CFR 460.7 is amended by revising the introductory statement and Area XXII to read as follows:

§ 460.7 California.

Twenty-eight Professional Standards Review Organization areas are designated in California. Areas XVIII through XXV are designated by city, community, and postal zone boundaries as in effect in 1974. All other areas are designated by counties. The boundaries for PSRO Areas XVIII through XXV will remain fixed, unless specifically revised through rulemaking, even though the 1974 boundaries for postal zones or other community areas may change. Therefore, detailed specifications of these PSRO Areas have also been prepared and are available upon request from HCFA.

* * * * *

AREA XXII

Culver City	Palms
Malibu	Playa del Rey
Marina del Rey	Santa Monica
Mar Vista	Sawtelle
Ocean Park	Venice
Pacific Palisades	Westwood

Los Angeles Postal Zones:

90034	90066
90049	90067
90064	90073

* * * * *

(Sec. 1102, 1152, Social Security Act (42 U.S.C. 1302, 1320c-1).)

Dated: October 23, 1978.

WILLIAM D. FULLERTON,
Acting Administrator, Health Care Financing Administration.

Approved: November 20, 1978.

HALE CHAMPION,
Acting Secretary.

[FR Doc. 78-33195 Filed 11-28-78; 8:45 am]

[4110-35-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Health Care Financing Administration

PROFESSIONAL STANDARDS REVIEW

Clarification of California PSRO Area Designations

AGENCY: Health Care Financing Administration (HCFA), DHEW.

ACTION: Notice.

SUMMARY: This notice provides a detailed description of the boundaries for California PSRO Areas XVIII through Area XXV, using street names and city and county borders. Publication of this detailed description will lessen existing confusion concerning PSRO area boundaries in Los Angeles and surrounding communities.

FOR FURTHER INFORMATION, CONTACT:

Ann Flurry, 301-443-6477.

SUPPLEMENTARY INFORMATION: Professional standards Review Organizations are independent physician organizations mandated under Title XI, Part B of the Social Security Act to review the medical necessity, appropriateness, and quality of health care services funded through the Medicare, Medicaid, and Maternal and Child Health programs. Specific PSRO areas must be designated before review activities can be undertaken.

California PSRO area designations, published on March 18, 1974 at 39 FR 10207, used postal zones, unincorporated communities and counties, as they existed in 1974, to establish the PSRO boundaries. A complete list of the California area designations appears at 42 CFR 460.7. Since the original publication of these area designations, the boundaries of the postal zones and unincorporated communities have changed frequently. If PSRO area boundaries followed these frequent changes, it would disrupt PSRO review activities. It is necessary, therefore, to retain the boundaries as they existed in 1974 and to provide a precise description of the areas. The detailed descriptions of California PSRO Areas XVIII through XXV are set forth below.

A final rule redesignating California PSRO Area XXII to include postal zone 90067 is published today at 43 FR

CALIFORNIA PSRO AREAS XVIII THROUGH XXV

AREA XVIII

The cities and communities of:

Altadena	Tujunga
La Vina	Verdugo City
Pasadena	Alhambra
San Marino	El Monte
South Pasadena	Garvey
Eagle Rock	Monterey Park
Glendale	Rosemead
La Canada	San Gabriel
La Crescenta	South San Gabriel
Montrose	Temple City
Sunland	Wilmar

The precise boundaries of this area are as follows:

Beginning at the intersection of the City of Monterey Park, the City of Montebello, and the unincorporated Los Angeles County border; thence running generally westerly and northerly along the Monterey Park side of the City of Monterey Park/unincorporated Los Angeles County border to its intersection with the City of Los Angeles border; then easterly along the City of Monterey Park side of the City of Monterey Park/City of Los Angeles border to its intersection with the City of Alhambra border; then northerly along the City of Alhambra side of the City of Alhambra/City of Los Angeles border to its intersection with the southern boundary line of the City of South Pasadena; then westerly and northerly along the City of South Pasadena side of the City of South Pasadena/City of Los Angeles border to its intersection with York Blvd.; then westerly along the northern side of York Blvd. to its intersection with Verdugo Road; then northerly along the eastern side of Verdugo Road to its intersection with the City of Glendale/City of Los Angeles border; then generally westerly along the City of Glendale side of the City of Glendale/City of Los Angeles border to its intersection with the City of Burbank border; then northeasterly along the City of Glendale side of the City of Glendale/City of Burbank border to the northern most point of this joint boundary line; then running westerly along the City of Los Angeles side of the City of Los Angeles/City of Burbank border to its intersection with Glen Oaks Blvd.; then following the eastern side of Glen Oaks Blvd. to its intersection with Sunland Blvd.; then north and northeasterly along the eastern side of Sunland Blvd. to its intersection with Foothill Blvd.; thence northwesterly along the eastern side of Foothill Blvd. to its intersection with Big Tujunga Canyon Road; then northeasterly along the southern side of Big Tujunga Canyon Road to its intersection with Angeles Forest Highway; then south along the western side of Angeles Forest Highway to its intersection with Angeles Crest Highway; then easterly along the southern side of Angeles Crest Highway to its intersection with Highway 39; then southerly along the western side of Highway 39 to its intersection with the City of Azusa; then generally westerly along the unincorporated Los Angeles County side of the unincorporated Los Angeles County/City of Azusa border to its intersection with the City of Duarte border; then northerly and westerly along the unincorporated Los Angeles County side of the unincorporated Los Angeles County/City of Duarte border to its intersection with the City of Monrovia border; then westerly and southerly along the unincorporated Los Angeles County side of the unincorporated Los Angeles County/City of Monrovia border to its intersection with the City of Arcadia border; then westerly along the unincorporated Los Angeles County side of the unincorporated Los Angeles County/City of Arcadia border to its intersection with the City of Sierra Madre border; then westerly along the unincorporated Los Angeles County side of the unincorporated Los Angeles County/City of Sierra Madre border to its intersection with the City of Pasadena border; then southerly along the City of Pasadena side of the City of Pasadena/City of Sierra Madre border to its intersection with the City of Arcadia border; then southerly along the City of Pasadena side of the City of Pasadena/City of Arcadia border to its intersection with the unincorporated Los Angeles County border; then southerly along the unincorporated Los Angeles County side of the unincorporated Los Angeles County/City of Arcadia border to its intersection with the Temple City border; then easterly along the Temple City side of the Temple City/City of Arcadia border to its intersection with the unincorporated Los Angeles County border; then southerly along the Temple City side of the Temple City/unincorporated Los Angeles County border to its intersection with the City of El Monte border; then easterly along the City of El Monte side of the City of El Monte/unincorporated Los Angeles County border to its intersection with the City of Arcadia border; then easterly along the City of El Monte side of the City of El Monte/City of Arcadia border to its intersection with the San Gabriel River; then southwesterly along the western side of the San Gabriel River to its intersection with the City of Pico Rivera/unincorporated Los Angeles County border; then southwesterly along the unincorporated Los Angeles County side of the unincorporated Los Angeles County/City of Pico Rivera border to its intersection with the City of Montebello border; then northeasterly along the unincorporated Los Angeles County side of the unincorporated Los Angeles County/City of Montebello border to its intersection with the City of Rosemead border; then northwesterly along the City of Rosemead side of the City of Rosemead/City of Montebello border to its intersection with the unincorporated Los Angeles County border; then generally northerly along the unincorporated Los Angeles County side of the unincorporated Los Angeles County/City of Montebello border to its intersection with the City of Monterey Park border; then westerly along the City of Monterey Park/City of Montebello border to its intersection with the unincorporated Los Angeles County border, the point of beginning.

AREA XIX

The cities and communities of:

Avalon	Wilmington
Dominguez	Harbor City
Hawaiian Gardens	Palos Verdes Estates
Lakewood	Palos Verdes Peninsula
Long Beach	San Pedro
Los Alamitos	
Terminal Island	

The precise boundaries of this area are as follows:

Beginning at the Pacific Ocean at its intersection with Western Avenue; then generally running north along the eastern side of Western Avenue to its intersection with Palos Verdes Drive North; then easterly along the southern side of Palos Verdes Drive North to its intersection with Vermont Avenue; then north on the eastern side of Vermont Avenue to its intersection with the Pacific Coast Highway; then west

along the northern side of Pacific Coast HIghway to its intersection with Western Avenue; then north along the eastern side of Western Avenue to its intersection with Sepulveda Blvd.; then southeasterly along the southern side of Sepulveda Blvd. to its intersection with Vermont Avenue; then following north along the eastern side of Vermont Avenue to its intersection with Alondra Blvd.; then easterly along the southern side of Alondra Blvd. to its intersection with the City of Carson/City of Compton border; then following the City of Carson side of the City of Carson/City of Compton border to its intersection with the unincorporated Los Angeles County border; then following the unincorporated Los Angeles County side of the unincorporated Los Angeles County/City of Compton border to its intersection with the City of North Long Beach border; then following the City of North Long Beach side of the City of North Long Beach/City of Compton border to its intersection with the City of Paramount; then following the City of North Long Beach side of the City of North Long Beach/City of Paramount border to its intersection with the City of Bellflower border; then following the City of North Long Beach side of the City of North Long Beach/City of Bellflower border to its intersection with the City of Lakewood border; then following the City of Lakewood side of the City of Lakewood/City of Bellflower border to its intersection with the City of Cerritos border; then following the City of Lakewood side of the City of Lakewood/City of Cerritos border to its intersection with the Los Angeles County/Orange County border; then following generally south along the Los Angeles County side of the Los Angeles County/Orange County border to its intersection with the Pacific Ocean, the point of beginning. The Island of Catalina is also within the Area.

AREA XX

The cities and communities of:

Agoura	Littlerock
Calabasas	Palmdale
Canoga Park	Pearblossom
Chatsworth	Quartz Hill
Encino	Burbank
Granada Hills	Mission Hills
Hidden Hills	North Hollywood
Newhall	Olive View
Northridge	Pacoima
Reseda	Panorama City
Saugus	San Fernando
Sherman Oaks	Sepulveda
Tarzana	Studio City
Van Nuys	Sun Valley
Woodland Hills	Sylmar
Lancaster	Toluca Lake

The precise boundaries of this area are as follows:

Beginning at the Los Angeles County/Ventura County border at Little Sycamore Canyon Road; thence running generally north and northeasterly along the Los Angeles County side of the Los Angeles County/Ventura County border to its intersection with the Kern County border line; then easterly along the Los Angeles County side of the Los Angeles County/Kern County border to its intersection with the San Bernardino County border; then southwesterly along the Los Angeles County side of the Los Angeles County/San Bernardino County border to its intersection with Angeles Crest Highway (State Highway 2); then westerly along the northern side of Angeles Crest Highway to its intersection with Angeles Forest Highway; then north and generally northwesterly along the eastern side of Angeles Forest Highway to its intersection with Big Tujunga Canyon Road; then following northwesterly on the northern side of Big Tujunga Canyon Road to the intersection with Foothill Blvd.; then southeasterly along the southwest side of Foothill Blvd. to its intersection with Sunland Blvd.; then south and southwesterly along the western side of Sunland Blvd. to its intersection with Glen Oaks Blvd.; then following south on the western side of Glen Oaks Blvd. to its intersection with the City of Burbank; then running north and northeasterly along the City of Burbank side of the City of Los Angeles/City of Burbank border to its intersection with the City of Glendale border; then south along the City of Burbank side of the City of Burbank/City of Glendale border to its intersection with the City of Los Angeles border; then running southwesterly along the City of Burbank side of the City of Burbank/City of Los Angeles border to the intersection with Barham Blvd.; then south along the western side of Barham Blvd. to its intersection with Hollywood Freeway (State Highway 101); then running southeasterly along the western side of Hollywood Freeway (State Highway 101) to its intersection with Mulholland Drive; then running south and southwesterly along the northern side of Mulholland Drive to its intersection with Mulholland Highway; then running south and southwesterly along the northern side of Mulholland Highway to its intersection with Little Sycamore Canyon Road; then running north along the eastern side of Little Sycamore Canyon Road to its intersection with the Ventura County/Los Angeles County border, point of beginning.

AREA XXI

The cities and communities of:

Commerce	Duarte
Hacienda Heights	Glendora
La Mirada	La Puente
East Los Angeles	Monrovia
Los Nietos	Rowland Heights
Montebello	Sierra Madre
Norwalk	Valinda
Pico Rivera	West Covina
Sante Fe Springs	Claremont
Whittier	La Verne
Arcadia	Pomona
Azusa	San Dimas
Baldwin Park	Walnut
Covina	

The precise boundaries of this area are as follows:

Beginning at the intersection of Long Beach Freeway and Randolph Street/City of Commerce/City of Bell Gardens border; thence running north along the eastern side of Long Beach Freeway to its intersection with Atlantic Boulevard; then following the southeastern side of Atlantic Blvd. to its intersection with the City of Commerce border; then along the City of Commerce side of the City of Commerce/City of Vernon border to its intersection with the City of Los Angeles border; then along the City of Commerce side of the City of Commerce/City of Los Angeles border to its intersection with the unincorporated Los Angeles County border; then along the City of Commerce side of the City of Commerce/unincorporated Los Angeles County border to its intersection with the Long Beach Freeway; then north along the eastern side of the Long Beach Freeway to its intersection with the unincorporated Los Angeles County/City of Monterey Park border; then east along the unincorporated Los Angeles County side of the unincorporated Los Angeles County/City of Monterey Park border to its intersection with the City of Montebello border; then following the City of Montebello side of the City of Montebello/City of Monterey Park border to its intersection with the unincorporated Los Angeles County border; then following the city of Montebello side of the City of Montebello/unincorporated Los Angeles County border to its intersection with the City of Rosemead border; then following the City of Montebello side of the City of Montebello/City of Rosemead border to its intersection with the unincorporated Los Angeles County border; then following the City of Montebello/unincorporated Los Angeles County border to its intersection with the City of Pico Rivera border; then following the city of Pico Rivera side of the City of Pico Rivera/unincorporated Los Angeles County border to its intersection with the San Gabriel River; then north and northeasterly along the eastern side of the San Gabriel River to its intersection with the City of El Monte/City of Arcadia border; then following the City of Arcadia side of the City of Arcadia/City of El Monte border to its intersection with the unincorporated Los Angeles County border; then following the unincorporated Los Angeles County side of the unincorporated Los Angeles County/City of El Monte border to its intersection with the Temple City border; then following the unincorporated Los Angeles County side of the unincorporated Los Angeles County/Temple City border to its intersection with the city of Arcadia border; then following the City of Arcadia side of the City of Arcadia/Temple City border to its intersection with the unincorporated Los Angeles County border; then following the City of Arcadia side of the City of Arcadia/unincorporated Los Angeles County border to its intersection with the City of Pasadena border; then following the City of Arcadia side of the City of Arcadia/City of Pasadena border to its intersection with the city of Sierra Madre border; then following the City of Sierra Madre side of the City of Sierra Madre/City of Pasadena border to its intersection with the unincorporated Los Angeles County border; then following the City of Sierra Madre side of the City of Sierra Madre/unincorporated Los Angeles County border to its intersection with the City of Arcadia border; then following the City of Arcadia side of the City of Arcadia/unincorporated Los Angeles County border to its intersection with the City of Monrovia border; then following the City of Monrovia side of the City of Monrovia/unincorporated Los Angeles County border to its intersection with the City of Duarte border; then following the City of Duarte side of the City of Duarte/unincorporated Los Angeles County border to its intersection with the City of Azusa border; then following the City of Azusa side of the City of Azusa/unincorporated Los Angeles County border to its intersection with Highway 39; then north along the eastern side of Highway 39 to its intersection with Angeles Crest Highway; then east on the southern side of An-

geles Crest Highway to its intersection with the San Bernardino County/Los Angeles County border; then south on the Los Angeles County side of the Los Angeles County/San Bernardino County border to its intersection with the Orange County border; then following west and southwesterly along the Los Angeles County side of the Los Angeles County/Orange County border to its intersection with the City of Cerritos/City of La Mirada border; then following the City of La Mirada side of the City of La Mirada/City of Cerritos border to its intersection with the City of Sante Fe Springs border; then following the City of Sante Fe Springs side of the City of Sante Fe Springs/City of Cerritos border to its intersection with the City of Norwalk border; then following the City of Norwalk side of the City of Norwalk/City of Cerritos border to its intersection with the City of Artesia border; then following the City of Norwalk side of the City Of Norwalk/City of Artesia border to its intersection with the City of Cerritos border; then following the City of Norwalk side of the City of Norwalk/City of Cerritos border to its intersection with the unincorporated Los Angeles County border; then following the City of Norwalk side of the City of Norwalk/unincorporated Los Angeles County border to its intersection with the City of Cerritos border; then following the City of Norwalk side of the City of Norwalk/City of Cerritos border to its intersection with the City of Bellflower/Cerritos border at the San Gabriel River; then north along the eastern side of the San Gabriel River to its intersection with the City of Pico Rivera/City of Downey border; then following the City of Pico Rivera side of the City of Pico Rivera/City of Downey border to its intersection with the City of Commerce border; then following the City of Commerce side of the City of Commerce/City of Downey border to its intersection with the City of Bell Gardens; then following the City of Commerce side of the City of Commerce/City of Bell Gardens border to its intersection with the Long Beach Freeway (State Highway 7); and Randolph Street, the point of beginning.

AREA XXII

The cities and communities of:

Culver City	Palms
Malibu	Playa del Rey
Marina del Rey	Santa Monica
Mar Vista	Sawtelle
Ocean Park	Venice
Pacific Palisades	Westwood

Los Angeles Postal Zones:

90034	90066
90049	90067
90064	90073

The precise boundaries of this area are as follows:

Beginning at the Pacific Ocean at the Los Angeles County/Ventura County border; then running north and north-easterly along the Los Angeles County side of the Los Angeles County/Ventura County border to its intersection with Little Sycamore Canyon Road; then running southeasterly along the southern side of Little Sycamore Canyon Road to its intersection with Mulholland Highway; then generally following easterly along the southern side of Mulholland Highway to its intersection with Mulholland Drive; then running generally easterly along the southern side of Mulholland Drive to its intersection with Benedict Canyon Road; then running generally southeasterly along the western side of Benedict Canyon Road to its intersection with the City of Los Angeles/City of Beverly Hills border; then southeasterly along the City of Los Angeles side of the City of Los Angeles/City of Beverly Hills border to its intersection with Beverwil Drive; then south along the western side of Beverwil Drive to its intersection with the Cresta Drive; then easterly along the southern side of Cresta Drive to its intersection with Beverly Drive; then running south along the western side of Beverly Drive to its intersection with Sawyer Street; then easterly along the southern side of Sawyer Street to its intersection with Fairfax Avenue; then south along the western side of Fairfax Avenue to its intersection with the Culver City/City of Los Angeles border; then following the Culver City side of the Culver City/City of Los Angeles border to its intersection with the unincorporated Los Angeles County border; then south along the Culver City side of the Culver City/unincorporated Los Angeles County border to its intersection with La Cienega Boulevard; then south along the western side of La Cienega Boulevard to its intersection with Centinela Avenue; then westerly along the northern side of Centinela Avenue to its intersection with the unincorporated Los Angeles County border; then running westerly along the unincorporated Los Angeles County side of the unincorporated Los Angeles County/City of Los Angeles border to its intersection with the Culver City border; then running northwesterly along the Culver City side of the Culver City/City of Los Angeles border to its intersection with the unincorporated Los Angeles County border; then running westerly along the unincorporated Los Angeles County side of the unincorporated Los Angeles County/City of Los Angeles border to its intersection with the Marina Del Rey Channel; then following southwesterly along the northern side of the Marina Del Rey Channel to its intersection with the Pacific Ocean, the point of beginning.

AREA XXIII

The cities and communities of:

Gardena	Bell
Hermosa Beach	Bellflower
Lomita	Bell Gardens
Manhattan Beach	Willowbrook
Palos Verdes	El Segundo
Redondo Beach	Hawthorne
Compton	Inglewood
Downey	Lawndale
Home Gardens	Lennox
Huntington Park	Maywood
Lynwood	Paramount
Torrance	South Gate
Artesia	Rolling Hills

Los Angeles Postal Zones:

90009	90045

The precise boundaries of this area are as follows:

Beginning at the Pacific Ocean at its intersection with the southern side of the Marina Del Rey Channel, thence running northeasterly along the City of Los Angeles side of the City of Los Angeles/Marina Del Rey Channel to its intersection with the unincorporated Los Angeles County border; then following south along the City of Los Angeles side of the City of Los Angeles/unincorporated Los Angeles County border to its intersection with Centinela Avenue; then southeasterly along the southern side of Centinela Avenue to its intersection with La Cienega Blvd.; then north along the eastern side of La Cienega Blvd. to its intersection with the northwest most point of the City of Los Angeles/City of Inglewood border; then east and southeasterly along the City of Inglewood side of the City of Inglewood/City of Los Angeles border to its intersection with the unincorporated Los Angeles County border; then south along the City of Inglewood side of the City of Inglewood/unincorporated Los Angeles County border to its intersection with the City of Hawthorne border; then running east and south along the City of Hawthorne side of the City of Hawthorne/unincorporated Los Angeles County border to its intersection with El Segundo Blvd.; then easterly along the southern side of El Segundo Blvd. to its intersection with Vermont Avenue; then south along the western side of Vermont Avenue to its intersection with Rosecrans Avenue; then easterly along the southern side of Rosecrans Avenue to its intersection with Central Avenue; then north along the eastern side of Central Avenue to its intersection with El Segundo Blvd.; then east along the southern side of El Segundo Blvd. to its intersection with Mona Blvd.; then north on the eastern side of Mona Blvd. to its intersection with Imperial Highway; then east on the southern side of Imperial Highway to its intersection with Alameda Street; then north on the eastern side of Alameda Street to its intersection with Slauson Avenue; then east along the City of Huntington Park side of the City of Huntington Park/City of Vernon border to its intersection with the unincorporated Los Angeles County border; then east and north along the City of Huntington Park side of the City of Huntington Park/unincorporated Los Angeles County border to its intersection with the City of Vernon border; then following the City of Huntington Park side of the City of Huntington Park/City of Vernon border to its intersection with the City of Maywood border; then north along the City of Maywood side of the City of Maywood/City of Vernon border to its intersection with Slauson Avenue; then easterly along the southern side of Slauson Avenue to its intersection with Long Beach Freeway (State Highway 7); then south along the western side of Long Beach Freeway to its intersection with the City of Bell Gardens/City of Commerce border; then easterly along the City of Bell Gardens side of the City of Bell Gardens/City of Commerce border to its intersection with the City of Downey border; then following the City of Downey/City of Commerce border to its intersection with the City of Pico Rivera border; then following the City of Downey side of the City of Downey/City of Pico Rivera border to its intersection with the San Gabriel River; then south along the western side of the San Gabriel River to its intersection with the City of Norwalk/City of Bellflower/City of Cerritos border; then east along the City of Cerritos side of the City of Cerritos/City of Norwalk border to its intersection with the unincorporated Los Angeles County/City of Norwalk border; then following the unincorporated Los Angeles County side of the unincorporated Los Angeles County/City of Norwalk border to

its intersection with the City of Cerritos border; then following the City of Cerritos side of the City of Cerritos/City of Norwalk border to its intersection with the City of Artesia border; then following the City of Artesia side of the City of Artesia/City of Norwalk border to its intersection with the City of Cerritos border; then following the City of Cerritos side of the City of Cerritos/City of Norwalk border to its intersection with the City of Sante Fe Springs border; then following the City of Cerritos side of the City of Cerritos/City of Sante Fe Springs border to its intersection with the City of La Mirada border; then following the City of Cerritos side of the City of Cerritos/City of La Mirada border to its intersection with the City of Buena Park border; then following the City of Cerritos side of the City of Cerritos/City of Buena Park border to its intersection with the City of La Palma border; then generally southwesterly along the City of Cerritos side of the City of Cerritos/City of La Palma border to its intersection with the unincorporated Orange County border; then following the City of Cerritos side of the City of Cerritos/unincorporated Orange County border to its intersection with the City of La Palma border; then following westerly along the City of Cerritos side of the City of Cerritos/City of La Palma border to its intersection with the City of Lakewood border; then west and northwesterly along the City of Cerritos side of the City of Cerritos/City of Lakewood border to its intersection with the City of Bellflower border; then following the City of Bellflower side of the City of Bellflower/City of Lakewood border to its intersection with the City of North Long Beach border; then following the City of Bellflower side of the City of Bellflower/City of North Long Beach border to its intersection with the City of Paramont border; then following the City of Paramont side of the city of Paramont/City of North Long Beach border to its intersection with the City of Compton border; then following the City of Compton side of the City of Compton/City of North Long Beach border to its intersection with the unincorporated Los Angeles County border; then following the City of Compton side of the city of Compton/unincorporated Los Angeles County border to its intersection with the City of Carson; then following the City of Compton side of the City of Compton/City of Carson border to its intersection with Alondra Blvd.; then westerly along the northern side of Alondra Blvd. to its intersection with Vermont Avenue; then south along the western side of Vermont Avenue to its intersection with Sepulveda Blvd.; then northwesterly along the northern side of Sepulveda Blvd. to its intersection with Western Avenue; then southerly along the western side of Western Avenue to its intersection with the Pacific Coast Highway; then east along the southern side of the Pacific Coast Highway to its intersection with Vermont Avenue; then south along the western side of Vermont Avenue to its intersection with Palos Verdes Drive North; then west along the northern side of Palos Verdes Drive North to its intersection with Western Avenue; then south along the western side of Western Avenue to its intersection with the Pacific Ocean, the point of beginning.

AREA XXIV

The cities and communities of:

Los Angeles Postal Zones:

90006	90003
90026	90008
90057	90011
90012	90037
90015	90043
90017	90044
90013	90047
90014	90056
90021	90059
90023	90061
90031	90062
90032	90004
90033	90005
90039	90007
90042	90010
90053	90016
90054	90018
90055	90019
90058	90020
90063	90035
90001	90051
90002	90065

The precise boundaries of this area are as follows:

Beginning on La Cienega Blvd. at its intersection with the City of Inglewood/City of Los Angeles border; then following north along the eastern side of La Cienega Blvd. to its intersection with the Culver City/unincorporated Los Angeles County border; then following the unincorporated Los Angeles County side of the unincorporated Los Angeles County/Culver City/Los Angeles County border to its intersection with the City of Los Angeles border; then following the City of Los Angeles side of the City of Los Angeles/City of Los Angeles border to its intersection with Fairfax Avenue; then north along the eastern side of Fairfax Avenue to its intersection with Sawyer Street; then running west along the northern side of Sawyer Street to its intersection with Beverly Drive; then north along the eastern side of Beverly Drive to its intersection with Cresta Drive; then westerly along the northern side of Cresta Drive to its intersection with Beverwil Drive; then north along the eastern side of Beverwil Drive to its intersection with the City of Beverly Hills/City of Los Angeles border; then running east along the City of Los Angeles side of the City of Los Angeles/City of Beverly Hills border to its intersection with Olympic Blvd.; then running easterly along the southern side of Olympic Blvd. to its intersection with Highland Avenue; then north along the eastern side of Highland Avenue to its intersection with Melrose Avenue; then east along the southern side of Melrose Avenue to its intersection with Hoover Street, then north along the eastern side of Hoover Street to its intersection with Myra Avenue; then generally north along the eastern side of Myra Avenue to its intersection with Fountain Avenue; then generally east along the southern side of Fountain Avenue to its intersection with Hyperion Avenue; then generally running northeasterly along the eastern side of Hyperion Avenue to its intersection with the Golden State Freeway (State Highway 5); then north along the eastern side of Golden State Freeway (State Highway 5) to its intersection with the Ventura Freeway (134); then east along the South side of the Ventura Freeway to its intersection with the City of Glendale border; then following along the City of Los Angeles side of the City of Los Angeles side of the City of Los Angeles/City of Glendale border to its intersection with Verdugo Road; then south along the western side of Verdugo Road to its intersection with York Blvd.; then east along the southern side of York Blvd. to its intersection with the City of South Pasadena border; then south and easterly along the City of Los Angeles side of the City of Los Angeles/City of South Pasadena border to its intersection with the City of Alhambra border line; then southerly along the City of Los Angeles side of the City of Los Angeles/City of Alhambra border to its intersection with the City of Monterey Park, then west along the City of Los Angeles side of the City of Los Angeles/City of Monterey Park to its intersection with the unincorporated Los Angeles County border; then south along the unincorporated Los Angeles County side of the unincorporated Los Angeles County/City of Monterey Park border to its intersection with the Long Beach Freeway (7), then south along the western side of Long Beach Freeway to its intersection with the City of Commerce; then west along the unincorporated Los Angeles County side of the unincorporated Los Angeles County/City of Commerce border to its intersection with the City of Los Angeles border; then south along the City of Los Angeles side of the City of Los Angeles/City of Commerce border to its intersection with the City of Vernon; then generally east along the City of Vernon side of the City of Vernon/City of Commerce border to its intersection with Atlantic Blvd., then southwesterly along the northwestern side of Atlantic Blvd. to its intersection with Slauson Avenue; then west along the northern side of Slauson Avenue to its intersection with the City of Vernon/City of Maywood border; then west and south along the City of Vernon side of the City of Vernon/City of Maywood border to its intersection with the City of Huntington Park; then following the City of Vernon side of the City of Vernon/City of Huntington Park border to its intersection with the unincorporated Los Angeles County border; then south and west along the unincorporated Los Angeles County side of the unincorporated Los Angeles County/City of Huntington Park border to its intersection with the City of Vernon; then west along the City of Huntington Park to its intersection with Alameda Street; then south along the western side of Alameda Street to its intersection with Imperial Highway; then west along the northern side of Imperial Highway to its intersection with Mona Blvd.; then south along the western side of Mona Blvd. to its intersection with El Segundo Blvd.; then west along the northern side of El Segundo Blvd. to its intersection with Central Avenue; then south along the western side of Central Avenue to its intersection with Rosecrans Avenue; then west along the northern side of Rosecrans Avenue to its intersection with Vermont Avenue; then north along the eastern side of Vermont Avenue to its intersection with El Segundo Blvd.; then west on the northern side of El Segundo Blvd. to its intersection with the unincorporated Los Angeles County/City of Hawthorne border; then generally northerly along the unincorporated Los Angeles County side of the unincorporated Los Angeles/City of Hawthorne border to its intersection with the City of Inglewood, then north along the unincorporated Los Angeles County side of the unincorporated Los Angeles County/City of Inglewood border to

its intersection with the City of Los Angeles border; then north and west along the City of Los Angeles/City of Inglewood border to its intersection with La Cienega Blvd., the point of beginning.

AREA XXV

The cities and communities of:

Beverly Hills Los Angeles Postal Zones:

90027	90046
90028	90048
90029	90068
90036	90069
90038	

The precise boundaries of this area are as follows:

Beginning at the southwestern corner of the City of Beverly Hills/City of Los Angeles border, thence running generally north and northwesterly along the City of Beverly Hills side of the City of Beverly Hills/City of Los Angeles border to its intersection with Benedict Canyon Drive; then running northwest along the eastern side of Benedict Canyon Drive to its intersection with Mulholland Drive; then running east along the southern side of Mulholland Drive to its intersection with Hollywood Freeway 101; then running northwesterly along the eastern side of Hollywood Freeway 101 to its intersection with Barham Blvd.; then running north and northeasterly along the eastern side of Barham Blvd. to its intersection with the Los Angeles River; at the City of Los Angeles/City of Burbank border; then running generally east along the City of Los Angeles side of the City of Los Angeles/City of Burbank border to the City of Glendale border; then running east and southeasterly along the City of Los Angeles side of the City of Los Angeles/City of Glendale border to its intersection with Ventura Freeway and the Los Angeles River; then running southeasterly along the western side of the Los Angeles River to its intersection with Hyperion Avenue; then running southwesterly along the western side of Hyperion Avenue to its intersection with Fountain Avenue; then running west along the northern side of Fountain Avenue to its intersection with Myra Avenue; then running southwesterly along the western side of Myra Avenue to its intersection with Hoover Street; then running south on the western side of Hoover Street to its intersection with Melrose Avenue; then running west on the northern side of Melrose Avenue to its intersection with Highland Avenue; then running south along the western side of Highland Avenue to its intersection with Olympic Blvd.; then running west along the northern side of Olympic Blvd. to its intersection with the City of Beverly Hills/City of Los Angeles border; then running west along the City of Beverly Hills side of the City of Beverly Hills/City of Los Angeles border to the southwestern most corner, the point of beginning.

(Sec. 1102, 1152, Social Security Act (42 U.S.C. 1302 and 1320c-1).

Dated: October 23, 1978.

WILLIAM D. FULLERTON,
Acting Administrator, Health Care Financing Administration.

Approved: November 20, 1978.

HALE CHAMPION,
Acting Secretary.

[FR Doc. 78-33196 Filed 11-28-78; 8:45 am]

Federal Register

WEDNESDAY, NOVEMBER 29, 1978
PART IV

DEPARTMENT OF STATE

■

SECURITY INFORMATION REGULATIONS

Implementation of E.O. 12065

[4710-11-M]

Title 22—Foreign Relations

CHAPTER I—DEPARTMENT OF STATE

SUBCHAPTER A—GENERAL

[Departmental Regulation 108.760]

PART 9—SECURITY INFORMATION REGULATIONS

Implementation of E.O. 12065 of June 28, 1978

AGENCY: Department of State.

ACTION: Final rule; request for comments.

SUMMARY: These regulations revise security information regulations for the Department of State, the Agency for International Development (AID), and the International Communication Agency (ICA). The revisions are necessary to conform to E.O. 12065 of June 28, 1978, entitled National Security Information.

DATES: Effective date: December 1, 1978. Comments must be received on or before December 31, 1978.

ADDRESSES: Send comments to:

Hodding Carter III, Assistant Secretary of State for Public Affairs, Department of State, 2201 C Street NW., Washington, D.C. 20520;

For AID: James W. McCulla, Director, Office of Public Affairs, Agency for International Development, 2201 C Street NW., Washington, D.C. 20523;

For ICA: Michael Pistor, Director, Office of Congressional and Public Liaison, International Communication Agency, 1750 Pennsylvania Avenue NW., Washington, D.C. 20547.

FOR FURTHER INFORMATION CONTACT:

Ely Maurer, Assistant Legal Adviser, Department of State, 2201 C Street NW., Washington, D.C. 20520, telephone 202-632-2682.

Barbara Ennis, Director, Freedom of Information Staff, Bureau of Public Affairs, 2201 C St. NW., Washington, D.C. 20520, telephone 202-632-0772.

William Larson, Division of Domestic Operations, Office of Security, 2201 C St. NW., Washington, D.C. 20520, telephone 202-632-0327.

Arnold Dadian, Chief, Public Inquiries Staff, AID, Washington, D.C. 20523, telephone 202-632-1805.

Charles Jones, Jr., Freedom of Information/Privacy Act Coordinator, Office of Congressional and Public Liaison, ICA, 1750 Pennsylvania Avenue NW., Washington, D.C. 20547, telephone 202-724-9103.

Regulations dealing with internal procedures will be published in the Foreign Affairs Manual. Copies of these regulations are available upon written request to the Freedom of Information Staff, Room 2811, Department of State, 2201 C St. NW., Washington, D.C. 20520.

Dated: November 1, 1978.

BEN H. READ,
Under Secretary for Management, Department of State.

Dated: November 1, 1978.

HERBERT BECKINGTON,
Auditor General, Agency for International Development.

Dated: November 2, 1978.

JAMES D. ISBISTER,
Associate Director for Management, International Communication Agency.

Part 9 of Title 22, CFR is revised to read as set forth below.

The regulations implement Executive Order 12065, dated June 28, 1978 (43 FR 28949, July 3, 1978) entitled "National Security Information", hereinafter referred to as the Order.

PART 9—SECURITY INFORMATION REGULATIONS

Sec.

9.1 General policy.
9.2 Implementation and review responsibilities.
9.3 Responsibility for safeguarding classified information.
9.4 Classification.
9.5 Criteria for classification.
9.6 Classification authority.
9.7 Prohibitions.
9.8 Classification designations.
9.9 Duration of classification.
9.10 Derivation classification.
9.11 Classification guides.
9.12 Declassification and downgrading.
9.13 Transferred material.
9.14 Systematic review declassification guidelines.
9.15 Scheduling for systematic review.
9.16 Mandatory review.
9.17 Appeals.
9.18 Schedule of fees.
9.19 Determinations in certain disputed cases.
9.20 Challenges to classification.

Appendix A—Definitions.

AUTHORITY: E.O. 12065, National Security Regulations of June 28, 1978 (43 FR 28949, July 3, 1978); Information Security Oversight Office Directive No. 1 (43 FR 46280, October 5, 1978).

§ 9.1 General policy.

The interests of the United States and its citizens are best served by making information regarding the affairs of Government readily available to the public. This concept of an informed citizenry is reflected in the Freedon of Information Act (5 U.S.C. 552) and in the current public information policies of the executive branch.

(a) *Safeguarding national security information.* Within the Federal Government there is some information which, because it bears directly on the effectiveness of our national defense and the conduct of our foreign relations, must be subject to some constraints for the security of our Nation.

(b) *Exemption from public disclosure.* This information, hereinafter referred to as classified information, is expressly exempted from compulsory public disclosure by 5 U.S.C. 552(b)(1).

(c) *Scope.* To balance the public's interest in access to government information with the need to protect certain national security information from disclosure, these regulations identify the information to be protected, prescribe classification, downgrading, declassification, and safeguarding procedures to be followed, and establish education, monitoring and sanctions systems to insure their effectiveness.

(d) *Limitation.* The requirement to safeguard information and material in the interest of national defense and the conduct of foreign relations in no way implies an indiscriminate license to restrict information from the public. It is important that the citizens of the United States have the fullest possible access, consistent with national security, to information concerning the policies and programs of their Government.

§ 9.2 Implementation and review responsibilities.

Executive Order 12065 requires the establishment of agency committees with authority to act on all suggestions and complaints with respect to each agency's administration of its information security program.

(a) Each agency committee will have responsibility for the following additional functions:

(1) To establish and monitor policies and procedures within its agency to prevent overclassification, to ensure the orderly and effective declassification of agency documents, and to facilitate the release of information, keeping in mind that the need to protect information should be balanced against the public interest in disclosure;

(2) To serve as a forum for systematic review of proposed classified disclosures of an exceptional nature bearing upon issues of concern to the Congress and the public;

(3) To recommend to the agency head any needed guidelines for classification and declassification;

(4) To administer a program to encourage agency personnel to challenge, through mandatory review and other appropriate procedures, those classification decisions they believe to be improper;

(5) To consider and decide such other questions concerning classification and declassification as may from time to time be referred to the Committee;

(6) To protect from unauthorized disclosure properly classified information and intelligence, including intelligence sources and methods, bearing upon important aspects of national defense and foreign policy; and

(7) To provide guidance concerning corrective or disciplinary action in unusually important cases involving unauthorized disclosure or refusal to declassify.

