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DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Parts 1822, 1823, and 1902

Loan and Grant Disbursement

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) revises its regulations to permit borrowers to establish supervised accounts with savings and loan associations, and credit unions. The current regulation provides that supervised accounts be maintained only with banks. This action is needed in order to comply with Treasury Circular 176 to permit deposits of government funds in savings and loan associations, and credit unions. The intended effect of this action is to give borrowers greater opportunity in choosing a financial institution to deposit and disburse loan fund proceeds. The supervised accounts will be used only in rare instances because FmHA field offices can request loan checks on an as needed basis. The regulation also recognizes the increase from $40,000 to $100,000 in Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, and the National Credit Union Administration coverage on deposits. Minor editorial changes are also being made.

EFFECTIVE DATE: July 14, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Phillip A. Carter, Financial Support Division, Room 4118, South Agriculture Building, 14th and Independence Avenue, SW, Washington, DC 20250. Phone: (202) 447–4871.

The Final Impact Analysis describing the options considered in developing this final rule and the impact of implementing each option is available on request from Mr. Carl O. Opstad, Chief, Directives Management Branch, Room 6346, South Agriculture Building, 14th and Independence Avenue, SW, Washington, DC 20250. Phone: (202) 447–4057.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 and has been classified "not significant." It has also been reviewed under Executive Order 12291 and determined not to be a "major rule." FmHA revised Subpart A of Part 1902, Chapter XVIII, Title 7, Code of Federal Regulations. This instruction does not directly affect any programs or projects which are subject to A–95 Clearing House review.

The Catalog of Federal Domestic Assistance numbers and titles are:

10.404 Emergency Loans
10.405 Farm Labor Housing Loans and Grants
10.406 Farm Operating Loans
10.407 Farm Ownership Loans
10.408 Grazing Association Loans
10.409 Irrigation, Drainage, and Other Soil and Water Conservation Loans
10.410 Low to Moderate Income Housing Loans (Rural Housing Loans—Section 502—Insured)
10.411 Rural Housing Site Loans (Section 523 and 524 Site Loans)
10.413 Recreation Facility Loans
10.414 Resource Conservation and Development Loans
10.415 Rural Rental Loans
10.416 Soil and Water Loans (SW Loans)
10.417 Very Low-Income Housing Repair Loans and Grants
10.418 Water and Waste Disposal Systems for Rural Communities
10.419 Watershed Protection and Flood Prevention Loans
10.420 Rural Self-Help Housing Technical Assistance (Section 523 Technical Assistance)
10.421 Indian Tribes and Tribal Corporation Loans
10.422 Business and Industrial Loans
10.423 Community Facilities Loans
10.424 Industrial Development Grants
10.425 Emergency Livestock Loans
10.426 Area Development Assistance Planning Grants (Section 111)
10.427 Rural Rental Assistance Payments
10.428 Economic Emergency Loans
10.429 Above Moderate Income Housing Loans (Guaranteed Rural Housing Loans)
10.430 Energy Impacted Area Development Assistance Program
10.431 Technical and Supervisory Assistance Grants
10.432 Biomass Energy and Alcohol Fuels Loans and Loan Guarantees

Note.—This document has been reviewed in accordance with FmHA Instruction 1901–G, "Environmental Impact Statements." It is the determination of FmHA that this final action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environment Policy Act of 1949, Pub. L. 91–190 an Environmental Impact Statement is not required.

The proposed regulation was published in the Federal Register on November 19, 1980 for public comment. Three comments were received and two changes were made as a result of these comments. Under Section 1902.3(d), a sentence was added to provide that funds deposited in a supervised bank account are to be recorded and accounted for on FmHA Form 402–2, "Statement of Deposits and Withdrawals." Also, item 7 of Exhibit A, collateral pledge memorandum, was changed from "Estimated closing date" to "Date supervised bank account to be opened." This change was made because loans to public bodies may involve the use of interim credit and the loan may not be closed until several months after the supervised bank account is opened. It was also recommended that the $100,000 amount be deleted and reference be made only to pledging collateral for funds on deposit in excess of the funds protected by the FDIC, FSLIC, and NCUA. It was felt that by doing this the forms and regulations would not have to be revised each time there was a change in the insurance coverage amount. The Agency decided not to make this change because the dollar amount for the insurance coverage would not change that often and it would be better for the field offices to actually know what the insurance coverage was at any given time. Accordingly, FmHA amends Chapter XVIII, Title 7, Code of Federal Regulations as follows:

Subchapter B—Loans and Grants Primarily for Real Estate Purposes

PART 1822—RURAL HOUSING LOANS AND GRANTS

Subpart G—Rural Housing Site Loan Policies, Procedures, and Authorizations

§ 1822.267 [Amended]

1. In § 1822.267(h)(i), line 10, change "$20,000" to "$100,000."

2. In § 1822.267(h)(i), line 14, change "in a bank which a member of the Federal Deposit Insurance Corporation" to "in accordance with Part 1902, Subpart A of this Chapter."

PART 1823—ASSOCIATION LOANS AND GRANTS—COMMUNITY FACILITIES, DEVELOPMENT, CONSERVATION, UTILIZATION

Subpart F—Loan to Timber Development Organizations

§ 1823.172 [Amended]

3. In § 1823.172(b), line 6, remove "in a bank in which deposits are covered by Federal Deposit Insurance."

4. In § 1823.172(b), line 16, change "$20,000" to "$100,000."

5. In § 1823.172(b), line 17, change "bank" to "financial institution."

Subpart H—Association Loans for Irrigation and Drainage and Other Soil and Water Conservation Measure

§ 1823.263 [Amended]

6. In § 1823.263(b), line 5, change "$20,000" to "$100,000."

Subpart I—Processing Loans to Association (Except for Domestic Water and Waste Disposal

§ 1823.272 [Amended]

7. In § 1823.272(l)(1), line 8, remove "in a bank in which deposits are covered by Federal Deposit Insurance."

8. In § 1823.272(l)(1), line 17, change "$20,000" to "$100,000" and change "bank" to "financial institution."

9. In § 1823.272(1)(7)(i), line 2, change "bank (but not in a savings and loan association)" to "financial institution."

Subpart N—Loans to Indian Tribes and Tribal Corporations

§ 1823.408 [Amended]

10. In § 1823.408(e)(1), line 5, change "$20,000" to "$100,000."

11. In § 1823.408(e)(1), line 6, change "depository bank" to "financial institution."

Exhibit B [Amended]

12. In Exhibit B, Section 5, line 6, change "in a bank which is a member of the Federal Deposit Insurance Corporation" to "in accordance with Part 1902, Subpart A of this Chapter."

13. In Exhibit B, Section 5(A), line 7, change "$20,000" to "$100,000" and change "depository bank" to "financial institution."

Subchapter H—Program Regulations

PART 1902—SUPERVISED BANK ACCOUNTS

Subpart A—Loan and Grant Disbursement

14. Subpart A of Part 1902 is revised as follows:

Chapter XVIII—Farmers Home Administration, Department of Agriculture

PART 1902—SUPERVISED BANK ACCOUNTS

Subpart A—Loan and Grant Disbursement

Subpart A—Loan and Grant Disbursement

§ 1902.1 General.

This Subpart prescribes the policies and procedures of the Farmers Home Administration (FmHA) for disbursement of funds under the Loan Disbursement System (LDS) and in establishing and using supervised bank accounts. The LDS system provides for disbursement of funds on an as needed basis to substantially reduce interest costs to FmHA borrowers, U.S. Treasury, and FmHA.