(b) *Department of State.* Within the Department of State, these functions will be performed by an oversight committee to be named subsequently.

(c) *Agency for International Development.* Within the Agency for International Development these functions will be performed by the AID Security Information Committee (ASIC). It shall be chaired by the Auditor General, shall include the Director, Office of Security, as Secretary, and shall consist of the following members of the AID senior staff or their alternates: Assistant Administrator, Bureau for Program and Management Services; Assistant Administrator, Bureau for Asia; Director, Office of Public Affairs; the Executive Secretary; and the General Counsel.

(d) *International Communication Agency.* Within the International Communication Agency, these functions will be performed by the Committee on Public Information Policy (CPIP). The Committee is composed of the Director, Office of Congressional and Public Liaison, who Chairs the Committee, Director, Office of Security, Associate Director, Management, Associate Director, Programs, and the General Counsel.

(e) *Reports to the Information Security Oversight Office.* The agency oversight committee shall provide information or reports to the Information Security Oversight Office as the Director of that office may find necessary to carry out that office's responsibilities under the Order.

§ 9.3 Responsibility for safeguarding classified information.

(a) *Primary.* The specific responsibility for the maintenance of the security of classified information rests with each person having knowledge or physical custody thereof, *no matter how obtained.*

(b) *Individual.* Each employee is responsible for becoming familiar with and adhering to all security regulations.

(c) *Supervisory.* The ultimate responsibility for safeguarding classified information rests upon each supervisor to the same degree that the supervisor is charged with functional responsibility for the organizational unit. While certain employees may be assigned specific security responsibilities, such as Top Secret Control Officer or Unit Security Officer, it is nevertheless the basic responsibility of supervisors to ensure that classified material entrusted to their organizational units is handled in accordance with the procedures prescribed in these regulations. Each supervisor should ensure that no one employee is assigned unreasonable security repsonsibilities in addition to usual administrative or functional duties.

(d) *Organizational.* The Offices of Security in State and AID are responsible for physical, procedural and personnel security in their respective agencies. The Office of Communications in the Department of State is responsible for communications security (COMSEC). In the Department of State a committee, to be named subsequently, will be responsible for general oversight of the policy aspects of the program of classification, declassification, and relase to the public, of information. For AID, the offices of Public Affairs and the General Counsel, working with the AID Security Information Committee, are responsible for these matters. For ICA, the offices of Congressional and Public Liaison and the General Counsel are responsible for policy aspects of the Order.

§ 9.4 Classification.

General policy. Documents or other material are to be classified only when protecting the national security requires that the information they contain be withheld from public disclosure. Information may not be classified to conceal violations of Law, inefficiency, or administrative error, or to prevent embarrassment to a person, organization or agency, or to restrain competition. No material may be classified to limit dissemination, or to prevent or delay public release, unless it falls within one of the three classification designations listed in § 9.8.

§ 9.5 Criteria for classification.

With the exception of the Atomic Energy Act of 1954, as amended, these regulations are the only basis for classifying information in the agencies named herein. To be eligible for classification, information or material must meet two requirements. (a) First, it must deal with one of the following criteria:

(1) Military plans, weapons, or operations;

(2) Foreign government information;

(3) Intelligence activities, sources or methods;

(4) Foreign relations or foreign activities of the United States;

(5) Scientific, technological, or economic matters relating to the national security;

(6) United States Government programs for safeguarding nuclear materials or facilities; or

(7) Other categories of information which are related to national security and which require protection against unauthorized disclosure as determined by the President or the head of an agency, or by officials designated by the President in accordance with Section 1-201 of the Order.

(b) Second, an official with original classification authority must determine that unauthorized disclosure of the information or material can reasonably be expected to cause at least identifiable damage to the national security. Unauthorized disclosure of foreign government information, or the identity of confidential foreign sources, is presumed to cause at least identifiable damage to the national security.

(c) Determinations of categories of information related to national security which require classification as noted in paragraph (a)(7) of this section shall be reported to the Director of the Information Security Oversight Office by the agency involved.

§ 9.6 Classification authority.

(a) In the Department of State authority for original classification of information as "Top Secret" may be exercised only by the Secretary of State and may be delegated to such principal subordinates as the Secretary may designate in writing, by position or by name, on the basis of their frequent need to exercise such authority. Normally, these will not be below the level of Deputy Assistant Secretary in the Department or of chief of mission abroad.

(b) Authority for original classification of information as "Secret" may be exercised by officials with Top Secret authority, the Administrator of AID, and the Director of ICA, and may be delegated to such subordinate officials as officials with top Secret authority and the Administrator of AID may designate in writing, by position or by name, on the basis of their frequent need to exercise such authority. Normally, these will not be below the level of office director, section head (in a mission abroad), country public affairs officer, or equivalent.

(c) Authority for original classification of information as "Confidential" may be exercised by officials with Top Secret or Secret classification authority and may be delegated to such subordinate officials as officals with Top Secret authority, the Administrator of AID and the Director of ICA may designate in writing, by position or by

name, on the basis of their frequent need to exercise such authority.

(d) Delegated original classification authority at any level may not be redelegated.

(e) In the absence of an authorized classifier, the person designated to act for that official may exercise the classifying authority.

(f) The Office of Security in each agency shall maintain a current listing, by classification designation, of the positions or officials carrying original classification authority. The Office shall also carry out periodic reviews of the number of officials to whom original classification authority has been delegated, to ensure that such delegations have been held to a minimum; and to ensure that officials so designated have a continuing need to exercise such authority.

§ 9.7 Prohibitions.

(a) A reference to classified documents which does not disclose classified information may not be classified or used as a basis for classification.

(b) No documents originated on or after December 1, 1978, may be classified after the agency has received a request for them under the Freedom of Information Act or under these regulations unless the documents were inadvertently or erroneously not classified at the time of origination. Such documents may be classified if classification of the information is consistent with these regulations, and is authorized by the head or deputy head of the agency personally, in writing, on a document-by-document basis. The same provisions shall apply to documents originated before December 1, 1978, but in such a case the chairman of the agency review committee referred to in § 9.2 or an official with Top Secret classification authority may personally authorize classification.

(c) Once declassified and released to the public by an agency a document may not be reclassified. This provision shall apply even if the original declassification and release were inadvertent or erroneous.

(d) Subject to paragraph (b) of this section any unclassified document may be classified or a classified document may be raised to a higher classification, if such classification is consistent with these regulations and if the information has not been released to the public.

§ 9.8 Classification designations.

(a) Only three (3) designations of classification are authorized: "Top Secret", "Secret", "Confidential". If there is reasonable doubt about which designation should be given to information or whether it should be classified, the least restrictive treatment should be chosen.

(1) *Top Secret.* Information may be classified "Top Secret" if its unauthorized disclosure could reasonably be expected to cause exceptionally grave damage to the national security. The classification "Top Secret" should be used with the utmost restraint. Examples of "exceptionally grave damage" include armed hostilities against the United States or its allies; disruption of foreign relations vitally affecting the national security; the compromise of vital national defense plans or complex cryptologic and communications intelligence systems; the revelation of sensitive intelligence operations; and the disclosure of scientific or technological developments vital to national security.

(2) *Secret.* Information may be classified "Secret" if its unauthorized disclosure could reasonably be expected to cause serious damage to the national security. The classification "Secret" should be used sparingly. Examples of "serious damage" include disruption of foreign relations significantly affecting the national security; significant impairment of a program or policy directly related to the national security; revelation of significant military plans or intelligence operations; and compromise of significant scientific or technological developments relating to national security.

(3) *Confidential.* Information may be classified "Confidential" if its unauthorized disclosure could reasonably be expected to cause identifiable damage to the national security. The word "identifiable" is used to assure that the damage is more than insignificant

No other classification designation is authorized or shall have force.

(b) *Foreign government information.* (1) If classified by the foreign government, shall either retain its original classification or be assigned a United States classification designation which will insure a degree of protection equivalent to that required by the entity that furnished the information.

(2) Foreign government information, if not given a specific classification by the foreign government, will be assigned an appropriate classification dependent on the sensitivity of the subject matter and the degree of damage its unauthorized disclosure could reasonably be expected to cause to the national security.

§ 9.9 Duration of Classification.

(a) Except as permitted below, information or material which is classified after December 1, 1978, shall be marked at the time of classification with the date for declassification, or for review for declassification, no more than 6 years later.

(b) Only the Secretary of State, the Administrator of AID, The Director of ICA, or an official with Top Secret classification authority may classify information for more than 6 years from the date of the original classification. This authority shall be used sparingly. In such a case, a declassification date or event or date for review for declassification shall be set. This date or event shall be as early as national security permits and shall be no more than 20 years after original classification, and no more than 30 years after original classification for foreign government information.

(c) In determining whether to assign a duration of classification for a stated period beyond 6 years, the guiding principle is the anticipated sensitivity of the information for that stated period. Such an assignment by an original classification authority referred to in the preceding paragraph may be based on the continued need of protection of the information during the stated period for any of the following reasons:

(1) The disclosure of foreign government information during the stated period would contravene either the expectation, express or implied, of a foreign government or a joint arrangement with a foreign government, that the information would be kept in confidence.

(2) The disclosure of the information during the stated period would reveal information specifically covered by statute, or pertaining to cryptography, or disclosing intelligence sources and methods.

(3) The disclosure of information revealing a system, plan, installation, project or specific foreign relations matter during the stated period would disclose information essential to the national security.

(4) The disclosure of the confidential foreign source during the stated period would put in jeopardy the source or the source's family, prejudice future access to the source or impair the government's ability to obtain information from other foreign sources in the future.

(d) The agency may establish guidelines to provide additional reasons for assigning a duration of classification beyond 6 years.

§ 9.10 Derivative classification.

(a) Derivative classification is the responsibility of those who only reproduce, extract, restate, paraphrase or summarize classified information, or who only apply classification markings derived from source material or as directed by a classification guide.

(1) Officials who apply such derivative classification shall respect original classification decisions. Such officials need not have original classification authority. They should also determine whether the derivative document re-

tains the earlier basis for classification. If extracting, paraphrasing or summarizing has removed the earlier basis for classification, the derivative document shall not be classified or shall be assigned a lower classification, as the case may be. If the derivative document does retain the earlier basis for classification, the office creating it shall assign the original classification to it.

(2) A new document that derives its classification from information classified on or after the effective date of the Order shall be marked with the declassification date or event, or the date for review, assigned to the source information.

(b) A new document that derives its classification from information classified under prior Orders shall be treated as follows:

(1) If the source text bears a declassification date or event 20 years or less from the date of origin, that date or event shall be carried forward on the new material.

(2) If the source text bears no declassification date or event or is marked for declassification beyond 20 years, the new document shall be marked with a date for review for declassification at 20 years from the date of original classification of the source material.

(3) If the source text is foreign government information bearing no date or event for declassification or is marked for declassification beyond thirty years, the new document shall be marked for review for declassification at thirty years from the date of original classification of the source text.

(4) If there is no source document, but derivative classification is being performed on the basis of a classification guide issued pursuant to §9.11, the provisions of the classification guide as to markings shall be followed.

§ 9.11 Classification guides.

Classification Guides used to direct derivative classification shall, as far as practicable, be unclassified. They shall be written and organized to facilitate the identification and uniform classification of information requiring the protection of classification under these regulations.

(a) Classification guides shall specifically identify the information to be classified. Each classification guide shall specifically indicate how the designations, time limits, markings and other requirements under these regulations are to be applied to the information.

(b) Each classification guide shall be approved in writing by an agency head listed in §9.6 or an official with Top Secret classification authority. Such approval constitutes an original classification decision.

(c) Classification guides shall be kept current and shall be reviewed at least every two years. Each agency shall maintain a list of all classification guides in current use.

§9.12 Declassification and downgrading.

(a) *Declassification general.* Declassification of classified information shall be given emphasis comparable to that accorded to classification. The determination to declassify information shall not be made on the basis of the level of classification assigned, but on the loss of the sensitivity of the information with the passage of time, and with due regard for the public interest in access to official information. At the time of review, any determination not to declassify shall be based on a determination that despite the passage of time since classification release of information reasonably could still be expected to cause at least identifiable damage to the national security.

(b) *Authority to declassify or downgrade.* The authority to declassify or downgrade national security information or material shall be exercised as follows:

(1) Classified information or material may be declassified or downgraded by the official authorizing the original classification, if that official is still serving in the same position; by a successor in the same position; or by a supervisory official of either.

(2) The agency head shall designate additional officials at the lowest practicable echelons to exercise declassification and downgrading authority.

(3) If the Director of the Information Security Oversight Office determines that information is classified in violation of the Order, the Director may require the agency that originated the classification to declassify it. Any such decision by the Director may be appealed to the National Security Council. The appeal shall be forwarded by the chairperson of the agency review committee. The information shall remain classified until the appeal is decided, or until one (1) year from the date of the Director's decision, whichever comes first.

(c) *Downgrading.* Information classified under prior Orders and marked for automatic downgrading shall be downgraded without notification to holders. Classified information not marked for automatic downgrading may be downgraded by the originator or other authorized officials when such action is considered appropriate. Notice of downgrading shall be provided to the holder of the record copy. Other holders of the information shall be notified to the extent that such action is practicable.

§ 9.13 Transferred material.

In the case of classified information or material officially transferred together with a transfer of function, the receiving agency shall be deemed to be the originating agency for all purposes, including downgrading and declassification. In the case of classified information not so transferred, but originated in an agency which has ceased to exist, each agency in possession shall be deemed the originating agency for all purposes, including downgrading and declassification. The agency in possession shall consult with any other agency having an interest in the subject matter before downgrading or declassifying.

§ 9.14 Systematic review declassification guidelines.

(a) *U.S. Government originated information.* By June 1, 1979, the agency head shall, after appropriate intra-agency consultations, in consultation with the Archivist of the United States and after review by the Information Security Oversight Office, issue declassification guidelines which shall be applicable to 20-year old United States Government originated information of permanent value under his or her jurisdiction which remains classified. Those guidelines shall specifically identify those limited categories of information which cannot be automatically declassified but must be reviewed item-by-item to determine whether there is a need for continued protection beyond 20 years. Information which has not been declassified earlier and which is not identified in the guidelines as requiring item-by-item review, shall be automatically declassified at the end of the 20th full calendar year from its date of origin. The guidelines shall be authorized for use by the Archivist of the United States, and may be authorized by the agency head for use by other agencies having custody of the information contained therein. The guidelines shall be reviewed at least every other year and revised as necessary. Only an agency head, in writing, may authorize the continued classification of information beyond 20 years. In cases where information is exempted from declassification at 20 years, a date shall be determined for declassification, or for further review for declassification. This date shall be no more than 10 years later. The agency head alone may seek a waiver from this 10 year review period in accordance with procedures to be established by implementing directive.

(b) *Foreign government information.* (1) Foreign government information is exempt from automatic declassification at 6 years and from systematic review at 20 years. Unless declassified earlier, such information shall be re-

viewed for declassification at 30 years in accordance with section 3-3 of the Order and the guidelines developed by December 1, 1979 by the agency head in consultation with the Archivist of the United States and, where appropriate, with the foreign government or international organization concerned. Foreign government information or material will be automatically declassified at 30 years unless it is withheld from declassification under those guidelines by an agency head. A date no more than 10 years later shall then be set for further review. An agency head alone may seek a waiver of the 10 year review period, in accordance with the procedures of the implementing directive.

(2) The guidelines for declassification of foreign government information will be reviewed every 2 years. Those guidelines shall be authorized for use by the Archivist of the United States. The agency head may also authorize their use by other agencies having custody of the information.

§ 9.15 Scheduling for systematic review.

Classified information constituting permanently valuable records of the Government as defined by 44 U.S.C. 2103 and information in the possession and control of the Administrator of General Services pursuant to 44 U.S.C. 2107 and 2107 Note shall be reviewed for declassification as it becomes 20 years old. However, in view of the backlog, transition to systematic review at 20 years shall be implemented as rapidly as practicable and shall be completed no more than 10 years from December 1, 1978. Each agency head shall order the review of all security classified records 20 years old or older which are held in storage areas by the agency, or in Federal Records Centers. Records which are found to be unscheduled for some future disposition shall be scheduled immediately, in consultation with the Archivist of the United States. This scheduling shall be accomplished by December 1, 1980.

§ 9.16 Mandatory review.

All information classified under the Order or prior orders, except as noted in paragraph (j) of this section shall be subject to review for declassification upon request of a member of the public, a government employee, or an agency.

(a) For the request to be entertained, it must describe the material sufficiently to enable the agency having custody to locate it with a reasonable amount of effort. Whenever a request does not reasonably describe the information sought, the requester shall be notified that unless additional information is provided, or the scope of the request is narrowed, no further action will be taken.

(b) A request for classified information under the Order, which is identified as specifically so intended, will be processed in accordance with these regulations. In such a case, however, the exemptions of the Freedom of Information Act and any other exemptions under applicable law may be invoked by the agency to deny material on grounds other than classification.

(c) Requests may be addressed to: (1) The Department of State, 2201 C Street, NW., 20520. (A more specific address will be provided later.) The envelope should be clearly marked MANDATORY REVIEW REQUEST: (2) Director, Office of Public Affairs for AID; and (3) Director, Office of Congressional and Public Liaison for ICA. These offices are hereafter referred to as the receiving offices.

(d) Requests for declassification under the Order shall be acted upon within 60 days from the date on which the request reaches the appropriate receiving office. The receiving office shall promptly acknowledge receipt of the request.

(e) Subject to paragraph (i) of this section, the agency receiving the request, if it is also the originating agency, shall determine whether the information or any reasonably segregable portion of it no longer requires protection. If so, the agency shall promptly make such information available to the requester, unless withholding it is otherwise warranted under applicable law. If the information may not be released, in whole or in part, the agency shall give the requester a brief statement of the reasons, a notice of the right to appeal the determination to the agency review committee, and notice that such an appeal must be filed with the review committee within 60 days.

(f) When an agency receives a request for information in a document which is in its custody, but which was classified by another agency, it shall refer the request to the appropriate agency for review, together with a copy of the document containing the information requested, where practicable. The receiving agency shall also notify the requester of the referral, unless the association of the reviewing agency with the information requires protection. The reviewing agency shall review a document in coordination with any other agency involved with the classification or having a direct interest in the subject matter. The reviewing agency shall respond directly to the request in accordance with the pertinent procedures described above and, if requested, shall notify the referring agency of its determination.

(g) (1) Requests for declassification of classified documents originated by an agency but in the possession and control of the Administrator of General Services, pursuant to 44 U.S.C. 2107 or 2107 Note, shall be referred by the Archivist to the agency of origin for processing and for direct response to the requests. The Archivist will inform requesters of such referrals.

(2) During the transition period from declassification at 30 years to declassification at 20 years, all requests for classified United States Government originated information over 20 years old and foreign government information over 30 years old not previously declassified and transferred to the Archives will be processed according to the agency's normal procedures.

(h) In response to a request for a classified document in its possession, an agency may not refuse to confirm the existence or non-existence of the document unless the fact of its existence or non-existence would itself be classifiable.

(i) In the case of requests for documents containing foreign government information, the agency receiving the request, if it is also the agency which initially received the foreign government information, shall determine whether the foreign government information in the document may be declassified and released in accordance with agency policies or guidelines, consulting with other agencies of subject matter interest as necessary. If the agency receiving the request is not the agency which received the foreign government information, it shall refer the request to the latter agency, which shall take action on the request. In those cases where available agency policies or guidelines do not apply, consultation with the foreign originator through appropriate channels may be advisable prior to final action on the request.

(j) Information less than 10 years old which was originated by the President, by the White House staff, or by committees or commissions appointed by the President, or by others acting on behalf of the President, including such information in the possession and control of the Administrator of General Services pursuant to 44 U.S.C. 2107 or 2107 Note, is exempted from mandatory review for declassification. Requests for mandatory review of information more than 10 years old of the origin described shall be processed in accordance with procedures developed by the Archivist of the United States. These procedures will provide for consultation with agencies having primary subject matter interest. Any decision by the Archivist may be appealed to the Director of the Information Security Oversight Office. Agencies with primary subject matter interest will be notified promptly of the Director's decision on such appeals and

may further appeal to the National Security Council. The information shall remain classified until the appeal is decided or until one year from the date of the Director's decision, whichever comes first.

(k) If any agency makes a request on behalf of a member of the public, the request shall be considered as a request by that member of the public and handled accordingly.

(l) The processing of requests by the receiving office in the Department shall be as follows:

(1) The receiving office shall record the request, and arrange for search and review of the documents. The documents will be reviewed for declassification in accordance with these regulations or any applicable guidelines. If the documents remain classified and are not to be released, in whole or in part, the reviewing office will also prepare a letter informing the requester as described in paragraph (e) of this section. The letter to the requester shall be signed by the agency head or by an officer of at least deputy assistant secretary level or equivalent. The receiving office shall record disposition of the case and forward the letter of denial to the requester.

(2) If any request requires obtaining the views of other agencies, the receiving office shall arrange coordination of review with such other agencies.

(3) When all documents involved in the request are declassified and released, the receiving office will send a release statement, to the requester, and shall inform the requester of any fees due before releasing documents.

(4) In the case of documents of agency origin requested by a Presidential Library on behalf of a member of the public, if there is a partial denial, the letter will advise the requester as described in paragraph (e) of this section, but the requester will be referred to the Archivist for copies of the released document, with portions excised. The receiving office will transmit such documents, with portions marked to be excised, to Archives which will transmit them with portions excised to the Presidential Library for its records and for use in the case of further similar requests.

(m) The receiving office shall also be the office for receiving requests from other agencies seeking the views of the Department as to declassification of documents originated by such other agencies but involving information of primary subject matter interest to the Department. The receiving office will transmit the documents to the reviewing area for a determination as to declassification and will coordinate the reply of the Department to the requesting agency.

(n) In considering requests for mandatory review, the agency may decline to review again any request for material which has been recently reviewed and denied, except insofar as the request constitutes an appeal under § 9.17.

(o) The receiving office in the Department of State shall forward to the National Security Council (NSC) the Department's recommendations concerning those documents which the Department reviews on behalf of the NSC, together with the documents in the case, for final action by the NSC.

(p) For AID refer to Handbook 18, Part III, Chapter 10.

(q) For ICA refer to Manual of Operations and Administration, Part III, Section 524.

§ 9.17 Appeals.

(a) *Department of State.* (1) The Assistant Secretary for Public Affairs is designated to receive appeals for denials of documents by the Department of State and to act as Chairman of the Department's appeals review panel to be specified in final publication. (See § 9.2(e).) Such appeals shall be addressed to:

The Assistant Secretary of State for Public Affairs, Department of State, 2201 C Street, NW., Washington, D.C. 20520. The appeal must be received in the Office of the Assistant Secretary within 60 days of the date of the original denial letter or the final release of documents, whichever is later.

(2) Appeals shall be decided within 30 days of their receipt by the Assistant Secretary.

(i) If the decision is to declassify the documents in entirety, the reviewing office shall so inform the requester and shall send the documents to the requester.

(ii)(A) If the recommendation of the reviewing office is to continue to deny the documents in entirety the receiving office shall supply a memorandum, cleared with its legal adviser, explaining its reasons for denial, for submission to the appeals review panel, together with a proposed letter of denial for signature by the chairman of the review panel. This letter shall be addressed to the requester. It shall contain a justification for the denial in terms of the two requirements set forth in § 9.5.

(B) The appeals review panel shall vote in writing to uphold or reverse the decision of the reviewing office. The panel's decision shall be communicated in writing to the requester by a letter from its chairman.

(3) If the recommendation of the reviewing office is to declassify a portion of the denied material, it shall supply a memorandum, cleared with its legal adviser, explaining its reasons for partial denial, for submission to the appeals review panel, together with a proposed letter of denial for signature by the Chairman of the panel. This letter shall be addressed to the requester. It shall contain a justification for the partial denial in terms of the two requirements set forth in § 9.5. The reviewing bureau's memorandum, with the proposed letter of denial and the documents denied, shall be submitted to the appeal review panel. The panel shall vote in writing to uphold or reverse the recommendation of the reviewing office. The board's decision shall be communicated in writing to the requester by a letter from its chairman. The chairman shall include with the letter those portions of the documents which have been declassified, unless fees are still to be collected from the requester.

(b) *For AID.* Procedures for appealing denials issued by the Agency for International Development appear in AID Handbook, 18 Part III, Chapter 10.

(c) *For ICA.* Procedures are found in the Agency's Manual of Operations and Administration, Part III, Section 524, and in Title 22, Code of Federal Regulations, Chapter V, Part 503.

§ 9.18 Schedule of fees.

For State, see 22 CFR 6.14. *For AID,* see 22 CFR 212.35. *For ICA* (USIA), see 22 CFR 503.6c.

§ 9.19 Determinations in certain disputed cases.

(a) Information that continues to meet the legal requirements for classification under Section 1-3 of the Order at the time of review for declassification is presumed to require continued protection and may be withheld from disclosure under the Order and Section 552(b)(1) of the Freedom of Information Act. However, as stated in Section 3-303 of the Order, it is government policy to consider the public interest in disclosure when information is reviewed for declassification. In some cases, the need to protect information that continues to meet the requirements of classification may be outweighed by the public interest in disclosure of information. When such a question arises, the authority reviewing the information shall refer the question to the relevant Top Secret authority in the Department of State, or the Director, Office of Public Affairs in AID, or the Director, ICA, to make a policy determination whether the public interest in disclosure outweighs the damage to the national security that might reasonably be expected from the disclosure. In making such determination, that authority shall respect the intent of the Order to protect foreign government information and confidential foreign sources. That authority shall also consult with other officials in the agency as the circumstances warrant.

(b) In the Department of State, if such a case is appealed by the requester of the information after receiving a notice of denial, the case shall be referred to the appeals review panel in accordance with the Department's appeal procedures. If the panel should decide that the case raises a question as to whether the need to protect information that continues to meet the requirements of classification is outweighed by the public interest in disclosure, the question shall be referred to a principal officer for determination.

(c) Address appeals for AID to the Director, Office of Public Affairs; for ICA to the Director, Office of Congressional and Public Liaison.

§ 9.20 Challenges to classification.

(a) A government employee, where there is reasonable cause to believe that a document is classified unnecessarily, improperly, or for an inappropriate period of time, is encouraged to and shall have the right to challenge such classification.

(b) The challenger shall prepare a statement giving the reasons to support such a challenge, and may submit a request to the office or bureau of origin for a review of the document under the mandatory declassification procedures of the agency, expect that the agency shall reach a determination in 30 days instead of 60 days. If the reviewing office or bureau agrees with the challenger, rectifying changes shall be made on the face of the document. The office of the record holder and other holders should be notified of the changes to the extent practicable. If the reviewing office disagrees with the challenger, the challenger may appeal within 60 days to the appeals review panel which shall make its decision within 30 days of receipt of the appeal.

(c) If the challenger wishes to remain anonymous, an officer designated by the chairman of the appeals review panel shall act as the challenger's agent.

APPENDIX A—DEFINITIONS

For the purpose of these security regulations, the following definitions of terms shall apply:

Agency. A federal agency including department, agency, commission, etc. as defined in 5 U.S.C. 552(e).

Classification. The determination that certain information requires protection against unauthorized disclosure in the interest of national security, coupled with the designation of the level of classification: Top Secret, Secret or Confidential.

Classification authority. The authority vested in an official of an agency to originally classify information or material which is determined by that official to require protection against unauthorized disclosure in the interest of national security. It is also the authority to prolong classification.

Classification guides. Documents issued in an exercise of authority for original classification that include determinations with respect to the proper level and duration of classification of categories of classified information.

Classified information. Information or material, herein collectively termed information, that is owned by, produced for or by, or under the control of the United States Government, and that has been determined pursuant to Executive Order 12065 or prior orders to require protection against unauthorized disclosure, coupled with the designation of the level of classification.

Classifier. An individual who makes a classification determination and applies a security classification to information or material. A classifier may either be a classification authority or may assign a security classification based on a properly classified source or a classification guide.

Code room. The designated and restricted area in which cryptographic operations are conducted.

Communications security. Measures designated to protect information during electrical transmission or associated processing.

Communications security material. All material associated with the security of telecommunications. The term used to cover both cryptographic and noncryptographic items.

Compromise. Loss of security enabling unauthorized access to classified information. Affected material is not automatically declassified.

Courier. A U.S. citizen employee of the Department of State whose chief function is to transport diplomatic pouches across international frontiers between the Department and posts and between posts.

Cryptographic material. All COMSEC material bearing the marking "CRYPTO" or otherwise designated as incorporating cryptographic information.

Custodian. An individual who has possession of or is otherwise charged with the responsibility for safeguarding and accounting for classified information.

Declassification. The determination that particular classified information no longer requires protection against unauthorized disclosure in the interest of national security. Such determination shall be by specific action or automatically after the lapse of a requisite period of time or the occurrence of a specified event. If such determination is by specific action, the material shall be so marked with the new designation.

Declassification event. An event which would eliminate the need for continued classification.

Decontrol. The authorized removal of an assigned administrative control designation.

Derivative classification. A determination that information is in substance the same as information currently classified coupled with the designation of the level of classification.

Document. Any recorded information regardless of its physical form or characteristics, including, without limitation, written or printed material; data processing cards and tapes; maps; charts; paintings; drawings; engravings; sketches; working notes and papers; reproductions of such things by any means or process; and sound, voice or electronic recordings in any form.

Downgrading. The determination that particular classified information requires a lesser degree of protection or no protection against unauthorized disclosure than currently provided. Such determination shall be by specific action or automatically after lapse of the requisite period of time or the occurrence of a specified event. If such determination is by specific action, the material shall be so marked with the new designation.

Foreign government information. "Foreign government information" is: (a) Information provided to the United States by a foreign government or international organization of governments in the expectation, express or implied, that the information is to be kept in confidence, or (b) Information, requiring confidentiality, produced by the United States pursuant to a written joint arrangement with a foreign government or international organization of governments. A written joint arrangement may be evidenced by an exchange of letters, a memorandum of understanding, or other written record of the joint arrangement.

Formerly restricted data. Information removed from the Restricted Data category upon determination jointly by the Department of Energy and Department of Defense that such information relates primarily to the military utilization of atomic weapons and that such information can be adequately safeguarded as classified defense information subject to the restrictions on transmission to other countries and regional defense organizations that apply to Restricted Data.

Information security. Safeguarding information against unauthorized disclosure; or, the result of any system of administrative policies and procedures for identifying, controlling, and protecting from unauthorized disclosure, information the protection of which is authorized by executive order or statute.

Intelligence method. The method which is used to provide support to an intelligence source or operation, and which, if disclosed, is vulnerable to counteraction that could nullify or significantly reduce its effectiveness in supporting the foreign intelligence or foreign counterintelligence activities of the United States, or which would, if disclosed, reasonably lead to the disclosure of an intelligence source or operation.

Intelligence source. A person, organization, or technical means which provides foreign intelligence or foreign counter-intelligence and which, if its identity or capability is disclosed, is vulnerable to counteraction that could nullify or significantly reduce its effectiveness in providing foreign intelligence or foreign counterintelligence to the United States. An "intelligence source" also means a person or organization which provides foreign intelligence or foreign counterintelligence to the United States only on the condition that its identity remains undisclosed.

International organization. An organization of governments.

National security. The national defense and foreign relations of the United States.

Nonrecord material. Extra and/or duplicate copies that are only of temporary value, including shorthand notes, used carbon paper, preliminary drafts, and other material of similar nature.

Office of security. The offices which have been disignated in State, AID, and ICA to administer their respective security programs.

Official information. That information or material which is owned by, produced for or

by, or under the control of the United States Government.

Order, the Executive Order 12065 dated June 28, 1978 (43 FR 28949, July 3, 1978) entitled "National Security Information".

Original classification. An initial determination that information requires protection against unauthorized disclosure in the interest of national security, and a designation of the level of classification.

Original classifier. An authorized individual in the executive branch who initially determines that particular information requires a specific degree of protection against unauthorized disclosure in the interest of national security and applies the classification designation "Top Secret", "Secret", or "Confidential."

Paraphrasing. A restatement of text in different phraseology without alteration of its meaning.

Post security officer. A U.S. citizen employee of the Foreign Service who is designated to perform security functions. At Posts where Regional Security Officers are located, they will be assigned this duty.

Presidential appointees. Former officials of the Department of State who held policy positions and were appointed by the President, by and with the advise and consent of the Senate, at the level of Ambassador, Assistant Secretary of State, or above. It does not include persons who merely received assignment commissions as Foreign Service Officers, Foreign Service Reserve Officers, Foreign Service Staff Officers and employees.

Record material. All books, papers, maps, photographs, or other documentary materials, regardless of physical form or characteristics, made or received by the U.S. Government in connection with the transaction of public business and preserved or appropriated by an agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, or other activities of any agency of the Government, or because of the informational data contained therein.

Regional security officer. A professionally trained officer who has been designated to administer the security program for a specific area or post.

Restricted area. A specifically designated and posted area in which classified information or material is located or in which sensitive functions are performed, access to which is controlled and to which only authorized personnel are admitted.

Restricted data. All data (information) concerning (1) design, manufacture, or utilization of atomic weapons; (2) the production of special nuclear material; or (3) the use of special nuclear material in the production of energy, but not to include data declassified or removed from the Restricted Data category pursuant to section 142 of the Atomic Energy Act. (See section 11w, Atomic Energy Act of 1954, as amended; 42 U.S.C. 2014(y).)

Security classification designations. Refers to "Top Secret", "Secret", and "Confidential" designations on classified information or material.

Sensitive intelligence information. Such intelligence information, the unauthorized disclosure of which would lead to counteraction (a) jeopardizing the continued productivity of intelligence sources or methods which provide intelligence vital to the national security, or (b) offsetting the value of intelligence vital to the national security.

Unit security officer. A U.S. citizen employee who is a nonprofessional security officer designated with a specific or homogeneous working unit to assist the Office of Security in carrying out functions prescribed in these regulations.

Unauthorized disclosure. The compromise of classified information by communication or physical transfer to an unauthorized recipient. It includes the unauthorized disclosure of classified information in a newspaper, journal, or other publication where such information is traceable to an agency because of a direct quotation or other uniquely identifiable fact.

United States and its territories. The 50 States; the District of Columbia, the Commonwealth of Puerto Rico, the Territories of Guam, American Samoa, and the Virgin Islands; the Trust Territory of the Pacific Islands; the Canal Zone; and the Possessions, Midway and Wake Islands.

Upgrading. The determination that particular unclassified or classified information requires a higher degree of protection against unauthorized disclosure than currently provided. Such determination shall be coupled with a marking of the material with the new designation.

[FR Doc. 78-33346 Filed 11-28-78; 8:45 am]

FEDERAL REGISTER

WEDNESDAY, NOVEMBER 29, 1978
PART V

DEPARTMENT OF COMMERCE

Office of Federal Statistical Policy and Standards

■

STANDARD METROPOLITAN STATISTICAL CLASSIFICATION

Revised Criteria

[3510-26-M]

DEPARTMENT OF COMMERCE

Office of Federal Statistical Policy and Standards

STANDARD METROPOLITAN STATISTICAL CLASSIFICATION

AGENCY: Office of Federal Statistical Policy and Standards, Department of Commerce.

ACTION: Notice of Proposed Revised Criteria for Establishing Standard Metropolitan Statistical Areas.

SUMMARY: This document proposes changes in criteria and typology for designating and defining standard metropolitan statistical areas. This notice contains three items in addition to this introductory statement: (1) the text of the proposed revised criteria; (2) a detailed statement on the background of the definition of the metropolitan statistical area and of the rationale for the proposed changes; and (3) appendices listing *potentially* affected counties and areas.

INTRODUCTION

The proposed new criteria are the result of the most recent periodic review of the definitional structure under which standard metropolitan areas are identified for Federal statistical purposes. These definitions must be based on objective criteria which, so far as possible, are formulated to define each area, irrespective of their regional location or population size.

A periodic review of the criteria is necessary to ensure the objectivity and consistency of the criteria and that relevant data are used. To this end, such reviews of the criteria have been conducted by the Federal Committee on Standard Metropolitan Statistical Areas (SMSA's) prior to each Decennial Census of Population since the official metropolitan areas were first established in the late 1940's. Once the revised criteria become final, they will be used in conjunction with the 1980 Decennial Census of Population results to determine the specific boundary definitions for each metropolitan statistical area, probably in early 1982.

In the Federal Committee on Standard Metropolitan Statistical Areas' initial proposal of revised criteria, which was published in the FEDERAL REGISTER on June 22, 1978, changes to the criteria were proposed in response to complaints and comments made to the Committee, by Federal agencies and the public since the 1970 Census. This second revision of the proposed criteria (published below) differs from the first in several respects, reflecting the substantial volume of public comment and suggestions received in response to the June proposal. The comment period on these proposed revised criteria will be open until January 29, 1979. In addition, notice was recently given in the FEDERAL REGISTER for a hearing to be held on December 15, 1978. After the public comments are received and reviewed, the final criteria will be published in the FEDERAL REGISTER.

THE NATURE OF CURRENT PROPOSALS

The most significant change since the June proposal is the provision of systematic recognition of the major component portions of the largest metropolitan complexes as distinct areas for Federal statistics. Further, it is proposed that the existing set of consolidated metropolitan statistical areas would be expanded to provide standard statistical recognition of major metropolitan complexes. Recognition of both component and consolidated statistical areas would retain twelve existing SMSA's which, under both the existing criteria and the June proposal, would have failed to qualify as separate areas. Under existing criteria these areas would have been merged with neighboring areas after the 1980 Census.

The revised proposed criteria increase the consistency with which various areas are treated by using the Bureau of the Census defined "urbanized area" as the basis for determining those areas which are large enough to qualify for recognition as metropolitan statistical areas. It is also proposed that the Census "urbanized areas" be used as the basis for a consistent determination of the specific area to which commuting is measured, in determining the outer boundaries of each metropolitan area. (The Bureau of the Census defines the "urbanized areas" in detail at the time of each Decennial Census of Population, following precise criteria relating to the density of population and urban development around cities. Thus urbanized areas provide a more consistent basis for identifying the size and extent of major population concentrations than the previously used limits of incorporated cities or individual localities.)

The new proposal also redefines the specific thresholds of commuting, population density, percentage urban, and similar objective measures that determine the qualification of outlying counties as parts of metropolitan statistical areas. The revisions are designed to ensure that qualifying counties are basically metropolitan in character.