(a) Form FmHA 1940-1, "Request for Obligation of Funds," provides for: (1) obligation only, (2) obligation and check request for the full amount of the loan or grant, and (3) obligation and check request for a partial amount of the loan or grant. The instructions on when and how to use this form are contained in the Forms Manual Insert (FMI) for this form.

(b) Form FmHA 440-57, "Acknowledgment of Obligated Funds/Check Request," provides for: (1) the initial loan amount check, (2) all subsequent loan checks, (3) making corrections on the data in the loan account as reflected on the form, (4) notifying the Finance Office of the loan closing date and the loan amortization effective date, and (5) providing requested information from the Finance Office. The instructions on when and how to use this form are contained in the FMI for this form.

(c) See FmHA Instruction 102.1 (available in any FmHA office) for procedures to follow if checks are lost or destroyed.

(d) Borrowers as referred to in this Subpart include both loan and grant recipients. They are referred to as depositors in the deposit agreements hereinafter described. References herein and in deposit agreements to "other lenders" include lenders and grantors other than FmHA.

(e) Banks referred to in this Subpart are those in which deposits are insured by the Federal Deposit Insurance Corporation (FDIC).

(f) Savings and Loans referred to in this Subpart are those in which deposits are insured by the Federal Savings and Loan Insurance Corporation (FSLIC).

(g) Credit Unions referred to in this Subpart are those in which deposits are insured by the National Credit Union Administration (NCUA).

(h) Financial Institutions as referred to in this Subpart include banks, savings and loans, and credit unions which are covered by the proper insurance coverage cited in paragraphs (e), (f) and (g) of this Section.

(i) Supervised bank accounts referred to in this Subpart are bank, savings and loan, or credit union accounts established through deposit agreements entered into between either (A) the borrower, the United States of America acting through the FmHA, and the bank on Form FmHA 402-1, "Deposit

Agreement," or the savings and loan and credit union on "Deposit Agreement (Exhibit C)", or (B) the borrower, FmHA, other lenders, and the bank on Form FmHA 402-5, "Deposit Agreement (Non-FmHA Funds)", or the savings and loan and credit union on "Deposit Agreement (Non-FmHA Funds)" (Exhibit D).

(j) Form FmHA 402-1 or Exhibit C provides for the deposit of funds in a supervised bank account as security for payment of the borrower's indebtedness to secure the performance of the borrower's obligation to FmHA in connection with a loan and grant.

(k) Form FmHA 402-5 or Exhibit D will be completed when deposits of funds advanced by other lenders as security for payments of the indebtedness to them and to assure the performance of the borrower's obligation to them in connection with a loan and grant are made in a separate supervised bank account.

(l) "Interest-Bearing Deposit Agreement" (Exhibit B), provides for the deposit of loan or grant funds that are not required for immediate disbursement in specified interest-bearing deposits, and it is executed in conjunction with Form FmHA 402-1 or Form FmHA 402-5.

§ 1902.2 Policies concerning disbursement of funds.

(a) The partial advance feature of the LDS will be utilized whenever possible in accordance with the specific program procedures, except where prohibited by State statutes. The capability to request Treasury checks on an as needed basis reduces the need for supervised bank accounts. *Therefore, supervised bank accounts will be used only in rare instances, e.g.:*

(1) When a construction loan is made and the construction is substantially completed, but a small amount is being withheld pending completion of landscaping or some similar item, or a small loan closing. In this case, the amount of funds not disbursed when the predetermined amortization effective date occurs may be placed in a supervised bank account for future disbursement as appropriate.

(2) When a large number of checks will be issued in the construction of a dwelling or other development, as for example under the "borrower method" of construction or in Operating (OL) loans and Emergency (EM) loans. In such cases, installment checks will continue to be requested from the Finance Office as necessary and deposited in a supervised bank account and disbursed to suppliers, sub-contractors, etc. as necessary. When the construction process requires several checks to be issued at one time the LDS system can still be utilized. Those District and County Offices authorized to request checks by telephone may request more than one check at a time. If more than one check is required, a Form FmHA 440-57 will be prepared for each check.

(3) Association loan and grant funds made on a multiple advance basis need not be deposited in a supervised bank account unless required by State statutes or otherwise determined necessary by the Loan Approval Official.

(4) Supervised bank accounts will be used only when necessary to assure the correct expenditures of all or a part of loan and grant funds, borrower contributions, and borrower income. Such accounts will be limited in amount and duration to the extent feasible through the prudent disbursement of funds and the prompt termination of the interests of FmHA and other lenders when the accounts are no longer required.

(5) Income from the sale of security property of Economic Opportunity (EO) property or the proceeds from insurance on such property will be deposited in a supervised bank account under Form FmHA 402-1 or Exhibit C when the District Director or County Supervisor determines it is necessary to do so to assure that the funds will be available for replacement of the property.

(6) When a borrower has a clearly demonstrated inability to handle financial affairs, all or part of the income or other funds may be deposited in the supervised bank account under the appropriate Deposit Agreement if the District Director or County Supervisor determines that such an arrangement is necessary to provide guidance in major financial management practices essential to the borrower's success, subject to the following requirements:

(i) This supervisory technique will be used for a temporary period to help the borrower learn to properly manage financial affairs. Such a period will not exceed one year unless extended by the District Director; and

(ii) The borrower is agreeable to such an arrangement.

(7) In exceptional cases when the unincorporated EO cooperative or grazing association borrower cannot obtain a position fidelity bond, its income may be deposited as provided for in § 1902.6 (and § 1902.2(f) of this Subpart if another lender is involved).

(b) For all construction loans, and those loans to be advanced in increments, only the actual amount to be disbursed at loan closing will be requested either through the initial submission of Form FmHA 1940-1 or through Form FmHA 440-57. Subsequent checks will be ordered as needed by submitting Form FmHA 440-57 to the Finance Office.

(c) Program instructions provide information as to the type of note to be utilized and the method of handling advances and the interest accrued thereon. For individual loan programs, interest will accrue from the loan closing date or date of check whichever is later. For association and organization type loans interest will accrue from the date the check is delivered to the borrower.

(d) For all loan accounts, when the total amount has not been advanced at the amortization effective date, as defined in the FMI for Form FmHA 1940-1, the Finance Office will forward the remaining balance to the District Director or County Supervisor for appropriate action, unless the District Director or County Supervisor notifies the Finance Office of other arrangements.

(e) When a check cannot be negotiated within 20 working days from the date of the check, the District Director or County Supervisor will return the check(s) with Form FmHA 440-10, "Cancellation of Loan or Grant Check and/or Obligation," in accordance with FmHA Instruction 102.1 (available in any FmHA Office).

(f) Funds provided to an FmHA borrower by another lender (through subordination agreements by the FmHA or under other arrangements between the borrower, FmHA, and the other lender) that are not used immediately after the loan and grant closing will be deposited in a supervised bank account under Form FmHA 402-5 or Exhibit D, provided:

(1) The District Director or County Supervisor determines such action is necessary to protect FmHA's interest and to assure that the funds will be used for the purposes planned,

(2) The other lender is unwilling to control the use of such funds, and

(3) The other lender is agreeable to the use of the FmHA supervised bank account.