Other adjustments in the criteria involve the identification of the central cities within each area, rules for determining a title for the area, and simplification of terminology by adopting "metropolitan statistical area" as the basic term.

The metropolitan statistical areas are established and defined strictly as a statistical standard for use in ensuring consistent statistics. However, in recent years the SMSA definitions have been adopted for many additional uses. There has been an increasing tendency for Federal agencies to apply the definitions of SMSA's in the implementation of their nonstatisical programs. The Federal Committee on Standard Metropolitan Statistical Areas is concerned about this trend because the definitions established for statistical purposes may not always be appropriate when applied to other programs, and because a change in the statistical definition of an area may have an unintended negative impact locally if program users do not take these changes into account. The Committee and the Office of Federal Statistical Policy and Standards are working closely with the Federal agencies involved to eliminate any detrimental effects that might result from the establishement of revised statistical criteria and definitions for metropolitan areas. (A report on present uses of SMSA designation in Federal programs is available from the Office of Federal Statistical Policy and Standards.)

ADDRESS: Send comments to: Joseph W. Duncan, Director, Office of Federal Statistical Policy and Standards, U.S. Department of Commerce, Washington, D.C. 20230. All comments, materials, questions, etc., in response to this proposal will be available for public inspection during normal business hours, 8:30 a.m. to 5:00 p.m., in Room 702, 2001 "S" Street, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Suzann Evinger, Office of Federal Statistical Policy and Standards, U.S. Department of Commerce, Washington, D.C. 20230, telephone (202) 673-7965.

Note.—The Department of Commerce has determined that this proposal is not a significant regulation requiring preparation of a regulatory analysis under Executive Order No. 12044.

JUANITA M. KREPS,
Secretary.

CRITERIA FOR DESIGNATION AND DEFINITION OF METROPOLITAN STATISTICAL AREAS

(REVISED DRAFT)

Basic Criteria

1. Each metropolitan statistical area:

(a) Must include a city of 15,000 or more inhabitants which, with surrounding densely settled territory has an urbanized area[1] population of at least 50,000; and

(b) Must have a total population of at least 100,000.

[1]As defined by the U.S. Bureau of the Census.

2. Four levels of metropolitan statistical areas are recognized on the basis of total population as of the last national census:

Level A—Metropolitan statistical areas of 1 million or more.

Level B—Metropolitan statistical areas of 250,000 to 1 million.

Level C—Metropolitan statistical areas of 100,000 to 250,000.

Level D—Metropolitan statistical areas of less than 100,000.[2]

Level A metropolitan statistical areas may be further subdivided into component metropolitan statistical areas as specified in Criteria 10 through 13.

Central Counties [3]

3. Included in the metropolitan statistical area and designated as control counties are those counties which:

(a) Have at least 5,000 population in the central city(ies) of the metropolitan statistical area (as defined in Criterion 6), *or*

(b) Have 50.00% or more of their population in the urbanized area[1] of the principal central city.

Outlying Counties [4]

4. An outlying county will be included in a metropolitan statistical area if any one of the following three combinations of conditions is met:

(a) At least 40.00% of the employed workers residing in the county commute to the central county(ies) (as defined in Criterion 3), *and* the population density is at least 40 persons per square mile.

(b) At least 30.00% of the employed workers commute to the central county(ies), plus any *one* of the following conditions:

(1) Population density is at least 60 persons per square mile.

(2) At least 35.00% of the population is urban.

(3) At least 10.00% (or 5,000) of the population lives within the urbanized area of the principal central city of the metropolitan statistical area.

(c) At least 15.00% of the employed workers commute to the central county(ies)[5] plus any *two* of the following conditions:

(1) Population density is at least 60 persons per square mile.

(2) At least 35.00% of the population is urban.

(3) Population growth between the last two decennial censuses is at least 20.00%.

(4) At least 10.00% (or 5,000) of the population lives within the urbanized area of the principal central city of the metropolitan statistical area.

Area Titles

5. The title of a metropolitan statistical area includes:

(a) The name of the city with the largest population in the metropolitan statistical area.

(b) The names of up to two additional cities, with eligibility determined as follows:

(1) Each additional city with a population of at least 250,000.

(2) A city of 15,000 to 250,000 population, provided it is at least one-third as large as the principal central city of the metropolitan statistical area, has an employment/residence ratio of at least 0.8, and has outcommuting of less than 50.00% of its resident employed workers.

(c) Area titles that include the names of more than one city will start with the name of the largest city and list other cities in order of their population according to the most recent national census.

(d) In addition to city names, the area titles contain the name of each State into which the metropolitan statistical area extends.

Central Cities

6. Recognized as the central city(ies) of the metropolitan statistical area are:

(a) Each city qualifying for the area title under Criterion 5.

(b) Each other city with a population of at least 25,000, an employment/residence ratio of at least 0.8, and outcommuting of less than 50.00% of its resident employed workers.

Merger of Adjacent Metropolitan Statistical Areas

7. Two adjacent metropolitan statistical areas qualifying under Criteria 1 and 3 through 6 will be included in the same metropolitan statistical area if their combined population is 1 million or more and all of the following conditions are met:

(a) At least 75.00% of the population of each metropolitan statistical area is urban.

(b) The commuting interchange [6] between the two metropolitan statistical areas is equal to:

(1) At least 15.00% of the employed workers residing in the smaller metropolitan statistical area, *or*

(2) At least 10.00% of the employed workers residing in the smaller metropolitan statistical area, *and*

((a)) The urbanized area of a central city of one metropolitan statistical area is contiguous with the urbanized area of a central city of the other metropolitan statistical area, *or*

((b)) A central city in one metropolitan statistical area shares the same urbanized area with a central city in the other metropolitan statistical area.

8. If two adjacent counties contain separate urbanized areas[1] whose largest central cities are within 25 miles of each other (downtown to downtown), they will be included in the same metropolitan statistical area unless there is definite evidence that the two cities are not closely integrated with one another socially and economically—for example, if the sum of the number of workers commuting between their two counties is less than 15.00% of the employed workers residing in the smaller county.

Loss of Designation or Transfer to Another Metropolitan Statistical Area

9. (a) Changes in status, level, and definition of established metropolitan statistical areas and central cities will be made immediately after national census data become available to provide the basis for the change in accordance with Criteria 1 through 8. However, a metropolitan statistical area designated on the basis of national census data according to criteria in effect at the time of designation will not be disqualified on the basis of having a total population of less than 100,000.[7]

(b) A county can be transferred from one metropolitan statistical area to another on the basis of data from a national census in cases in which (1) the application of Criterion 1 or Criterion 8 would lead to the designation of a new metropolitan statistical area, or (2) the application of Criterion 3 or Criterion 4 shows greater integration with a different metropolitan statistical area.

Component Metropolitan Statistical Areas

Within each Level A metropolitan statistical area outside New England, one or more component metropolitan statistical areas may be designated and titled, as follows:

10. A single county may be designated a component metropolitan statistical area if it meets all four of the following requirements:

(a) Has at least 100,000 population;

(b) Contains no part of the principal central city of the Level A metropolitan statistical area;

(c) Is 75.00% or more urban; *and*

(d) Has 66.66% or more of its resident workers working within the county.

11. Pairs of counties, each county of which meets Criteria 10(a) through 10(c), may be designated a single component metropolitan statistical area if they meet all five of the following requirements:

(a) Each county has 50.00% or more of its resident workers working within the county;

(b) They have commuting interchange[6] amounting to at least 20.00% of the employed workers residing in the smaller county;

(c) The smaller county does not have greater commuting interchange with any other county in the Level A metropolitan statistical area, other than those containing the principal central city;

(d) There is other evidence that the two counties are closely linked economically and socially; *and*

(e) The pair taken together has 66.66% or more of its resident workers working within

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[2] Areas previously recognized as standard metropolitan statistical areas but not currently qualified on the basis of metropolitan statistical area population; retained under Criterion 9.

[3] Throughout the criteria the term "county" includes county equivalents (e.g., parishes in Louisiana). In Virginia, where most cities of more than 15,000 population are independent of any county, the criteria generally treat as included in a county any independent cities derived primarily from it. In New England, metropolitan statistical areas are defined in terms of cities and towns instead of counties; see Criteria 15-21.

[4] Refers to non-central counties qualifying for inclusion in the metropolitan statistical area. Such counties must be directly contiguous to a central county or to an outlying county already qualified for inclusion. See also footnote 3.

[5] Also accepted as meeting this commuting requirement are:

(a) The number of persons working in the county who live in the central county(ies) is equal to at least 15.00% of the employed workers living in the county, or

(b) The sum of the number of workers commuting to and from the central county(ies) is equal to at least 20.00% of the employed workers living in the county.

[6] The commuting interchange between two areas is the sum of the number of workers who live in either of the two areas and work in the other.

[7] All such areas will become Level D metropolitan statistical areas (see Criterion 2). This provision does not apply to metropolitan statistical areas designated on the basis of current population estimates, which will lose their designation if they fail to qualify in the national census following designation.

the pair. Such pairs can further merge as one component metropolitan statistical area with single (unpaired) counties meeting Criteria 10(a) through 10(d), or with other pairs meeting Criteria 11(a) through 11(e), provided commuting interchange amounts to 20.00% of the employed workers residing in the smaller county or pair and is supported by other evidence of close economic and social ties.

12. Other counties in the Level A metropolitan statistical area will be added to a component metropolitan statistical area as defined by Criteria 10 and 11 if:

(a) Commuting from the county to the qualifying county or pair is greater than 15.00% and greater than to any other qualifying county or pair; or

(b) The only physical link with the rest of the Level A metropolitan statistical area is through the qualifying county or pair.

13. If a Level A metropolitan statistical area has one or more component metropolitan statistical areas designated:

(a) The Level A metropolitan statistical area is designated a consolidated metropolitan statistical area;

(b) All counties not included in a component metropolitan statistical area under Criteria 10 through 12 together comprise a component metropolitan statistical area whose largest central city is the largest city of the Level A (consolidated) metropolitan statistical area.

14. Component metropolitan statistical areas are titled in either of two ways:

(a) Using the names of up to three cities in the component metropolitan statistical area that qualify as central cities of the Level A (consolidated) metropolitan statistical area under Criterion 6, following the rules of Criterion 5 for selection and sequencing; *or*

(b) Using the names of up to three counties in the component metropolitan statistical area, sequenced in order from largest to smallest population.

Special Provisions For New England

In New England, the cities and towns are administratively more important than the counties, and a wide range of data is complied locally for these minor civil divisions. Therefore, cities and towns are the units used in defining metropolitan statistical area. The units used are much smaller than the counties used to define metropolitan statistical areas in other States, and the definitions are based primarily on population density and commuting.

As a basis for measuring commuting and determining which cities and towns could qualify for inclusion in a metropolitan statistical area, a *central core* is first defined for each urbanized areas,[1] consisting essentially of all contiguous cities and towns that have at least 50.00% of their population in the urbanized area, provided they have a specified degree of integration with the rest of the central core and are not more integrated with another central core.

To permit a systematic implementation of the criteria on commuting, *Principal core cities* are identified following criteria like those used to identify metropolitan statistical area central cities (Criterion 6), and the central core is defined with respect to these cities.

15. For purposes of measuring commuting, a *central core* is defined in each urbanized area, comprising

(a) The largest city in the urbanized area, termed a *principal core city;*[8]

(b) Contiguous cities and towns that have at least 50.00% of their population within the urbanized area or in a contiguous urbanized area, provided at least 15.00% of the employed workers residing in the city or town work in the principal core city(ies);[9]

(c) Contiguous cities and towns that have at least 50.00% of their population within the urbanized area or in a contiguous urbanized area, provided at least 15.00% of the employed workers residing in the city or town work in the principal core city(ies) or in cities and towns qualifying for the central core under Criterion 15(b).[10]

16. A "principal core city" for purposes of Criterion 15 is any city meeting Criteria 15 (b) or (c) for inclusion in the central core which also meets Criterion 6 for recognition as the central city.[11]

17. A city or town adjacent to a central core as defined by Criterion 15 will be included in its metropolitan statistical area[12] if

(a) It has a population density of at least 60 persons per square mile and at least 30.00% of the employed workers living in the city or town work in the central core; *or*

(b) It has a population density of at least 100 persons per square mile and at least 15.00% of the employed workers living in the city or town work in the central core.[13]

18. The potential metropolitan statistical area defined by Criteria 15, 16, and 17 qualifies as a metropolitan statistical area provided it meets Criterion 1. Determination of the title and central cities of the metropolitan statistical area is made according to Criteria 5 and 6.[14]

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[8] A central core may include more than one principal core city; see Criterion 16.

[9] Also accepted as meeting this commuting requirement are:

(a) The number of persons working in the city or town who live in the principal core city(ies) is equal to at least 15.00% of the employed workers living in the city or town; *or*

(b) The sum of the number of workers commuting to and from the principal core city(ies) is equal to at least 20.00% of the employed workers living in the city or town.

[10] Cities and towns are also included in the central core if they are completely surrounded by cities and towns that qualify for inclusion in that core.

[11] Recognition of a principal core city(ies) is necessary to provide a basis for applying the criteria of integration, and does not necessarily result in recognition as a central city once the entire extent of the metropolitan statistical area is determined.

[12] Provided that the metropolitan statistical area as ultimately defined qualifies for recognition under Criterion 1.

[13] Also accepted as meeting this commuting requirement are:

(a) The number of persons working in the city or town who live in the central core is equal to at least 15.00% of the employed workers living in the city or town; *or*

(b) The sum of the number of workers commuting to and from the central core is equal to at least 20.00% of the employed workers living in the city or town.

[14] Because detailed commuting data are available to reflect degree of integration at the subcounty level in New England, the provisions of Criterion 8 are not normally applied to New England metropolitan statistical areas.

New England Component Metropolitan Statistical Areas

Within each Level A metropolitan statistical area in New England,[15] one or more component metropolitan statistical areas may be designated and titled. In order to designate a component metropolitan statistical area, there must first be defined a *component central core.*

19. (a) A component central core is defined for each city in the metropolitan statistical area (other than the principal central city) that has a total population of at least 15,000, an employment/residence ratio of at least 0.8, and outcommuting of less than 50.00% of its resident employed workers. A city so qualifying is termed a *component core city.*

(b) Included in the component central core will be any additional city or town that meets all three of the following requirements:

(a) At least 50.00% of its population lives in the urbanized area[1] containing the component core city or in a contiguous urbanized area; *and*

(2) At least 5.00% of its employed workers work in the component core city together with other cities and towns already qualified for the component central core; *and*

(3) The commuting interchange[6] with the component core city or other cities and towns already qualified for the component central core is at least 20.00%,[16] and is less than the commuting interchange with any other component central core or with the largest city of the metropolitan statistical area.

(c) The component central core defined by Criteria 19 (a) and (b) as a whole must have outcommuting of less than 50.00% of its resident labor force, and there must be other evidence that the communities making up the component central core are closely linked economically and socially.

(d) Adjacent component central cores defined under Criteria 19 (b) and (c) may be merged[17] as a single component central core provided

(1) The component core city of one component central core qualifies for inclusion in the other component central core under Criterion 19(b), or the component central core defined around one component core city qualifies as a whole for inclusion in the other component central core; *and*

(2) There is other evidence that the communities are closely linked economically and socially.

20. A contiguous city or town adjacent to a component central core as defined by Criterion 19 will be included in its component metropolitan statistical area[18] if:

(a) It is included within the Level A metropolitan statistical area; and

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[15] Including the Connecticut portion of the New York metropolitan statistical area.

[16] Local opinion is considered before making a decision if the commuting interchange is at least 15.00% with each of two component central cores (and is also greater than the interchange with the principal central city of the Level A metropolitan statistical area.

[17] Local opinion is consulted before making a decision to merge component central cores that otherwise qualify for separate recognition.

[18] Provided that the component metropolitan statistical area is ultimately defined qualifies for recognition under Criterion 21.

(b) At least 15.00% of its employed workers work in the component central core; and

(c) The commuting interchange with the component central core is greater than with the principal central city of the Level A metropolitan statistical area.

21. (a) A potential component metropolitan statistical area defined by Criteria 19 and 20 qualifies as a component metropolitan statistical area provided it has a total population of at least 75,000 and contains at least one city or town in addition to its component core city.

(b) If a Level A metropolitan statistical area has one or more component metropolitan statistical areas designated, the Level A metropolitan statistical area is designated a consolidated metropolitan statistical area, and all cities and towns not included in a component metropolitan statistical area under Criteria 19, 20, and 21(a) together comprise a component metropolitan statistical area whose largest central city is the largest city of the Level A (consolidated) metropolitan statistical area.

(c) Each component metropolitan statistical area is titled using the names of up to three cities in the component metropolitan statistical area that qualify as central cities of the Level A metropolitan statistical area under Criterion 6, following the rules of Criterion 5 for selection and sequencing.

[3510-26-C]

Appendix A

CURRENT SMSA COUNTIES THAT WOULD PROBABLY NOT QUALIFY FOR INCLUSION IN A METROPOLITAN STATISTICAL AREA UNDER THE PROPOSED NEW CRITERIA

(Note: Counties are listed by State, in geographic order. Not included are a number of additional counties that would not qualify on the basis of 1970 data but appear likely to qualify by 1980 on available information on growth trends since 1970.)

County	State	SMSA
Herkimer	NY	Utica-Rome
Adams	PA	York
Susquehanna	PA	Binghamton, NY-PA
Ottawa	OH	Toledo
Preble	OH	Dayton
Putnam	OH	Lima
Van Wert	OH	Lima
Clay	IN	Terre Haute
Marshall	IN	South Bend
Posey	IN	Evansville
Sullivan	IN	Terre Haute
Tipton	IN	Kokomo
Vermillion	IN	Terre Haute
Wells	IN	Fort Wayne
Clinton	IL	St. Louis, MO-IL
Menard	IL	Springfield
Oceana	MI	Muskegon-Norton Shores-Muskegon Heights
St. Croix	WI	Minneapolis-St. Paul, MN-WI
Andrew	MO	St. Joseph
Christian	MO	Springfield
Ray	MO	Kansas City
Butler	KS	Wichita
Jefferson	KS	Topeka
Osage	KS	Topeka
Cecil	MD	Wilmington, DE-NJ-MD
Appomattox	VA	Lynchburg
Charles City	VA	Richmond
Craig	VA	Roanoke
New Kent	VA	Richmond
Powhatan	VA	Richmond
Wirt	WV	Parkersburg-Marietta, WV-OH

Appendix A
page 2

County	State	SMSA
Brunswick	NC	Wilmington
Currituck	NC	Norfolk-Virginia Beach-Portsmouth, VA-NC
Madison	NC	Asheville
Bryan	GA	Savannah
Effingham	GA	Savannah
Lee	GA	Albany
Twiggs	GA	Macon
Baker	FL	Jacksonville
Nassau	FL	Jacksonville
Wakulla	FL	Tallahassee
Marion	TN	Chattanooga
Sequatchie	TN	Chattanooga
Baldwin	AL	Mobile
Limestone	AL	Huntsville
Stone	MS	Biloxi-Gulfport
Benton	AR	Fayetteville-Springdale
Little River	AR	Texarkana, TX-AR
Grant	LA	Alexandria
McClain	OK	Oklahoma City
Mayes	OK	Tulsa
Sequoyah	OK	Fort Smith, AR-OK
Callahan	TX	Abilene
Hardin	TX	Beaumont-Port Arthur-Orange
Jones	TX	Abilene
Waller	TX	Houston
Wise	TX	Dallas-Fort Worth
Douglas	CO	Denver
Gilpin	CO	Denver
Teller	CO	Colorado Springs
Sandoval	NM	Albuquerque

Appendix B

NONMETROPOLITAN COUNTIES THAT WOULD PROBABLY QUALIFY FOR INCLUSION IN A METROPOLITAN STATISTICAL AREA UNDER THE PROPOSED NEW CRITERIA

(Note: Counties are listed by State, in geographic order. Counties marked with an asterisk (*) do not qualify for inclusion on the basis of 1970 data but would probably qualify by 1980 based on growth trends since 1970.)

County	State	MSA
Greene*	NY	Albany-Schenectady-Troy
Hunterdon	NJ	New York Consolidated MSA
Ocean	NJ	New York Consolidated MSA
Sussex	NJ	New York Consolidated MSA
Wyoming*	PA	Northeast Pennsylvania
Brown*	OH	Cincinnati, OH-KY-IN
Mason*	IL	Peoria
Cass	NE	Omaha, NE-IA
Calvert	MD	Washington, DC-MD-VA
Frederick*	MD	Washington, DC-MD-VA
Pleasants*	WV	Parkersburg-Marietta, WV-OH
Davie*	NC	Greensboro--Winston-Salem--High Point
Lincoln*	NC	Charlotte-Gastonia
Bartow*	GA	Atlanta
Coweta*	GA	Atlanta
Spalding	GA	Atlanta
Carter*	KY	Huntington-Ashland, WV-KY-OH
Grainger*	TN	Knoxville
Sevier*	TN	Knoxville
Franklin*	AL	Florence
Madison*	MS	Jackson
Lonoke*	AR	Little Rock-North Little Rock
Plaquemines*	LA	New Orleans
St. Charles	LA	New Orleans
Logan*	OK	Oklahoma City
Bastrop*	TX	Austin
Kendall*	TX	San Antonio
Lampasas*	TX	Killeen-Temple
Yamhill	OR	Portland, OR-WA

Appendix C
CONSOLIDATED AND COMPONENT
METROPOLITAN STATISTICAL AREAS

Consolidated MSA	Number of Counties [1]	Population 1970	Component MSA	Number of Counties [1]	Population 1970
Boston, MA-NH*	(156)	3,762,799	Boston, MA	(98)	2,752,815
			Brockton, MA	(10)	169,898
			Lawrence-Haverhill, MA-NH	(21)	261,067
			Lowell, MA-NH	(9)	219,560
			Lynn, MA	(5)	143,927
			Salem, MA	(13)	215,532
Chicago, IL-IN-WI*	9	7,730,231	Aurora-Elgin, Il	1	251,005
			Chicago, IL	4	6,345,304
			Gary-Hammond, IN	2	633,367
			Kenosha, WI	1	117,917
			Waukegan, IL	1	382,638
Cincinnati, OH-KY-IN*	9	1,637,693	Cincinnati, OH-KY-IN	8	1,411,486
			Hamilton-Middletown, OH	1	226,207
Cleveland-Akron, OH*	7	3,000,276	Akron, OH	2	679,239
			Cleveland, OH	4	2,064,194
			Lorain-Elyria, OH	1	256,843
Dallas-Fort Worth, TX	10	2,358,292	Dallas, TX	6	1,555,950
			Fort Worth, TX	4	802,342
Denver, CO*	5	1,227,529	Boulder, CO	1	131,889
			Denver, CO	4	1,095,640
Detroit, MI*	7	4,665,493	Ann Arbor, MI	2	293,070
			Detroit, MI	5	4,372,423

Consolidated MSA	Number of Counties [1]	Population 1970	Component MSA	Number of Counties [1]	Population 1970
Hartford, CT*	(48)	985,576	Bristol, CT	(3)	69,878
			Hartford, CT	(36)	710,421
			Middletown, CT	(5)	60,008
			New Britain, CT	(4)	145,269
Houston, TX*	6	2,154,843	Galveston-Texas City, TX	1	169,812
			Houston, TX	5	1,985,031
Los Angeles-Long Beach, CA*	5	9,972,037	Anaheim-Santa Ana, CA	1	1,420,386
			Los Angeles-Long Beach, CA	1	7,032,075
			Oxnard-Ventura, CA	1	376,430
			Riverside, CA **	1	459,074
			San Bernardino, CA **	1	684,072
Miami, FL*	2	1,887,892	Fort Lauderdale, FL	1	620,100
			Miami, FL	1	1,267,792
Milwaukee, WI*	5	1,574,526	Milwaukee, WI	4	1,403,688
			Racine, WI	1	170,838
Minneapolis-St. Paul, MN	9	1,930,805	Minneapolis, MN	5	1,214,302
			St. Paul, MN	4	716,503
New York-Newark-Jersey City, NY-NJ-CT	22 (8)	17,384,426	Bergen-Passaic, NJ **	2	1,358,794
			Jersey City, NJ	1	609,266
			Middlesex-Somerset-Hunterdon, NJ **	3	851,903
			Monmouth-Ocean, NJ **	2	667,849
			Nassau-Suffolk, NY **	2	2,553,030
			Newark, NJ	4	1,934,084
			New York, NY	5	7,894,862
			Norwalk, CT	(4)	127,516
			Rockland, NY **	1	229,903
			Stamford, CT	(4)	206,419
			Westchester-Putnam, NY **	2	950,800

Consolidated MSA	Number of Counties [1]	Population 1970	Component MSA	Number of Counties [1]	Population 1970
Philadelphia, PA-NJ-DE*	11	5,568,084	Camden-Burlington-Gloucester, NJ **	3	952,104
			Montgomery, PA **	1	623,799
			Philadelphia, PA	4	3,242,011
			Trenton, NJ	1	303,968
			Wilmington, DE-NJ	2	446,202
Pittsburgh, PA*	4	2,401,245	Beaver, PA **	1	208,418
			Pittsburgh, PA	3	2,192,827
San Francisco-Oakland-San Jose, CA	8	4,423,314	Oakland, CA	2	1,631,573
			San Francisco, CA	3	1,477,946
			San Jose, CA	1	1,064,714
			Vallejo-Fairfield-Napa, CA	2	249,081
Seattle, WA*	3	1,832,896	Seattle, WA	2	1,421,869
			Tacoma, WA	1	411,027
Tampa-St. Petersburg, FL	3	1,088,549	St. Petersburg, FL	1	522,329
			Tampa, FL	2	566,220

Component MSA	Number of Counties	Population 1970	Consolidated MSA In Which Included
Akron, OH	2	679,239	Cleveland-Akron, OH *
Anaheim-Santa Ana, CA	1	1,420,386	Los Angeles-Long Beach, CA *
Ann Arbor, MI	2	293,070	Detroit, MI *
Aurora-Elgin, IL	1	251,005	Chicago, IL-IN-WI*
Beaver, PA **	1	208,418	Pittsburgh, PA *
Bergen-Passaic, NJ **	2	1,358,794	New York-Newark-Jersey City,NY-NJ-CT
Boston, MA	(98)	2,752,815	Boston, MA-NH *
Boulder, CO	1	131,889	Denver, CO *
Bristol, CT	(3)	69,878	Hartford, CT *
Brockton, MA	(10)	169,898	Boston, MA-NH *
Camden-Burlington-Gloucester, NJ **	3	952,104	Philadelphia, PA-NJ-DE *
Chicago, IL	4	6,345,304	Chicago, IL-IN-WI *
Cincinnati, OH-KY-IN	8	1,411,486	Cincinnati, OH-KY-IN *
Cleveland, OH	4	2,064,194	Cleveland-Akron, OH *
Dallas, TX	6	1,555,950	Dallas-Fort Worth, TX
Denver, CO	4	1,095,640	Denver, CO *
Detroit, MI	5	4,372,423	Detroit, MI *
Fort Lauderdale, FL	1	620,100	Miami, FL *
Fort Worth, TX	4	802,342	Dallas-Fort Worth, TX
Galveston-Texas City, TX	1	169,812	Houston, TX *
Gary-Hammond, IN	2	633,367	Chicago, IL-IN-WI *
Hamilton-Middletown, OH	1	226,207	Cincinnati, OH-KY-IN *
Hartford, CT	(36)	710,421	Hartford, CT *
Houston, TX	5	1,985,031	Houston, TX *
Jersey City, NJ	1	609,266	New York-Newark-Jersey City,NY-NJ-CT
Kenosha, WI	1	117,917	Chicago, IL-IN-WI *
Lawrence-Haverhill, MA-NH	(21)	261,067	Boston, MA-NH *
Lorain-Elyria, OH	1	256,843	Cleveland-Akron, OH *
Los Angeles-Long Beach, CA	1	7,032,075	Los Angeles-Long Beach, CA *
Lowell, MA-NH	(9)	219,560	Boston, MA-NH *
Lynn, MA	(5)	143,927	Boston, MA-NH *
Miami, FL	1	1,267,792	Miami, FL *
Middlesex-Somerset-Hunterdon, NJ **	3	851,903	New York-Newark-Jersey City, NY-NJ-CT

Component MSA	Number of Counties	Population 1970	Consolidated MSA In Which Included
Middletown, CT	(5)	60,008	Hartford, CT *
Milwaukee, WI	4	1,403,688	Milwaukee, WI *
Minneapolis, MN	5	1,214,302	Minneapolis-St. Paul, MN
Monmouth-Ocean, NJ **	2	667,849	New York-Newark-Jersey City, NY-NJ-CT
Montgomery, PA **	1	623,799	Philadelphia, PA-NJ-DE *
Nassau-Suffolk, NY **	2	2,553,030	New York-Newark-Jersey City, NY-NJ-CT
Newark, NJ	4	1,934,084	New York-Newark-Jersey City, NY-NJ-CT
New Britain, CT	(4)	145,269	Hartford, CT *
New York, NY	5	7,894,862	New York-Newark-Jersey City, NY-NJ-CT
Norwalk, CT	(4)	127,516	New York-Newark-Jersey City, NY-NJ-CT
Oakland, CA	2	1,631,573	San Francisco-Oakland-San Jose, CA
Oxnard-Ventura, CA	1	376,430	Los Angeles-Long Beach, CA *
Philadelphia, PA	4	3,242,011	Philadelphia, PA-NJ-DE *
Pittsburgh, PA	3	2,192,827	Pittsburgh, PA *
Racine, WI	1	170,838	Milwaukee, WI *
Riverside, CA **	1	459,074	Los Angeles-Long Beach, CA *
Rockland, NY **	1	229,903	New York-Newark-Jersey City, NY-NJ-CT
St. Paul, MN	4	716,503	Minneapolis-St. Paul, MN
St. Petersburg, FL	1	522,329	Tampa-St. Petersburg, FL
Salem, MA	(13)	215,532	Boston, MA-NH *
San Bernardino, CA **	1	684,072	Los Angeles-Long Beach, CA *
San Francisco, CA	3	1,477,946	San Francisco-Oakland-San Jose, CA
San Jose, CA	1	1,064,714	San Francisco-Oakland-San Jose, CA
Seattle, WA	2	1,421,869	Seattle, WA *
Stamford, CT	(4)	206,419	New York-Newark-Jersey City, NY-NJ-CT
Tacoma, WA	1	411,027	Seattle, WA *

Component MSA	Number of Counties	Population 1970	Consolidated MSA In Which Included
Tampa, FL	2	566,220	Tampa-St. Petersburg, FL
Trenton, NJ	1	303,968	Philadelphia, PA-NJ-DE *
Vallejo-Fairfield-Napa, CA	2	249,081	San Francisco-Oakland-San Jose, CA
Waukegan, IL	1	382,638	Chicago, IL-IN-WI *
Westchester-Putnam, NY **	2	950,800	New York-Newark-Jersey City, NY-NJ-CT
Wilmington, DE-NJ	2	446,202	Philadelphia, PA-NJ-DE *

(Note: This list is based on 1970 commuting and other data and hence is tentative pending availability of 1980 data. Certain Component Metropolitan Statistical Areas are listed with 1970 populations below the levels required by the criteria because they have passed these limits according to recent population estimates.)

* For convenience, these Component Metropolitan Statistical Areas have been listed with titles based on county rather than city names (see Criterion 14).

** For convenience, titles of Consolidated Metropolitan Statistical Areas have been listed using only names of cities over 250,000. No final rules for Consolidated Metropolitan Statistical Area titles have yet been developed.

1/ Numbers in parentheses refer to New England cities and towns.

Appendix D
CHANGES IN NEW ENGLAND METROPOLITAN STATISTICAL AREAS

Additions

According to 1970 data on commuting to the newly defined central cores, the following cities and towns would qualify to be added to metropolitan statistical areas or consolidated metropolitan statistical areas. (For titles and makeup of component metropolitan statistical areas, see Appendix C and text.) To determine whether the population density requirements are met, the 1980 density was estimated by projecting 1970-75 estimated population growth to 1980. When 1980 commuting data become available, undoubtedly some additional cities and towns will qualify for inclusion. Places listed are towns unless designated as cities.

Boston Consolidated MSA, MA-NH	Additions in MA: Bolton, Boxborough, Carver, Dunstable, Essex, Gloucester city, Groton, Hopedale, Hopkinton, Hudson, Ipswich, Littleton, Mansfield, Marlborough city, Maynard, Mendon, Middleborough, Milford, Newbury, Newburyport city, Plymouth, Plympton, Raynham, Rockport, Rowley, Southborough, Stow Additions in NH: Danville, East Kingston, Sandown
Bridgeport, CT	Ansonia city, Oxford, Seymour
Fitchburg-Leominster, MA	Ashburnham, Ashby
Hartford-New Britain-Bristol Consolidated MSA, CT	East Haddam, Middlefield, Middletown city
Lewiston-Auburn, ME	Greene, Mechanic Falls, Poland, Sabattus (Webster)
Manchester, NH	Auburn, Candia, Raymond
Nashua, NH	Hollis, Litchfield
New Bedford, MA	Rochester
New Haven-Meriden, CT	Durham, Killingworth
New London-Norwich, CT-RI	Additions in CT: North Stonington, Salem

Appendix D
page 2

New York Consolidated MSA, NY-NJ-CT	Addition in CT: Ridgefield
Pittsfield, MA	Hinsdale, Richmond, West Stockbridge
Portland, ME	Buxton, Hollis, North Yarmouth, Standish
Providence-Pawtucket, RI-MA	Additions in RI: Exeter, Foster, Glocester
Springfield-Chicopee, MA	Huntington, Montgomery, Russell
Waterbury, CT	Bethlehem, Morris
Worcester, MA	Douglas, Princeton, Rutland

Deletions

A few cities and towns would no longer qualify for inclusion in a metropolitan statistical area, based on 1970 commuting data to the central core as redefined. In many cases, 1980 data will probably show an increase in commuting such that the place will continue to qualify.

Fitchburg-Leominster, MA	Shirley
Manchester, NH	Derry
New Bedford, MA	Lakeville
New London-Norwich, CT-RI	Hopkinton, RI
Pittsfield, MA	Stockbridge
Portland, ME	Freeport, Saco city
Springfield-Chicopee, MA	Hadley, Warren
Worcester, MA	Berlin, Webster

Transfers

Based on 1970 commuting data and the redefined central cores, several towns would be transferred from one SMSA to another. In a few cases, however, 1980 commuting data may confirm the present SMSA affiliation.

Town	From	To
Cheshire, CT	Waterbury	New Haven-Meriden
Redding, CT	Danbury	New York Consolidated MSA

Appendix D
page 3

Somers, CT	Springfield-Chicopee	Hartford-New Britain-Bristol Consolidated MSA
Southbury, CT	Waterbury	Bridgeport

Possible Additional Changes

Not reflected in the draft criteria and listings is a further proposal under consideration by the Federal Committee on SMSA's. This proposal would recognize the importance of commuting to cities smaller than the size cutoff required for recognition as an MSA. Based on 1970 data, the five New England towns listed below have a higher level of commuting to a nonmetropolitan city than they do to the metropolitan statistical area central core with which they qualify according to the present draft criteria. If the commuting to the nonmetropolitan city were recognized, these towns would not be included in any metropolitan statistical area.

Town	MSA with which qualified under draft criteria	Nonmetropolitan city with which commuting ties are stronger than to MSA
Allenstown, NH	Manchester	Concord
Pembroke, NH	Manchester	Concord
Raynham, MA	Boston Consolidated MSA	Taunton
Jamestown, RI	Providence-Pawtucket	Newport
Portsmouth, RI	Fall River, MA-RI	Newport
Harwinton, CT	Hartford-New Britain-Bristol Consolidated MSA	Torrington

RATIONALE FOR THE CRITERIA FOR DEFINING METROPOLITAN STATISTICAL AREAS

PREFACE

During the first round of public review and comment on the proposed changes in the criteria for defining metropolitan statistical areas, there were a number of individuals who requested fuller information relative to the statistical concept of a metropolitan area and the background of the official definitions. This statement outlines the history of this concept in Federal statistics, states the rationale for each portion of the criteria, and explains how the new proposal differs from the criteria now in effect. Mention is also made of some additional items still under consideration by the Committee and of the effects of the criteria changes on availability of statistical data.

BACKGROUND

The interest in developing a consistent definition of metropolitan areas dates back more than a century. The existence of suburban areas outside the limits of important cities was noted in census and statistical publications almost from the time of the first U.S. census in 1790.

Metropolitan areas, defined to include suburbs with their central cities, were first officially defined for census purposes in 1910; from that census through 1940, the term used was "metropolitan district." These areas were established in order to permit accurate comparisons of important urban centers across the country, unaffected by the varying extent of central city boundaries.

A review of the census publications of the 1910-1930 period makes it clear that in concept the metropolitan districts were single concentrations (some with multiple centers) of dense urban development, larger than a stated size, with strong internal commuting ties and weak ties to any other densely developed areas. They were not intended to represent broad regions such as trading or newspaper-circulation areas, which would normally be much larger; nor, on the other hand, were they supposed to be limited to the built-up urbanized area.[1]

In the 1930 census, the concept was described as constituting the 'greater' city," and beginning in that year, the definition required a central city of 50,000 or more. It may be noted that a number of other countries independently began to define their own metropolitan areas during the same 1910-1940 period. Definitions adopted in other countries similarly have stressed high population density, commuting ties, and low proportion of population involved in agriculture.[2]

The metropolitan districts defined in the censuses from 1910 through 1940 were intended primarily for the presentation of data from the census. They were defined in terms of townships and similar county subdivisions, which made it difficult for other Federal, State, local, and private statistical groups to compile related data for them. As a consequence, by World War II several Federal agencies had developed alternative metropolitan area definitions, usually in terms of whole counties. Sometimes these county combinations were based as closely as possible on the Census Bureau metropolitan districts; sometimes they were based on other information. Often the various definitions did not agree with one another.

As a result, shortly before the 1950 census, a decision was made to define a set of "standard metropolitan areas" (SMA's) for presenting Federal statistics. Since the new areas were to be used by all Federal statistical agencies and not just for census purposes, the task of defining them was assigned to the Bureau of the Budget (later renamed the Office of Management and Budget), acting with the advice of a newly formed interagency committee. (This original assignment was reinforced by the Budget and Accounting Procedures Act of 1950 which, in Section 103, assigned the Bureau of the Budget responsibility for statistical policy. In October 1977 that responsibility was assigned by President Carter to the Department of Commerce, where it is implemented by the Office of Federal Statistical Policy and Standards (OFSPS).)