(g) The debt instruments executed at the time of loan closing constitute an obligation on the part of the Government to disburse all funds at one time or in multiple advances provided the funds are for purposes authorized by the Government at the time of loan closing. This obligatory commitment takes priority over any intervening liens or advances by other creditors regardless of the provisions of the State laws involved.

§ 1902.3 Procedures to follow in fund disbursement.

(a) The District Director or County Supervisor will determine during loan approval the amount(s) of loan check(s)—full or partial—and forward such request to the Finance Office by complying with the FMI for Forms FmHA 1940-1 and FmHA 440-57.

(b) Counties using the telephone to request subsequent advances will call the designated telephone number provided by the Finance Office and request all subsequent checks by providing the information required on Form FmHA 440-57.

(c) When check(s) are delivered to the District or County Office, the District Director or County Supervisor will make sure that the name of the borrower and the amount(s) of check(s) coincide with the request on file. The District Director or County Supervisor should be sure that the check is properly endorsed to insure payment to the intended recipient. Examples of such restrictive endorsements are:

(1) "For Deposit Only to Account No. (Number of Construction Account) of (*Name of Borrower*) in (*Name of Bank*)."

(2) "Pay to the order of (3rd party payee)"—(Contractor, Developer, Sub-Contractor, Building Supply House, etc.) for the purpose of ———.

(d) When necessary and only under the circumstances listed in § 1902.2 the District Director or County Supervisor will establish, or cause to be established, a supervised bank account. Funds deposited in a supervised bank account are to be recorded and accounted for on Form FmHA 402.2, "Statement of Deposits and Withdrawals."

§ 1902.4-1902.5 [Reserved]

§ 1902.6 Establishing supervised bank accounts.

(a) Each borrower will be given an opportunity to choose the financial institution in which the supervised bank account will be established, provided the bank is a member of the FDIC, the savings and loan is a member of the FSLIC, and the credit union is a member of the NCUA.

(b) When accounts are established, it should be determined that:

(1) The financial institution is fully informed concerning the provisions of the applicable deposit agreement,

(2) Agreements are reach with respect to the services to be provided by the financial institution including the frequency and method of transmittal of checking account statements, and

(3) Agreement is reached with the financial institution regarding the place where the counter-signature will be on checks.

(c) When possible, District Directors or County Supervisors will make arrangements with financial institutions to waive service charges in connection with supervised bank accounts. However, there is no objection to the payment by the borrower of a reasonable charge for such service.

(d) If the amount of Community Facility, Water and Waste Disposal, Grazing Association, Irrigation and Drainage, Indian Land Acquisition, Watershed (WS), Organizational Rural Rental Housing (RRH), Resource Conservation and Development (RCD), EO loans to a Cooperative Association, Rural Cooperative Housing (RCH), or Organizational Labor Housing (LH) loan funds, and grant funds plus any borrower contributions and funds from other sources to be deposited in the supervised bank account will exceed $100,000 the financial institution will be required to pledge collateral for the excess over $100,000 before the deposit is made (see § 1902.7). In addition, a pledge of collateral may be required for other types of loans or grants in amounts in excess of the State Director's approval authority when determined necessary by the National Office on an individual case basis.

(e) Only one supervised bank account will be established for any borrower regardless of the amount or source of funds, except for RRH loans where separate accounts will be established for each project.

(f) When a supervised bank account is established, an original and two copies of the applicable Deposit Agreement and the Interest-Bearing Deposit Agreement (Exhibit B), when applicable, will be executed by the borrower, the financial institution, and a District or County Office employee. The original will be retained in the borrower's case file, one executed copy will be delivered to the financial institution and one executed copy to the borrower. An extra copy of the Interest-Bearing Deposit Agreement, when applicable, will be prepared and attached to the certificate, passbook, or other evidence of deposit representing the interest-bearing deposit.

(1) If an agreement on the applicable Deposit Agreement has previously been executed and Form FmHA 402-6, "Termination of Interest in Supervised Bank Account," has not been executed with respect to it, a new agreement is not required when additional funds are to be deposited unless requested by the financial institution.

(2) When the note and security instrument are signed by two joint borrowers or by both husband and wife, a joint survivorship supervised bank account will be established from which either can withdraw funds if State laws permit such accounts. In such cases both parties will sign the Deposit Agreement(s).

§ 1902.7 Pledging collateral for deposit of funds in supervised bank accounts.

(a) Funds in excess of $100,000 for borrowers referred to in § 1902.6(d), deposited in supervised bank accounts, must be secured by pledging acceptable collateral with the Federal Reserve Bank in an amount not less than the excess.

(b) As soon as it is determined that the loan will be approved and the applicant has selected or tentatively selected a financial institution for the supervised bank account, the District Director or County Supervisor will contact the financial institution to determine:

(1) That the financial institution selected is insured by the FDIC (banks), FSLIC (savings and loans), or NCUA (credit unions).

(2) Whether the financial institution is willing to pledge collateral with the Federal Reserve Bank under Treasury Circular No. 176 to the extent necessary to secure the amount of funds being deposited in excess of $100,000.

(3) If the financial institution is not a member of the Federal Reserve System it will be necessary for that financial institution to pledge the securities with a correspondent bank who is a member of the System. The correspondent bank should contact the Federal Reserve Bank informing them they are holding securities pledged for the supervised bank account under Treasury Circular 176.

(c) If the financial institution is agreeable to pledging collateral, the District Director or County Supervisor should complete a form letter (Exhibit A) in an original and two copies, the original for the National Office, the first copy for the State Office, and the second copy for the District or County Office. The form letter should be forwarded to the National Office at least 30 days before the date of loan closing.

(d) The National Office will arrange for the Treasury Department to have the financial institution designated as a depository, unless already designated, and to have collateral pledged.

(e) If, two days before loan closing, the State Director has not received a copy of the Treasury Department's letter to the financial institution confirming that the pledge of collateral has been made, contact should be made with the depository bank to ascertain whether they have pledged collateral with their local Federal Reserve Bank in compliance with the provisions of Treasury Circular 176. If the bank has accomplished the pledge then contact the National Office, Financial Support Division.

(f) When the amount of the deposit in the supervised bank account has been reduced to a point where the financial institution desires part, or all of its collateral released, it should write to the Treasury Department, Domestic Banking Staff, Bureau of Government Operations, Washington, D.C. 20226, (Attention: Collateral and Reports Branch) requesting the release and stating the balance in the supervised bank account.

§ 1902.8 Authority to establish supervised bank accounts, deposit loan checks and other funds, countersign checks, close accounts, and execute all forms in connection with supervised bank account transactions.

District Directors or County Supervisors are authorized to establish supervised bank accounts, deposit loan checks and other funds, countersign checks, close accounts, and execute all forms in connection with supervised bank account transactions and redelegate this authority to a person listed in Exhibit B of FmHA Instruction 1951-B, under their supervision who are considered capable of exercising such authority. State Directors will make written demand upon the bank for withdrawals as outlined in § 1902.16.

§ 1902.9 Deposits.

(a) *Deposit by FmHA personnel.*

(1) Checks made payable solely to the Federal Government, or any agency thereof, and a joint check when the Treasurer of the United States is a joint payee, may not be deposited in a supervised bank account.

(2) FmHA personnel will accept funds for deposit in a borrower's supervised bank account only in the form of a check or money order endorsed by the borrower "For Deposit Only," or a check drawn to the order of the financial institution in which the funds are to be deposited, or a loan check drawn on the U.S. Treasury.

(i) A joint check that is payable to the borrower and FmHA will be endorsed by the District Director or County Supervisor as provided in section 1951.57(e) of this Chapter.

(ii) Ordinarily, when deposits are made from funds which are received as the result of consent or subordination agreements or assignments of income, the check should be drawn to the order of the financial institution in which the supervised bank account is established or jointly to the order of the borrower and the FmHA. All such checks should be delivered or mailed to the District or County Office.

(3) If direct or insured loan funds (other than OL or EM, loan funds) or borrower contributions are to be deposited in a supervised bank account, such funds will be deposited on the date of loan closing *after it has been determined that the loan can be closed.* However, if it is impossible to deposit the funds on the day the loan is closed due to reasons such as distance from the financial institution or banking hours, the funds will be deposited on the first banking day following the date of loan closing.

(4) Grant funds will be deposited when such funds are delivered.

(5) When funds from any source are deposited by FmHA personnel in a supervised bank account, a deposit slip will be prepared in an original and two copies and distribution as follows: Original to the financial institution, one copy to the borrower, and one copy for the borrower's case folder. The names of the borrower, the sources of funds, and "Subject to FmHA Countersignature," and if applicable, the account number will be entered on each deposit slip.

(6) A loan or grant check drawn on the U.S. Treasury may be deposited in a supervised bank account without endorsement by the borrower when it will facilitate delivery of the check and is acceptable to the financial institution. The borrower will be notified immediately of any deposit made and will be furnished a copy of the deposit slip. When a deposit of this nature is made, the following endorsement will be used:

For deposit only in the supervised bank account of *(name of borrower)* in the *(name of financial institution and address when necessary for identification)* pursuant to Deposit Agreement dated ———.

(7) Accounts established through the use of Interest-Bearing Deposit Agreement will be in the name of the depositor and the Government.

(b) *Deposits by borrowers.* Funds in any form may be deposited in the supervised bank account by the borrower if authorized by FmHA provided the financial institution has agreed that when a deposit in made to the account by other than FmHA personnel, the financial institution will promptly deliver or mail a copy of the deposit slip to the FmHA District or County Office.

(1) A loan or grant check drawn on the U.S. Treasury may be deposited in a supervised bank account by a borrower, provided the following endorsement is used and is inserted thereon prior to delivery to the borrower for signature:

For deposit only in my supervised bank account in the *(name of financial institution and address when necessary for identification)* pursuant to Deposit Agreement dated ———.

(2) Funds other than loan or grant funds may be deposited by the borrower in those exceptional instances where an agreement is reached between the District Director or County Supervisor and the borrower, whereby the borrower will make deposits of income from any source directly into the supervised bank account. In such instances the borrower will be instructed to prepare the deposit slip in the manner described in § 1902.9 (a)(5).

§ 1902.10 Withdrawal

(a) The District Director or County Supervisor will not countersign checks on the supervised bank account for the use of funds unless the funds deposited by the borrower from other sources were cash deposits, or checks which the District Director or County Supervisor knows to be good, or until the deposit checks have cleared.

(b) Withdrawals of funds deposited under the applicable deposit agreement are permitted only by order of the borrower and countersignature of authorized FmHA personnel, or upon written demand on the financial institution by the State Director.

(c) Upon withdrawal or maturity of interest-bearing accounts established through the use of an Interest-Bearing Deposit Agreement, such funds will be credited to the supervised bank account established through the use of Form FmHA 402-1 or Form FmHA 402-5.

(d) The issuance of checks on the supervised bank account will be kept to the minimum possible without defeating the purpose of such accounts. When major items of capital goods are being purchased, or a limited number of relatively costly items of operating expenses are being paid, or when debts are being refinanced, the checks will be drawn to the vendors or creditors. If minor capital items are being purchased or numerous items of operating and family living expenses are involved as in connection with a monthly budget, a check may be drawn to the borrower to provide the funds to meet such costs.

(1) A check will be issued payable to the appropriate payee but will never be issued to "cash." The purpose of the expenditure will be clearly shown on Form FmHA 402-2 and indicated on the fact of the check. When checks are drawn in favor of the borrower to cover items too numerous to identify, the

expenditure will be identified on the check, as "miscellaneous."

(2) Normally, OL and EM loan funds will not be withdrawn from the supervised bank account until the lien search has been made and a determination reached that the required security has been obtained. This applies also to withdrawal of funds in secured individual loan cases. However, in those instances when the applicant is unable to pay for the lien search and filing fees from personal funds, a check for this purpose may be drawn on the supervised bank account to meet these loan making requirements.

(3) Ordinarily, a check will be countersigned before it is delivered to the payee. However, in justifiable circumstances such as when excessive travel on the part of the borrower, District Director of County Supervisor would be involved, or purchase would be prevented, and the borrower can be relied upon to select goods and services in accordance with the plans, a check may be delivered to the payee by the borrower before being countersigned.

(i) When a check is to be delivered to the payee before being countersigned, the District Director or County Supervisor must make it clear to the borrower and to the payee, if possible, that the check will be countersigned only if the quantity and quality of items purchased are in accordance with approved plans.

(ii) Checks delivered to the payee before countersignature will bear the following legend in addition to the legend for countersignature: "Valid only upon countersignature of Farmers Home Administration."

(iii) The check must be presented by the payee or a representative to the District or County Office of the FmHA servicing the account for the required countersignature.

(iv) Such check must be accompanied by a bill of sale, invoice, or receipt signed by the borrower identifying the nature and cost of goods or services purchased or similar information must be indicated on the check.

(4) For real estate loans or grants, whether the check is delivered to the payee before or after countersignature, the number, and date of the check will be inserted on all bills of sale, invoices, receipts, and itemized statements for materials, equipment, and services.

(5) Bills of sale, and so forth, may be returned to the borrower with the canceled check for the payment of the bill.

(6) Checks to be drawn on a supervised bank account will bear the legend:

Countersigned, not as co-maker or endorser.

(Title)

Farmers Home Administration

§ 1902.11 District and County Office records.

A record of funds deposited in a supervised bank account will be maintained on Form FmHA 402-2 in accordance with the FMI and Exhibit A of FmHA Instruction 2033-A, available in any FmHA office. The record of funds provided for operating purposes by another creditor or grantor will be on a separate Form FmHA 402-2 so that they can be clearly identified.

§ 1902.12-1902.13 [Reserved]

§ 1902.14 Reconciliation of accounts.

(a) A checking account statement will be obtained periodically in accordance with established practices in the area. If requested by the financial institution a supply of addressed, franked envelopes will be provided for use in mailing checking account statements and cancelled checks for supervised bank accounts to the District or County Office. Checking account statements will be reconciled promptly with District or County Office records. The persons making the reconciliation will initial the record and indicate the date of the action.

(b) All checking account statements and canceled checks will be forwarded immediately to the borrower when bank statements and District or County Office records are in agreement. If a transmittal is used, Form FmHA 140-4, "Transmittal of Documents," is prescribed for that purpose.

§ 1902.15 Closing accounts.

When FmHA loan or grant funds and those of any lender have all been properly expended or withdrawn, Form FmHA 402-6 may be used to give FmHA's consent (and of another lender, if involved) to close the supervised bank account in the following situations:

(a) When FmHA loan funds in the supervised bank account of a borrower have been reduced to $100 or less, and a check for the unexpended balance has been issued to the borrower to be used for authorized purposes.