To maximize the range of statistical data that could be made available for the SMA's, it was agreed to define them in terms of entire counties. Although it was recognized that this would lead to some inaccuracies in definition, this disadvantage was felt to be outweighed by the large amount of related data that could be made available by county but not by smaller subcounty units. However, an exception to the county building-block approach was made for New England. Here the subcounty units—the cities and towns—have always had great local importance and a wide range of statistics available, while at the same time the counties have been relatively unimportant as governmental units. For example, in Connecticut and Rhode Island the counties no longer function as active governmental units.

The establishment of the SMA's in 1950 represented a change of technique, not of concept, for defining metropolitan areas. The concept embodied in the SMA definition continued to be that of a large concentration of dense urban development, with strong internal commuting ties and weak ties to any other densely developed areas. The original published criteria issued for defining the SMA's in 1950 reflected this by stressing commuting as the main criterion of integration of the outlying parts of the metropolitan area with its center or chief city. The rule adopted then was that if an outlying county had at least 15 percent of its resident workers working in the central county, it qualified for inclusion. The specific 15 percent cutoff was selected primarily on the basis of examination of available data for specific areas. With certain exceptions (which are discussed in a later section), it has proved satisfactory in that counties included in metropolitan areas by this criterion have been generally accepted as properly qualified.

From their inception, the official SMA's (renamed standard metropolitan statistical areas—SMSA's—in 1959) were defined according to specific published criteria. These criteria have dealt chiefly with how large a city had to be to have a metropolitan area defined, and how to decide which counties, if any, adjacent to the city's county should be included in its metropolitan area. The criteria have also mentioned, but in less detail, other issues such as rules for determining which cities in the metropolitan area are "central cities" and which should be included in the area title; how to decide whether two cities in adjacent counties, each of which could qualify for a separate metropolitan area, should be defined as two separate areas or as one; and what to do if the qualification status of a metropolitan area changed over time, for example, if new commuting data showed that a formerly independent area had come to qualify for inclusion in a neighboring area.

Changes in the official criteria have been made at the time of each census since 1950. None of these changes have involved significant deviations from the basic metropolitan area concept. Several modifications have been made over time in the rules for determining how large a city must be to have a metropolitan area defined. Through 1950, a city of 50,000 or more had always been required, but subsequent changes have gradually relaxed the rules somewhat, permitting areas to be defined around smaller cities under certain specified conditions.

Other changes have been made to reflect changing national conditions and the availability of new statistical data for use in the definition process. For example, the 1950 rules specified that a county must have less than 25 percent of its workers engaged in agriculture. However, with a rapidly decreasing proportion of the population engaged in farming, this rule is now subject to elimination because there are practically no counties still affected by it. Although commuting was the main measure of integration between outlying and central counties in the 1950 criteria, there were no national data available on the subject at that time. The commuting data used for the definitions in the 1950's were mostly taken from surveys by State and local employment agencies, which were not always entirely comparable with one another in their coverage and approach. Consequently, the data base was much improved in this respect after a question on place of work was included in the 1960 census.

In the 1950 and 1960 criteria, references were made to other measures of integration, such as the volume of telephone calls between outlying counties and the central county, circulation patterns of central-city daily newspapers, customer service and delivery areas of department stores, and the extent of locally established planning areas. However, these alternative measures were dropped from the criteria after national commuting data became available. This was not so much because their were poor indicators but because it was difficult to obtain nationally comparable data on them. Throughout the history of the SMA's and SMSA's, the use of statistical data available for only a few areas has been avoided in the criteria because there would be not way to provide comparable definitions for other areas for which the specified data were not available.

In 1977, the Federal Committee on standard Metropolitan Statistical Areas and OFSPS began reevaluating the current criteria and considering modifications that might be introduced at the time of the 1980 census. The Committee wanted to determine whether any improvements could be made in the criteria so that they would more closely reflect the basic metropolitan area concept. Over the ensuing two years,

[1] See Richard L. Forstall and Philip N. Fulton, "The Official SCSA/SMSA Definition: Concept and Practice," *Statistical Reporter*, October 1976, and the various sources cited there.

[2] See International Urban Research, *The World's Metropolitan Areas*, Berkeley and Los Angeles: University of California Press, 1959, pp. 6-15.

much of the Committee discussion was based on comments the members had received from users of the SMSA's, in their own or other Federal agencies or elsewhere in the country.

As noted earlier, in 1977 the responsibility for defining SMSA's was transferred from OMB to the new established Office of Federal Statistical Policy and Standards in the Department of Commerce. The OFSPS published a first set of proposed criteria for public comment in the May 1978 *Statistical Reporter* and in the FEDERAL REGISTER for June 22, 1978 (Vol. 43, No. 121).[3] Comments on the proposals were received from several hundred individuals, representing about 50 SMSA's. After reviewing these comments, the Committee has developed a revised criteria proposal for defining metropolitan statistical areas. In preparing the revised proposal, the Committee decided to follow the general outlines of the main proposal published in June, rather than either of the alternative options A and B that were published at the same time. Although some groups and individuals indicated they favored one or the other of these alternatives, they constituted a small minority of all those who commented.

THE PROPOSED NEW CRITERIA

As revised, the proposed criteria include the following changes from the criteria now in effect.[4]

[3]The general and New England criteria were also published in the *Statistical Reporter* issues of May 1978 and August 1978, respectively.

[4]The substantive changes made in the criteria since the version published in the FEDERAL REGISTER in June include:

Criteria for defining component metropolitan statistical areas within (consolidated) metropolitan statistical areas of 1,000,000 or more (Criteria 10-14 and 19-21);

Changes in number and nomenclature of levels, from "Major" and "Local" to A, B, C, and D (Criterion 2);

Changes in qualification rules, including requirement that metropolitan statistical areas established in the future must have a total population of at least 100,000 (Criterion 1); provision that areas already existing will not be disqualified simply because they have less than 100,000 population (Criterion 9);

Recasting of the rules for qualifying outlying counties to recognize as one of the criteria of metropolitan character a 10 percent involvement with the main city's urbanized area (Criteria 4(b) and (c));

For counties with at least 40 percent commuting to the central counties, reduction of the required criteria of metropolitan character to a population density of at least 40 persons per square mile (Criterion 4(a));

Special provision for counties associated with independent cities (footnote 3);

Development of separate rules for determining central cities and metropolitan statistical area titles; cities of 15,000 to 25,000 qualify as central cities if they qualify for the metropolitan statistical area title (criteria 5 and 6).

Except for the addition of criteria for recognizing component metropolitan statistical areas in New England (Criteria 19-21), the New England criteria have not been substantively changed from those published in the *Statistical Reporter* in August, but have been renumbered (Criteria 9-12 in the *Statistical Reporter* are 15-18 in the new version).

Qualification (present Criterion 1; proposed Criterion 1).—The rules for permitting a city to qualify for recognition as a metropolitan statistical area have been modified to require a city of at least 15,000, that is located in a Bureau of the Census defined urbanized area of at least 50,000 and with a total population of at least 100,000 in the metropolitan area defined by the criteria. The lowering of the city size criterion (which is currently 25,000) would qualify a few new metropolitan areas. These would consist of a relatively small city which is surrounded by an extensive urbanized area whose total population is as large or larger than the urbanized areas of some cities already recognized for SMSA's. The requirement for a city of at least 15,000 is included to avoid the possibility of qualifying a densely populated area (for example a large military base) that does not contain at least a small city. The cutoff of 15,000 population has appeared in the criteria for a number of years as the lower limit for qualification as a central city other than the principal central city.

The level of 50,000 required for the urbanized area represents an updating of the requirement for a city of 50,000 that has appeared in the criteria since 1930. Adoption of the Census Bureau's urbanized area for this rule represents a more standard approach. The urbanized areas are defined on a consistent basis nationwide at the time of each national census, and consequently represent the larger urban concentrations more consistently than do corporate city areas, whose boundaries tend to vary widely from region to region because of differing practices on annexation.

The cutoff of 100,000 for total metropolitan population would disqualify several existing SMSA's that are below that limit. However, these areas will not be dropped simply because their populations remain under 100,000, provided they did qualify for separate recognition under the criteria in effect at the time they were established.

The overall effect of the changes in the size requirements will make it somewhat more dificult for additional small areas to qualify as metropolitan statistical areas. This change was adopted because the Committee felt that, now as in the past, the metropolitan area concept was intended to identify the Nation's *larger* urban centers.

Outlying Counties (present Criteria 2 and 3; proposed Criterion 4).—The rules for determining which outlying counties should be included in the metropolitan area have been made somewhat more restrictive. However, these rules are generally similar to the corresponding criteria now in effect. The intent is to include all counties that reach the 15 percent commuting level provided they also demonstrate a given level of "metropolitan character". The rules used to determine "metropolitan character" are all based on regularly available census data and are designed to exclude counties that are very rural or sparsely populated. A majority of the Committee believes that such rural counties should not be included in metropolitan areas even if their commuting ties with the central county are very high.

As in the current criteria, counties with very high commuting links to the central county or counties are included without having to meet as many other requirements as counties with lower levels of commuting. However, even counties with the highest levels of commuting (over 40 percent) must still have a population density of at least 40 persons per square mile to qualify.

Counties with between 30 and 40 percent commuting must meet one of three rules indicative of metropolitan character, such as a relatively high population density, or a significant percentage of the population classified as urban (that is, living in urbanized areas or in places of 2,500 or more population). Counties with between 15 and 30 percent commuting must meet two of four requirements; these are similar to those just mentioned, but also include a high percentage population increase between the last two censuses, a measure that gives recognition to rapid-growth suburban fringe areas.

The effect of the changes in the criteria for outlying counties is to exclude 61 counties now included in SMSA's. A list of these counties is given in Appendix A. This list is based on 1970 commuting data; after 1980 census data become available in 1981-2, the new data may show that some of these counties are in fact qualified under the revised criteria. In any case, no counties will actually be dropped from metropolitan areas until the 1980 census results are tabulated.

Although a fairly large number of counties would possibly be affected by this change in the rules, their total 1970 population is only about 1.25 million or less than 1 percent of the current SMSA total. Their total area of 36,837 square miles represents over 7 percent of the current SMSA total, reflecting the fact that these are relatively sparsely settled counties on the outer edges of the metropolitan areas.

Central Counties (Footnote 5 in present criteria; proposed Criterion 3).—The rules for defining the central core area of each metropolitan area have been modified. This central area must be identified in order to determine the area to which commuting from outlying counties is measured. Originally, the central area comprised only the county or counties containing the central city or cities. However, this produced arbitrary results in several areas where the central city constitutes a separate county by itself (for example, Philadelphia, Denver, San Francisco). The central area in such cases was much smaller than for cities such as Chicago or Los Angeles that are located in a large county. Here, again, the proposed new rules introduce greater consistency by adopting the Bureau of the Census urbanized area as the basis for determining the central counties. Those counties with at least half their population in the urbanized area will now qualify.

It should be noted that only the central core is used to determine whether any additional counties (termed "outlying counties" in the criteria) qualify for inclusion in the metropolitan area. Any commuting to these outlying counties does *not* qualify further counties for inclusion—the commuting must be to the central core counties.

The effect of the change in the central core rules is to add about 8 counties to SMSA's because their level of commuting to the central core would now be over 15 percent—in other words, they had less than 15 percent commuting to the central county or counties as previously defined, but more than 15 percent once additional counties were treated as central counties. A list of these counties based on 1970 commuting data appears in Appendix B, together with

about 20 additional counties likely to be added to metropolitan statistical areas by 1980 based on this or other criteria.

This criterion also includes a rule that qualifies for inclusion in the central core any county containing at least 5,000 population in a central city. The main purpose of this rule is to provide for situations where a central city is located in more than one county. Such counties are not included automatically as central counties if the population of the central city portion is small (less than 5,000). However, counties containing smaller portions of central cities usually do qualify under other criteria for inclusion in the metropolitan area itself.

Central Cities and Titles (present Criterion 4; proposed Criteria 5 and 6).—The rules for identifying the central cities within each metropolitan area have been modified, and have been separated from the rules for titling the area. Central cities are commonly regarded as relatively large communities, with a denser population and a higher concentration of economic activties than more recently developed outlying or "suburban" areas. As such, central cities have numerous common characteristics and problems, and the central city/suburban distinction is important in many statistical presentations, permitting users to compare the respective central cities with one another separately from the respective suburban areas.

The largest city in each metropolitan area is always recognized as a central city, of course. Ever since the establishment of the SMA's in the 1950 census, the identification of any additional central cities has been made essentially on the basis of their being at least one-third the size of the area's largest city. However, a review of commuting and other data for all of the existing central cities has shown that certain commuting measures identify the cities of central character much more precisely than the present rule. Consequently, the Committee proposes to adopt a new rule based on two commuting requirements: at least 50 percent of the residents [5] of the city must work within the city (that is, must not commute to work somewhere else), and the ratio of the number of persons working in the city to the number of residents [5] must be at least 0.8 (in other words, there must be at least 80 local jobs per 100 local residents).

The chief effect of this rule is to identify certain smaller places as central cities because they have central-city characteristics, even though their populations are considerably smaller than that of the main city. There are quite a few of these smaller central-type cities, especially in certain larger metropolitan areas. Examples include Cambridge, Lynn, and Waltham near Boston, Niagara Falls in the Buffalo area, Pontiac in the Detroit area, Aurora and Joliet in the Chicago area, and Berkeley and Pasadena in California. At the same time, some cities now listed as central cities would no longer be so treated because their commuting data indicate that they have a relatively high level of outcommuting, or that they provide jobs for relatively few of their own residents, or both—in other words, that they resemble suburban areas more closely than they do other central cities.

In determining titles for metropolitan statistical areas, the existing maximum of three cities has been retained in the proposed criteria, to avoid unduly cumbersome titles. This means that for the first time some places would be classified as central cities although not actually named in the title of the metropolitan statistical area.

Levels (proposed Criterion 2).—During the discussions of the Federal Committee on SMSA's, it became clear that there is a wide range of opinions about how large an urban area must be to deserve classification as "metropolitan".

Although the official metropolitan criteria have recognized urban centers as small as 50,000 ever since 1930, there are many users who believe that a much higher cutoff should be established. Although the Committee decided to make the rules for qualification a little more stringent (as described above), it did not seriously consider changing to a much higher cutoff level, because this would have had the effect of disqualifying many existing metropolitan areas, including some that have been recognized ever since 1950. Instead, the Committee decided to identify four levels of metropolitan areas, using the total metropolitan population as the basis. The cutoff for these levels have been set at 1,000,000, 250,000, and 100,000.

Many studies have demonstrated that larger urban centers typically carry on numerous economic and social functions that are rare or absent in smaller cities. Essentially all cities large enough to be recognized for metropolitan area status have sizable department stores and daily newspapers, banks of more than local importance, a junior college, and scheduled airline service (although this may be through an airport shared with a neighboring metropolitan center). However, only the largest metropolitan cities have many headquarters of major corporations, a Sunday newspaper with regional circulation, a wide range of specialized medical facilities, a major university, and a major-league athletic team. Above the one million level, most metropolitan cities have all of these functions, and the significance of this particular size has some degree of public recognition. A study conducted by the Committee showed that the level of 250,000 corresponds approximately to the level at which most metropolitan centers typically acquire wide regional influence, including such functions as large banks and Sunday newspapers, regional branches of major national firms, and several hospitals. The 100,000 level was included because it is proposed as the future cutoff for qualification as an SMSA.

After considerable discussion, the four levels have been identified simply as Level A, Level B, Level C, and Level D rather than assign them names (such as Major Metropolitan Areas), since none of the specific sets of terms proposed appeared to have wide support. The Committee is particularly interested in receiving suggestions for names for identifying the levels.

The Committee believes that there are many situations in which it is desirable to look at statistics for metropolitan areas broken down into size categories, and that the identification of levels of metropolitan areas will also aid users who may wish to limit a study to the largest areas, or to focus on a smaller or a middle-size group of areas.

Besides these changes affecting terminology, the Committee decided to simplify the basic designation by dropping the word "standard", thus reducing the basic term to three words, "metropolitan statistical area". In this discussion, the present abbreviations, SMSA, has generally been used in referring to the areas as defined now or at a past date, but "metropolitan statistical area" is generally used in references to the effects of the new criteria.

Component Areas and Consolidated Areas (present Criterion 8; proposed Criteria 7-8 and 10-14). As mentioned earlier, the official criteria for identifying and defining metropolitan areas have proved generally quite satisfactory since they were first developed in 1950; most subsequent changes in the criteria have been largely in the nature of correcting details. Probably the major exception to this general statement involves the treatment of situations where sizable neighboring cities might or might not be treated as one metropolitan area.

In the existing criteria, Criterion 8 has provided for consideration of a range of factors in determining whether or not to treat adjacent centers as parts of a single area.[6] However, in practice Criterion 8 has been applied primarily to instances where pairs of smaller cities, each of which qualified for recognition as an SMSA, regarded themselves as constituting a single metropolitan area, although their urbanized areas were still separate and intercommuting, had not reached the 15 percent level. In such cases the Committee has sometimes merged the areas under Criterion 8 without insisting that the commuting requirement be met. However, Criterion 8 has rarely if ever been used by itself as the basis for separating cities that did qualify to be included in a single area through having substantial commuting interchange.

In some of the largest metropolitan complexes, sizable urban centers of independent origin are sometimes completely connected by urban development, so that there is no visible break between them. Within such physically continuous urban areas, the different parts are typically linked by large volumes of commuting; sometimes, however, the *percentages* of commuters are relatively low. For example, in both 1960 and 1970 a strict application of the 15 percent commuting rule would have separated Oakland from San Francisco and St. Petersburg from Tampa, although these well-recognized twin city pairs have long been treated as single metropolitan areas in official statistics.

In the past, reflecting the underlying concept of a single concentration of dense urban development, the criteria have usually treated cities that were in a single urbanized area as parts of a single metropolitan area. However, beginning in the late 1950's, some cities included within major urbanized areas achieved recognition as centers of separate SMSA's, typically on the basis that their commuting ties to the area's main city

[5] In the application of the criteria, "resident" is limited to persons working, and excludes residents who were not in the labor force or for other reasons not working at the time of the census. Workers whose place of work was not reported are also excluded, to avoid any bias toward the residence side in the employment/residence ratio.

[6] Criterion 8(b) has limited such action to cities within 20 miles of one another; the proposed criteria retain this provision but change the distance measure to 25, measured from city center to city center rather than from city limits to city limits as hitherto. Use of city limits as the basis has introduced considerable arbitrary bias because of the wide variation in annexation practices from region to region.

were below the 15 percent cutoff. The separate recognition of these areas has introduced a nonstandard aspect into the metropolitan area system, because not all cases with less than 15 percent commuting have been separated, while at the same time a few areas with *more* than 15 percent commuting have been given separate recognition although the criteria did not provide for it.

In giving recognition in these instances, the Committee was in fact recognizing that the largest metropolitan areas may be regarded from two aspects. From one point of view, the entire urbanized area and the counties with heavy commuting thereto constitute a single large metropolitan area, which for convenience may be referred to as the "greater" area. For many statistical purposes, this approach provides the best comparability with other metropolitan areas around the country since, like them, it encompasses the entire continuously urbanized area within a single statistical boundary. This approach also conforms quite closely to the metropolitan area concept as reflected in the metropolitan districts of 1910–40 and the SMA's and SMSA's of 1950–70.

From another point of view, however, the separate components of many large metropolitan areas constitute important metropolitan entities in their own right. Although the component area usually has considerable commuting to the urbanized area's main city, a majority of its workers work locally. Often the component area's population is large enough to support a wide range of local functions and services, comparable in most respects to those of a free-standing metropolitan area elsewhere in the country. This may be especially true where the component area was originally an independent urban center, whose close affiliation to the larger nearby city is a recent development. In such a case, although an increasing volume of intercommuting may have strengthened the relationship of the component center to the larger center, often these ties have not greatly altered the basic local pattern of services and activities for which the smaller city remains an important center.

These and similar points were made by many local officials and members of the public who commented on the first set of proposed criteria after their publication in June. Although these proposals did not directly address the question of possible component areas, they left unaltered the provisions of the existing criteria (Criterion 5) that calls for SMSA's to be merged with others if two successive national censuses show that commuting between their central cores exceeds the 15 percent cutoff level in either direction. Under this criterion, 11 existing SMSA's would be merged with others in 1980. Most of these 11 areas did qualify under the official criteria at some time in the past.

The general tenor of the comments received by the Committee from these existing SMSA's subject to merger was that they should continue to be separately recognized in Federal statistics, and that if the commuting data did not support the separate recognition, the use of this measure should be re-examined.

After further discussion, the Committee concluded that only by recognizing two tiers of areas could the metropolitan area system meet, in a standard fashion, the needs of those whose emphasis is on the component level of area as well as those whose need is for data on the "greater" level. The revised proposals do this by providing that within any "greater" metropolitan area of one million or more population, component metropolitan statistical areas may be recognized if certain criteria are met relating to commuting, total population, and percentage urban. If the "greater" area has any component metropolitan statistical areas that qualify, it becomes a consolidated metropolitan statistical area, composed of two or more component metropolitan statistical areas. All other metropolitan statistical areas (those of less than one million, and those over that size but within which no component areas qualify under the rules) are designated simply metropolitan statistical areas.

This approach also incorporates directly into the metropolitan statistical area framework the standard consolidated statistical areas (SCSA's), first established at the time of the 1960 census and currently defined according to criteria published in 1975. To provide a systematic basis for arriving at standard definitions, the new criteria incorporate the existing SCSA criteria into those that determine the overall extent of the "greater" metropolitan area. The result is to establish "greater" metropolitan areas that typically combine all counties involved in a single urbanized area, plus those counties with the qualifying level of commuting to the central core. The use of the SCSA rules also combines as single "greater" areas certain neighboring MSA's that have separate urbanized areas but a substantial commuting interchange.

Once these "greater" areas have been defined, provided there is a total population over 1,000,000, the rules for identifying component metropolitan statistical areas are applied. These rules for components have three effects. First, not surprisingly they result in qualifying as component metropolitan statistical areas all instances of currently qualifying SMSA's that would have qualified as separate metropolitan statistical areas but were merged through the application of the SCSA rules.[7] Second, the component rules also qualify as component metropolitan statistical areas all 11 of the current SMSA's that were due to be merged with others after 1980.[8] Third, several component metropolitan statistical areas are qualified under the proposed rules that have not previously received separate recognition. In effect, these are areas that have as much or more independence from the main center of their "greater" metropolitan area as the various areas mentioned in the two preceding sentences.

Some of these new component areas are smaller cities located within large metropolitan complexes but retaining a high degree of independence from a period when they were functionally more separate; examples are Lynn and Salem in the Boston area, Kane County (Aurora-Elgin) and Will County (Joliet) in the Chicago area, and Beaver County in the Pittsburgh area.[8] Also on the list of new component areas are St. Paul, Oakland, and St. Petersburg, which have hitherto not been given recognition except in combination with Minneapolis, San Francisco, and Tampa, respectively. Fort Worth, which was a separate SMSA until combined with Dallas in 1973, also appears for separate recognition as a component area. In each case, of course, the "greater" area, as a consolidated metropolitan statistical area, would continue to provide data for Minneapolis-St. Paul, San Francisco-Oakland-San Jose, Tampa-St. Petersburg, and Dallas-Fort Worth. A list of all consolidated and component areas that would qualify using 1970 commuting data appears in Appendix C.

Loss of Designation (present Criterion 5; proposed Criterion 9).—How quickly to reflect a change in the status of an area or county on the basis of new data is another one of the points on which many comments have been received by the Committee. For most purposes involving current statistical applications, a definition based on the most up-to-date information is undoubtedly preferable. However, since some metropolitan areas have now been officially identified for almost 30 years, the issue of geographic continuity also arises; changes in definitions can prove awkward for many users, unless statistical series can be made available for past dates based on new areal definitions. The committee is also aware that the very wide uses to which the official metropolitan area definitions have been applied has resulted in their being employed to determine boundaries for local councils of government, planning agencies, and a variety of other purposes. Many users assume that if the official metropolitan area definitions change, these local boundaries must be changed also—an assumption that may be both undesirable and unwarranted.

The Committee's conclusion, as embodied in the proposed criteria, is that changes justified by the criteria should be made immediately, with one exception—that existing metropolitan statistical areas will not be disqualified simply because their population is less than 100,000, assuming they qualified as metropolitan statistical areas at some past date under the criteria then in effect.

To deal with the problem described by many users of securing comparable statistical data, the Committee and OFSPS intend to request the Bureau of the Census to prepare a range of statistical data for the new definitions from past censuses. Consideration is also being given to applying the new criteria to 1970 and 1960 data to produce definitions of metropolitan statistical areas, consolidated metropolitan statistical areas and component metropolitan statistical areas as they would have been defined at those dates had the new rules been in effect.

New England Criteria (present Criteria 6 and 7; proposed Criteria 15–21). Because the New England criteria are applied to cities and towns rather than to entire counties, the delimitation of New England metropolitan statistical areas is somewhat more complex than for the metropolitan statistical areas in other regions. The size levels required for qualification are no different for New England (Criterion 1), but the definition of the central core for the purpose of

[7] In a few cases, the boundaries of the present SMSA's would be enlarged or otherwise changed.

[8] Not surprisingly, some of the cities that would qualify under the proposed new rules for identifying central cities, described earlier, are located in areas that would qualify as component metropolitan statistical areas under the component criteria. In each set of rules, the commuting measures tend to reflect a relatively high degree of independence from other cities in general and from the main city of the "greater" area in particular.

measuring commuting from outlying areas must have special rules. These rules for defining the central core represent the main change in the New England criteria made by the Committee (other than the addition of new rules for identifying component metropolitan statistical areas in New England as in the other States).

The new rules for the central core (Criteria 15 and 16), like those for defining the central counties in the main criteria (Criterion 3), are based primarily on the Bureau of the Census urbanized area—cities and towns with more than half their population in the urbanized area of a city are included in that city's central core, except for a few places whose commuting ties with that city and its immediate environs are relatively weak. The New England central cores defined by these rules are generally comparable to the central counties defined by the main criteria in other States, but tend to be somewhat smaller in extent because they exclude the outlying portions of counties that would be included in a non-New England State.

The criteria for including additional cities and towns in a New England metropolitan statistical area have been altered slightly, to permit towns with a population density between 60 and 100 per square mile to qualify if they have at least 30 percent of their workers commuting to the central core.

The expansion of several central cores and the change in criteria for outlying cities and towns, based on 1970 data, would result in a number of additional communities being added to existing SMSA's. These are listed in Appendix D, which also lists 11 places that would be deleted and four towns that would be transferred from one metropolitan statistical area to another. In addition, because of the changes in the central city criteria, Holyoke, MA; Warwick, RI; and West Haven, CT, would no longer qualify as central cities.

Component and Consolidated Metropolitan Statistical Areas in New England. (Criteria 19-21).—The main effect of the revised core rules described above is to enlarge somewhat the central cores of certain New England Metropolitan statistical areas. By itself, this would have the result of merging serveral existing SMSA's with others. However, under the newly developed criteria for component areas, these areas would continue to be recognized as separate component metropolitan statistical areas. The component rules for New England follow the same general approach as those for component areas in other regions. The rules for defining the component central core are designed to include all of the consolidated metropolitan statistical area's central core that is more closely related to the component core city than to the consolidated area's main city.

In some cases two or more adjacent groups of communities qualify as separate component areas but also qualify to be combined under the rules. The proposed criteria leave open the decision as to whether or not such areas should be merged; local opinion on each side of the question would be an important factor in reaching a decision. Likewise, local opinion would be sought to determine to which of two component central cores a given place should be assigned if it has substantial commuting interchange with each. This reflects a recognition on the part of the Committee that commuting, while probably the best single indicator generally available, is not the only measure deserving consideration in deciding "borderline" situations.

Under these rules, Boston and Hartford-New Britain-Bristol would become consolidated metropolitan statistical areas, and the Norwalk and Stamford SMSA's would become component metropolitan statistical areas in the New York Consolidated Metropolitan Statistical Area. The new criteria would also result in the merger of the New Haven and Meriden areas as a single New Haven-Meriden Metropolitan Statistical Area.

At the same time, these criteria would result in component areas being defined for several additional New England areas. Within the Boston Consolidated metropolitan Statistical Area, the Brockton Component Metropolitan Statistical Area would include all of the existing Brockton SMSA plus Abington and Hanson. (These two towns were transferred from the Brockton SMSA to the Boston SMSA in 1973, but under the component rules have more commuting to the Brockton component core than to Boston proper.) For Lowell, the component metropolitan statistical area would include all of the present Lowell SMSA plus Dunstable. The Lawrence-Haverhill Component Metropolitan Statistical Area would include the existing SMSA plus Danville, East Kingston, and Sandown in New Hampshire.

Lynn and four neighboring towns (Lynnfield, Nahant, Saugus, and Swampscott) would also qualify as a Component Metropolitan Statistical Area. So would Salem and 12 adjacent cities and towns (Beverly, Danvers, Essex, Hamilton, Ipswich, Manchester, Marblehead, Middleton, Peabody, Rowley, Topsfield, and Wenham). The Lynn and Salem areas could also qualify to be a single Lynn-Salem Component Metropolitan Statistical Area, if local opinion favored such a combination.

A potential problem not specifically addressed by the criteria so far involves a situation that occurs to the north of the Lynn and Salem areas, where four communities, Gloucester, Rockport, Newbury and Newburyport, qualify for inclusion in the Boston Consolidated Metropolitan Statistical Area but not for either the Lynn or Salem component areas. These four places are isolated from the remainder of the Boston area balance, which under the criteria would constitute the Boston Component Metropolitan Statistical Area.

The criteria would also establish a new component area in the Hartford-New Britain-Bristol Consolidated Metropolitan Statistical Area. Besides the New Britain and Bristol component metropolitan statistical areas, each of which would correspond to the existing SMSA, there would also be a Middletown Component Metropolitan Statistical Area, including Cromwell, East Haddam, East Hampton, and Middlefield.

Also in Connecticut, Norwalk and Stamford would qualify for component status within the New York consolidated area. These two areas could also qualify to be combined as a single Stamford-Norwalk Component Metropolitan Statistical Area if local opinion supported such a merger.

Many of these New England changes involve nomenclature—for example, redesignation of existing SMSA's as component metropolitan statistical areas—rather than major boundary changes. However, the new criteria would also provide separate statistical recognition to the Lynn, Salem, and Middletown areas. In addition, the changes would serve to increase consistency between the treatment of New England metropolitan areas and those of other States, and therefore would be in keeping with the Committee's general intention of establishing a standard set of areas suitable for statistical comparisons across the country.

Additional items still under consideration by the Committee.—Certain additional criteria modifications have been suggested by Committee members or by those who commented on the first draft proposal. The Committee has not yet reached a decision on these points. The suggested modifications, which would involve relatively few areas, are as follows:

1. Whether to provide for some local option in cases where a county qualifies about equally under the criteria for each of two metropolitan statistical areas.
2. Whether a county should be qualified on the basis of total commuting to two separate metropolitan statistical areas.
3. Whether to provide for some local option in the selection of an areal or regional name for a metropolitan statistical area instead of the names of the central cities.
4. Whether to provide that a county should be excluded from a metropolitan statistical area if its commuting to the central county(ies) can be shown to be primarily to areas outside the urbanized area proper.
5. Some further modifications in the rules for area titles.
6. Whether to recognize commuting to a nonmetropolitan city in defining New England metropolitan statistical areas (see Appendix D).
7. Whether any special provisions should be made for defining metropolitan statistical areas in Puerto Rico.

In addition to these points, the Committee is taking steps to prepare a listing of instances where an important city or urban concentration is included in a metropolitan statistical area simply because it is located within a large county, other portions of which have high commuting to the central county(ies) of the metropolitan statistical area. Typically, if such a place were located in a separate county, it would not be included in the metropolitan statistical area. The Committee believes this listing will be of value to users who want to give such areas separate recognition.

The Committee is also giving serious consideration to designating some additional types of standard areas for Federal statistical purposes (for example, substate planning districts).

Effects of Criteria Changes on Availability of Statistical Data.—From the comments made on the first criteria proposal, it is evident that many users assume that much statistical information is available for counties included in metropolitan areas that is not available for nonmetropolitan counties. This point has been raised in particular by counties that might no longer be included in a metropolitan statistical area after 1980 under the proposed criteria for outlying counties.

However, this concern may often be exaggerated. In population and housing census publications, most data that appear for SMSA's are also given for every county; the exceptions are certain very detailed cross-classifications for the larger SMSA's that are not published for smaller SMSA's or in-

dividual counties, although available at cost in unpublished form.

Certain types of census data have traditionally been provided primarily for metropolitan areas because that was the source of most of the demand for them. The prime example is the census tract reports. However, plans for the 1980 tract reports are well under way at the Bureau of the Census, and are unlikely to reflect any changes in SMSA's that result from the new criteria, other than perhaps the recognition of some newly established areas. Specifically, for counties now in SMSA's who have already had a 1980 census tract plan approved by the Bureau, the tract data will be published as part of the appropriate SMSA tract report, irrespective of whether the county would still qualify for the SMSA under the proposed criteria revisions.

For 1980 as in the past, some nonmetropolitan counties have regularly arranged to be tracted. In 1970, data for these nonmetropolitan tracts were either published in the reports for adjacent SMSA's or made available at cost in unpublished form. In 1980, the Bureau is considering publishing the data for all tracted areas. In any case, a county that ceases to be metropolitan after 1980 can arrange to continue to be tracted.

The economic censuses (censuses of business and manufacturers) taken by the Census Bureau regularly provide more data on SMSA's than on individual counties. The same is true of some sample surveys at both the Federal and State levels. The difference in coverage is not due to the area's metropolitan or nonmetropolitan status, but results from the size of its total population or business volume. The rules developed to protect the confidentiality of individual survey responses and business census reports often preclude the publication of detail for areas with relatively small numbers of people or business establishments. Therefore, larger counties and larger SMSA's usually have more data published than smaller areas. Also, when a choice must be made between publishing data for an SMSA or for one of its component counties, the SMSA, as the larger area, is normally preferred. However, there may sometimes be more data published in the business censuses for a large nonmetropolitan county than for a small county in an SMSA.

Whether an SMSA contains more than one county may affect the range of data published. Single-county SMSA's in general have little if any more published data than the single county would have by itself, although the coverage may appear in a different section of the report, under a metropolitan rather than a nonmetropolitan heading. For an SMSA comprising two (or more) large counties, most data on each of the counties are usually published separately. Recognition as an SMSA also produces totals for the two-county combinations; most of these totals can also be obtained by combining the published data for the separate counties.

For an SMSA containing one large and one or more small counties, the SMSA totals may include considerable data that are also published for the large member county but not for the smaller ones. Again, however, the data available for the larger county, and for the SMSA itself, will not greatly exceed what would be available for a nonmetropolitan county of the same size.

[FR Doc. 78-33293 Filed 11-28-78; 8:45 am]

Federal Register

WEDNESDAY, NOVEMBER 29, 1978
PART VI

COUNCIL ON ENVIRONMENTAL QUALITY

■

NATIONAL ENVIRONMENTAL POLICY ACT

Implementation of Procedural Provisions; Final Regulations

[3125-01-M]

Title 40—Protection of Environment

CHAPTER V—COUNCIL ON ENVIRONMENTAL QUALITY

NATIONAL ENVIRONMENTAL POLICY ACT—REGULATIONS

Implementation of Procedural Provisions

AGENCY: Council on Environmental Quality, Exective Office of the President.

ACTION: Final regulations.

SUMMARY: These final regulations establish uniform procedures for implementing the procedural provisions of the National Environmental Policy Act. The regulations would accomplish three principal aims: to reduce paperwork, to reduce delays, and to produce better decisions. The regulations were issued in draft form in 43 FR 25230-25247 (June 9, 1978) for public review and comment and reflect changes made as a result of this process.

EFFECTIVE DATE: July 30, 1979. (See exceptions listed in § 1506.12.)

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SUPPLEMENTARY INFORMATION:

1. PURPOSE

We are publishing these final regulations to implement the procedural provisions of the National Environmental Policy Act. Their purpose is to provide all Federal agencies with efficient, uniform procedures for translating the law into practical action. We expect the new regulations to accomplish three principal aims: To reduce paperwork, to reduce delays, and at the same time to produce better decisions which further the national policy to protect and enhance the quality of the human environment.

The Council on Environmental Quality is responsbile for overseeing Federal efforts to comply with the National Environmental Policy Act ("NEPA"). In 1970, the Council issued Guidelines for the preparation of environmental impact statements (EISs) under Executive Order 11514 (1970). The 1973 revised Guidelines are now in effect. Although the Council conceived of the Guidelines as non-discretionary standards for agency decisionmaking, some agencies viewed them as advisory only. Similarly, courts differed over the weight which should be accorded the Guidelines in evaluating agency compliance with the statute.

The result has been an evolution of inconsistent agency practices and interpretations of the law. The lack of a uniform, government-wide approach to implementing NEPA has impeded Federal coordination and made it more difficult for those outside government to understand and participate in the environmental review process. It has also caused unnecessary duplication, delay and paperwork.

Moreover, by the terms of Executive Order 11514, the Guidelines were confined to Subsection (C) of Section 102(2) of NEPA—the requirement for environmental impact statements. The Guidelines did not address Section 102(2)'s other important provisions for agency planning and decisionmaking. Consequently, the environmental impact statement has tended to become an end in itself, rather than a means to making better decisions. Environmental impact statements have often failed to establish the link between what is learned through the NEPA process and how the information can contribute to decisions which further national environmental policies and goals.

To correct these problems, the President issued Executive Order 11991 on May 24, 1977 directing the Council to issue the regulations. The Executive Order was based on the President's Constitutional and statutory authority, including NEPA, the Environmental Quality Improvement Act, and Section 309 of the Clean Air Act. The President has a constitutional duty to insure that the laws are faithfully executed (U.S. Const. art. II, sec. 3), which may be delegated to appropriate officials. (Title 3 U.S.C., Sec. 301). In signing Executive Order 11991, the President delegated this authority to the agency created by NEPA, the Council on Environmental Quality.

In accordance with this directive, the Council's regulations are binding on all Federal agencies, replace some seventy different sets of agency regulations, and provide uniform standards applicable throughout the Federal government for conducting environmental reviews. The regulations also establish formal guidance from the Council on the requirements of NEPA for use by the courts in interpreting this law. The regulations address all nine subdivisions of Section 102(2) of the Act, rather than just the EIS provision covered by the Guidelines. Finally, as mandated by President Carter's Executive Order, the regulations are

"* * * designed to make the environmental impact statement more useful to decisionmakers and the public; and to reduce paperwork and the accumulation of extraneous background data, in order to emphasize the need to focus on real environmental issues and alternatives."