(b) For all loan accounts, except loans listed in Section 1902.6(d), after completion of authorized loan fund expenditures, and after promptly refunding any remaining unexpended loan funds on the borrower's loan account with FmHA or another lender, as appropriate.

(c) For loan and grant accounts listed in Section 1902.6(d), when the funds have been expended in accordance with the requirements of Part 1942 Subpart A and Part 1823, Subpart I (FmHA Instructions 1942-A and 442.9) the supervised bank account will be closed within 90 days following completion of development unless an extension of time is authorized in writing by the District Director. If the borrower will not agree to close the account, the District Director or County Supervisor will request the State Director to make demand upon the financial institution in accordance with § 1902.16.

(d) Promptly upon death of a borrower, except when the loan is being continued with a joint debtor, when a borrower is in default and it is determined that no further assistance will be given, or when a borrower is no longer classified as "active."

(1) *Deceased borrowers.*

(i) Ordinarily, upon notice of the death of a borrower, the District Director or the County Supervisor will request the State Director to make demand upon the bank for the balance on deposit and apply all the balance after payment of any bank charges to the borrower's FmHA indebtedness. When the State Director approves continuation with a survivor, the supervised bank account of deceased borrower may be continued with a remaining joint debtor who is liable for the loan and agrees to use the unexpended funds as planned, provided:

(A) The account is a joint survivorship supervised bank account, or

(B) If not a joint survivorship account, the financial institution will agree to permit the addition of the surviving joint debtor's name to the existing signature card and the appropriate Deposit Agreement and continue to disburse checks out of the existing account upon FmHA's countersignature and the joint debtor's signature in place of the deceased borrower, or

(C) The financial institution will permit the State Director to withdraw the balance from the existing supervised bank account with a check jointly payable to the FmHA and the surviving joint debtor and deposit the money in a new supervised bank account with a surviving joint debtor, and will disburse checks from this new account upon the signature of such survivor and the countersignature of an authorized FmHA official.

(ii) The State Director, before applying the balance remaining in the supervised bank account to the FmHA indebtedness, is authorized upon approval by the Office of the General Counsel (OGC) to refund any unobligated balances of funds from other lenders to the FmHA borrower for specific operating purposes in accordance with subordination agreements or other arrangements between the FmHA, the lender and the borrower.

(iii) The State Director, upon the recommendation of an authorized representative of the estate of the deceased borrower and the approval of the OGC, is authorized to approve the use of deposited funds for the payment of commitments for goods delivered or services performed in accordance with the deceased borrower's plans approved by FmHA.

(2) *Borrowers in default.* Whenever it is impossible or impractical to obtain a signed check from a borrower whose supervised bank account is to be closed, the District Director or County Supervisor will request the State Director to make demand upon the financial institution for the balance on deposit in the borrower's supervised bank account for application as appropriate:

(i) To the borrower's FmHA indebtedness, or

(ii) As refunds of any unobligated advance provided by other lenders which were deposited in the account, or

(iii) For the return of FmHA grant funds to the FmHA Finance Office, or

(iv) For the return of grant funds to other grantors.

(3) *Inactive borrowers.* An inactive borrower is one whose loan has not been paid in full, but is no longer classified as "active."

(4) *Paid up borrowers.* A paid-up borrower is one who has a balance remaining in the supervised bank account and has repaid the entire indebtedness to FmHA and has properly expended all funds advanced by other lenders. In such cases the District Director or County Supervisor will (i) notify the borrower in writing that the interests in the account of FmHA have been terminated, and (ii) inform the borrower of the balance remaining in the supervised bank account.

§ 1902.16 Request for withdrawals by State Director.

When the State Director is requested to make written demand upon the financial institution for the balance on deposit in the supervised bank account, or any part thereof, the request will be accompanied by the following information.

(a) Name of borrower as it appears on the applicable Deposit Agreement.

(b) Name and location of financial institution.

(c) Amount to be withdrawn for refund to another lender of any balance that may remain of funds received by the borrower from such lender as a loan or grant, or under a subordination agreement or other arrangement between the FmHA, the other lender, and the borrower.

(d) Amount to be withdrawn, excluding any service charges, for a refund of FmHA's.

(e) Other pertinent information including reasons for the withdrawal.

§§ 1902.17–1902.50 [Reserved]

Exhibit A—United States Department of Agriculture, Farmers Home Administration

Subject: Designated Financial Institution—Collateral Pledge

Date:

District Office or County Office Location: (as applicable)

Telephone No.: (indicate FTS or provide area code)

To: Administrator, FmHA; Attn: Financial Support Division, Washington, DC 20250.

1. Name of borrower or grantee (Please indicate if subsequent loan)
2. Type of loan or grant funds
3. Name and location of Financial Institution *(excluding street address)*——————

——————

Location of Branch, ——————

(If to be used for deposit of loan funds)

4. Proposed amount of FmHA: Loan $—— Grant $——
5. Amount of any other funds to be deposited in addition to amount in item 4 $——
6. Largest amount from all sources that will be on deposit at any one time $—— (Amount should include FDIC, FSLIC, or NCUA coverage of $100,000)
7. Date supervised bank account to be opened ——————
8. Name of other account(s) for which the financial institution has pledged collateral ——————. Also indicate balance of FmHA loan and/or grant funds on deposit for these accounts or any future deposits which will be above the FDIC, FSLIC or NCUA coverage.

(Signature) ——————

Exhibit B—United States Department of Agriculture, Farmers Home Administration

Interest-Bearing Deposit Agreement

Whereas, Certain funds of ——————hereinafter referred to as the "Depositor," are now on deposit with the ——————, hereinafter referred to as the "Bank," under a Deposit Agreement, dated ——————, 19—, providing for supervision thereof by the United States of America, acting through the Farmers Home Administration, hereinafter referred to as the "Government," which Deposit Agreement grants to the Government security and/or other interests in the funds covered thereby; and,

Whereas, certain of said funds are not now required for immediate disbursement and it is the desire of the Depositor to place the same in interest-bearing deposits with the Bank;

Now therefore, the Depositor and the Government hereby authorize and direct the Bank to place —— Dollars ($——) of the funds subject to said Deposit Agreement in interest-bearing deposits as follows:

$—— for a period of —— months at —— % interest

$—— for a period of —— months at —— % interest

$—— for a period of —— months at —— % interest

Said interest-bearing deposits and the income earned thereon at all times shall be considered a part of the account covered by said Deposit Agreement except that the right of the Depositor and the Government to jointly withdraw all or a portion of the funds in the account covered by the Deposit Agreement by an order of the Depositor countersigned by a representative of the Government, and the right of the Government to make written demand for the balance or any portion thereof, is modified by the above time deposit maturity schedule. The evidence of such time deposits shall be issued in the names of the Depositor and the Farmers Home Administration.

A copy of this Agreement shall be attached to and become a part of each certificate, passbook, or other evidence of deposit that may be issued to represent such interest-bearing deposits.

Executed this — day of ——.

(Depositor) ——————

United States of America

By: ——————

County Supervisor,

Farmers Home Administration,

U.S. Department of Agriculture

By: ——————

Title: ——————

Accepted on the foregoing terms and conditions this — day of ——, 19—

(Bank) ——————

(Office or Branch) ——————

By: ——————

Title: ——————

Exhibit C—United States Department of Agriculture, Farmers Home Administration

Deposit Agreement

Name(s) of Depositor(s)

Social Security or IRS Tax No.

Address (Including Zip Code) c/o Farmers Home Administration

Name and Address of Savings and Loan or Credit Union (Including Zip Code)

County of Residence

Date of Agreement Account Number (If used)

This agreement, made on the date indicated above, between the United States of America, acting through the Farmers Home Administration, herein called the "Government," the above-named Depositor(s), herein called the "Depositor" and the above named Savings and Loans or Credit Union herein called the "Depository"

Witnesseth:

In consideration of loans or other advance(s) of funds made or insured by the Government and the depositing in the Depository to the credit of the Depositor in the account established pursuant to this agreement, of moneys derived from such loans or other advance(s) of funds, of moneys otherwise obtained by the Depositor, it is agreed as follows:

1. The Depositor hereby assigns, transfers, and pledges to the Government the aforesaid account and deposit(s), heretofore or hereafter made, and conveys to the Government a security interest in all money deposited in said account, as security for the repayment of any and all indebtedness now or hereafter owing by the Depositor to or insured by the Government, and for the performance of the obligations and agreements of the Depositor in connection with such advances(s) or indebtedness.

2. No part of such deposit(s), account or money shall be withdrawn by the Depositor and no withdrawal shall be permitted by the Depository except on the order of the Depositor and the counter signature of a duly authorized representative of the Government. Provided, however, that at any time upon written demand or order by the State Director of the Farmers Home Administration the Depository shall pay over the balance then on hand, or any part thereof demanded, for application on said indebtedness or as a return of grant funds to the Government or for protection of the Government's lien or security to accomplish the purpose for which such advances were made: Provided, further, that the death, disability, or insolvency of the Depositor shall not impair the power of the State Director to demand or order such withdrawal.

3. The Depository agrees that it will not assert any right of offset, except service charges, with respect to the funds deposited pursuant to this agreement by reason of any indebtedness or claim now or hereafter owing to or acquired by it.

4. The Depository shall be under no obligation with respect to the expenditure of funds after their withdrawal from the Depository in accordance with the provisions of this agreement. Upon making payment pursuant to an order or check duly executed by the Depositor and the countersigning officer, or pursuant to the written demand or order of the said State Director, the Depository shall be discharged from all obligations with respect to the funds so released.

5. The Depository agrees that, at the end of each ——— period, it will forward statements and cancelled checks to the Farmers Home Administration office at the address shown above for review by that Agency.

In witness whereof, the parties hereto have executed this agreement as of the day and year first above written.

Depository ———

By ———

United States of America

By (Title) ———

Depositor ———

Farmers Home Administration

Depositor ———

United States Department of Agriculture

Note to Depository: Please return signed original and copy of this form, along with copy of deposit slip to the above FmHA Office address.

Exhibit D

Deposit Agreement (Non-FmHA Funds)

Name(s) of Depositor(s)

Name and Address of Savings and Loan or Credit Union (Zip Code)

County of Residence

Address of Farmers Home Administration (Zip Code)

Date of Agreement Account Number (If Used)

Name and Address of Lender (Zip Code) (Leave Blank When Lender and S&L or Credit Union are Same

This agreement, made on the date indicated above, between the United States of America, acting through the Farmers Home Administration, herein called the "Depositor," and the above-named Savings and Loan or Credit Union herein called the "Depository" and the above-named lender or grantor, herein called the "Lender."

Witnesseth:

In consideration of loans or other advance(s) of funds made or insured by the Lender and by the Government and the depositing in the Depository, to the credit of the Depositor in the account established pursuant to this agreement, of moneys derived from the loans or other advance(s) of funds by the Lender, or moneys otherwise obtained by the Depositor, it is agreed as follows:

1. The Depositor hereby assigns, transfers, and pledges to the Government as trustee for the Lender the aforesaid account and deposit(s), heretofore, or hereafter made, and conveys to the Government as trustee for the Lender a security interest in all money deposited in said account, (a) as security for the repayment of any and all indebtedness now or hereafter owing by the Depositor to or insured by the Lender and (b) for the performance of obligations and ageements of the Depositor in connection with such advance(s)

2. No part of such deposit(s), account or money shall be withdrawn by the Depositor and no withdrawal shall be permitted by the Depository except on the order of the Depositor and counter-signature of a duly authorized representative of the Government: Provided, however, that at any time upon written demand or order by the State Director of the Farmers Home Administration the Depository shall pay over the balance then on hand, or any part thereof demanded, in accordance with the demand for use for the purposes for which the advance(s) were made or for return to the Lender for application on the indebtedness or as a return of grant funds: Provided, further, that the death, disability or insolvency of the Depositor shall not impair the power of the State Director to demand or order such withdrawal.

3. The Depository agrees that it will not assert any right of offset, except service charges, with respect to the funds deposited pursuant to this agreement by reason of any indebtedness of claim now or hereafter owing to or acquired by it.

4. The Depository and the Government shall be under no obligations with respect to the expenditure of funds after their withdrawal from the Depository in accordance with the provisions of this agreement. Upon making payment pursuant to an order or check duly executed by the Depositor and the countersigning officer, or pursuant to the written demand or order of the said State Director, the Depository shall be discharged from all obligations with respect to the funds so released.

5. The Depository further agrees that, at the end of each ——— period, it will forward statements and cancelled checks to the Farmers Home Administration office at the address shown above for review by that Agency.

In witness whereof, the parties hereto have executed this agreement as of the day and year first above written.

Depository ———

By ———

United States of America

By (Official title Farmers Home Administration) ———

Omit Lender's Signature When it is the Same as the Depository

Lender ———

By (Official Title) ———

Depositor ———

Depositor ———

PART 1942—ASSOCIATION

Subpart A—Community Facility Loans

§ 1942.17 [Amended]

15. In § 1942.17(p)(3)(i), line 7, change "in a bank having Federal Deposit Insurance (F.D.I.C.) coverage" to "in accordance with Part 1902, Subpart A of this Chapter."

16. In § 1942.17(p)(3)(i), line 13, change "F.D.I.C." to "insurance."

PART 1944—HOUSING

Subpart D—Farm Labor Housing Loan and Grant Policies, Procedures, and Authorizations

§ 1944.169 [Amended]

17. In § 1944.169(g)(2), line 2, change "depositary bank" to "financial institution."

Exhibits C-E [Amended]

18. In Exhibit C, Section 4, line 8, change "$40,000" to "$100,000" and on line 9, change "depository bank" to "financial institution."

19. In Exhibit D, Section 3, line 8, change "$40,000" to "$100,000" and on line 9, change "depositary bank" to "financial institution."

20. In Exhibit E, Section 4, line 9, change "$40,000" to "$100,000" and change "depository bank" to "financial institution."

PART 1955—PROPERTY MANAGEMENT

Subpart A—Liquidation of Loans and Acquisition of Property

§ 1955.15 [Amended]

21. In § 1955.15(d)(4), line 3, change "bank" to "financial institution."

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; sec. 10 Pub. L. 93-357, 88 Stat. 392; Title II of the Emergency Agricultural Credit Adjustment Act of 1978, 92 Stat. 429; deleg. of auth. by the Sec. of Agri., 7 CFR 2.23; deleg. of auth. by the Under Sec. for Small Community and Rural Development, 7 CFR 2.70.

Dated May 29, 1981.