2. SUMMARY OF MAJOR INNOVATIONS IN THE REGULATIONS

Following this mandate in developing the new regulations, we have kept in mind the threefold objective of less paperwork, less delay, and better decisions.

A. REDUCING PAPERWORK

These regulations reduce paperwork requirements on agencies of government. Neither NEPA nor these regulations impose paperwork requirements on the public.

i. *Reducing the length of environmental impact statements.* Agencies are directed to write concise EISs (§ 1502.2(c)), which normally shall be less than 150 pages, or, for proposals of unusual scope or complexity, 300 pages (§ 1502.7).

ii. *Emphasizing real alternatives.* The regulations stress that the environmental analysis is to concentrate on alternatives, which are the heart of the process (§§ 1502.14, 1502.16); to treat peripheral matters briefly (§ 1502.2(b)); and to avoid accumulating masses of background data which tend to obscure the important issues (§§ 1502.1, 1502.15).

iii. *Using an early "scoping" process to determine what the important issues are.* A new "scoping" procedure is established to assist agencies in deciding what the central issues are, how long the EIS shall be, and how the responsibility for the EIS will be allocated among the lead agency and cooperating agencies (§ 1501.7). The scoping process is to begin as early in the NEPA process as possible—in most cases, shortly after the decision to prepare an EIS—and shall be integrated with other planning.

iv. *Using plain language.* The regulations strongly advocate writing in plain language (§ 1502.8).

v. *Following a clear format.* The regulations recommend a standard format intended to eliminate repetitive discussion, stress the major conclusions, highlight the areas of controversy, and focus on the issues to be resolved (§ 1502.10).

vi. *Requiring summaries of environmental impact statements.* The regulations are intended to make the document more usable by more people (§ 1502.12). With some exceptions, a summary may be circulated in lieu of the environmental impact statement if the latter is unusually long (§ 1502.19).

vii. *Eliminating duplication.* Under the regulations Federal agencies may prepare EISs jointly with State and local units of government which have "little NEPA" requirements (§ 1506.2).

They may also adopt another Federal agency's EIS (§ 1506.3).

viii. *Consistent terminology.* The regulations provide uniform terminology for the implementation of NEPA (§ 1508.1). For instance, the CEQ term "environmental assessment" will replace the following (nonexhaustive) list of comparable existing agency procedures: "survey" (Corps of Engineers), "environmental analysis" (Forest Service), "normal or special clearance" (HUD), "environmental analysis report" (Interior), and "marginal impact statement" (HEW) (§ 1508.9).

ix. *Incorporation by reference.* Agencies are encouraged to incorporate material by reference into the environmental impact statement when the material is not of central importance and when it is readily available for public inspection (§ 1502.21).

x. *Specific comments.* The regulations require that comments on environmental impact statements be as specific as possible to facilitate a timely and informative exchange of views among the lead agency and other agencies and the public (§ 1503.3).

xi. *Simplified procedures for making minor changes in environmental impact statements.* If comments on a draft environmental impact statement require only minor changes or factual corrections, an agency may circulate the comments, responses thereto, and the changes from language in the draft statement, rather than rewriting and circulating the entire document as a final environmental impact statement (§ 1506.4).

xii. *Combining documents.* Agencies may combine environmental impact statements and other environmental documents with any other document used in agency planning and decisionmaking (§ 1506.4).

xiii. *Reducing paperwork involved in reporting requirements.* The regulations will reduce the paperwork involved in reporting requirements as summarized below. In comparing the requirements under the existing Guidelines and the new CEQ regulations, it should be kept in mind that the regulations cover Sections 102(2)(A) through (I) of NEPA, while the Guidelines cover only Section 102(2)(C) (environmental impact statements). CEQ's new regulations will also replace more than 70 different existing sets of individual agency regulations. (Under the new regulations each agency will only issue implementing procedures to explain how the regulations apply to its particular policies and programs (§ 1507.3).)

Existing requirements (Applicable guidelines sections are noted)	New requirements (Applicable regulations sections are noted)
Assessment (optional under Guidelines on a case-by-case basis; currently required, however, by most major agencies in practice or in procedures) Sec. 1500.6.	*Assessment* (limited requirement: not required where there would not be environmental effects or where an EIS will be required) Secs. 1501.3, .4.
Notice of intent to prepare impact statement Sec. 1500.6.	*Notice of intent* to prepare EIS and commence scoping process Sec. 1501.7.
Quarterly list of notices of intent Sec. 1500.6.	Requirement abolished.
Negative determination (decision not to prepare impact statement) Sec. 1500.6.	*Finding of no significant impact* Sec. 1501.4.
Quarterly list of negative determinations Sec. 1500.6.	Requirement abolished.
Draft EIS Sec. 1500.7	*Draft EIS* Sec. 1502.9.
Final EIS Sec. 1500.6, .10	*Final EIS* Sec. 1502.9.
EISs on non-agency legislative reports ("agency reports on legislation initiated elsewhere") Sec. 1500.5(a)(1).	Requirment abolished.
Agency report to CEQ on implementation experience Sec. 1500.14(b).	Requirement abolished.
Agency report to CEQ on substantive guidance Secs. 1500.6(c), .14.	Requirement abolished.
Record of decision (no Guideline provision but required by many agencies' own procedures and in a wide range of cases generally under the Administrative Procedure Act and OMB Circular A-95, Part I, Sec. 6(c) and (d), Part II, Sec. 5(b)(4)).	*Record of decision* (brief explanation of decision based in part on EIS that was prepared; no circulation requirement) Sec. 1505.2.

B. REDUCING DELAY

The measures to reduce delay are listed below.

i. *Time limits on the NEPA process.* The regulations encourage lead agencies to set time limits on the NEPA process and require that time limits be set when requested by an applicant (§§ 1501.7(b)(2), 1501.8).

ii. *Integrating EIS requirements with other environmental review requirements.* Often the NEPA process and the requirements of other laws proceed separately, causing delay. The regulations provide for all agencies with jurisdiction over a proposal to cooperate so that all reviews may be conducted simultaneously (§§ 1501.7, 1502.25).

iii. *Integrating the NEPA process into early planning.* If environmental review is tacked on to the end of the planning process, then the process is prolonged, or else the EIS is written to justify a decision that has already been made and genuine consideration may not be given to environmental factors. The regulations require agencies to integrate the NEPA process with other planning at the earliest possible time (§ 1501.2).

iv. *Emphasizing interagency cooperation before the EIS is drafted.* The regulations emphasize that other agencies should begin cooperating with the lead agency before the EIS is prepared in order to encourage early resolution of differences (§ 1501.6). We hope that early cooperation among affected agencies in preparing a draft EIS will produce a better draft and will reduce delays caused by unnecessarily late criticism.

v. *Swift and fair resolution of lead agency disputes.* When agencies differ as to who shall take the lead in preparing an EIS, or when none is willing to take the lead, the regulations provide a means for prompt resolution of the dispute (§ 1501.5),

vi. *Preparing EISs on programs and not repeating the same material in project specific EISs.* Material common to many actions may be covered in a broad EIS, and then through "tiering" may be summarized and incorporated by reference rather than reiterated in each subsequent EIS (§§ 1502.4, 1502.20, 1502.21, 1508.28).

vii. *Legal delays.* The regulations provide that litigation, if any, should come at the end rather than in the middle of the process (§ 1500.3).

viii. *Accelerated procedures for legislative proposals.* The regulations provide accelerated, simplified procedures for environmental analysis of legislative proposals, to fit better with Congressional schedules (§ 1506.8).

ix. *Categorical exclusions.* Under the regulations, categories of actions which do not individually or cumulatively have a significant effect on the human environment may be excluded from environmental review requirements (§ 1508.4).

x. *Finding of no significant impact.* If an action has not been categorically excluded from environmental review under § 1508.4, but nevertheless will not significantly affect the quality of the human environment, the agency will issue a finding of no significant impact as a basis for not preparing an EIS (§ 1508.13).

C. BETTER DECISIONS

Most of the features described above will help to improve decisionmaking. This, of course, is the fundamental purpose of the NEPA process the end to which the EIS is a means. Section 101 of NEPA sets forth the substantive requirements of the Act, the policy to be implemented by the "action-forcing" procedures of Section 102. These procedures must be tied to their intended purpose, otherwise they are indeed useless paperwork and wasted time.

i. *Recording in the decision how the EIS was used.* The new regulations re-

quire agencies to produce a concise public record, indicating how the EIS was used in arriving at the decision (§ 1505.2). This record of decision must indicate which alternative (or alternatives) considered in the EIS is preferable on environmental grounds. Agencies may also discuss preferences among alternatives based on relevant factors including economic and technical considerations and agency statutory missions. Agencies should identify those "essential considerations of national policy", including factors not related to environmental quality, which were balanced in making the decision.

ii. *Insure follow-up of agency decisions.* When an agency requires environmentally protective mitigation measures in its decisions, the regulations provide for means to ensure that these measures are implemented and monitored (§ 1505.3).

iii. *Securing more accurate, professional documents.* The regulations require accurate documents as the basis for sound decisions. As provided by Section 102(2)(A) of NEPA, the documents must draw upon all the appropriate disciplines from the natural and social sciences, plus the environmental design arts (§ 1502.6). The lead agency is responsible for the professional integrity of environmental documents and requirements are established to ensure this result, such as special provisions regarding the use of data provided by an applicant (§ 1506.5). A list of people who helped prepare documents, and their professional qualifications, shall be included in the EIS to encourage professional responsibility and ensure that an interdisciplinary approach was followed (§ 1502.17).

The regulations establish a streamlined process, and one which has a broader purpose than the Guidelines they replace. The Guidelines emphasized a single document, the EIS, while the regulations emphasize the entire NEPA process, from early planning through assessment and EIS preparation through decisions and provisions for follow-up. They are designed to gear means to ends—to ensure that the action-forcing procedures of Section 102(2) of NEPA are used by agencies to fulfill the requirements of the Congressionally mandated policy set out in Section 101 of the Act. Furthermore, the regulations are uniform, applying in the same way to all Federal agencies, although each agency will develop its own procedures for implementing the regulations. With these new regulations we seek to carry out as faithfully as possible the original intent of Congress in enacting NEPA.

3. Background

The Council was greatly assisted by the hundreds of people who responded to our call for suggestions on how to make the NEPA process work better. In all, the Council sought the views of almost 12,000 private organizations, individuals, State and local agencies, and Federal agencies. In public hearings which we held in June 1977, we invited testimony from a broad array of public officials, organizations, and private citizens, affirmatively involving NEPA's critics as well as its friends.

Among those represented were the U.S. Chamber of Commerce, which coordinated testimony from business; the Building and Construction Trades Department of the AFL-CIO, which did so for labor; the National Conference of State Legislatures, for State and local governments; and the Natural Resources Defense Council, for environmental groups. Scientists, scholars, and the general public were also represented.

There was broad consensus among these diverse witnesses. All, without exception, expressed the view that NEPA benefited the public. Equally widely shared was the view that the process had become needlessly cumbersome and should be streamlined. Witness after witness said that the length and detail of EISs made it difficult to distinguish the important from the trivial. The degree of unanimity about the good and bad points of the NEPA process was such that at one point an official spokesperson for the oil inductry rose to say that he adopted in its entirety the presentation of the President of the Sierra Club.

After the hearings we culled the record to organize both the problems and the solutions proposed by witnesses into a 38-page "NEPA Hearing Questionnaire." The questionnaire was sent to all witnesses, every State governor, all Federal agencies, and everyone who responded to an invitation in the FEDERAL REGISTER. We received more than 300 replies, from a broad cross section of groups and individuals. By the comments we received from respondents we gauged our success in faithfully presenting the results of the public hearings. One commenter, an electric utility official, said that for the first time in his life he knew the government was listening to him, because all the suggestions made at the hearing turned up in the questionnaire. We then collated all the responses for use in drafting the regulations.

We also met with every agency of the Federal government to discuss what should be in the regulations. Guided by these extensive interactions with government agencies and the public, we prepared draft regulations which were circulated for comment to all Federal agencies in December, 1977. We then studied agency comments in detail, and consulted numerous Federal officials with special experience in implementing the Act. Informal redrafts were circulated to the agencies with greatest experience in preparing environmental impact statements.

At the same time that Federal agencies were reviewing the early draft, we continued to meet with, listen to, and brief members of the public, including representatives of business, labor, State and local governments, environmental groups, and others. Their views were considered during this early stage of the rulemaking. We also considered seriously and proposed in our regulations virtually every major recommendation made by the Commission on Federal Paperwork and the General Accounting Office in their recent studies on the environmental impact statement process. The studies by these two independent bodies were among the most detailed and informed reviews of the paperwork abuses in the impact statement process. In many cases, such as streamlining intergovernmental coordination, the proposed regulations go further than their recommendations.

On June 9, 1978 the regulations were proposed in draft form (43 FR at pages 25230-25247) and the Council announced that the period for public review of and comment on the draft regulations would extend for two months until August 11, 1978. During this period, the Council received almost 500 written comments on the draft regulations, most of which contained specific and detailed suggestions for improving them. These comments were again broadly representative of the various interests which are involved in the NEPA process.

The Council carefully reevaluated the regulations in light of the comments we received. The Council's staff read and analyzed each of the comments and developed recommendations for responding to them. A clear majority of the comments were favorable and expressed strong support for the draft regulations as a major improvement over the existing Guidelines. Some comments suggested further improvements through changes in the wording of specific provisions. A smaller number expressed more general concerns about the approach and direction taken by the regulations. In continuing efforts to resolve issues raised during the review, staff members conducted numerous meetings with individuals and groups who had offered comments and with representatives of affected Federal agencies. This process continued until most concerns with the proposals were alleviated or satisfied.

When, after discussions and review the Council determined that the comments raised valid concerns, we altered the regulations accordingly. When we

decided that reasons supporting the regulations were stronger than those for challenging them, we left the regulations unchanged. Part 4 of the Preamble describes section by section the more significant comments we received, and how we responded to them.

4. COMMENTS AND THE COUNCIL'S RESPONSE

PART 1500—PURPOSE, POLICY AND MANDATE

Comments on § 1500.3: Mandate. Section 1500.3 of the draft regulations stated that it is the Council's intention that judicial review of agency compliance with the regulations not occur before an agency has filed the final environmental impact statement, causes irreparable injury, or has made a finding of no significant impact. Some comments expressed concern that court action might be commenced under this provision following a finding of no significant impact which was only tentative and did not represent a final determination that an environmental impact statement would not be prepared.

The Council made two changes in response to this concern: First, the word "final" was inserted before the phrase "finding of no significant impact." Thus, the Council eliminated the possibility of interpreting this phrase to mean a preliminary or tentative determination. Second, a clarification was added to this provision to indicate the Council's intention that judicial review would be appropriate only where the finding of no significant impact would lead to action affecting the environment.

Several comments on § 1500.3 expressed concern that agency action could be invalidated in court proceedings as the result of trivial departures from the requirements established by the Council's regulations. This is not the Council's intention. Accordingly, a sentence was added to indicate the Council's intention that a trivial departure from the regulations not give rise to an independent cause of action under law.

PART 1501—NEPA AND AGENCY PLANNING

Comments on § 1501.2: Apply NEPA early in process. Section (d)(1) of § 1501.2 stated that Federal agencies should take steps to ensure that private parties and State and local entities initiate environmental studies as soon as Federal involvement in their proposals can be foreseen. Several commenters raised questions concerning the authority of a Federal agency to require that environmental studies be initiated by private parties, for example, even before that agency had become officially involved in the review of the proposal.

The Council's intention in this provision is to ensure that environmental factors are considered at an early stage in the planning process. The Council recognizes that the authority of Federal agencies may be limited before their duty to review proposals initiated by parties outside the Federal government officially begins. Accordingly, the Council altered subsection (d)(1) of § 1501.2 to require that in such cases Federal agencies must ensure that "[p]olicies or designated staff are available to advise potential applicants of studies or other information foreseeably required by later Federal action." The purpose of the amended provision is to assure the full cooperation and support of Federal agencies for efforts by private parties and State and local entities in making an early start on studies for proposals that will eventually be reviewed by the agencies.

Comments on § 1501.3: When to prepare an environmental assessment. One commenter asked whether an environmental assessment would be required where an agency had already decided to prepare an environmental impact statement. This is not the Council's intention. To clarify this point, the Council added a sentence to this provision stating that an assessment is not necessary if the agency has decided to prepare an environmental impact statement.

Comments on § 1501.5: Lead agencies. The Council's proposal was designed to insure the swift and fair resolution of lead agency disputes. Section 1501.5 of the draft regulations established procedures for resolving disagreements among agencies over which of them must take the lead in preparing an environmental impact statement. Under subsection (d) of this section, persons and governmental entities substantially affected by the failure of Federal agencies to resolve this question may request these agencies in writing to designate a lead agency forthwith. If this request has not been met "within a reasonable period of time," subsection (e) authorizes such persons and governmental entities to petition the Council for a resolution of this issue.

Several comments objected to the phrase "within a reasonable time" because it was vague, and left it uncertain when concerned parties could file a request with the Council. The comments urged that a precise time period be fixed instead. The Council adopted this suggestion and substituted 45 days for the phrase "within a reasonable period of time." With this change, the regulations require that a lead agency be designated, if necessary by the Council, within a fixed period following a request from concerned parties that this be done.

Several commenters suggested that the Council take responsibility for designating lead agencies in every case to reduce delay. These commenters recommended that all preliminary steps be dropped in favor of immediate Council action whenever the lead agency issue arose.

The Council determined, however, that individual agencies are in the best position to decide these questions and should be given the opportunity to do so. In view of its limited resources, the Council does not have the capability to make lead agency designations for all proposals. As a result of these factors, the Council determined not to alter this provision.

Several commenters opposed the concept of joint lead agencies authorized by subsection (b) of this section, particularly where two or more of the agencies are Federal. These commenters expressed doubt that Federal agencies could cooperate in such circumstances and stated their view that the environmental review process will only work where one agency is given primary responsibility for conducting it.

In the Council's judgment, however, the designation of joint lead agencies may be the most efficient way to approach the NEPA process where more than one agency plays a significant role in reviewing proposed actions. The Council believes that Federal agencies should have the option to become joint lead agencies in such cases.

Comments on § 1501.6: Cooperating agencies. The Council developed proposals to emphasize interagency cooperation before the environmental impact statement was prepared rather than comments on a completed document. Section 1501.6 stated that agencies with jurisdiction by law over a proposal would be required to become "cooperating agencies" in the preparation of an EIS should the lead agency request that they do so. Under subsection (b) of this provision, "cooperating agencies" could be required to assume responsibility for developing information and analysis within their special competence and to make staff support available to enhance the interdisciplinary capability of the lead agency.

Several comments pointed out that principal authority for environmental matters resides in a small number of agencies in the Federal government. Concern was expressed that these few agencies could be inundated with requests for cooperation in the preparation of EISs and, if required to meet these requests in every case, drained of resources required to fulfill other statutory mandates.

The Council determined that this was a valid concern. Accordingly, it added a new subsection (c) to this sec-

tion which authorizes a cooperating agency to decline to participate or otherwise limit its involvement in the preparation of an EIS where existing program commitments preclude more extensive cooperation.

Subsection (b)(5) of this section provided that a lead agency shall finance the major activities or analyses it requests from cooperating agencies to the extent available funds permit. Several commenters expressed opposition to this provision on grounds that a lead agency should conserve its funds for the fulfillment of its own statutory mandate rather than disburse funds for analyses prepared by other agencies.

The same considerations apply, however, to cooperating agencies. All Federal agencies are subject to the mandate of the National Environmental Policy Act. This provision of the regulations allows a lead agency to facilitate compliance with this statute by funding analyses prepared by cooperating agencies "to the extent available funds permit." In the Council's view, this section will enhance the ability of a lead agency to meet all of its obligations under law.

Section 1501.7: Scoping. The new concept of "scoping" was intended by the Council and perceived by the great preponderance of the commenters as a means for early identification of what are and what are not the important issues deserving of study in the EIS. Section 1501.7 of the draft regulations established a formal mechanism for agencies, in consultation with affected parties, to identify the significant issues which must be discussed in detail in an EIS, to identify the issues that do not require detailed study, and to allocate responsibilities for preparation of the document. The section provided that a scoping meeting must be held when practicable. One purpose of scoping is to encourage affected parties to identify the crucial issues raised by a proposal before an environmental impact statement is prepared in order to reduce the possibility that matters of importance will be overlooked in the early stages of a NEPA review. Scoping is also designed to ensure that agency resources will not be spent on analysis of issues which none concerned believe are significant. Finally, since scoping requires the lead agency to allocate responsibility for preparing the EIS among affected agencies and to identify other environmental review and consultation requirements applicable to the project, it will set the stage for a more timely, coordinated, and efficient Federal review of the proposal.

The concept of scoping was one of the innovations in the proposed regulations most uniformly praised by members of the public ranging from business to environmentalists. There was considerable discussion of the details of implementing the concept. Some commenters objected to the formality of the scoping process, expressing the view that compliance with this provision in every case would be time-consuming, would lead to legal challenges by citizens and private organizations with objections to the agency's way of conducting the process, and would lead to paperwork since every issue raised during the process would have to be addressed to some extent in the environmental impact statement. These commenters stated further that Federal agencies themselves were in the best position to determine matters of scope, and that public participation in these decisions was unnecessary because any scoping errors that were made by such agencies could be commented upon when the draft EIS was issued (as was done in the past) and corrected in the final document. These commenters urged that scoping at least be more open-ended and flexible and that agencies be merely encouraged rather than required to undertake the process.

Other commenters said that the Council had not gone for enough in imposing uniform requirements. These commenters urged the Council to require that a scoping meeting be held in every case, rather than only when practicable; that a scoping document be issued which reflected the decisions reached during the process; and that formal procedures be established for the resolution of disagreements over scope that arise during the scoping process. These commenters felt that more stringent requirements were necessary to ensure that agencies did not avoid the process.

In developing § 1501.7, the Council sought to ensure that the benefits of scoping would be widely realized in Federal decisionmaking, but without significant disruptions for existing procedures. The Council made the process itself mandatory to guarantee that early cooperation among affected parties would be initiated in every case. However, § 1501.7 left important elements of scoping to agency discretion. After reviewing the recommendations for more flexibility on the one hand, and more formality on the other, and while making several specific changes in response to specific comments, the Council determined that the proper balance had been struck in Section 1501.7 and did not change the basic outline of this provision. The Council did accept amendments to make clear that scoping meetings were permissive and that an agency might make provision for combining its scoping process with its environmental assessment process.

Comments on § 1501.8: Time limits. Reducing delay and uncertainty by the use of time limits is one of the Council's principal changes. Section 1501.8 of the draft regulations established criteria for setting time limits for completion of the entire NEPA process or any part of the process. These criteria include the size of the proposal and its potential for environmental harm, the state of the art, the number of agencies involved, the availability of relevant information and the time required to obtain it. Under this section, if a private applicant requests a lead agency to set time limits for an EIS review, the agency must do so provided that the time limits are consistent with the purposes of NEPA and other essential considerations of national policy. If a Federal agency is the sponsor of a proposal for major action, the lead agency is encouraged to set a timetable for the EIS review.

Several commenters objected to the concept of time limits for the NEPA process. In their opinion, the uncertainties involved in an EIS review and competing demands for limited Federal resources could make it difficult for agencies to predict how much time will be required to complete environmental impact statements on major proposals. These commenters were concerned that time limits could prompt agencies to forego necessary analysis in order to meet deadlines. In their view, the concept of time limits should be dropped from the regulations in favor of more flexible "targets" or "goals" which would be set only after consultation with all concerned parties.

On the other side of the question, the Council received several comments that the provision for time limits was not strict enough. These comments expressed concern that the criteria contained in the draft regulations were vague and would not serve effectively to encourage tight timetables for rapid completion of environmental reviews. The Council was urged to strengthen this section by including definite time limits for the completion of the EIS process in every case or by providing that CEQ itself set such limits for every environmental review, and by setting time limits for the establishment of time limits.

A primary goal of the Council's regulations is to reduce delays in the EIS process. The Council recognizes the difficulties of evaluating in advance the time required to complete environmental reviews. Nevertheless, the Council believes that a provision for time limits is necessary to concentrate agencies' attention on the timely completion of environmental impact statements and to provide private applicants with reasonable certainty as to how long the NEPA process will take. Section 1501.7(c) of the regulations

allows revision of time limits if significant new circumstances (including information) arise which bear on the proposal or its impacts.

At the same time, the Council believes that precise time limits to apply uniformly across government would be unrealistic. The factors which determine the time needed to complete an environmental review are various, including the state of the art, the size and complexity of the proposal, the number of Federal agencies involved, and the presence of sensitive ecological conditions. These factors may differ significantly from one proposal to the next. The same law that applies to a Trans-Alaska pipeline may also apply to a modest federally funded building in a historic district. In the Council's judgment, individual agencies are in the best position to perform this function. The Council does not have the resources to weigh these factors for each proposal. Accordingly, the Council determined not to change these provisions of § 1501.8 of the regulations.

PART 1502—ENVIRONMENTAL IMPACT STATEMENT

Comments on Section 1502.5: Timing. Several commenters noted that it has become common practice in informal rulemaking for Federal agencies to issue required draft environmental impact statements at the same time that rules are issued in proposed form. These commenters expressed the view that this procedure was convenient, time-saving and consistent with NEPA, and urged that the regulations provide for it. The Council added a new subsection (d) to § 1502.5 on informal rulemaking stating that this procedure shall normally be followed.

Comments on section 1502.7: Page limits. A principal purpose of these regulations is to turn bulky, often unused EISs into short, usable documents which are in fact used. Section 1502.7 of the draft regulations provided that final environmental impact statements shall normally be less than 150 pages long and, for proposals of unusual scope or complexity, shall normally be less than 300 pages. Numerous commenters expressed strong support for the Council's decision to establish page limits for environmental impact statements.

Several commenters objected to the concept of page limits for environmental impact statements on grounds that it could constrain the thoroughness of environmental reviews. Some said that the limits were too short and would preclude essential analysis; others contended that they were too long and would encourage the inclusion of unnecessary detail. One commenter proposed a "sliding scale" for page limits; another suggested that a limitation on the number of words would be more effective than a limitation on the number of pages. A number of commenters urged that page limits be simply recommended rather than established as standards that should normally be met.

The usefulness of the NEPA process to decisionmakers and the public has been jeopardized in recent years by the length and complexity of environmental impact statements. In accordance with the President's directive, a primary objective of the regulations is to insure that these documents are clear, concise, and to the point. Numerous provisions in the regulations underscore the importance of focusing on the major issues and real choices facing federal decisionmakers and excluding less important matters from detailed study. Other sections in the regulations provide that certain technical and background materials developed during the environmental review process may be appended but need not be presented in the body of an EIS.

The Council recognizes the tension between the requirement of a thorough review of environmental issues and a limitation on the number of pages that may be devoted to the analysis. The Council believes that the limits set in the regulations are realistic and will help to achieve the goal of more succinct and useful environmental documents. The Council also determined that a limitation on the number of words in an EIS was not required for accomplishing the objective of this provision. The inclusion of the term "normally" in this provision accords Federal agencies latitude if abnormal circumstances exist.

Others suggested that page limits might result in conflict with judicial precedents on adequacy of EISs, that the proverbial kitchen sink may have to be included to insure an adequate document, whatever the length. The Council trusts and intends that this not be the case. Based on its day-to-day experience in overseeing the administration of NEPA throughout the Federal government, the Council is acutely aware that in many cases bulky EISs are not read and are not used by decisionmakers. An unread and unused document quite simply cannot achieve the purpose Congress set for it. The only way to give greater assurance that EISs will be used is to make them usable and that means making them shorter. By way of analogy, judicial opinions are themselves often models of compact treatment of complex subjects. Departmental option documents often provide brief coverage of complicated decisions. Without sacrifice of analytical rigor, we see no reason why the material to be covered in an EIS cannot normally be covered in 150 pages (or 300 pages in extraordinary circumstances).

Comments on § 1502.10: Recommended format. Section 1502.10 stated that agencies shall normally use a standard format for environmental impact statements. This provision received broad support from those commenting on the draft regulations.

As part of the recommended format, environmental impact statements would be required to describe the environmental consequences of a proposed action before they described the environment that would be affected. Many commenters felt that these elements of the EIS should be reversed so that a description of the environmental consequences of a proposal would follow rather than precede a description of the affected environment. The commenters stated their view that it would be easier for the reader to appreciate the nature and significance of environmental consequences if a description of the affected environment was presented first. The Council concurs in this view and adopted the suggested change.

Comments on § 1502.13: Purpose and need. This section of the draft regulations provided that agencies shall briefly specify—normally in one page or less—the underlying purpose and need to which the agency is responding in proposing alternatives for action. Many commenters stated that in some cases this analysis would require more than one page. The Council responded to these comments by deleting the one page limitation.

Comments on § 1502.14: Alternatives including the proposed action. Subsection (a) of this section of the draft regulations provided, among other things, that agencies shall rigorously explore and objectively evaluate all reasonable alternatives. This provision was strongly supported by a majority of those who commented on the provision.

A number of commenters objected to the phrase "all reasonable alternatives" on the grounds that it was unduly broad. The commenters suggested a variety of ways to narrow this requirement and to place limits on the range and type of alternatives that would have to be considered in an EIS.

The phrase "all reasonable alternatives" is firmly established in the case law interpreting NEPA. The phrase has not been interpreted to require that an infinite or unreasonable number of alternatives be analyzed. Accordingly, the Council determined not to alter this subsection of the regulations.

Subsection (c) requires Federal agencies to consider reasonable alternatives not within the jurisdiction of the lead agency. Subsection (d) requires consideration of the no action alternative. A

few commenters inquired into the basis for these provisions. Subsections (c) and (d) are declaratory of existing law.

Subsection (e) of this section required Federal agencies to designate the "environmentally preferable alternative (or alternatives, if two or more are equally preferable)" and the reasons for identifying it. While the purpose of NEPA is better environmental decisionmaking, the process itself has not always successfully focused attention on this central goal. The objective of this requirement is to ensure that Federal agencies consider which course of action available to them will most effectively promote national environmental policies and goals. This provision was strongly supported in many comments on the regulations.

Some commenters noted that a wide variety of decisionmaking procedures are employed by agencies which are subject to NEPA and recommended flexibility to accommodate these diverse agency practices. In particular, the commenters recommended that agencies be given latitude to determine at what stage in the NEPA process—from the draft EIS to the record of decision—the environmentally preferable alternative would be designated.

The Council adopted this recommendation and deleted this requirement from the EIS portion of the regulations (§ 1502.14), while leaving it in § 1505.2 regarding the record of decision. Nothing in these regulations would preclude Federal agencies from choosing to identify the environmentally preferable alternative or alternatives in the environmental impact statement.

Comments on § 1502.15: Environmental consequences. Subsection (e) of this section requires an environmental impact statement to discuss energy requirements and conservation potential of various alternatives and mitigation measures. One commenter asked whether the subsection would require agencies to analyze total energy costs, including possible hidden or indirect costs, and total energy benefits of proposed actions. The Council intends that the subsection be interpreted in this way.

Several commenters suggested that the regulations expressly mention the quality of the urban environment as an environmental consequence to be discussed in an environmental impact statement. The Council responded by adding a new subsection (g) to this section requiring that EISs include a discussion of urban quality, historic and cultural resources, and the design of the built environment, including the reuse and conservation potential of various alternatives and mitigation measures. Section 1502.15 has been renumbered as § 1502.16.

Comments on § 1502.17: List of preparers. Section 1502.17 provided that environmental impact statements shall identify and describe the qualifications and professional disciplines of those persons who were primarily involved in preparing the document and background analyses. This section has three principal purposes: First, Section 102(2)(A) of NEPA requires Federal agencies to "utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and decisionmaking which may have an impact on man's environment." The list of preparers will provide a basis for evaluating whether such a "systematic interdisciplinary approach" was used in preparing the EIS. Second, publication of a list of preparers increases accountability for the analyses appearing in the EIS and thus tends to encourage professional competence among those preparing them. Finally, publication of the list will enhance the professional standing of the preparers by giving proper attribution to their contributions, and making them a recognized part of the literature of their disciplines. This provision received broad support from those commenting on the regulations.

Some commenters felt that a list of preparers would be used as a list of witnesses by those challenging the adequacy of an EIS in court proceedings. However, this information would ordinarily be available anyway through normal discovery proceedings.

Section 1502.17 was also criticized for failing expressly to mention expertise and experience as "qualifications" for preparing environmental impact statements. The Council added these two terms to this section to insure that the term "qualifications" would be interpreted in this way.

Some commenters suggested that the list of preparers should also specify the amount of time that was spent on the EIS by each person identified. These commenters felt that such information was required as a basis for accurately evaluating whether an interdisciplinary approach had been employed. While the Council felt there was much to be said for this suggestion, it determined that the incremental benefits gained from this information did not justify the additional agency efforts that would be required to provide it.

Comments on § 1502.19: Circulation of the environmental impact statement. If an EIS is unusually long, Section 1502.19 provided, with certain exceptions, that a summary can be circulated in lieu of the entire document. Several commenters suggested that private applicants sponsoring a proposal should receive the entire environmental impact statement in every case in view of their interest and probable involvement in the NEPA process. The Council concurs and altered this provision accordingly.

Comments on § 1502.20: Tiering. Section 1502.20 encouraged agencies to tier their environmental impact statements to eliminate repetitive discussions and to focus on the actual issues ripe for decision at each level of environmental review. Some commenters objected to tiering on grounds that it was not required by NEPA and would add an additional unauthorized layer to the environmental review process.

Section 1502.20 authorizes tiering of EISs; it does not require that it be done. In addition, the purpose of tiering is to simplify the EIS process by providing that environmental analysis completed at a broad program level not be duplicated for site-specific project reviews. Many agencies have already used tiering successfully in their decisionmaking. In view of these and other considerations, the Council determined not to alter this provision.

Comments on § 1502.22: Incomplete or unavailable information. Section 1502.22 provided, among other things, that agencies prepare a worst case analysis of the risk and severity of possible adverse environmental impacts when it proceeds with a proposal in the face of uncertainty. This provision received strong support from many commenters.

Several commenters expressed concern that this requirement would place undue emphasis on the possible occurence of adverse environmental consequences regardless of how remote the possibility might be. In response, the Council added a phrase designed to ensure that the improbability as well as the probability of adverse environmental consequences would be discussed in worst case analyses prepared under this section.

Section 1502.22 stated that if information is essential to a reasoned choice among alternatives and is not known and the costs of obtaining it are not exorbitant, the agency shall include the information in the environmental impact statement. Some commenters inquired into the meaning of the term "costs." The Council intends for this word to be interpreted as including financial and other costs and adopted the phrase "overall costs" to convey this meaning.

PART 1503—COMMENTING

Comments on § 1503.1: Inviting comments. Section 1503.1 set forth the responsibility of Federal agencies to solicit comments on environmental impact statements. Several commenters observed that may Federal

agencies solicit comments from State and local environmental agencies through procedures established by Office of Management and Budget Circular A-95 and suggested that the Council confirm this approach in the regulations. The Council adopted this suggestion by adding an appropriate paragraph to the section.

Comments on § 1503.2: Duty to comment. Section 1503.2 set forth the responsibilities of Federal agencies to comment on environmental impact statements. Several commenters suggested reinforcing the requirement that Federal agencies are subject to the same time limits as those outside the Federal government in order to avoid delays. The Council concurred in this suggestion and amended the provision accordingly. The Council was constrained from further changes by the requirement of Section 102(2)(C) of NEPA that agencies "consult with and obtain" the comments of specified other agencies.

Comments on § 1503.3: Specificity of comments. Section 1503.3 of the draft regulations elaborated upon the responsibilities of Federal agencies to comment specifically upon draft environmental impact statements prepared by other agencies. Several commenters suggested that cooperating agencies should assume a particular obligation in this regard. They noted that cooperating agencies which are themselves required independently to evaluate and/or approve the proposal at some later stage in the Federal review process are uniquely qualified to advise the lead agency of what additional steps may be required to facilitate these actions. In the opinion of these commenters, cooperating agencies should be required to provide this information to lead agencies when they comment on draft EISs so that the final EIS can be prepared with further Federal involvement in mind.

The Council adopted this suggestion and amended § 1503.3 through the addition of new subsections (c) and (d). The new subsections require cooperating agencies, in their comments on draft EISs, to specify what additional information, if any, is required for them to fulfill other applicable environmental review and consultation requirements, and to comment adequately on the site-specific effects to be expected from issuance of subsequent Federal approvals for the proposal. In addition, if a cooperating agency criticizes the proposed action, this section now requires that it specify the mitigation measures which would be necessary in order for it to approve the proposal under its independent statutory authority.

Comments on § 1504.3: Procedure for referrals and response. Several commenters noted that § 1504.3 did not establish a role for members of the public or applicants in the referral process. The Council determined that such persons and organizations were entitled to a role and that their views would be helpful in reaching a proper decision on the referral. Accordingly, the Council added subsection (e) to this section, authorizing interested persons including the applicant to submit their views on the referral, and any response to the referral, in writing to the Council.

Subsection (d) of this section provided that the Council may take one of several actions within 25 days after the referral and agency responses to the referral, if any, are received. Several commenters observed, however, that this subsection did not establish a deadline for final action by the Council in cases where additional discussions, public meetings, or negotiations were deemed appropriate. These commenters expressed concern that the absence of a deadline could lead to delays in concluding the referral process. The Council concurred. Accordingly, the Council added subsection (g) to this section which requires that specified actions be completed within 60 days.

Several commenters noted that the procedures established by Section 1504.3 may be inappropriate for referrals which involve agency determinations required by statute to be made on the record after opportunity for public hearing. The Council agrees. The Council added subsection (h) to this section requiring referrals in such cases to be conducted in a manner consistent with 5 U.S.C. 557(d). Thus, communications to agency officials who made the decision which is the subject of the referral must be made on the public record and after notice to all parties to the referral proceeding. In other words, ex parte contacts with agency decisionmakers in such cases are prohibited.

PART 1505—NEPA AND AGENCY DECISIONMAKING

Comments on Section 1501.1: Agency decisionmaking procedures. Some commenters asked whether this or other sections of the regulations would allow Federal agencies to place responsibility for compliance with NEPA in the hands of those with decisionmaking authority at the field level. Nothing in the regulations would prevent this arrangement. By delegating authority in this way, agencies can avoid multiple approvals of environmental documents and enhance the role of those most directly involved in their preparation and use. For policy oversight and quality control, an environmental quality review office at the national level can, among other things, establish general procedures and guidance for NEPA compliance, monitor agency performance through periodic review of selected environmental documents, and facilitate coordination among agency subunits involved in the NEPA process.