Dwight O. Calhoun,

Acting Administrator, Farmers Home Administration.

[FR Doc. 81-20507 Filed 7-13-81; 8:45 am]

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Food Safety and Inspection Service [1]

9 CFR Parts 307 and 310

[Docket No. 81-023I]

Cattle Post-Mortem Inspection Staffing Standards

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending the Federal meat inspection regulations on an interim basis and requesting comments on the rules prior to taking any final action in the matter. The interim rule establishes new cattle post-mortem inspection staffing standards based on adjustments to the present work measurement-based standard and sets forth certain related facility requirements for inspection. The new staffing standards will result in an increase in Agency productivity in cattle inspection with no loss of inspection effectiveness. The standards and requirements are being implemented on an interim basis without a prior proposal because of the immediate need of FSIS to achieve greater labor efficiency in order to meet its inspectional responsibilities within its mandated appropriations and personnel limitations. It is also being published for comment as a means to provide full public participation in the rulemaking process prior to promulgation of a final rule.

DATES: Interim rule effective July 14, 1981; comments must be received on or before September 14, 1981.

ADDRESS: Written comments to: Regulations Coordination Division, Attn: Annie Johnson, FSIS Hearing Clerk, Room 2637, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, D.C. 20250. (See also "Comments" under Supplementary Information.)

FOR FURTHER INFORMATION CONTACT: Dr. John Prucha, Director, Slaughter Inspection Standards and Procedures Division, Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-3219.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This action has been reviewed in conformance with Executive Order 12291 and has been classified as not a "major rule." It will not result in an annual effect on the economy or $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Effect on Small Entities

Donald L. Houston, Administrator, Food Safety and Inspection Service, has determined that this action will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act, Pub. L. 96-354 (5 U.S.C. 601) because it only slightly affects the current staffing standards at small entities where the slower line speeds are more prevalent. The existing facility requirements, although now to be specified in the regulations, have not been changed. Therefore, no significant economic impacts will ensue.

Comments

Interested persons are invited to submit written comments concerning these interim amendments. Comments must be sent in duplicate to the Regulations Coordination Division and should bear reference to the docket number located in the heading of this document. All comments submitted pursuant to this document will be made available for public inspection in the Regulations Coordination Division between 8:00 a.m. and 4:30 p.m., Monday through Friday.

Background

The Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) requires, among other things, the Secretary of Agriculture, through appointed inspectors, to carry out a post-mortem examination of the carcasses and parts of certain domestic food animals, including cattle, when they are slaughtered in an official establishment which is subject to inspection under the Act. The post-mortem inspection involves an examination by one or more trained food inspectors, under veterinary supervision, of the head, viscera (internal organs), and other parts of the carcass of each animal slaughtered, for the purpose of detecting disease or other conditions which could render the carcass or any part of the carcass unfit for human food or otherwise adulterated. In performing the examination, the inspectors follow standardized inspection procedures and initiate appropriate actions consistent with their findings. The procedures are designed to provide assurance that only wholesome, unadulterated carcasses and parts are passed for human food.

Post-mortem inspection requires a large portion of the budget of the Agency's meat and poultry inspection program. Therefore, the Agency's ongoing responsibility for efficient utilization of its resources is especially important with respect to post-mortem inspection. A failure to use the most efficient post-mortem staffing standards could result in costs to the public which are significantly higher than necessary. For reasons explained below, FSIS has determined that efficiencies are achievable in the post-mortem inspection of cattle with no loss in consumer protection.

Cattle Post-Mortem Inspection

The staffing standards currently in use for cattle were developed in the 1960's and informally distributed in January 1968. They included standards for ranges of slaughter line speeds above the highest production rate, or line speed, in operation at the time. However, as new equipment technology was developed, approved, and adopted during the 1970's, some slaughter establishments were able to increase production rates well above the highest range covered by those standards. To accommodate these higher line speeds, decisions on increased staffing assignments were made on an individual plant basis. However, this has resulted in some non-uniformity in staffing patterns in these high speed plants. Therefore, the standards have been refined and mathematically extended to cover the higher slaughter rates. The rate changes are discussed below:

1. *The 1968 Standards.* These standards were work measurement-based. The amount of time needed to

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[1] Pursuant to the reorganizational plans outlined in USDA Secretary's Memo 1030-1, issued June 19, 1981, the Food Safety and Quality Service has become the Food Safety and Inspection Service. A notice detailing the Agency's reorganization is now being drafted for later publication.

perform the post-mortem inspection varied based on the different types of cattle and the particular slaughter method used by the plant. Mature cows and bulls require a little more time to inspect than young steers and heifers because of a greater likelihood of tissue abnormalities in these animals due to the longer period of time these animals have been exposed to other animals and the environment. Inspection also required more time in plants using a bed-type kill rather than a viscera table kill method. Under the older bed-type kill, the carcass is skinned on the floor, and hung in a stationary position for inspection. The viscera is placed in a truck or cart, and the head on a stationary rack, for inspection. Under the newer viscera table kill method, the carcass is hung from a moving rail during inspection, the viscera are inspected on a mechanized, moving conveyor or table, and the head is inspected on a mechanized, moving hook. Part of the difference in the time required to do essentially the same inspection tasks is a result of the different shifts in body position that the inspector must make. Also, bed-type kills require the inspector to walk from task to task, whereas viscera table kills do not.

2. *Revisions of the Standards.* The 1968 standards have been mathematically extended in this interim rule to cover faster slaughter lines. In addition, the rates have been altered, in accord with recent work measurement developments, generally, but not always, allowing the inspectors to inspect at a faster rate. More time has been allowed for body movement in the basic work standard, slowing the inspection rate. On the other hand, the workload requirements have been more efficiently distributed (line-balancing) among the three inspection work stations, which increases the inspection rate. The net effect of these changes has resulted in a larger number of staffing rates, some of which are faster and some slower than those distributed in 1968. In addition, the staffing rates have been adjusted to reflect the differences in inspection time attributable to plants separating the tongues from the heads prior to inspection.

Work Measurement of Other Species

The inspection of other species such as swine, sheep, and calves has also been work measured. New swine inspection procedures have been developed which appear to be more efficient. Therefore, the new swine slaughter staffing standards have been prepared in coordination with these new procedures. The new swine procedures and staffing standards will soon be published in a separate document. The 1968 standards for sheep and calves have been updated, but because they do not affect the manpower in place today, there is no need for an interim rule. FSIS will address new staffing standards for them separately in a proposal at a future date.

New Inspection Methods for Cattle, Swine, and Other Species

In addition to adjusting staffing standards to make them more efficient, FSIS is committed to developing better post-mortem inspection methods for all species to reduce inspection costs wherever this can be done without lessening consumer protection. As mentioned above, a new swine procedure has been developed and appraised which will be published in the near future. A new cattle inspection procedure, which is under examination now, appears very promising in terms of future productivity improvement. However, at this point, the cattle inspection procedure must remain the same until further evaluation is completed. New inspection procedures for other species are in the planning stage.

Publication of Facilities Requirements for Inspection

Establishments in which USDA inspectors work must provide certain facilities to the inspectors, such as work stations on the line, lighting, handwashng facilities, etc. While some of these facility requirements are detailed in the regulations, others are more generally referenced. The blueprint review and approval process, when establishments apply for inspection or apply to modify existing facilities, has resulted in uniform interpretation of these general requirements. Since certain of these general facility requirements with regard to slaughter inspection are so closely related to staffing standards, they are being detailed in this interim rule as a convenience to establishments or other interested persons, and to allow for public comment. The amendments, with respect to facility requirements, make no change in the requirements currently being applied in federally inspected establishments.