Comments on § 1505.2: Record of decision in those cases requiring environmental impact statements. Section 1505.2 provided that in cases where an environmental statement was prepared, the agency shall prepare a concise public record stating what its final decision was. If an environmentally preferable alternative was not selected, § 1505.2 required the record of decision to state why other specific considerations of national policy overrode those alternatives.

This requirement was the single provision most strongly supported by individuals and organizations commenting on the regulations. These commenters stated, among things, that the requirement for a record of decision would be the most significant improvement over the existing process, would procedurally link NEPA's documentation to NEPA's policy, would relate the EIS process to agency decisionmaking, would ensure that EISs are actually considered by Federal decisionmakers, and was required as sound administrative practice.

As noted above, the Council decided that agencies shall identify the environmentally preferable alternative and the reasons for identifying it in the record of decision. *See* Comments on § 1502.14. The Council's decision does not involve the preparation of additional analysis in the EIS process; it simply affects where the analysis will be presented.

Some commenters objected to the concept of a public record of decision on actions subject to NEPA review. In the Council's opinion, however, a public record of decision is essential for the effective implementation of NEPA. As previously noted, environmental impact statement preparation has too often become an end in itself with no necessary role in agency decisionmaking. One serious problem with the administration of NEPA has been the separation between an agency's NEPA process and its decisionmaking process. In too many cases bulky EISs have been prepared and transmitted but not used by the decisionmaker. The primary purpose of requiring that a decisionmaker concisely record his or her decision in those cases where an EIS has been prepared is to tie means to ends, to see that the decisionmaker considers and pays attention to what the NEPA process has shown to be an environmentally sensitive way of doing things. Other factors may, on balance, lead the decisionmaker to decide that other policies outweigh the environmental ones, but at least

the record of decision will have achieved the original Congressional purpose of ensuring that environmental factors are integrated into the agency's decisionmaking.

Some commenters expressed the opinion that it could be difficult for Federal agencies to identify the environmentally preferable alternative or alternatives because of the multitude of factors that would have to be weighed in any such determination and the subjective nature of the balancing process. By way of illustration, commenters asked: Is clean water preferable to clean air, or the preservation of prime farmland in one region preferable to the preservation of wildlife habitat in another?

In response, the Council has amended the regulations to permit agencies to identify more than one environmentally preferable alternative, regardless of whether they are "equally" preferable, as originally proposed. Moreover, the "environmentally preferable alternative" will be that alternative which best promotes the national environmental policy as expressed in Section 101 of NEPA and most specifically in Section 101(b). Section 101(a) stresses that the policy is concerned with man and nature, to see that they exist in productive harmony and that the social, economic, and other requirements of present and future generations of Americans are fulfilled. Section 101(c) recognizes the need for a healthy environment and each person's responsibility to contribute to it. Section 101(b) contemplates Federal actions which will enable the Nation to fulfill the responsibilities of each generation as trustee for the environment for succeeding generations; to attain the widest range of beneficial uses of the environment; to preserve important historic, cultural and natural aspects of our national heritage; and to accomplish other important goals. The Council recognizes that the identification of the environmentally preferable alternative or alternatives may involve difficult assessments in some cases. The Council determined that the benefits of ensuring that decisionmakers consider and take account of environmental factors outweigh these difficulties. To assist agencies in developing and determining environmentally preferable alternatives, commenters on impact statements may choose to provide agencies with their views on this matter.

Several commenters expressed concern that the regulations did not authorize Federal agencies to express preferences based on factors other than environmental quality. In the opinion of these commenters, this emphasis on environmental considerations was misplaced and not consistent with the factors that agencies are expected to consider in decisionmaking.

The Council responded to these comments by reference to the statute, recognizing that Title II of NEPA and especially Section 101 clearly contemplate balancing of essential considerations of national policy. We provided that agencies may discuss preferences they have among alternatives based on relevant factors, including economic and technical considerations and agency statutory mission. Agencies should identify those considerations, including factors not related to environmental quality, which were balanced in making the decision. Nothing in the final regulations precludes Federal agencies from choosing to discuss these preferences and identifying these factors in the environmental impact statement.

Some commenters objected to the word "overrode" in this provision. The language of the Act and its legislative history make clear that Federal agencies must act in an environmentally responsible fashion and not merely consider environmental factors. NEPA requires that each Federal agency use "all practicable means and measures" to protect and improve the environment "consistent with other essential considerations of national policy." Section 101(b). The Council determined to tie this provision of the regulations to NEPA's statutory provision in place of the "overrode" language.

Several commenters expressed concern that the phrase "national policy" would not allow agencies to refer to state and local policies in the record of decision. "National policy" is the phrase used by Congress in NEPA. However, in many cases specific statutory provisions require that Federal agencies adhere to or pay heed to State and local policies.

Finally, some commenters expressed concern that the requirement for a concise record of decision would involve additional agency efforts. The intention is not to require new efforts, but to see that environmental considerations are built into existing processes. Preparing such decision records is recognized as good administrative practice and the benefits of this requirement outweigh the difficulties of building environmental considerations into the decisionmaking process.

Subsection (c) of § 1505.2 states that for any mitigation adopted a monitoring and enforcement program where applicable shall be adopted and summarized in the record of decision. One commenter asked what the term "summarized" was intended to mean in this context. The Council intends this word to be interpreted as requiring a brief and concise statement describing the monitoring and enforcement program which has been adopted.

Comments on § 1505.3: Implementing the decision. Section 1505.3 provides for mitigation of adverse environmental effects. Several commenters expressed concern that this provision would grant broad authority to the lead agency for mandating that other agencies undertake and monitor mitigation measures without their consent. This is not the Council's intention and the language of the provision does not support this interpretation.

PART 1506—OTHER REQUIREMENTS OF NEPA

Comments on §1506.1: Limitations on actions during NEPA process. Section 1506.1 placed limitations on actions which can be taken before completion of the environmental review process because of the possibility of prejudicing or foreclosing important choices. Some commenters expressed concern that these limitations would impair the ability of those outside the Federal government to develop proposals for agency review and approval. Accordingly, the Council added a new paragraph (d) to this section which authorizes certain limited activities before completion of the environmental review process.

Comments on § 1506.2: Elimination of duplication with State and local procedures. This section received strong support from many commenters. Several commenters sought clarification of the procedures established by this section. It provides for coordination among Federal, State and local agencies in several distinct situations. First, subsection (a) of this section simply confirms that Federal agencies funding State programs have been authorized by Section 102(2)(D) of NEPA to cooperate with certain State agencies with statewide jurisdiction in conducting environmental reviews. Second, subsection (b) provides generally for Federal cooperation with all States in environmental reviews such as joint planning processes, joint research, joint public hearings, and joint environmental assessments. Third, subsection (c) specifically provides for Federal cooperation with those States and localities which administer "little NEPA's." The Federal agencies are directed to the fullest extent possible to reduce duplication between NEPA and comparable State and local requirements. Approximately half the states now have some sort of environmental impact statement requirement either legislatively adopted or administratively promulgated. In these circumstances, Federal agencies are required to cooperate in fulfilling these requirements as well as those of Federal laws so that one document will comply with all applicable laws. Finally, subsection (d) provides that Federal agencies generally shall in en-

vironmental impact statements discuss any inconsistency between a proposed action and any approved State or local plan or laws, regardless of whether the latter are Federally sanctioned.

Comments on § 1506.3: Adoption. Section 1506.3 authorized one Federal agency to adopt an environmental impact statement prepared by another in prescribed circumstances, provided that the statement is circulated for public comment in the same fashion as a draft EIS. Several commenters stated their view that recirculation was unnecessary if the actions contemplated by both agencies were substantially the same. The Council concurs and added a new paragraph (b) which provides that recirculation is not required in these circumstances.

Comments on § 1506.4: Combining documents. Section 1506.4 provided for the combination of environmental documents with other agency documents. Some commenters expressed the view that this section should enumerate the types of agency documents which could be combined under this provision. The Council concluded that such a list was not necessary and that such matters were better left to agency discretion. Thus, agencies may choose to combine a regulatory analysis review document, an urban impact analysis, and final decision or option documents with environmental impact statements.

Comments on § 1506.5: Agency responsibility. NEPA is a law which imposes obligations on Federal agencies. This provision is designed to insure that those agencies meet those obligations and to minimize the conflict of interest inherent in the situation of those outside the government coming to the government for money, leases or permits while attempting impartially to analyze the environmental consequences of their getting it. § 1506.5 set forth the responsibility of Federal agencies for preparing environmental documents, and addressed the role of those outside the Federal government. As proposed, subsection (b) of this section provided that environmental impact statements shall be prepared either by Federal agencies or by parties under contract to and chosen solely by Federal agencies. The purpose of this provision is to ensure the objectivity of the environmental review process.

Some commenters expressed the view that requiring Federal agencies to be a formal party to every contract for the preparation of an environmental impact statement was not necessary to ensure objectivity so long as the contractor was chosen solely by Federal agencies. These commenters contended that a requirement for formal Federal involvement in all such contracts could cause delay. The Council concurs and deleted the phrase "under contract" from this provision.

Several commenters noted that the existing procedures for a few Federal programs are not consistent with § 1506.5. The Council recognizes that this provision will in a few cases require additional agency efforts where, for example, agencies have relied on applicants for the preparation of environmental impact statements. The Council determined that such efforts were justified by the goal of this provision.

Several commenters expressed concern that environmental information provided by private applicants would not be adequately evaluated by Federal agencies before it was used in environmental documents. Other commenters wanted to insure that applicants were free to submit information to the agencies. Accordingly, the Council amended subsection (a) to allow receipt of such information while requiring Federal agencies to independently evaluate the information submitted and to be responsible for its accuracy. In cases where the information is used in an environmental impact statement, the persons responsible for that evaluation must be identified in the list of preparers required by § 1502.17.

Several commenters expressed the view that applicants should be allowed to prepare environmental assessments. These commenters noted that the number of assessments prepared each year is far greater than the number of environmental impact statements; that such authority was necessary to ensure environmental sensitivity was built into actions, which while ultimately Federal were planned outside the Federal government; that assessments are much shorter and less complex than EISs; and that it would be considerably less difficult for Federal agencies independently to evaluate the information submitted for an environmental assessment than for an environmental impact statement.

The Council concurs and has added a new subsection (b) to this section which authorizes the preparation of environmental assessments by applicants. The Council intends that this provision enable private and State and local applicants to build the environment into their own planning processes, while the Federal agency retains the obligation for the ultimate EIS. The Council emphasizes, however, that Federal agencies must independently evaluate the information submitted for environmental assessments and assume responsibility for its accuracy; make their own evaluation of environmental issues; and take responsibility for the scope and content of environmental assessments.

Comments on § 1506.6: Public involvement. Subsection (b)(3) of this section listed several means by which Federal agencies might provide notice of actions which have effects primarily of local concern. Several commenters urged that such notices be made mandatory, rather than permissive; other commenters felt these methods of public notice should not be listed at all. Some commenters suggested that additional methods be included in this subsection; others urged that one or more methods be deleted.

Subsection (b) of this section required agencies to provide public notice by means calculated to inform those persons and agencies who may be interested or affected. Paragraph 3 of the subsection merely identified alternative techniques that might be used for this purpose at the local level. Paragraph 3 is not intended to provide an exhaustive list of the means of providing adequate public notice. Nor are the measures it lists mandatory in nature. On the basis of these considerations, the Council determined not to alter this provision.

As proposed, subsection (f) of this section required Federal agencies to make comments on environmental impact statements available to the public. This subsection repeated the existing language on the subject that has been in the Guidelines since 1973 (40 CFR 1500.11(d)) relative to the public availability of comments. On the basis of comments received, the Council altered this provision to state that intra-agency documents need not be made available when the Freedom of Information Act allows them to be withheld.

Several commenters observed that subsection (f) did not establish limitations on charges for environmental impact statements as the Council's Guidelines had. Accordingly, the Council incorporated the standard of the Guidelines into this subsection. The standard provides that such documents shall be provided to the public without charge to the extent practicable, or at a fee which is not more than the actual costs incurred.

Comments on § 1506.8: Proposals for legislation. Section 1506.8 established modified procedures for the preparation of environmental impact statements on legislative proposals. Except in prescribed circumstances, this section provided for the transmittal of a single legislative EIS to the Congress and to Federal, State and local agencies and the public for review and comment. No revised EIS is required in such cases.

A few commenters objected to these procedures and urged that draft and final environmental impact statements be required for all legislative proposals. These commenters said that the

conventional final environmental impact statement, including an agency's response to comments, was no less important in this context than in a purely administrative setting.

However, the Council views legislative proposals as different from proposed actions to be undertaken by agencies, in several important respects. Unlike administrative proposals, the timing of critical steps (hearings, votes) is not under the control of the administrative agency. Congress will hold its hearings or take its votes when it chooses, and if an EIS is to influence those actions, it must be there in time. Congress may request Federal agencies to provide any additional environmental information it needs following receipt of a legislative EIS. Administration proposals are considered alongside other proposals introduced by members of Congress and the final product, if any, may be substantially different from the proposal transmitted by the Federal agency. Congress may hold hearings on legislative proposals and invite testimony on all aspects of proposed legislation including its environmental impacts. On the basis of these considerations, the Council determined that it would be overly burdensome and unproductive to require draft and final legislative environmental impact statements for all legislation, wherever it originates.

Several commenters also expressed concern about the requirement that the legislative environmental impact statement actually accompany legislative proposals when they are transmitted to Congress. These commenters noted that such proposals are often transmitted on an urgent basis without advance warning. Accordingly, the Council amended this section to provide for a period of thirty days for transmittal of legislative environmental impact statements, except that agencies must always transmit such EISs before the Congress begins formal deliberations on the proposal.

Comments on § 1506.10: Timing of agency action. Subsection (c) of this section provided that agencies shall allow not less than 45 days for comments on draft environmental impact statements. Several commenters felt that this period was too long; others thought it too short.

The Council recognizes that a balance must be struck between an adequate period for public comment on draft EIS's and timely completion of the environmental review process. In the Council's judgment, 45 days has proven to be the proper balance. This period for public comment was established by the Guidelines in 1973, and the Council determined not to alter it. Subsection (e) of this section authorizes the Environmental Protection Agency to reduce time periods for agency action for compelling reasons of national policy.

Comments on § 1506.11: Emergencies. Section 1506.11 provided for agency action in emergency circumstances without observing the requirements of the regulations. The section required the Federal agency "proposing to take the action" to consult with the Council about alternative arrangements.

Several commenters expressed concern that use of the phrase "proposing to take the action" would be interpreted to mean that agencies consult with the Council before emergency action was taken. In the view of these commenters, such a requirement might be impractical in emergency circumstances and could defeat the purpose of the section. The Council concurs and substituted the phrase "taking the action" for "proposing to take the action." Similarly, the Council amended the section to provide for consultation "as soon as feasible" and not necessarily before emergency action.

PART 1507—AGENCY COMPLIANCE

Comments on § 1507.2: Agency capability to comply. Section 1507.2 provided, among other things, that a Federal agency shall itself have "sufficient capability" to evaluate any analysis prepared for it by others. Several commenters expressed concern that this could be interpreted to mean that each agency must employ the full range of professionals including geologists, biologists, chemists, botanists and others to gain sufficient capability for evaluating work prepared by others. This is not the Council's intention. Agency staffing requirements will vary with the agency's mission and needs including the number of EIS's for which they are responsible.

Comments on § 1507.3: Agency procedures. Subsection (a) of § 1507.3 provided that agencies shall adopt procedures for implementation of the regulations within eight months after the regulations are published in the FEDERAL REGISTER. Several commenters noted that State and local agencies participating in the NEPA process under certain statutory highway and community development programs would also require implementing procedures but could not finally begin to develop them until the relevant Federal agencies had completed this task. Accordingly, the Council amended this provision to allow such state and local agencies an additional four months for the adoption of implementing procedures.

Several commenters suggested that agencies with similar programs should establish similar procedures, especially for the submission of information by applicants. The Council concurs and added a new sentence to subsection (a) stating that agencies with similar programs should consult with each other and the Council to coordinate their procedures, especially for programs requesting similar information from applicants.

Several commenters suggested that a committee be established to review agency compliance with these regulations. Under subsection (a), the Council will review agency implementing procedures for conformity with the Act and the regulations. Moreover, the Council regularly consults with Federal agencies regarding their implementation of NEPA and conducts periodic reviews on how the process is working. On the basis of these considerations, the Council determined that a committee for the review of agency compliance with NEPA should not be established.

PART 1508—TERMINOLOGY AND INDEX

Comments on § 1508.8: Effects. Several commenters urged that the term "effects" expressly include aesthetic, historic and cultural impacts. The Council adopted this suggestion and altered this provision accordingly.

Comments on § 1508.12: Federal agency. Several commenters urged that States and units of general local government assuming NEPA responsibilities under Section 104(h) of the Housing and Community Development Act of 1974 be expressly recognized as Federal agencies for purposes of these regulations. The Council adopted this suggestion and amended this provision accordingly.

Comments on § 1508.14: Human environment. In its proposed form, § 1508.14 stated that the term "human environment" shall be interpreted comprehensively to include the natural and physical environment and the interaction of people with that environment. A few commenters expressed concern that this definition could be interpreted as being limited to the natural and physical aspects of the environment. This is not the Council's intention. *See* § 1508.8 (relating to effects) and our discussion of the environment in the portion of this Preamble relating to § 1505.2. The full scope of the environment is set out in Section 101 of NEPA. Human beings are central to that concept. In § 1508.14 the Council replaced the work "interaction" with the work "relationship" to ensure that the definition is interpreted as being inclusive of the human environment.

The only line we draw is one drawn by the cases. Section 1508.14 stated that economic or social effects are not intended by themselves to require preparation of an environmental impact statement. A few commenters sought further explanation of this provision. This provision reflects the

Council's determination, which accords with the case law, that NEPA was not intended to require an environmental impact statement where the closing of a military base, for example, only affects such things as the composition of the population or the level of personal income in a region.

Comments on § 1508.16: Legislation. Section 1508.16 defined legislation to exclude requests for appropriations. Some commenters felt that this exclusion was inappropriate. Others noted that environmental reviews for requests for appropriations had not been conducted in the eight years since NEPA was enacted. On the basis of traditional concepts relating to appropriations and the budget cycle, considerations of timing and confidentiality, and other factors, the Council decided not to alter the scope of this provision. The Council is aware that this is the one instance in the regulations where we assert a position opposed to that in the predecessor Guidelines. Quite simply, the Council in its experience found that preparation of EISs is ill-suited to the budget preparation process. Nothing in the Council's determination, however, relieves agencies of responsibility to prepare statements when otherwise required on the underlying program or other actions. (We note that a petition for certiorari on this issue is now pending before the Supreme Court.) This section was renumbered as § 1508.17.

Comments on § 1508.17: Major Federal action. Section 1508.17 of the draft regulations addressed the issue of NEPA's application to Federal programs which are delegated or otherwise transferred to State and local government. Some commenters said that the application of NEPA in such circumstances is a highly complicated issue; that its proper resolution depends on a variety of factors that may differ significantly from one program to the next and should be weighed on a case-by-case basis; and that agencies themselves should be accorded latitude in resolving this issue, subject to judicial review. The Council concurs and determined not to address this issue in this context at the present time. This determination should not be interpreted as a decision one way or the other on the merits of the issue.

Section 1508.17 also stated that the term "major" reinforces but does not have a meaning independent of the term "significantly" in NEPA's phrase "major Federal action significantly affecting the quality of the human environment." A few commenters noted that courts have differed over whether these terms should have independent meaning under NEPA. The Council determined that any Federal action which significantly affects the quality of the human environment is "major" for purposes of NEPA. The Council's view is in accord with *Minnesota PIRG v. Butz*, 498 F. 2d 1314 (8th Cir., 1974).

Section 1508.17 was renumbered as § 1508.18.

Comments on § 1508.22: Proposal. Section 1508.22 stated that a proposal exists when an agency is "actively considering" alternatives and certain other factors are present. Several commenters expressed the view that this phrase could be interpreted to mean that a proposal exists too early in planning and decisionmaking, before there is any likelihood that the agency will be making a decision on the matter. In response to this concern, and to emphasize the link between EISs and actual agency decisions, the Council deleted the phrase "actively considering" and replaced it with the phrase "actively preparing to make a decision on" alternatives. The Council does not intend the change to detract from the importance of integrating NEPA with agency planning as provided in § 1501.2 of the regulations.

This section was renumbered as § 1508.23.

OTHER COMMENTS

Comments on the application of NEPA abroad. Several commenters urged that the question of whether NEPA applies abroad be resolved by these regulations. However, the President has publicly announced his intention to address this issue in an Executive Order. The Executive Order, when issued, will represent the position of the Administration on that issue.

Comments on the role of Indian tribes in the NEPA process. Several commenters stated that the regulations should clarify the role of Indian Tribes in the NEPA process. Accordingly, the Council expressly identified Indian Tribes as participants in the NEPA process in §§ 1501.2(d)(2), 1501.7(a)(1), 1502.15(c) and 1503.1(a)(2)(ii).

Comments on the Council's special environmental assessment for the NEPA regulations. The Council prepared a special environmental assessment for these regulations and announced in the preamble to the draft regulations that the document was available to the public upon request. Some commenters expressed the view that it did not contain an adequate evaluation of the effects of the regulations. For the reasons set out in the assessment, and the preamble to the proposed regulations, the Council confirmed its earlier determination that the special environmental assessment did provide an adequate evaluation for these procedural regulations.

Comments on the President's authority to issue Executive Order 11991 and the Council's authority to issue regulations. A few commenters questioned the authority of the President to issue Executive Order 11991, and the authority of the Council to issue the regulations. The President is empowered to issue regulations implementing the procedural provisions of NEPA by virtue of the authority vested in him as President of the United States under Article II, Section 3 of the Constitution and other provisions of the Constitution and laws of the United States. The President is empowered to delegate responsibility for performing this function to the Council on Environmental Quality under Section 301 of Title 3 of the United States Code and other laws of the United States.

Comments on the responsibilities of Federal agencies in the NEPA process. Agency responsibilities under the regulations often depend upon whether they have "jurisdiction by law" or "special expertise" with respect to a particular proposal. Several commenters noted that these terms were not defined in the regulations and could be subject to varying interpretations. Accordingly, the Council added definitions for these terms in §§ 1508.15 and 1508.26.

Comments on the role of State and areawide clearinghouses. At the request of several States, the Council recognized the role of state and areawide clearinghouses in distributing Federal documents to appropriate recipients. *See* e.g. §§ 1501.4(e)(2), 1503.1(2)(iii), and 1506.6(b)(3)(i).

Comments on the concept of a national data bank. When the Council issued the proposed regulations, it invited comment on the concept of a national data bank. The purpose of a data bank would be to provide for the storage and recall of information developed in one EIS for use in subsequent EISs. Most commenters expressed reservations about the idea on grounds of cost and practicality. The Council, while still intrigued by the concept did not change its initial conclusion that the financial and other resources that would be required are beyond the benefits that might be achieved.

Comments on Federal funding of public comments on EISs. The Council also invited comment on a proposal for encouraging Federal agencies to fund public comments on EISs when an important viewpoint would otherwise not be presented. Several commenters supported this proposal on grounds that it would broaden the range and improve the quality of public comments on EISs. Others doubted that the expenditure of Federal funds for this purpose would be worthwhile. Some felt that Congress should decide the question. The Council determined not to address the issue of Federal funding for public comments on EISs in the regu-

lations, but to leave the matter to individual agencies' discretion.

5. REGULATORY ANALYSES

The final regulations implement the policy and other requirements of Executive Order 12044 to the fullest extent possible. We intend agencies in implementing these regulations to minimize burdens on the public. The determinations required by Section 2(d) of the Order have been made by the Council and are available on request.

It is our intention that a Regulatory Analysis required by Section 3 of the Order be undertaken concurrently with and, where appropriate, integrated with an environmental impact statement required by NEPA and these regulations.

6. CONCLUSION

We could not, of course, adopt every suggestion that was made on the regulations. We have tried to respond to the major concerns that were expressed. In the process, we have changed 74 of the 92 sections, making a total of 340 amendments to the regulations. We are confident that any issues which arise in the future can be resolved through a variety of mechanisms that exists for improving the NEPA process.

We appreciate the efforts of the many people who participated in developing the regulations and look forward to their cooperation as the regulations are implemented by individual agencies.

CHARLES WARREN,
Chairman.

TABLE OF CONTENTS

PART 1500—PURPOSE, POLICY, AND MANDATE

Sec.
1500.1 Purpose.
1500.2 Policy.
1500.3 Mandate.
1500.4 Reducing paperwork.
1500.5 Reducing delay.
1500.6 Agency authority.

PART 1501—NEPA AND AGENCY PLANNING

1501.1 Purpose.
1501.2 Apply NEPA early in the process.
1501.3 When to prepare an environmental assessment.
1501.4 Whether to prepare an environmental impact statement.
1501.5 Lead agencies.
1501.6 Cooperating agencies.
1501.7 Scoping.
1501.8 Time limits.

PART 1502—ENVIRONMENTAL IMPACT STATEMENT

1502.1 Purpose.
1502.2 Implementation.
1502.3 Statutory requirements for statements.
Sec.
1502.4 Major Federal actions requiring the preparation of environmental impact statements.
1502.5 Timing.
1502.6 Interdisciplinary preparation.
1502.7 Page limits.
1502.8 Writing.
1502.9 Draft, final, and supplemental statements.
1502.10 Recommended format.
1502.11 Cover sheet.
1502.12 Summary.
1502.13 Purpose and need.
1502.14 Alternatives including the proposed action.
1502.15 Affected environment.
1502.16 Environmental consequences.
1502.17 List of preparers.
1502.18 Appendix.
1502.19 Circulation of the environmental impact statement.
1502.20 Tiering.
1502.21 Incorporation by reference.
1502.22 Incomplete or unavailable information.
1502.23 Cost-benefit analysis.
1502.24 Methodology and scientific accuracy.
1502.25 Environmental review and consultation requirements.

PART 1503—COMMENTING

1503.1 Inviting comments.
1503.2 Duty to comment.
1503.3 Specificity of comments.
1503.4 Response to comments.

PART 1504—PREDECISION REFERRALS TO THE COUNCIL OF PROPOSED FEDERAL ACTIONS DETERMINED TO BE ENVIRONMENTALLY UNSATISFACTORY

1504.1 Purpose.
1504.2 Criteria for referral.
1504.3 Procedure for referrals and response.

PART 1505—NEPA AND AGENCY DECISIONMAKING

1505.1 Agency decisionmaking procedures.
1505.2 Record of decision in cases requiring environmental impact statements.
1505.3 Implementing the decision.

PART 1506—OTHER REQUIREMENTS OF NEPA

1506.1 Limitations on actions during NEPA process.
1506.2 Elimination of duplication with State and local procedures.
1506.3 Adoption.
1506.4 Combining documents.
1506.5 Agency responsibility.
1506.6 Public involvement.
1506.7 Further guidance.
1506.8 Proposals for legislation.
1506.9 Filing requirements.
1506.10 Timing of agency action.
1506.11 Emergencies.
1506.12 Effective date.

PART 1507—AGENCY COMPLIANCE

1507.1 Compliance.
1507.2 Agency capability to comply.
1507.3 Agency procedures.

PART 1508—TERMINOLOGY AND INDEX

1508.1 Terminology.
1508.2 Act.
1508.3 Affecting.
Sec.
1508.4 Categorical exclusion.
1508.5 Cooperating agency.
1508.6 Council.
1508.7 Cumulative impact.
1508.8 Effects.
1508.9 Environmental assessment.
1508.10 Environmental document.
1508.11 Environmental impact statement.
1508.12 Federal agency.
1508.13 Finding of no significant impact.
1508.14 Human environment.
1508.15 Jurisdiction by law.
1508.16 Lead agency.
1508.17 Legislation.
1508.18 Major Federal action.
1508.19 Matter.
1508.20 Mitigation.
1508.21 NEPA process.
1508.22 Notice of intent.
1508.23 Proposal.
1508.24 Referring agency.
1508.25 Scope.
1508.26 Special expertise.
1508.27 Significantly.
1508.28 Tiering.
Index.

PART 1500—PURPOSE, POLICY, AND MANDATE

Sec.
1500.1 Purpose.
1500.2 Policy.
1500.3 Mandate.
1500.4 Reducing paperwork.
1500.5 Reducing delay.
1500.6 Agency authority.

AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), section 309 of the Clean Air Act, as amended (42 U.S.C. 7609) and Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970 as amended by Executive Order 11991, May 24, 1977).

§ 1500.1 Purpose.

(a) The National Environmental Policy Act (NEPA) is our basic national charter for protection of the environment. It establishes policy, sets goals (section 101), and provides means (section 102) for carrying out the policy. Section 102(2) contains "action-forcing" provisions to make sure that federal agencies act according to the letter and spirit of the Act. The regulations that follow implement Section 102(2). Their purpose is to tell federal agencies what they must do to comply with the procedures and achieve the goals of the Act. The President, the federal agencies, and the courts share responsibility for enforcing the Act so as to achieve the substantive requirements of section 101.

(b) NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken. The information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA. Most important, NEPA documents must con-

centrate on the issues that are truly significant to the action in question, rather than amassing needless detail.

(c) Ultimately, of course, it is not better documents but better decisions that count. NEPA's purpose is not to generate paperwork—even excellent paperwork—but to foster excellent action. The NEPA process is intended to help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment. These regulations provide the direction to achieve this purpose.

§ 1500.2 Policy.

Federal agencies shall to the fullest extent possible:

(a) Interpret and administer the policies, regulations, and public laws of the United States in accordance with the policies set forth in the Act and in these regulations.

(b) Implement procedures to make the NEPA process more useful to decisionmakers and the public; to reduce paperwork and the accumulation of extraneous background data; and to emphasize real environmental issues and alternatives. Environmental impact statements shall be concise, clear, and to the point, and shall be supported by evidence that agencies have made the necessary environmental analyses.

(c) Integrate the requirements of NEPA with other planning and environmental review procedures required by law or by agency practice so that all such procedures run concurrently rather than consecutively.

(d) Encourage and facilitate public involvement in decisions which affect the quality of the human environment.

(e) Use the NEPA process to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment.

(f) Use all practicable means, consistent with the requirements of the Act and other essential considerations of national policy, to restore and enhance the quality of the human environment and avoid or minimize any possible adverse effects of their actions upon the quality of the human environment.

§ 1500.3 Mandate.

Parts 1500–1508 of this Title provide regulations applicable to and binding on all Federal agencies for implementing the procedural provisions of the National Environmental Policy Act of 1969, as amended (Pub. L. 91-190, 42 U.S.C. 4321 et seq.) (NEPA or the Act) except where compliance would be inconsistent with other statutory requirements. These regulations are issued pursuant to NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.) Section 309 of the Clean Air Act, as amended (42 U.S.C. 7609) and Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970, as amended by Executive Order 11991, May 24, 1977). These regulations, unlike the predecessor guidelines, are not confined to Sec. 102(2)(C) (environmental impact statements). The regulations apply to the whole of section 102(2). The provisions of the Act and of these regulations must be read together as a whole in order to comply with the spirit and letter of the law. It is the Council's intention that judicial review of agency compliance with these regulations not occur before an agency has filed the final environmental impact statement, or has made a final finding of no significant impact (when such a finding will result in action affecting the environment), or takes action that will result in irreparable injury. Furthermore, it is the Council's intention that any trivial violation of these regulations not give rise to any independent cause of action.

§ 1500.4 Reducing paperwork.

Agencies shall reduce excessive paperwork by:

(a) Reducing the length of environmental impact statements (§ 1502.2(c)), by means such as setting appropriate page limits (§§ 1501.7(b)(1) and 1502.7).

(b) Preparing analytic rather than encyclopedic environmental impact statements (§ 1502.2(a)).

(c) Discussing only briefly issues other than significant ones (§ 1502.2(b)).

(d) Writing environmental impact statements in plain language (§ 1502.8).

(e) Following a clear format for environmental impact statements (§ 1502.10).

(f) Emphasizing the portions of the environmental impact statement that are useful to decisionmakers and the public (§§ 1502.14 and 1502.15) and reducing emphasis on background material (§ 1502.16).

(g) Using the scoping process, not only to identify significant environmental issues deserving of study, but also to deemphasize insignificant issues, narrowing the scope of the environmental impact statement process accordingly (§ 1501.7).

(h) Summarizing the environmental impact statement (§ 1502.12) and circulating the summary instead of the entire environmental impact statement if the latter is unusually long (§ 1502.19).

(i) Using programs, policy, or plan environmental impact statements and tiering from statements of broad scope to those of narrower scope, to eliminate repetitive discussions of the same issues (§§ 1502.4 and 1502.20).

(j) Incorporating by reference (§ 1502.21).

(k) Integrating NEPA requirements with other environmental review and consultation requirements (§ 1502.25).

(l) Requiring comments to be as specific as possible (§ 1503.3).

(m) Attaching and circulating only changes to the draft environmental impact statement, rather than rewriting and circulating the entire statement when changes are minor (§ 1503.4(c)).

(n) Eliminating duplication with State and local procedures, by providing for joint preparation (§ 1506.2), and with other Federal procedures, by providing that an agency may adopt appropriate environmental documents prepared by another agency (§ 1506.3).

(o) Combining environmental documents with other documents (§ 1506.4).

(p) Using categorical exclusions to define categories of actions which do not individually or cumulatively have a significant effect on the human environment and which are therefore exempt from requirements to prepare an environmental impact statement (§ 1508.4).

(q) Using a finding of no significant impact when an action not otherwise excluded will not have a significant effect on the human environment and is therefore exempt from requirements to prepare an environmental impact statement (§ 1508.13).

§ 1500.5 Reducing delay.

Agencies shall reduce delay by:

(a) Integrating the NEPA process into early planning (§ 1501.2).

(b) Emphasizing interagency cooperation before the environmental impact statement is prepared, rather than submission of adversary comments on a completed document (§ 1501.6).

(c) Insuring the swift and fair resolution of lead agency disputes (§ 1501.5).

(d) Using the scoping process for an early identification of what are and what are not the real issues (§ 1501.7).

(e) Establishing appropriate time limits for the environmental impact statement process (§§ 1501.7(b)(2) and 1501.8).

(f) Preparing environmental impact statements early in the process (§ 1502.5).

(g) Integrating NEPA requirements with other environmental review and consultation requirements (§ 1502.25).

(h) Eliminating duplication with State and local procedures by providing for joint preparation (§ 1506.2) and with other Federal procedures by providing that an agency may adopt ap-

propriate environmental documents prepared by another agency (§ 1506.3).

(i) Combining environmental documents with other documents (§ 1506.4).

(j) Using accelerated procedures for proposals for legislation (§ 1506.8).

(k) Using categorical exclusions to define categories of actions which do not individually or cumulatively have a significant effect on the human environment (§ 1508.4) and which are therefore exempt from requirements to prepare an environmental impact statement.

(l) Using a finding of no significant impact when an action not otherwise excluded will not have a significant effect on the human environment (§ 1508.13) and is therefore exempt from requirements to prepare an environmental impact statement.

§ 1500.6 Agency authority.

Each agency shall interpret the provisions of the Act as a supplement to its existing authority and as a mandate to view traditional policies and missions in the light of the Act's national environmental objectives. Agencies shall review their policies, procedures, and regulations accordingly and revise them as necessary to insure full compliance with the purposes and provisions of the Act. The phrase "to the fullest extent possible" in section 102 means that each agency of the Federal Government shall comply with that section unless existing law applicable to the agency's operations expressly prohibits or makes compliance impossible.

PART 1501—NEPA AND AGENCY PLANNING

Sec.

1501.1 Purpose.
1501.2 Apply NEPA early in the process.
1501.3 When to prepare an environmental assessment.
1501.4 Whether to prepare an environmental impact statement.
1501.5 Lead agencies.
1501.6 Cooperating agencies.
1501.7 Scoping.
1501.8 Time limits.

AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), Section 309 of the Clean Air Act, as amended (42 U.S.C. 7609, and Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970, as amended by Executive Order 11991, May, 24 1977).

§ 1501.1 Purpose.

The purposes of this part include:

(a) Integrating the NEPA process into early planning to insure appropriate consideration of NEPA's policies and to eliminate delay.

(b) Emphasizing cooperative consultation among agencies before the environmental impact statement is prepared rather than submission of adversary comments on a completed document.

(c) Providing for the swift and fair resolution of lead agency disputes.

(d) Identifying at an early stage the significant environmental issues deserving of study and deemphasizing insignificant issues, narrowing the scope of the environmental impact statement accordingly.

(e) Providing a mechanism for putting appropriate time limits on the environmental impact statement process.

§ 1501.2 Apply NEPA early in the process.

Agencies shall integrate the NEPA process with other planning at the earliest possible time to insure that planning and decisions reflect environmental values, to avoid delays later in the process, and to head off potential conflicts. Each agency shall:

(a) Comply with the mandate of section 102(2)(A) to "utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment," as specified by § 1507.2.

(b) Identify environmental effects and values in adequate detail so they can be compared to economic and technical analyses. Environmental documents and appropriate analyses shall be circulated and reviewed at the same time as other planning documents.

(c) Study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources as provided by section 102(2)(E) of the Act.

(d) Provide for cases where actions are planned by private applicants or other non-Federal entities before Federal involvement so that:

(1) Policies or designated staff are available to advise potential applicants of studies or other information foreseeably required for later Federal action.

(2) The Federal agency consults early with appropriate State and local agencies and Indian tribes and with interested private persons and organizations when its own involvement is reasonably foreseeable.

(3) The Federal agency commences its NEPA process at the earliest possible time.

§ 1501.3 When to prepare an environmental assessment.

(a) Agencies shall prepare an environmental assessment (§ 1508.9) when necessary under the procedures adopted by individual agencies to supplement these regulations as described in § 1507.3. An assessment is not necessary if the agency has decided to prepare an environmental impact statement.

(b) Agencies may prepare an environmental assessment on any action at any time in order to assist agency planning and decisionmaking.

§ 1501.4 Whether to prepare an environmental impact statement.

In determining whether to prepare an environmental impact statement the Federal agency shall:

(a) Determine under its procedures supplementing these regulations (described in § 1507.3) whether the proposal is one which:

(1) Normally requires an environmental impact statement, or

(2) Normally does not require either an environmental impact statement or an environmental assessment (categorical exclusion).

(b) If the proposed action is not covered by paragraph (a) of this section, prepare an environmental assessment (§ 1508.9). The agency shall involve environmental agencies, applicants, and the public, to the extent practicable, in preparing assessments required by § 1508.9(a)(1).

(c) Based on the environmental assessment make its determination whether to prepare an environmental impact statement.

(d) Commence the scoping process (§ 1501.7), if the agency will prepare an environmental impact statement.

(e) Prepare a finding of no significant impact (§ 1508.13), if the agency determines on the basis of the environmental assessment not to prepare a statement.

(1) The agency shall make the finding of no significant impact available to the affected public as specified in § 1506.6.

(2) In certain limited circumstances, which the agency may cover in its procedures under § 1507.3, the agency shall make the finding of no significant impact available for public review (including State and areawide clearinghouses) for 30 days before the agency makes its final determination whether to prepare an environmental impact statement and before the action may begin. The circumstances are:

(i) The proposed action is, or is closely similar to, one which normally requires the preparation of an environmental impact statement under the procedures adopted by the agency pursuant to § 1507.3, or

(ii) The nature of the proposed action is one without precedent.

§ 1501.5 Lead agencies.

(a) A lead agency shall supervise the preparation of an environmental

impact statement if more than one Federal agency either:

(1) Proposes or is involved in the same action; or

(2) Is involved in a group of actions directly related to each other because of their functional interdependence or geographical proximity.

(b) Federal, State, or local agencies, including at least one Federal agency, may act as joint lead agencies to prepare an environmental impact statement (§ 1506.2).

(c) If an action falls within the provisions of paragraph (a) of this section the potential lead agencies shall determine by letter or memorandum which agency shall be the lead agency and which shall be cooperating agencies. The agencies shall resolve the lead agency question so as not to cause delay. If there is disagreement among the agencies, the following factors (which are listed in order of descending importance) shall determine lead agency designation:

(1) Magnitude of agency's involvement.

(2) Project approval/disapproval authority.

(3) Expertise concerning the action's environmental effects.

(4) Duration of agency's involvement.

(5) Sequence of agency's involvement.

(d) Any Federal agency, or any State of local agency or private person substantially affected by the absence of lead agency designation, may make a written request to the potential lead agencies that a lead agency be designated.

(e) If Federal agencies are unable to agree on which agency will be the lead agency or if the procedure described in paragraph (c) of this section has not resulted within 45 days in a lead agency designation, any of the agencies or persons concerned may file a request with the Council asking it to determine which Federal agency shall be the lead agency.

A copy of the request shall be transmitted to each potential lead agency. The request shall consist of:

(1) A precise description of the nature and extent of the proposed action;

(2) A detailed statement of why each potential lead agency should or should not be the lead agency under the criteria specified above in paragraph (c) of this section.

(f) A response may be filed by any potential lead agency concerned within 20 days after a request is filed with the Council. The Council shall determine as soon as possible but not later than 20 days after receiving the request and all responses to it which Federal agency shall be the lead agency and which other Federal agencies shall be cooperating agencies.

§ 1501.6 Cooperating agencies.

The purpose of this section is to emphasize agency cooperation early in the NEPA process. Upon request of the lead agency, any other Federal agency which has jurisdiction by law shall be a cooperating agency. In addition any other Federal agency which has special expertise with respect to any environmental issue, which should be addressed in the statement may be a cooperating agency upon request of the lead agency. An agency may request the lead agency to designate it a cooperating agency.

(a) The lead agency shall:

(1) Request the participation of each cooperating agency in the NEPA process at the earliest possible time.

(2) Use the environmental analysis and proposals of cooperating agencies with jurisdiction by law or special expertise, to the maximum extent possible consistent with its responsibility as lead agency.

(3) Meet with a cooperating agency at the latter's request.

(b) Each cooperating agency shall:

(1) Participate in the NEPA process at the earliest possible time.

(2) Participate in the scoping process (described below in § 1501.7).

(3) Assume on request of the lead agency responsibility for developing information and preparing environmental analyses including portions of the environmental impact statement concerning which the cooperating agency has special expertise.

(4) Make available staff support at the lead agency's request to enhance the latter's interdisciplinary capability.

(5) Normally use its own funds. The lead agency shall, to the extent available funds permit, fund those major activities or analyses it requests from cooperating agencies. Potential lead agencies shall include such funding requirements in their budget requests.

(c) A cooperating agency may in response to a lead agency's request for assistance in preparing the environmental impact statement (described in paragraph (b) (3), (4), or (5) of this section) reply that other program commitments preclude any involvement or the degree of involvement requested in the action that is the subject of the environmental impact statement. A copy of this reply shall be submitted to the Council.

§ 1501.7 Scoping.

There shall be an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action. This process shall be termed scoping. As soon as practicable after its decision to prepare an environmental impact statement and before the scoping process the lead agency shall publish a notice of intent (§ 1508.22) in the FEDERAL REGISTER except as provided in § 1507.3(e).

(a) As part of the scoping process the lead agency shall:

(1) Invite the participation of affected Federal, State, and local agencies, any affected Indian tribe, the proponent of the action, and other interested persons (including those who might not be in accord with the action on environmental grounds), unless there is a limited exception under § 1507.3(c). An agency may give notice in accordance with § 1506.6.

(2) Determine the scope (§ 1508.25) and the significant issues to be analyzed in depth in the environmental impact statement.

(3) Identify and eliminate from detailed study the issues which are not significant or which have been covered by prior environmental review (§ 1506.3), narrowing the discussion of these issues in the statement to a brief presentation of why they will not have a significant effect on the human environment or providing a reference to their coverage elsewhere.

(4) Allocate assignments for preparation of the environmental impact statement among the lead and cooperating agencies, with the lead agency retaining responsibility for the statement.

(5) Indicate any public environmental assessments and other environmental impact statements which are being or will be prepared that are related to but are not part of the scope of the impact statement under consideration.

(6) Identify other environmental review and consultation requirements so the lead and cooperating agencies may prepare other required analyses and studies concurrently with, and integrated with, the environmental impact statement as provided in § 1502.25.

(7) Indicate the relationship between the timing of the preparation of environmental analyses and the agency's tentative planning and decisionmaking schedule.

(b) As part of the scoping process the lead agency may:

(1) Set page limits on environmental documents (§ 1502.7).

(2) Set time limits (§ 1501.8).

(3) Adopt procedures under § 1507.3 to combine its environmental assessment process with its scoping process.

(4) Hold an early scoping meeting or meetings which may be integrated with any other early planning meeting the agency has. Such a scoping meeting will often be appropriate when the impacts of a particular action are confined to specific sites.

(c) An agency shall revise the determinations made under paragraphs (a) and (b) of this section if substantial changes are made later in the proposed action, or if significant new circumstances or information arise which bear on the proposal or its impacts.

§ 1501.8 Time limits.

Although the Council has decided that prescribed universal time limits for the entire NEPA process are too inflexible, Federal agencies are encouraged to set time limits appropriate to individual actions (consistent with the time intervals required by § 1506.10). When multiple agencies are involved the reference to agency below means lead agency.

(a) The agency shall set time limits if an applicant for the proposed action requests them: *Provided,* That the limits are consistent with the purposes of NEPA and other essential considerations of national policy.

(b) The agency may:

(1) Consider the following factors in determining time limits:

(i) Potential for environmental harm.

(ii) Size of the proposed action.

(iii) State of the art of analytic techniques.

(iv) Degree of public need for the proposed action, including the consequences of delay.

(v) Number of persons and agencies affected.

(vi) Degree to which relevant information is known and if not known the time required for obtaining it.

(vii) Degree to which the action is controversial.

(viii) Other time limits imposed on the agency by law, regulations, or executive order.

(2) Set overall time limits or limits for each constituent part of the NEPA process which may include:

(i) Decision on whether to prepare an environmental impact statement (if not already decided).

(ii) Determination of the scope of the environmental impact statement.

(iii) Preparation of the draft environmental impact statement.

(iv) Review of any comments on the draft environmental impact statement from the public and agencies.

(v) Preparation of the final environmental impact statement.

(vi) Review of any comments on the final environmental impact statement.

(vii) Decision on the action based in part on the environmental impact statement.

(3) Designate a person (such as the project manager or a person in the agency's office with NEPA responsibilities) to expedite the NEPA process.

(c) State or local agencies or members of the public may request a Federal Agency to set time limits.

PART 1502—ENVIRONMENTAL IMPACT STATEMENT

Sec.

1502.1 Purpose.
1502.2 Implementation.
1502.3 Statutory Requirements for Statements.
1502.4 Major Federal Actions Requiring the Preparation of Environmental Impact Statements.
1502.5 Timing.
1502.6 Interdisciplinary Preparation.
1502.7 Page Limits.
1502.8 Writing.
1502.9 Draft, Final, and Supplemental Statements.
1502.10 Recommended Format.
1502.11 Cover Sheet.
1502.12 Summary.
1502.13 Purpose and Need.
1502.14 Alternatives Including the Proposed Action.
1502.15 Affected Environment.
1502.16 Environmental Consequences.
1502.17 List of Preparers.
1502.18 Appendix.
1502.19 Circulation of the Environmental Impact Statement.
1502.20 Tiering.
1502.21 Incorporation by Reference.
1502.22 Incomplete or Unavailable Information.
1502.23 Cost-Benefit Analysis.
1502.24 Methodolgy and Scientific Accuracy.
1502.25 Environmental Review and Consultation Requirements.

AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), Section 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970, as amended by Executive Order 11991, May 24, 1977).

§ 1502.1 Purpose.

The primary purpose of an environmental impact statement is to serve as an action-forcing device to insure that the policies and goals defined in the Act are infused into the ongoing programs and actions of the Federal Government. It shall provide full and fair discussion of significant environmental impacts and shall inform decisionmakers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment. Agencies shall focus on significant environmental issues and alternatives and shall reduce paperwork and the accumulation of extraneous background data. Statements shall be concise, clear, and to the point, and shall be supported by evidence that the agency has made the necessary environmental analyses. An environmental impact statement is more than a disclosure document. It shall be used by Federal officials in conjunction with other relevant material to plan actions and make decisions.

§ 1502.2 Implementation.

To achieve the purposes set forth in § 1502.1 agencies shall prepare environmental impact statements in the following manner:

(a) Environmental impact statements shall be analytic rather than encyclopedic.

(b) Impacts shall be discussed in proportion to their significance. There shall be only brief discussion of other than significant issues. As in a finding of no significant impact, there should be only enough discussion to show why more study is not warranted.

(c) Environmental impact statements shall be kept concise and shall be no longer than absolutely necessary to comply with NEPA and with these regulations. Length should vary first with potential environmental problems and then with project size.

(d) Environmental impact statements shall state how alternatives considered in it and decisions based on it will or will not achieve the requirements of sections 101 and 102(1) of the Act and other environmental laws and policies.

(e) The range of alternatives discussed in environmental impact statements shall encompass those to be considered by the ultimate agency decisionmaker.

(f) Agencies shall not commit resources prejudicing selection of alternatives before making a final decision (§ 1506.1).

(g) Environmental impact statements shall serve as the means of assessing the environmental impact of proposed agency actions, rather than justifying decisions already made.

§ 1502.3 Statutory requirements for statements.

As required by sec. 102(2)(C) of NEPA environmental impact statements (§ 1508.11) are to be included in every recommendation or report. On proposals (§ 1508.23). For legislation and (§ 1508.17). Other major Federal actions (§ 1508.18). Significantly (§ 1508.27). Affecting (§§ 1508.3, 1508.8). The quality of the human environment (§ 1508.14).

§ 1502.4 Major Federal actions requiring the preparation of environmental impact statements.

(a) Agencies shall make sure the proposal which is the subject of an environmental impact statement is properly defined. Agencies shall use the criteria for scope (§ 1508.25) to determine which proposal(s) shall be the subject of a particular statement. Proposals or parts or proposals which are related to each other closely enough to be, in effect, a single course of action shall

be evaluated in a single impact statement.

(b) Environmental impact statements may be prepared, and are sometimes required, for broad Federal actions such as the adoption of new agency programs or regulations (§ 1508.18). Agencies shall prepare statements on broad actions so that they are relevant to policy and are timed to coincide with meaningful points in agency planning and decisionmaking.

(c) When preparing statements on broad actions (including proposals by more than one agency), agencies may find it useful to evaluate the proposal(s) in one of the following ways:

(1) Geographically, including actions occurring in the same general location, such as body of water, region, or metropolitan area.

(2) Generically, including actions which have relevant similarities, such as common timing, impacts, alternatives, methods of implementation, media, or subject matter.

(3) By stage of technological development including federal or federally assisted research, development or demonstration programs for new technologies which, if applied, could significantly affect the quality of the human environment. Statements shall be prepared on such programs and shall be available before the program has reached a stage of investment or commitment to implementation likely to determine subsequent development or restrict later alternatives.

(d) Agencies shall as appropriate employ scoping (§ 1501.7), tiering (§ 1502.20), and other methods listed in §§ 1500.4 and 1500.5 to relate broad and narrow actions and to avoid duplication and delay.

§ 1502.5 Timing.

An agency shall commence preparation of an environmental impact statement as close as possible to the time the agency is developing or is presented with a proposal (§ 1508.23) so that preparation can be completed in time for the final statement to be included in any recommendation or report on the proposal. The statement shall be prepared early enough so that it can serve practically as an important contribution to the decisionmaking process and will not be used to rationalize of justify decisions already made (§§ 1500.2(c), 1501.2, and 1502.2). For instance:

(a) For projects directly undertaken by Federal agencies the environmental impact statement shall be prepared at the feasibility analysis (go-no go) stage and may be supplemented at a later stage if necessary.

(b) For applications to the agency appropriate environmental assessments or statements shall be commenced no later than immediately after the application is received. Federal agencies are encouraged to begin preparation of such assessments or statements earlier, preferably jointly with applicable State or local agencies.

(c) For adjudication, the final environmental impact statement shall normally precede the final staff recommendation and that portion of the public hearing related to the impact study. In appropriate circumstances the statement may follow preliminary hearings designed to gather information for use in the statements.

(d) For informal rulemaking the draft environmental impact statement shall normally accompany the proposed rule.

§ 1502.6 Interdisciplinary preparation.

Environmental impact statements shall be prepared using an inter-disciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts (section 102(2)(A) of the Act). The disciplines of the preparers shall be appropriate to the scope and issues identified in the scoping process (§ 1501.7).

§ 1502.7 Page limits.

The text of final environmental impact statements (e.g., paragraphs (d) through (g) of § 1502.10) shall normally be less than 150 pages and for proposals of unusual scope or complexity shall normally be less than 300 pages.

§ 1502.8 Writing.

Environmental impact statements shall be written in plain language and may use appropriate graphics so that decisionmakers and the public can readily understand them. Agencies should employ writers of clear prose or editors to write, review, or edit statements, which will be based upon the analysis and supporting data from the natural and social sciences and the environmental design arts.

§ 1502.9 Draft, final, and supplemental statements.

Except for proposals for legislation as provided in § 1506.8 environmental impact statements shall be prepared in two stages and may be supplemented.

(a) Draft environmental impact statements shall be prepared in accordance with the scope decided upon in the scoping process. The lead agency shall work with the cooperating agencies and shall obtain comments as required in Part 1503 of this chapter. The draft statement must fulfill and satisfy to the fullest extent possible the requirements established for final statements in section 102(2)(C) of the Act. If a draft statement is so inadequate as to preclude meaningful analysis, the agency shall prepare and circulate a revised draft of the appropriate portion. The agency shall make every effort to disclose and discuss at appropriate points in the draft statement all major points of view on the environmental impacts of the alternatives including the proposed action.

(b) Final environmental impact statements shall respond to comments as required in Part 1503 of this chapter. The agency shall discuss at appropriate points in the final statement any responsible opposing view which was not adequately discussed in the draft statement and shall indicate the agency's response to the issues raised.

(c) Agencies:

(1) Shall prepare supplements to either draft or final environmental impact statements if:

(i) The agency makes substantial changes in the proposed action that are relevant to environmental concerns; or

(ii) There are significant new circumstances, or information relevant to environmental concerns and bearing on the proposed action or its impacts.

(2) May also prepare supplements when the agency determines that the purposes of the Act will be furthered by doing so.

(3) Shall adopt procedures for introducing a supplement into its formal administrative record, if such a record exists.

(4) Shall prepare, circulate, and file a supplement to a statement in the same fashion (exclusive of scoping) as a draft and final statement unless alternative procedures are approved by the Council.

§ 1502.10 Recommended format.

Agencies shall use a format for environmental impact statements which will encourage good analysis and clear presentation of the alternatives including the proposed action. The following standard format for environmental impact statements should be followed unless the agency determines that there is a compelling reason to do otherwise:

(a) Cover sheet.

(b) Summary.

(c) Table of Contents.

(d) Purpose of and Need for Action.

(e) Alternatives Including Proposed Action (secs. 102(2)(C)(iii) and 102(2)(E) of the Act).

(f) Affected Environment.

(g) Environmental Consequences (especially sections 102(2)(C) (i), (ii), (iv), and (v) of the Act.

(h) List of Preparers.

(i) List of Agencies, Organizations, and Persons to Whom Copies of the Statement Are Sent.

(j) Index.

(k) Appendices (if any).

If a different format is used, it shall include paragraphs (a), (b), (c), (h), (i), and (j), of this section and shall include the substance of paragraphs (d), (e), (f), (g), and (k) of this section, as further described in §§ 1502.11–1502.18, in any appropriate format.

§ 1502.11 Cover sheet.

The cover sheet shall not exceed one page, It shall include:

(a) A list of the responsible agencies including the lead agency and any cooperating agencies.

(b) The title of the proposed action that is the subject of the statement (and if appropriate the titles of related cooperating agency actions), together with the State(s) and county(ies) (or other jurisdiction if applicable) where the action is located.

(c) The name, address, and telephone number of the person at the agency who can supply further information.

(d) A designation of the statement as a draft, final, or draft or final supplement.

(e) A one paragraph abstract of the statement.

(f) The date by which comments must be received (computed in cooperation with EPA under § 1506.10).

The information required by this section may be entered on Standard Form 424 (in items 4, 6, 7, 10, and 18).

§ 1502.12 Summary.

Each environmental impact statement shall contain a summary which adequately and accurately summarizes the statement. The summary shall stress the major conclusions, areas of controversy (including issues raised by agencies and the public), and the issues to be resolved (including the choice among alternatives). The summary will normally not exceed 15 pages.

§ 1502.13 Purpose and need.

The statement shall briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action.

§ 1502.14 Alternatives including the proposed action.

This section is the heart of the environmental impact statement. Based on the information and analysis presented in the sections on the Affected Environment (§ 1502.15) and the Environmental Consequences (§ 1502.16), it should present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public. In this section agencies shall:

(a) Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.

(b) Devote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits.

(c) Include reasonable alternatives not within the jurisdiction of the lead agency.

(d) Include the alternative of no action.

(e) Identify the agency's preferred alternative or alternatives, if one or more exists, in the draft statement and identify such alternative in the final statement unless another law prohibits the expression of such a preference.

(f) Include appropriate mitigation measures not already included in the proposed action or alternatives.

§ 1502.15 Affected environment.

The environmental impact statement shall succinctly describe the environment of the area(s) to be affected or created by the alternatives under consideration. The descriptions shall be no longer than is necessary to understand the effects of the alternatives. Data and analyses in a statement shall be commensurate with the importance of the impact, with less important material summarized, consolidated, or simply referenced. Agencies shall avoid useless bulk in statements and shall concentrate effort and attention on important issues. Verbose descriptions of the affected environment are themselves no measure of the adequacy of an environmental impact statement.

§ 1502.16 Environmental consequences.

This section forms the scientific and analytic basis for the comparisons under § 1502.14. It shall consolidate the discussions of those elements required by secs. 102(2)(C) (i), (ii), (iv), and (v) of NEPA which are within the scope of the statement and as much of sec. 102(2)(C)(iii) as is necessary to support the comparisons. The discussion will include the environmental impacts of the alternatives including the proposed action, any adverse environmental effects which cannot be avoided should the proposal be implemented, the relationship between short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and any irreversible or irretrievable commitments of resources which would be involved in the proposal should it be implemented. This section should not duplicate discussions in § 1502.14. It shall include discussions of:

(a) Direct effects and their significance (§ 1508.18).

(b) Indirect effects and their significance (§ 1508.8).

(c) Possible conflicts between the proposed action and the objectives of Federal, regional, State, and local (and in the case of a reservation, Indian tribe) land use plans, policies and controls for the area concerned. (See § 1506.2(c).)

(d) The environmental effects of alternatives including the proposed action. The comparisons under § 1502.14 will be based on this discussion.

(e) Energy requirements and conservation potential of various alternatives and mitigation measures.

(f) Natural or depletable resource requirements and conservation potential of various alternatives and mitigation measures.

(g) Urban quality, historic and cultural resources, and the design of the built environment, including the reuse and conservation potential of various alternatives and mitigation measures.

(h) Means to mitigate adverse environmental impacts (if not fully covered under § 1502.14(f)).

§ 1502.17 List of preparers.

The environmental impact statement shall list the names, together with their qualifications (expertise, experience, professional disciplines), of the persons who were primarily responsible for preparing the environmental impact statement or significant background papers, including basic components of the statement (§§ 1502.6 and 1502.8). Where possible the persons who are responsible for a particular analysis, including analyses in background papers, shall be identified. Normally the list will not exceed two pages.

§ 1502.18 Appendix.

If an agency prepares an appendix to an environmental impact statement the appendix shall:

(a) Consist of material prepared in connection with an environmental impact statement (as distinct from material which is not so prepared and which is incorporated by reference (§ 1502.21)).

(b) Normally consist of material which substantiates any analysis fundamental to the impact statement.

(c) Normally be analytic and relevant to the decision to be made.

(d) Be circulated with the environmental impact statement or be readily available on request.

§ 1502.19 Circulation of the environmental impact statement.

Agencies shall circulate the entire draft and final environmental impact statements except for certain appendices as provided in § 1502.18(d) and unchanged statements as provided in § 1503.4(c). However, if the statement is unusually long, the agency may circulate the summary instead, except that the entire statement shall be furnished to:

(a) Any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved and any appropriate Federal, State or local agency authorized to develop and enforce environmental standards.

(b) The applicant, if any.

(c) Any person, organization, or agency requesting the entire environmental impact statement.

(d) In the case of a final environmental impact statement any person, organization, or agency which submitted substantive comments on the draft.

If the agency circulates the summary and thereafter receives a timely request for the entire statement and for additional time to comment, the time for that requestor only shall be extended by at least 15 days beyond the minimum period.

§ 1502.20 Tiering.

Agencies are encouraged to tier their environmental impact statements to eliminate repetitive discussions of the same issues and to focus on the actual issues ripe for decision at each level of environmental review (§ 1508.28) Whenever a broad environmental impact statement has been prepared (such as a program or policy statement) and a subsequent statement or environmental assessment is then prepared on an action included within the entire program or policy (such as a site specific action) the subsequent statement or environmental assessment need only summarize the issues discussed in the broader statement and incorporate discussions from the broader statement by reference and shall concentrate on the issues specific to the subsequent action. The subsequent document shall state where the earlier document is available. Tiering may also be appropriate for different stages of actions. (Sec. 1508.28).

§ 1502.21 Incorporation by reference.

Agencies shall incorporate material into an environmental impact statement by reference when the effect will be to cut down on bulk without impeding agency and public review of the action. The incorporated material shall be cited in the statement and its content briefly described. No material may be incorporated by reference unless it is reasonably available for inspection by potentially interested persons within the time allowed for comment. Material based on proprietary data which is itself not available for review and comment shall not be incorporated by reference.

§ 1502.22 Incomplete or unavailable information.

When an agency is evaluating significant adverse effects on the human environment in an environmental impact statement and there are gaps in relevant information or scientific uncertainty, the agency shall always make clear that such information is lacking or that uncertainty exists.

(a) If the information relevant to adverse impacts is essential to a reasoned choice among alternatives and is not known and the overall costs of obtaining it are not exorbitant, the agency shall include the information in the environmental impact statement.

(b) If (1) the information relevant to adverse impacts is essential to a reasoned choice among alternatives and is not known and the overall costs of obtaining it are exorbitant or (2) the information relevant to adverse impacts is important to the decision and the means to obtain it are not known (e.g., the means for obtaining it are beyond the state of the art) the agency shall weigh the need for the action against the risk and severity of possible adverse impacts were the action to proceed in the face of uncertainty. If the agency proceeds, it shall include a worst case analysis and an indication of the probability or improbability of its occurrence.

§ 1502.23 Cost-benefit analysis.

If a cost-benefit analysis relevant to the choice among environmentally different alternatives is being considered for the proposed action, it shall be incorporated by reference or appended to the statement as an aid in evaluating the environmental consequences. To assess the adequacy of compliance with sec. 102(2)(B) of the Act the statement shall, when a cost-benefit analysis is prepared, discuss the relationship between that analysis and any analyses of unquantified environmental impacts, values, and amenities. For purposes of complying with the Act, the weighing of the merits and drawbacks of the various alternatives need not be displayed in a monetary cost-benefit analysis and should not be when there are important qualitative considerations. In any event, an environmental impact statement should at least indicate those considerations, including factors not related to environmental quality, which are likely to be relevant and important to a decision.

§ 1502.24 Methodology and scientific accuracy.

Agencies shall insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements. They shall identify any methodologies used and shall make explicit reference by footnote to the scientific and other sources relied upon for conclusions in the statement. An agency may place discussion of methodology in an appendix.

§ 1502.25 Environmental review and consultation requirements.

(a) To the fullest extent possible, agencies shall prepare draft environmental impact statements concurrently with and integrated with environmental impact analyses and related surveys and studies required by the Fish and Wildlife Coordination Act (16 U.S.C. Sec. 661 et seq.) the National Historic Preservation Act of 1966 (16 U.S.C. Sec. 470 et seq.), the Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), and other environmental review laws and executive orders.

(b) The draft environmental impact statement shall list all Federal permits, licenses, and other entitlements which must be obtained in implementing the proposal. If it is uncertain whether a Federal permit, license, or other entitlement is necessary, the draft environmental impact statement shall so indicate.

PART 1503—COMMENTING

Sec.
1503.1 Inviting Comments.
1503.2 Duty to Comment.
1503.3 Specificity of Comments.
1503.4 Response to Comments.

AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), Section 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970, as amended by Executive Order 11991, May 24, 1977).

§ 1503.1 Inviting comments.

(a) After preparing a draft environmental impact statement and before preparing a final environmental impact statement the agency shall:

(1) Obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved or which is authorized to develop and enforce environmental standards.

(2) Request the comments of:

(i) Appropriate State and local agencies which are authorized to develop and enforce environmental standards;

(ii) Indian tribes, when the effects may be on a reservation; and

(iii) Any agency which has requested that it receive statements on actions of the kind proposed.

Office of Management and Budget Circular A-95 (Revised), through its system of clearinghouses, provides a means of securing the views of State and local environmental agencies. The clearinghouses may be used, by mutual agreement of the lead agency and the clearinghouse, for securing State and local reviews of the draft environmental impact statements.

(3) Request comments from the applicant, if any.

(4) Request comments from the public, affirmatively soliciting comments from those persons or organizations who may be interested or affected.

(b) An agency may request comments on a final environmental impact statement before the decision is finally made. In any case other agencies or persons may make comments before the final decision unless a different time is provided under § 1506.10

§ 1503.2 Duty to comment.

Federal agencies with jurisdiction by law or special expertise with respect to any environmental impact involved and agencies which are authorized to develop and enforce environmental standards shall comment on statements within their jurisdiction, expertise, or authority. Agencies shall comment within the time period specified for comment in § 1506.10. A Federal agency may reply that it has no comment. If a cooperating agency is satisfied that its views are adequately reflected in the environmental impact statement, it should reply that it has no comment.

§ 1503.3 Specificity of comments.

(a) Comments on an environmental impact statement or on a proposed action shall be as specific as possible and may address either the adequacy of the statement or the merits of the alternatives discussed or both.

(b) When a commenting agency criticizes a lead agency's predictive methodology, the commenting agency should describe the alternative methodology which it prefers and why.

(c) A cooperating agency shall specify in its comments whether it needs additional information to fulfill other applicable environmental reviews or consultation requirements and what information it needs. In particular, it shall specify any additional information it needs to comment adequately on the draft statement's analysis of significant site-specific effects associated with the granting or approving by that cooperating agency of necessary Federal permits, licenses, or entitlements.

(d) When a cooperating agency with jurisdiction by law objects to or expresses reservations about the proposal on grounds of environmental impacts, the agency expressing the objection or reservation shall specify the mitigation measures it considers necessary to allow the agency to grant or approve applicable permit, license, or related requirements or concurrences.

§ 1503.4 Response to comments.

(a) An agency preparing a final environmental impact statement shall assess and consider comments both individually and collectively, and shall respond by one or more of the means listed below, stating its response in the final statement. Possible responses are to:

(1) Modify alternatives including the proposed action.

(2) Develop and evaluate alternatives not previously given serious consideration by the agency.

(3) Supplement, improve, or modify its analyses.

(4) Make factual corrections.

(5) Explain why the comments do not warrant further agency response, citing the sources, authorities, or reasons which support the agency's position and, if appropriate, indicate those circumstances which would trigger agency reappraisal or further response.

(b) All substantive comments received on the draft statement (or summaries thereof where the response has been exceptionally voluminous), should be attached to the final statement whether or not the comment is thought to merit individual discussion by the agency in the text of the statement.

(c) If changes in response to comments are minor and are confined to the responses described in paragraphs (a) (4) and (5) of this section, agencies may write them on errata sheets and attach them to the statement instead of rewriting the draft statement. In such cases only the comments, the responses, and the changes and not the final statement need be circulated (§ 1502.19). The entire document with a new cover sheet shall be filed as the final statement (§ 1506.9).

PART 1504—PREDECISION REFERRALS TO THE COUNCIL OF PROPOSED FEDERAL ACTIONS DETERMINED TO BE ENVIRONMENTALLY UNSATISFACTORY

Sec.
1504.1 Purpose.
1504.2 Criteria for Referral.
1504.3 Procedure for Referrals and Response.

AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), Section 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970, as amended by Executive Order 11991, May 24, 1977).

§ 1504.1 Purpose.

(a) This part establishes procedures for referring to the Council Federal interagency disagreements concerning proposed major Federal actions that might cause unsatisfactory environmental effects. It provides means for early resolution of such disagreements.

(b) Under section 309 of the Clean Air Act (42 U.S.C. 7609), the Administrator of the Environmental Protection Agency is directed to review and comment publicly on the environmental impacts of Federal activities, including actions for which environmental impact statements are prepared. If after this review the Administrator determines that the matter is "unsatisfactory from the standpoint of public health or welfare or environmental quality," section 309 directs that the matter be referred to the Council (hereafter "environmental referrals").

(c) Under section 102(2)(C) of the Act other Federal agencies may make similar reviews of environmental impact statements, including judgments on the acceptability of anticipated environmental impacts. These reviews must be made available to the President, the Council and the public.

§ 1504.2 Criteria for referral.

Environmental referrals should be made to the Council only after concerted, timely (as early as possible in the process), but unsuccessful attempts to resolve differences with the lead agency. In determining what environmental objections to the matter are appropriate to refer to the Council, an agency should weigh potential adverse environmental impacts, considering:

(a) Possible violation of national environmental standards or policies.

(b) Severity.

(c) Geographical scope.

(d) Duration.

(e) Importance as precedents.

(f) Availability of environmentally preferable alternatives.

§ 1504.3 Procedure for referrals and response.

(a) A Federal agency making the referral to the Council shall:

(1) Advise the lead agency at the earliest possible time that it intends to refer a matter to the Council unless a satisfactory agreement is reached.

(2) Include such advice in the referring agency's comments on the draft environmental impact statement, except when the statement does not

contain adequate information to permit an assessment of the matter's environmental acceptability.

(3) Identify any essential information that is lacking and request that it be made available at the earliest possible time.

(4) Send copies of such advice to the Council.

(b) The referring agency shall deliver its referral to the Council not later than twenty-five (25) days after the final environmental impact statement has been made available to the Environmental Protection Agency, commenting agencies, and the public. Except when an extension of this period has been granted by the lead agency, the Council will not accept a referral after that date.

(c) The referral shall consist of:

(1) A copy of the letter signed by the head of the referring agency and delivered to the lead agency informing the lead agency of the referral and the reasons for it, and requesting that no action be taken to implement the matter until the Council acts upon the referral. The letter shall include a copy of the statement referred to in (c)(2) below.

(2) A statement supported by factual evidence leading to the conclusion that the matter is unsatisfactory from the standpoint of public health or welfare or environmental quality. The statement shall:

(i) Identify any material facts in controversy and incorporate (by reference if appropriate) agreed upon facts,

(ii) Identify any existing environmental requirements or policies which would be violated by the matter,

(iii) Present the reasons why the referring agency believes the matter is environmentally unsatisfactory,

(iv) Contain a finding by the agency whether the issue raised is of national importance because of the threat to national environmental resources or policies or for some other reason,

(v) Review the steps taken by the referring agency to bring its concerns to the attention of the lead agency at the earliest possible time, and

(vi) Give the referring agency's recommendations as to what mitigation alternative, further study, or other course of action (including abandonment of the matter) are necessary to remedy the situation.

(d) Not later than twenty-five (25) days after the referral to the Council the lead agency may deliver a response to the Council, and the referring agency. If the lead agency requests more time and gives assurance that the matter will not go forward in the interim, the Council may grant an extension. The response shall:

(1) Address fully the issues raised in the referral.

(2) Be supported by evidence.

(3) Give the lead agency's response to the referring agency's recommendations.

(e) Interested persons (including the applicant) may deliver their views in writing to the Council. Views in support of the referral should be delivered not later than the referral. Views in support of the response shall be delivered not later than the response.

(f) Not later than twenty-five (25) days after receipt of both the referral and any response or upon being informed that there will be no response (unless the lead agency agrees to a longer time), the Council may take one or more of the following actions:

(1) Conclude that the process of referral and response has successfully resolved the problem.

(2) Initiate discussions with the agencies with the objective of mediation with referring and lead agencies.

(3) Hold public meetings or hearings to obtain additional views and information.

(4) Determine that the issue is not one of national importance and request the referring and lead agencies to pursue their decision process.

(5) Determine that the issue should be further negotiated by the referring and lead agencies and is not appropriate for Council consideration until one or more heads of agencies report to the Council that the agencies' disagreements are irreconcilable.

(6) Publish its findings and recommendations (including where appropriate a finding that the submitted evidence does not support the position of an agency).

(7) When appropriate, submit the referral and the response together with the Council's recommendation to the President for action.

(g) The Council shall take no longer than 60 days to complete the actions specified in paragraph (f) (2), (3), or (5) of this section.

(h) When the referral involves an action required by statute to be determined on the record after opportunity for agency hearing, the referral shall be conducted in a manner consistent with 5 U.S.C. 557(d) (Administrative Procedures Act).

PART 1505—NEPA AND AGENCY DECISIONMAKING

Sec.

1505.1 Agency decisionmaking procedures.
1505.2 Record of decision in cases requiring environmental impact statements.
1505.3 Implementing the decision.

AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), Section 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970, as amended by Executive Order 11991, May 24, 1977).

§ 1505.1 Agency decisionmaking procedures.

Agencies shall adopt procedures (§ 1507.3) to ensure that decisions are made in accordance with the policies and purposes of the Act. Such procedures shall include but not be limited to:

(a) Implementing procedures under section 102(2) to achieve the requirements of sections 101 and 102(1).

(b) Designating the major decision points for the agency's principal programs likely to have a significant effect on the human environment and assuring that the NEPA process corresponds with them.

(c) Requiring that relevant environmental documents, comments, and responses be part of the record in formal rulemaking or adjudicatory proceedings.

(d) Requiring that relevant environmental documents, comments, and responses accompany the proposal through existing agency review processes so that agency officials use the statement in making decisions.

(e) Requiring that the alternatives considered by the decisionmaker are encompassed by the range of alternatives discussed in the relevant environmental documents and that the decisionmaker consider the alternatives described in the environmental impact statement. If another decision document accompanies the relevant environmental documents to the decisionmaker, agencies are encouraged to make available to the public before the decision is made any part of that document that relates to the comparison of alternatives.

§ 1505.2 Record of decision in cases requiring environmental impact statements.

At the time of its decision (§ 1506.10) or, if appropriate, its recommendation to Congress, each agency shall prepare a concise public record of decision. The record, which may be integrated into any other record prepared by the agency, including that required by OMB Circular A-95 (Revised), part I, sections 6 (c) and (d), and part II, section 5(b)(4), shall:

(a) State what the decision was.

(b) Identify all alternatives considered by the agency in reaching its decision, specifying the alternative or alternatives which were considered to be environmentally preferable. An agency may discuss preferences among alternatives based on relevant factors including economic and technical considerations and agency statutory missions. An agency shall identify and discuss all such factors including any essential considerations of national policy which were balanced by the agency in making its decision and

state how those considerations entered into its decision.

(c) State whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted, and if not, why they were not. A monitoring and enforcement program shall be adopted and summarized where applicable for any mitigation.

§ 1505.3 Implementing the decision.

Agencies may provide for monitoring to assure that their decisions are carried out and should do so in important cases. Mitigation (§ 1505.2(c)) and other conditions established in the environmental impact statement or during its review and committed as part of the decision shall be implemented by the lead agency or other appropriate consenting agency. The lead agency shall:

(a) Include appropriate conditions in grants, permits or other approvals.

(b) Condition funding of actions on mitigation.

(c) Upon request, inform cooperating or commenting agencies on progress in carrying out mitigation measures which they have proposed and which were adopted by the agency making the decision.

(d) Upon request, make available to the public the results of relevant monitoring.

PART 1506—OTHER REQUIREMENTS OF NEPA

Sec.

1506.1 Limitations on actions during NEPA process.
1506.2 Elimination of duplication with State and local procedures.
1506.3 Adoption.
1506.4 Combining documents.
1506.5 Agency responsibility.
1506.6 Public involvement.
1506.7 Further guidance.
1506.8 Proposals for legislation.
1506.9 Filing requirements.
1506.10 Timing of agency action.
1506.11 Emergencies.
1506.12 Effective date.

AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), Section 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970. as amended by Executive Order 11991, May 24, 1977).

§ 1506.1 Limitations on actions during NEPA process.

(a) Until an agency issues a record of decision as provided in § 1505.2 (except as provided in paragraph (c) of this section), no action concerning the proposal shall be taken which would:

(1) Have an adverse environmental impact; or

(2) Limit the choice of reasonable alternatives.

(b) If any agency is considering an application from a non-Federal entity, and is aware that the applicant is about to take an action within the agency's jurisdiction that would meet either of the criteria in paragraph (a) of this section, then the agency shall promptly notify the applicant that the agency will take appropriate action to insure that the objectives and procedures of NEPA are achieved.

(c) While work on a required program environmental impact statement is in progress and the action is not covered by an existing program statement, agencies shall not undertake in the interim any major Federal action covered by the program which may significantly affect the quality of the human environment unless such action:

(1) Is justified independently of the program;

(2) Is itself accompanied by an adequate environmental impact statement; and

(3) Will not prejudice the ultimate decision on the program. Interim action prejudices the ultimate decision on the program when it tends to determine subsequent development or limit alternatives.

(d) This section does not preclude development by applicants of plans or designs or performance of other work necessary to support an application for Federal, State or local permits or assistance. Nothing in this section shall preclude Rural Electrification Administration approval of minimal expenditures not affecting the environment (*e.g.* long leadtime equipment and purchase options) made by nongovernmental entities seeking loan guarantees from the Administration.

§ 1506.2 Elimination of duplication with State and local procedures.

(a) Agencies authorized by law to cooperate with State agencies of statewide jurisdiction pursuant to section 102(2)(D) of the Act may do so.

(b) Agencies shall cooperate with State and local agencies to the fullest extent possible to reduce duplication between NEPA and State and local requirements, unless the agencies are specifically barred from doing so by some other law. Except for cases covered by paragraph (a) of this section, such cooperation shall to the fullest extent possible include:

(1) Joint planning processes.

(2) Joint environmental research and studies.

(3) Joint public hearings (except where otherwise provided by statute).

(4) Joint environmental assessments.

(c) Agencies shall cooperate with State and local agencies to the fullest extent possible to reduce duplication between NEPA and comparable State and local requirements, unless the agencies are specifically barred from doing so by some other law. Except for cases covered by paragraph (a) of this section, such cooperation shall to the fullest extent possible include joint environmental impact statements. In such cases one or more Federal agencies and one or more State or local agencies shall be joint lead agencies. Where State laws or local ordinances have environmental impact statement requirements in addition to but not in conflict with those in NEPA, Federal agencies shall cooperate in fulfilling these requirements as well as those of Federal laws so that one document will comply with all applicable laws.

(d) To better integrate environmental impact statements into State or local planning processes, statements shall discuss any inconsistency of a proposed action with any approved State or local plan and laws (whether or not federally sanctioned). Where an inconsistency exists, the statement should describe the extent to which the agency would reconcile its proposed action with the plan or law.

§ 1506.3 Adoption.

(a) An agency may adopt a Federal draft or final environmental impact statement or portion thereof provided that the statement or portion thereof meets the standards for an adequate statement under these regulations.

(b) If the actions covered by the original environmental impact statement and the proposed action are substantially the same, the agency adopting another agency's statement is not required to recirculate it except as a final statement. Otherwise the adopting agency shall treat the statement as a draft and recirculate it (except as provided in paragraph (c) of this section).

(c) A cooperating agency may adopt without recirculating the environmental impact statement of a lead agency when, after an independent review of the statement, the cooperating agency concludes that its comments and suggestions have been satisfied.

(d) When an agency adopts a statement which is not final within the agency that prepared it, or when the action it assesses is the subject of a referral under part 1504, or when the statement's adequacy is the subject of a judicial action which is not final, the agency shall so specify.

§ 1506.4 Combining documents.

Any environmental document in compliance with NEPA may be combined with any other agency document to reduce duplication and paperwork.

§ 1506.5 Agency responsibility.

(a) *Information.* If an agency requires an applicant to submit environmental information for possible use by the agency in preparing an environmental impact statement, then the agency should assist the applicant by outlining the types of information required. The agency shall independently evaluate the information submitted and shall be responsible for its accuracy. If the agency chooses to use the information submitted by the applicant in the environmental impact statement, either directly or by reference, then the names of the persons responsible for the independent evaluation shall be included in the list of preparers (§ 1502.17). It is the intent of this subparagraph that acceptable work not be redone, but that it be verified by the agency.

(b) *Environmental assessments.* If an agency permits an applicant to prepare an environmental assessment, the agency, besides fulfilling the requirements of paragraph (a) of this section, shall make its own evaluation of the environmental issues and take responsibility for the scope and content of the environmental assessment.

(c) *Environmental impact statements.* Except as provided in §§ 1506.2 and 1506.3 any environmental impact statement prepared pursuant to the requirements of NEPA shall be prepared directly by or by a contractor selected by the lead agency or where appropriate under § 1501.6(b), a cooperating agency. It is the intent of these regulations that the contractor be chosen solely by the lead agency, or by the lead agency in cooperation with cooperating agencies, or where appropriate by a cooperating agency to avoid any conflict of interest. Contractors shall execute a disclosure statement prepared by the lead agency, or where appropriate the cooperating agency, specifying that they have no financial or other interest in the outcome of the project. If the document is prepared by contract, the responsible Federal official shall furnish guidance and participate in the preparation and shall independently evaluate the statement prior to its approval and take responsibility for its scope and contents. Nothing in this section is intended to prohibit any agency from requesting any person to submit information to it or to prohibit any person from submitting information to any agency.

§ 1506.6 Public involvement.

Agencies shall: (a) Make diligent efforts to involve the public in preparing and implementing their NEPA procedures.

(b) Provide public notice of NEPA-related hearings, public meetings, and the availability of environmental documents so as to inform those persons and agencies who may be interested or affected.

(1) In all cases the agency shall mail notice to those who have requested it on an individual action.

(2) In the case of an action with effects of national concern notice shall include publication in the FEDERAL REGISTER and notice by mail to national organizations reasonably expected to be interested in the matter and may include listing in the *102 Monitor.* An agency engaged in rulemaking may provide notice by mail to national organizations who have requested that notice regularly be provided. Agencies shall maintain a list of such organizations.

(3) In the case of an action with effects primarily of local concern the notice may include:

(i) Notice to State and areawide clearinghouses pursuant to OMB Circular A-95 (Revised).

(ii) Notice to Indian tribes when effects may occur on reservations.

(iii) Following the affected State's public notice procedures for comparable actions.

(iv) Publication in local newspapers (in papers of general circulation rather than legal papers).

(v) Notice through other local media.

(vi) Notice to potentially interested community organizations including small business associations.

(vii) Publication in newsletters that may be expected to reach potentially interested persons.

(viii) Direct mailing to owners and occupants of nearby or affected property.

(ix) Posting of notice on and off site in the area where the action is to be located.

(c) Hold or sponsor public hearings or public meetings whenever appropriate or in accordance with statutory requirements applicable to the agency. Criteria shall include whether there is:

(1) Substantial environmental controversy concerning the proposed action or substantial interest in holding the hearing.

(2) A request for a hearing by another agency with jurisdiction over the action supported by reasons why a hearing will be helpful. If a draft environmental impact statement is to be considered at a public hearing, the agency should make the statement available to the public at least 15 days in advance (unless the purpose of the hearing is to provide information for the draft environmental impact statement).

(d) Solicit appropriate information from the public.

(e) Explain in its procedures where interested persons can get information or status reports on environmental impact statements and other elements of the NEPA process.

(f) make environmental impact statements, the comments received, and any underlying documents available to the public pursuant to the provisions of the Freedom of Information Act (5 U.S.C. 552), without regard to the exclusion for interagency memoranda where such memoranda transmit comments of Federal agencies on the environmental impact of the proposed action. Materials to be made available to the public shall be provided to the public without charge to the extent practicable, or at a fee which is not more than the actual costs of reproducing copies required to be sent to other Federal agencies, including the Council.

§ 1506.7 Further guidance.

The Council may provide further guidance concerning NEPA and its procedures including:

(a) A handbook which the Council may supplement from time to time, which shall in plain language provide guidance and instructions concerning the application of NEPA and these regulations.

(b) Publication of the Council's Memoranda to Heads of Agencies.

(c) In conjunction with the Environmental Protection Agency and the publication of the 102 Monitor, notice of:

(1) Research activities;

(2) Meetings and conferences related to NEPA; and

(3) Successful and innovative procedures used by agencies to implement NEPA.

§ 1506.8 Proposals for legislation.

(a) The NEPA process for proposals for legislation (§ 1508.17) significantly affecting the quality of the human environment shall be integrated with the legislative process of the Congress. A legislative environmental impact statement is the detailed statement required by law to be included in a recommendation or report on a legislative proposal to Congress. A legislative environmental impact statement shall be considered part of the formal transmittal of a legislative proposal to Congress; however, it may be transmitted to Congress up to 30 days later in order to allow time for completion of an accurate statement which can serve as the basis for public and Congressional debate. The statement must be available in time for Congressional hearings and deliberations.

(b) Preparation of a legislative environmental impact statement shall conform to the requirements of these regulations except as follows:

(1) There need not be a scoping process.

(2) The legislative statement shall be prepared in the same manner as a draft statement, but shall be considered the "detailed statement" required by statute; *Provided,* That when any of the following conditions exist both the draft and final environmental impact statement on the legislative proposal shall be prepared and circulated as provided by §§ 1503.1 and 1506.10.

(i) A Congressional Committee with jurisdiction over the proposal has a rule requiring both draft and final environmental impact statements.

(ii) The proposal results from a study process required by statute (such as those required by the Wild and Scenic Rivers Act (16 U.S.C. 1271 et esq.) and the Wilderness Act (16 U.S.C. 1131 et seq.)

(iii) Legislative approval is sought for Federal or federally assisted construction or other projects which the agency recommends be located at specific geographic locations. For proposals requiring an environmental impact statement for the acquisition of space by the General Services Administration a draft statement shall accompany the Prospectus or the 11(b) Report of Building Project Surveys to the Congress, and a final statement shall be completed before site acquisition.

(iv) The agency decides to prepare draft and final statements.

(c) Comments on the legislative statement shall be given to the lead agency which shall forward them along with its own responses to the Congressional committees with jurisdiction.

§ 1506.9 Filing requirements.

Environmental impact statements together with comments and responses shall be filed with the Environmental Protection Agency, attention Office of Federal Activities (A-104), 401 M Street SW., Washington, D.C. 20460. Statements shall be filed with EPA no earlier than they are also transmitted to commenting agencies and made available to the public. EPA shall deliver one copy of each statement to the Council, which shall satisfy the requirement of availability to the President. EPA may issue guidelines to agencies to implement its responsibilities under this section and § 1506.10 below.

§ 1506.10 Timing of agency action.

(a) The Environmental Protection Agency shall publish a notice in the FEDERAL REGISTER each week of the environmental impact statements filed during the preceding week. The minimum time periods set forth in this section section shall be calculated from the date of publication of this notice.

(b) No decision on the proposed action shall be made or recorded under § 1505.2 by a Federal agency until the later of the following dates:

(1) Ninety (90) days after publication of the notice described above in paragraph (a) of this section for a draft environmental impact statement.

(2) Thirty (30) days after publication of the notice described above in paragraph (a) of this section for a final environmental impact statement. An exception to the rules on timing may be made in the case of an agency decision which is subject to a formal internal appeal. Some agencies have a formally established appeal process which allows other agencies or the public to take appeals on a decision and make their views known, after publication of the final environmental impact statement. In such cases, where a real opportunity exists to alter the decision, the decision may be made and recorded at the same time the environmental impact statement is published. This means that the period for appeal of the decision and the 30-day period prescribed in paragraph (b)(2) of this section may run concurrently. In such cases the environmental impact statement shall explain the timing and the public's right of appeal. An agency engaged in rulemaking under the Administrative Procedures Act or other statute for the purpose of protecting the public health or safety, may waive the time period in paragraph (b)(2) of this section and publish a decision on the final rule simultaneously with publication of the notice of the availability of the final environmental impact statement as described in paragraph (a) of this section.

(c) If the final environmental impact statement is filed within ninety (90) days after a draft environmental impact statement is filed with the Environmental Protection Agency, the minimum thirty (30) day period and the minimum ninety (90) day period may run concurrently. However, subject to paragraph (d) of this section agencies shall allow not less than 45 days for comments on draft statements.

(d) The lead agency may extend prescribed periods. The Environmental Protection Agency may upon a showing by the lead agency of compelling reasons of national policy reduce the prescribed periods and may upon a showing by any other Federal agency of compelling reasons of national policy also extend prescribed periods, but only after consultation with the lead agency. (Also see § 1507.3(d).) Failure to file timely comments shall not be a sufficient reason for extending a period. If the lead agency does not concur with the extension of time, EPA may not extend it for more than 30 days. When the Environmental Protection Agency reduces or extends any period of time it shall notify the Council.

§ 1506.11 Emergencies.

Where emergency circumstances make it necessary to take an action with significant environmental impact without observing the provisions of these regulations, the Federal agency taking the action should consult with the Council about alternative arrangements. Agencies and the Council will limit such arrangements to actions necessary to control the immediate impacts of the emergency. Other actions remain subject to NEPA review.

§ 1506.12 Effective date.

The effective date of these regulations is July 30, 1979, except that for agencies that administer programs that qualify under sec. 102(2)(D) of the Act or under sec. 104(h) of the Housing and Community Development Act of 1974 an additional four months shall be allowed for the State or local agencies to adopt their implementing procedures.

(a) These regulations shall apply to the fullest extent practicable to ongoing activities and environmental documents begun before the effective date. These regulations do not apply to an environmental impact statement or supplement if the draft statement was filed before the effective date of these regulations. No completed environmental documents need be redone by reasons of these regulations. Until these regulations are applicable, the Council's guidelines published in the FEDERAL REGISTER of August 1, 1973, shall continue to be applicable. In cases where these regulations are applicable the guidelines are superseded. However, nothing shall prevent an agency from proceeding under these regulations at an earlier time.

(b) NEPA shall continue to be applicable to actions begun before January 1, 1970, to the fullest extent possible.

PART 1507—AGENCY COMPLIANCE

Sec.
1507.1 Compliance.
1507.2 Agency Capability to Comply.
1507.3 Agency Procedures.

AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), Section 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970, as amended by Executive Order 11991, May 24, 1977).

§ 1507.1 Compliance.

All agencies of the Federal Government shall comply with these regulations. It is the intent of these regulations to allow each agency flexibility in adapting its implementing proce-

dures authorized by § 1507.3 to the requirements of other applicable laws.

§ 1507.2 Agency capability to comply.

Each agency shall be capable (in terms of personnel and other resources) of complying with the requirements enumerated below. Such compliance may include use of other's resources, but the using agency shall itself have sufficient capability to evaluate what others do for it. Agencies shall:

(a) Fulfill the requirements of Sec. 102(2)(A) of the Act to utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on the human environment. Agencies shall designate a person to be responsible for overall review of agency NEPA compliance.

(b) Identify methods and procedures required by Sec. 102(2)(B) to insure that presently unquantified environmental amenities and values may be given appropriate consideration.

(c) Prepare adequate environmental impact statements pursuant to Sec. 102(2)(C) and comment on statements in the areas where the agency has jurisdiction by law or special expertise or is authorized to develop and enforce environmental standards.

(d) Study, develop, and describe alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources. This requirement of Sec. 102(2)(E) extends to all such proposals, not just the more limited scope of Sec. 102(2)(C)(iii) where the discussion of alternatives is confined to impact statements.

(e) Comply with the requirements of Sec. 102(2)(H) that the agency initiate and utilize ecological information in the planning and development of resource-oriented projects.

(f) Fulfill the requirements of sections 102(2)(F), 102(2)(G), and 102(2)(I), of the Act and of Executive Order 11514, Protection and Enhancement of Environmental Quality, Sec. 2.

§ 1507.3 Agency procedures.

(a) Not later than eight months after publication of these regulations as finally adopted in the FEDERAL REGISTER, or five months after the establishment of an agency, whichever shall come later; each agency shall as necessary adopt procedures to supplement these regulations. When the agency is a department, major subunits are encouraged (with the consent of the department) to adopt their own procedures. Such procedures shall not paraphrase these regulations. They shall confine themselves to implementing procedures. Each agency shall consult with the Council while developing its procedures and before publishing them in the FEDERAL REGISTER for comment. Agencies with similar programs should consult with each other and the Council to coordinate their procedures, especially for programs requesting similar information from applicants. The procedures shall be adopted only after an opportunity for public review and after review by the Council for conformity with the Act and these regulations. The Council shall complete its review within 30 days. Once in effect they shall be filed with the Council and made readily available to the public. Agencies are encouraged to publish explanatory guidance for these regulations and their own procedures. Agencies shall continue to review their policies and procedures and in consultation with the Council to revise them as necessary to ensure full compliance with the purposes and provisions of the Act.

(b) Agency procedures shall comply with these regulations except where compliance would be inconsistent with statutory requirements and shall include:

(1) Those procedures required by §§ 1501.2(d), 1502.9(c)(3), 1505.1, 1506.6(e), and 1508.4.

(2) Specific criteria for and identification of those typical classes of action:

(i) Which normally do require environmental impact statements.

(ii) Which normally do not require either an environmental impact statement or an environmental assessment (categorical exclusions (§ 1508.4)).

(iii) Which normally require environmental assessments but not necessarily environmental impact statements.

(c) Agency procedures may include specific criteria for providing limited exceptions to the provisions of these regulations for classified proposals. They are proposed actions which are specifically authorized under criteria established by an Executive Order or statute to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order or statute. Environmental assessments and environmental impact statements which address classified proposals may be safeguarded and restricted from public dissemination in accordance with agencies' own regulations applicable to classified information. These documents may be organized so that classified portions can be included as annexes, in order tht the unclassified portions can be made available to the public.

(d) Agency procedures may provide for periods of time other than those presented in § 1506.10 when necessary to comply with other specific statutory requirements.

(e) Agency procedures may provide that where there is a lengthy period between the agency's decision to prepare an environmental impact statement and the time of actual preparation, the notice of intent required by § 1501.7 may be published at a reasonable time in advance of preparation of the draft statement.

PART 1508—TERMINOLOGY AND INDEX

Sec.
1508.1 Terminology.
1508.2 Act.
1508.3 Affecting.
1508.4 Categorical Exclusion.
1508.5 Cooperating Agency.
1508.6 Council.
1508.7 Cumulative Impact.
1508.8 Effects.
1508.9 Environmental Assessment.
1508.10 Environmental Document.
1508.11 Environmental Impact Statement.
1508.12 Federal Agency.
1508.13 Finding of No Significant Impact.
1508.14 Human Environment.
1508.15 Jurisdiction By Law.
1508.16 Lead Agency.
1508.17 Legislation.
1508.18 Major Federal Action.
1508.19 Matter.
1508.20 Mitigation.
1508.21 NEPA Process.
1508.22 Notice of Intent.
1508.23 Proposal.
1508.24 Referring Agency.
1508.25 Scope.
1508.26 Special Expertise.
1508.27 Significantly.
1508.28 Tiering.

AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*), Section 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970, as amended by Executive Order 11991, May 24, 1977).

§ 1508.1 Terminology.

The terminology of this part shall be uniform throughout the Federal Government.

§ 1508.2 Act.

"Act" means the National Environmental Policy Act, as amended (42 U.S.C. 4321, et seq.) which is also referred to as "NEPA."

§ 1508.3 Affecting.

"Affecting" means will or may have an effect on.

§ 1508.4 Categorical exclusion.

"Categorical Exclusion" means a category of actions which do not individually or cumulatively have a significant effect on the human environment

and which have been found to have no such effect in procedures adopted by a Federal agency in implementation of these regulations (§ 1507.3) and for which, therefore, neither an environmental assessment nor an environmental impact statement is required. An agency may decide in its procedures or otherwise, to prepare environmental assessments for the reasons stated in § 1508.9 even though it is not required to do so. Any procedures under this section shall provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect.

§ 1508.5 Cooperating agency.

"Cooperating Agency" means any Federal agency other than a lead agency which has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal (or a reasonable alternative) for legislation or other major Federal action significantly affecting the quality of the human environment. The selection and responsibilities of a cooperating agency are described in § 1501.6. A State or local agency of similar qualifications or, when the effects are on a reservation, an Indian Tribe, may by agreement with the lead agency become a cooperating agency.

§ 1508.6 Council.

"Council" means the Council on Environmental Quality established by Title II of the Act.

§ 1508.7 Cumulative impact.

"Cumulative impact" is the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

§ 1508.8 Effects.

"Effects" include:

(a) Direct effects, which are caused by the action and occur at the same time and place.

(b) Indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.

Effects and impacts as used in these regulations are synonymous. Effects includes ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative. Effects may also include those resulting from actions which may have both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial.

§ 1508.9 Environmental assessment.

"Environmental Assessment":

(a) Means a concise public document for which a Federal agency is responsible that serves to:

(1) Briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact.

(2) Aid an agency's compliance with the Act when no environmental impact statement is necessary.

(3) Facilitate preparation of a statement when one is necessary.

(b) Shall include brief discussions of the need for the proposal, of alternatives as required by sec. 102(2)(E), of the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted.

§ 1508.10 Environmental document.

"Environmental document" includes the documents specified in § 1508.9 (environmental assessment), § 1508.11 (environmental impact statement), § 1508.13 (finding of no significant impact), and § 1508.22 (notice of intent).

§ 1508.11 Environmental impact statement.

"Environmental Impact Statement" means a detailed written statement as required by Sec. 102(2)(C) of the Act.

§ 1508.12 Federal agency.

"Federal agency" means all agencies of the Federal Government. It does not mean the Congress, the Judiciary, or the President, including the performance of staff functions for the President in his Executive Office. It also includes for purposes of these regulations States and units of general local government and Indian tribes assuming NEPA responsibilities under section 104(h) of the Housing and Community Development Act of 1974.

§ 1508.13 Finding of no significant impact.

"Finding of No Significant Impact" means a document by a Federal agency briefly presenting the reasons why an action, not otherwise excluded (§ 1508.4), will not have a significant effect on the human environment and for which an environmental impact statement therefore will not be prepared. It shall include the environmental assessment or a summary of it and shall note any other environmental documents related to it (§ 1501.7(a)(5)). If the assessment is included, the finding need not repeat any of the discussion in the assessment but may incorporate it by reference.

§ 1508.14 Human Environment.

"Human Environment" shall be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment. (See the definition of "effects" (§ 1508.8).) This means that economic or social effects are not intended by themselves to require preparation of an environmental impact statement. When an environmental impact statement is prepared and economic or social and natural or physical environmental effects are interrelated, then the environmental impact statement will discuss all of these effects on the human environment.

§ 1508.15 Jurisdiction By Law.

"Jurisdiction by law" means agency authority to approve, veto, or finance all or part of the proposal.

§ 1508.16 Lead agency.

"Lead Agency" means the agency or agencies preparing or having taken primary responsibility for preparing the environmental impact statement.

§ 1508.17 Legislation.

"Legislation" includes a bill or legislative proposal to Congress developed by or with the significant cooperation and support of a Federal agency, but does not include requests for appropriations. The test for significant cooperation is whether the proposal is in fact predominantly that of the agency rather than another source. Drafting does not by itself constitute significant cooperation. Proposals for legislation include requests for ratification of treaties. Only the agency which has primary responsibility for the subject matter involved will prepare a legislative environmental impact statement.

§ 1508.18 Major Federal action.

"Major Federal action" includes actions with effects that may be major and which are potentially subject to Federal control and responsibility. Major reinforces but does not have a meaning independent of significantly (§ 1508.27). Actions include the circumstance where the responsible officials fail to act and that failure to act is reviewable by courts or administrative tribunals under the Administrative Procedure Act or other applicable law as agency action.

(a) Actions include new and continuing activities, including projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by federal agencies; new or revised agency rules, regulations, plans, policies, or procedures; and legislative proposals (§§ 1506.8, 1508.17). Actions do not include funding assistance solely in the form of general revenue sharing funds, distributed under the State and Local Fiscal Assistance Act of 1972, 31 U.S.C. 1221 et seq., with no Federal agency control over the subsequent use of such funds. Actions do not include bringing judicial or administrative civil or criminal enforcement actions.

(b) Federal actions tend to fall within one of the following categories:

(1) Adoption of official policy, such as rules, regulations, and interpretations adopted pursuant to the Administrative Procedure Act, 5 U.S.C. 551 et seq.; treaties and international conventions or agreements; formal documents establishing an agency's policies which will result in or substantially alter agency programs.

(2) Adoption of formal plans, such as official documents prepared or approved by federal agencies which guide or prescribe alternative uses of federal resources, upon which future agency actions will be based.

(3) Adoption of programs, such as a group of concerted actions to implement a specific policy or plan; systematic and connected agency decisions allocating agency resources to implement a specific statutory program or executive directive.

(4) Approval of specific projects, such as construction or management activities located in a defined geographic area. Projects include actions approved by permit or other regulatory decision as well as federal and federally assisted activities.

§ 1508.19 Matter.

"Matter" includes for purposes of Part 1504:

(a) With respect to the Environmental Protection Agency, any proposed legislation, project, action or regulation as those terms are used in Section 309(a) of the Clean Air Act (42 U.S.C. 7609).

(b) With respect to all other agencies, any proposed major federal action to which section 102(2)(C) of NEPA applies.

§ 1508.20 Mitigation.

"Mitigation" includes:

(a) Avoiding the impact altogether by not taking a certain action or parts of an action.

(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.

(c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.

(d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.

(e) Compensating for the impact by replacing or providing substitute resources or environments.

§ 1508.21 NEPA process.

"NEPA process" means all measures necessary for compliance with the requirements of Section 2 and Title I of NEPA.

§ 1508.22 Notice of intent.

"Notice of Intent" means a notice that an environmental impact statement will be prepared and considered. The notice shall briefly:

(a) Describe the proposed action and possible alternatives.

(b) Describe the agency's proposed scoping process including whether, when, and where any scoping meeting will be held.

(c) State the name and address of a person within the agency who can answer questions about the proposed action and the environmental impact statement.

§ 1508.23 Proposal.

"Proposal" exists at that stage in the development of an action when an agency subject to the Act has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal and the effects can be meaningfully evaluated. Preparation of an environmental impact statement on a proposal should be timed (§ 1502.5) so that the final statement may be completed in time for the statement to be included in any recommendation or report on the proposal. A proposal may exist in fact as well as by agency declaration that one exists.

§ 1508.24 Referring agency.

"Referring agency" means the federal agency which has referred any matter to the Council after a determination that the matter is unsatisfactory from the standpoint of public health or welfare or environmental quality.

§ 1508.25 Scope.

Scope consists of the range of actions, alternatives, and impacts to be considered in an environmental impact statement. The scope of an individual statement may depend on its relationships to other statements (§§1502.20 and 1508.28). To determine the scope of environmental impact statements, agencies shall consider 3 types of actions, 3 types of alternatives, and 3 types of impacts. They include:

(a) Actions (other than unconnected single actions) which may be:

(1) Connected actions, which means that they are closely related and therefore should be discussed in the same impact statement. Actions are connected if they:

(i) Automatically trigger other actions which may require environmental impact statements.

(ii) Cannot or will not proceed unless other actions are taken previously or simultaneously.

(iii) Are interdependent parts of a larger action and depend on the larger action for their justification.

(2) Cumulative actions, which when viewed with other proposed actions have cumulatively significant impacts and should therefore be discussed in the same impact statement.

(3) Similar actions, which when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental consequencies together, such as common timing or geography. An agency may wish to analyze these actions in the same impact statement. It should do so when the best way to assess adequately the combined impacts of similar actions or reasonable alternatives to such actions is to treat them in a single impact statement.

(b) Alternatives, which include: (1) No action alternative. (2) Other reasonable courses of actions. (3) Mitigation measures (not in the proposed action).

(c) Impacts, which may be: (1) Direct. (2) Indirect. (3) Cumulative.

§ 1508.26 Special expertise.

"Special expertise" means statutory responsibility, agency mission, or related program experience.

§ 1508.27 Significantly.

"Significantly" as used in NEPA requires considerations of both context and intensity:

(a) *Context.* This means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. Significant varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend upon the effects in the locale rather than in the world as a whole. Both short- and long-term effects are relevant.

(b) *Intensity.* This refers to the severity of impact. Responsible officials must bear in mind that more than one agency may make decisions about partial aspects of a major action. The following should be considered in evaluating intensity:

(1) Impacts that may be both beneficial and adverse. A significant effect

may exist even if the Federal agency believes that on balance the effect will be beneficial.

(2) The degree to which the proposed action affects public health or safety.

(3) Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.

(4) The degree to which the effects on the quality of the human environment are likely to be highly controversial.

(5) The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.

(6) The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.

(7) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.

(8) The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.

(9) The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.

(10) Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.

§ 1508.28 Tiering.

"Tiering" refers to the coverage of general matters in broader environmental impact statements (such as national program or policy statements) with subsequent narrower statements or environmental analyses (such as regional or basinwide program statements or ultimately site-specific statements) incorporating by reference the general discussions and concentrating solely on the issues specific to the statement subsequently prepared. Tiering is appropriate when the sequence of statements or analyses is:

(a) From a program, plan, or policy environmental impact statement to a program, plan, or policy statement or analysis of lesser scope or to a site-specific statement or analysis.

(b) From an environmental impact statement on a specific action at an early stage (such as need and site selection) to a supplement (which is preferred) or a subsequent statement or analysis at a later stage (such as environmental mitigation). Tiering in such cases is appropriate when it helps the lead agency to focus on the issues which are ripe for decision and exclude from consideration issues already decided or not yet ripe.

INDEX

Act	1508.2
Action	1508.18, 1508.25
Action-forcing	1500.1, 1502.1
Adoption	1500.4(n), 1500.5(h), 1506.3
Affected Environment	1502.10(f), 1502.15
Affecting	1502.3, 1508.3
Agency Authority	1500.6
Agency Capability	1501.2(a), 1507.2
Agency Compliance	1507.1
Agency Procedures	1505.1, 1507.3
Agency Responsibility	1506.5
Alternatives	1501.2(c), 1502.2, 1502.10(e), 1502.14, 1505.1(e), 1505.2, 1507.2(d), 1508.25(b)
Appendices	1502.10(k), 1502.18, 1502.24
Applicant	1501.2(d)(1), 1501.4(b), 1501.8(a), 1502.19(b), 1503.1(a)(3), 1504.3(e), 1506.1(d), 1506.5(a), 1506.5(b)
Apply NEPA Early in the Process.	1501.2
Categorical Exclusion	1500.4(p), 1500.5(k), 1501.4(a), 1507.3(b), 1508.4
Circulating of Environmental Impact Statement.	1502.19, 1506.3
Classified Information	1507.3(c)
Clean Air Act	1504.1, 1508.19(a)
Combining Documents	1500.4(o), 1500.5(i), 1506.4
Commenting	1502.19, 1503.1, 1503.2, 1503.3, 1503.4, 1506.6(f)
Consultation Requirement.	1500.4(k), 1500.5(g), 1501.7(a)(6), 1502.25
Context	1508.27(a)
Cooperating Agency	1500.5(b), 1501.1(b), 1501.5(c), 1501.5(f), 1501.6, 1503.1(a)(1), 1503.2, 1503.3, 1506.3(c), 1506.5(a), 1508.5
Cost-Benefit	1502.23
Council on Environmental Quality.	1500.3, 1501.5(e), 1501.5(f), 1501.6(c), 1502.9(c)(4), 1504.1, 1504.2, 1504.3, 1506.6(f), 1506.9, 1506.10(e), 1506.11, 1507.3, 1508.6, 1508.24
Cover Sheet	1502.10(a), 1502.11
Cumulative Impact	1508.7, 1508.25(a), 1508.25(c)
Decisionmaking	1505.1, 1506.1
Decision points	1505.1(b)
Dependent	1508.25(a)
Draft Environmental Impact Statement.	1502.9(a)
Early Application of NEPA.	1501.2
Economic Effects	1508.8
Effective Date	1506.12
Effects	1502.16, 1508.8
Emergencies	1506.11
Endangered Species Act	1502.25, 1508.27(b)(9)
Energy	1502.16(e)
Environmental Assessment.	1501.3, 1501.4(b), 1501.4(c), 1501.7(b)(3), 1506.2(b)(4), 1506.5(b), 1508.4, 1508.9, 1508.10, 1508.13
Environmental Consequences.	1502.10(g), 1502.16
Environmental Consultation Requirements.	1500.4(k), 1500.5(g), 1501.7(a)(6), 1502.25, 1503.3(c)
Environmental Documents.	1508.10
Environmental Impact Statement.	1500.4, 1501.4(c), 1501.7, 1501.3, 1502.1, 1502.2, 1502.3, 1502.4, 1502.5, 1502.6, 1502.7, 1502.8, 1502.9, 1502.10, 1502.11, 1502.12, 1502.13, 1502.14, 1502.15, 1502.16, 1502.17, 1502.18, 1502.19, 1502.20, 1502.21, 1502.22, 1502.23, 1502.24, 1502.25, 1506.2(b)(4), 1506.3, 1506.8, 1508.11
Environmental Protection Agency.	1502.11(f), 1504.1, 1504.3, 1506.7(c), 1506.9, 1506.10, 1508.19(a)
Environmental Review Requirements.	1500.4(k), 1500.5(g), 1501.7(a)(6), 1502.25 1503.3(c)
Expediter	1501.8(b)(2)
Federal Agency	1508.12
Filing	1506.9
Final Environmental Impact Statement.	1502.9(b), 1503.1, 1503.4(b)
Finding of No Significant Impact.	1500.3, 1500.4(q), 1500.5(1), 1501.4(e), 1508.13
Fish and Wildlife Coordination Act.	1502.25
Format for Environmental Impact Statement.	1502 10
Freedom of Information Act.	1506.6(f)
Further Guidance	1506.7
Generic	1502.4(c)(2)
General Services Administration.	1506.8(b)(5)
Geographic	1502.4(c)(1)
Graphics	1502.8
Handbook	1506.7(a)
Housing and Community Development Act.	1506.12, 1508.12
Human Environment	1502.3, 1502.22, 1508.14
Impacts	1508.8, 1508.25(c)
Implementing the Decision.	1505.3
Incomplete or Unavailable Information.	1502.22
Incorporation by Reference.	1500.4(j), 1502.21
Index	1502.10(j)
Indian Tribes	1501.2(d)(2), 1501.7(a)(1), 1502.15(c), 1503.1(a)(2)(ii), 1506.6(b)(3)(ii), 1508.5, 1508.12
Intensity	1508.27(b)
Interdisciplinary Preparation.	1502.6, 1502.17
Interim Actions	1506.1
Joint Lead Agency	1501.5(b), 1506.2
Judicial Review	1500.3
Jurisdication by Law	1508.15
Lead Agency	1500.5(c), 1501.1(c), 1501.5, 1501.6, 1501.7, 1501.8, 1504.3, 1506.2(b)(4), 1506.8(a), 1506.10(c), 1508.16
Legislation	1500.5(j), 1502.3, 1506.8, 1508.17, 1508.18(a)
Limitation on Action During NEPA Process.	1506.1
List of Preparers	1502.10(h), 1502.17
Local or State	1500.4(n), 1500.5(h), 1501.2(d)(2), 1501.5(b), 1501.5(d), 1501.7(a)(1), 1501.8(c), 1502.16(c), 1503.1(a)(2), 1506.2(b), 1506.6(b)(3), 1508.5, 1508.12, 1508.18
Major Federal Action	1502.3, 1508.18
Mandate	1500.3
Matter	1504.1, 1504.2, 1504.3, 1508.19

INDEX—Continued

Methodology	1502.24
Mitigation	1502.14(h), 1502.16(h), 1503.3(d), 1505.2(c), 1505.3, 1508.20
Monitoring	1505.2(c), 1505.3
National Historic Preservation Act.	1502.25
National Register of Historical Places.	1508.27(b)(8)
Natural or Depletable Resource Requirements.	1502.16(f)
Need for Action	1502.10(d), 1502.13
NEPA Process	1508.21
Non-Federal Sponsor	1501.2(d)
Notice of Intent	1501.7, 1507.3(e), 1508.22
OMB Circular A-95	1503.1(a)(2)(iii), 1505.2, 1506.6(b)(3)(i)
102 Monitor	1506.6(b)(2), 1506.7(c)
Ongoing Activities	1506.12
Page Limits	1500.4(a), 1501.7(b), 1502.7
Planning	1500.5(a), 1501.2(b), 1502.4(a), 1508.18
Policy	1500.2, 1502.4(b), 1508.18(a)
Program Environmental Impact Statement.	1500.4(i), 1502.4, 1502.20, 1508.18
Programs	1502.4, 1508.18(b)
Projects	1508.18
Proposal	1502.4, 1502.5, 1506.8, 1508.23
Proposed Action	1502.10(e), 1502.14, 1506.2(c)
Public Health and Welfare.	1504.1
Public Involvement	1501.4(e), 1503.1(a)(3), 1506.6
Purpose	1500.1, 1501.1, 1502.1, 1504.1
Purpose of Action	1502.10(d), 1502.13
Record of Decision	1505.2, 1506.1
Referrals	1504.1, 1504.2, 1504.3, 1506.3(d)
Referring Agency	1504.1, 1504.2, 1504.3
Response to Comments	1503.4
Rural Electrification Administration.	1506.1(d)
Scientific Accuracy	1502.24
Scope	1502.4(a), 1502.9(a), 1508.25
Scoping	1500.4(b), 1501.1(d), 1501.4(d), 1501.7, 1502.9(a), 1506.8(a)
Significantly	1502.3, 1508.27
Similar	1508.25
Small Business Associations.	1506.6(b)(3)(vi)
Social Effects	1508.8
Special Expertise	1508.26
Specificity of Comments.	1500.4(i), 1503.3
State and Areawide Clearinghouses.	1501.4(e)(2), 1503.1(a)(2)(iii), 1506.6(b)(3)(i)
State and Local	1500.4(n), 1500.5(h), 1501.2(d)(2), 1501.5(b), 1501.5(d), 1501.7(a)(1), 1501.8(c), 1502.16(c), 1503.1(a)(2), 1506.2(b), 1506.6(b)(3), 1508.5, 1508.12, 1508.18
State and Local Fiscal Assistance Act.	1508.18(a)
Summary	1500.4(h), 1502.10(b), 1502.12
Supplements to Environmental Impact Statements.	1502.9(c)
Table of Contents	1502.10(c)
Technological Development.	1502.4(c)(3)
Terminology	1508.1
Tiering	1500.4(i), 1502.4(d), 1502.20, 1508.28
Time Limits	1500.5(e), 1501.1(e), 1501.7(b)(2), 1501.8
Timing	1502.4, 1502.5, 1506.10
Treaties	1508.17
When to Prepare an Environmental Impact Statement.	1501.3
Wild and Scenic Rivers Act.	1506.8(b)(ii)
Wilderness Act	1506.8(b)(ii)
Writing	1502.8

[FR Doc. 78-33362 Filed 11-27-78; 8:45 am]

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