Need for Interim Rule

The Agency finds that it must take the unusual action of implementing these amendments on an interim basis effective immediately in view of its own manpower shortages. Because of the need to reduce Federal spending and the resulting government-wide restrictions on hiring, the Agency must act expeditiously to make the most efficient use of its existing manpower.

Therefore, the Administrator has determined that the following changes in the regulations must be adopted as an interim final rule. The interim rule will have the effect of reducing the staffing requirement for cattle inspection by approximately 40 positions nationwide. Since the meat and poultry inspection program is already experiencing personnel shortages in many areas, it is anticipated that implementation of the interim rule will have the effect of releasing some inspectors now required for cattle post-mortem inspection so that they may be utilized for other essential inspection activities, such as staffing positions with critical shortages and new inspection positions where industry production increases. In taking this action, the Administrator is mindful that, in the current volatile economic climate, establishments are going in and out of business and expanding and contracting. FSIS must be able to react to these needs. Due to appropriation and manpower restraints imposed on the Agency, FSIS cannot meet its inspectional responsibilities, even in the short term, without this immediate revision of the 1968 cattle post-mortem inspection staffing standards and related facility requirements.

Accordingly, §§ 307.2 and 310.1 of the Federal meat inspection regulations (9 CFR 307.2 and 310.1) are amended as follows:

1. The authority citation for Parts 307 and 310 reads as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*, 601 *et seq.*, 33 U.S.C. 466–466k.

2. Section 307.2 is amended by adding a new paragraph (m) to read as follows:

§ 307.2 Other facilities and conditions to be provided by establishment.

* * * * *

(m) In addition to any facilities required to accomplish sanitary dressing procedures, the following inspection station facilities for cattle slaughter lines described in § 310.1(b) of this subchapter are required:

(1) An inspection station consisting of 5 feet of unobstructed line space for each head or carcass inspector and, for viscera table kills, 8 feet on the

inspector's side of the table for each viscera inspector.

(2) A minimum of 50 foot-candles of shadow-free lighting at the inspection surface of the head, viscera, and carcass.

(3) For each inspector, a handwash lavatory (other than one which is hand operated), furnished with soap, towels, and hot and cold water, and located adjacent to the inspector's work area. In addition, for each head and viscera inspector, a sterilizer located adjacent to the inspector's work area.

(4) For mechanized operations, a switch located adjacent to each inspection station, which can stop the chain or conveyor.

(5) Facilities to position tally sheets or other recording devices, such as digital counters, and facilities to contain condemned brands.

3. Section 310.1 of the Federal meat inspection regulations (9 CFR 310.1) is amended as follows:

The Table of Contents is amended by showing the revised § 310.1 heading, and § 310.1 is amended by changing the section heading, designating the present text as paragraph (a), and adding a new paragraph (b) to read as follows:

§ 310.1 Extent and time of post-mortem inspection; post-mortem inspection staffing standards.

* * * * *

(b)(1) The staffing standards on the basis of the number of carcasses to be inspected per hour are outlined in the following tables. Standards for multiple inspector lines are based on inspectors rotating through the different types of inspection stations during each shift to equalize the workload. The inspector in charge shall be responsible for requiring the establishment to reduce slaughter line speeds where, in his judgment, the inspection procedure cannot be adequately performed within the available time because of particular deficiencies in carcass preparation and presentation by the plant at the higher speed, or because the health condition of the particular animals indicates a need for more extensive inspection.

(2) Cattle Inspection. For all cattle staffing standards, an "a" in the "Number of Inspectors by Stations" column means that one inspector performs the entire inspection procedure and a "b" means that one inspector performs the head and lower carcass inspection and a second inspector performs the viscera and upper carcass inspection.[2]

(i) Inspection Using the Viscera Truck.

Steers and heifers

Head per hour per line	Number of inspectors by stations		
	Head	Viscera	Carcass
1-27	a	a	a
28-56	b	b	b
57-84	1	1	1
85-86	1	2	1
87-143	2	2	1

Cows and bulls

Head per hour per line	Number of inspectors by stations		
	Head	Viscera	Carcass
1-27	a	a	a
28-55	b	b	b
56-77	1	1	1
78-81	1	2	1
82-134	2	2	1

(A) Rules for determining adjusted maximum per hour per line rates for single-inspector kills considering walking distances according to the table in this subdivision: Determine the distances the inspector actually walks between the points shown in columns 2 through 14 of the following table. For each column, determine the deduction figure opposite the appropriate number of feet in column 1. Compute the total of the deduction figures for columns 2 through 14. The adjusted maximum rate is the maximum rate in paragraph (b)(2)(i) of this section minus total of the deduction figures. If the resultant number is not a whole number, it must be rounded off to the next *lowest* whole number.

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[2] The maximum "Head per Hour per Line" figures listed in paragraph (b)(2)(i) of this section for one (a) and two (b) inspector kills are overstated because the time required to walk from one inspection station to another is not included. To determine the proper adjusted maximum head per hour per line, paragraph (b)(2)(i)(A) of this section for one inspector kills or paragraph (b)(2)(i)(B) of this section for two inspector kills must be used along with their accompanying rules.

ONE INSPECTOR CATTLE KILL - VISCERA TRUCK

Table of Deductions from Maximum Rates of Kill for Each Two Feet Between Points (in Tenths of Cattle Per Hour)

1 Number of Feet Between Points	2 Head Rack and High Rail		3 Viscera and Low Rail		4 Low Rail and Head Rack		5 Head Rack and Carcass**		6 Carcass** and Wash-basin		7 Tags-Brands and Low Rail		8 Viscera and Wash-basin		9 Viscera and High Rail		10 Low Rail and High Rail		11 Head Rack and Closest Washbasin		12 Washbasin and High Rail*		13 Head Rack and Wash-basin*		14 Viscera and Tags - Brands	
	Strs. Hfrs.	Cows Bulls	Strs. Hfrs.	Cows Bulls	Strs. Hfrs.	Cows Bulls	Strs. Hfrs.	Cows Bulls	Strs. Hfrs.	Cows Bulls	Strs. Hfrs.	Cows Bulls	Strs. Hfrs.	Cows Bulls	Strs. Hfrs.	Cows Bulls	Strs. Hfrs.	Cows Bulls	Strs. Hfrs.	Cows Bulls	Strs. Hfrs.	Cows Bulls	Strs. Hfrs.	Cows Bulls	Strs. Hfrs.	Cows Bulls
1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
3	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0.1	0
5	0	0	0.1	0	0	0	0	0	0	0	0	0	0	0.1	0.1	0.1	0	0	0	0	0	0	0	0	0.2	0.1
7	0	0	0.1	0.1	0.1	0.1	0	0	0	0	0.1	0.1	0.1	0.2	0.2	0.2	0.1	0.1	0	0	0	0	0	0	0.3	0.3
9	0	0	0.2	0.1	0.1	0.1	0	0	0	0	0.1	0.1	0.1	0.3	0.3	0.3	0.1	0.1	0	0	0.1	0.1	0.1	0.1	0.4	0.4
11	0.1	0.1	0.2	0.2	0.2	0.2	0	0	0	0	0.1	0.2	0.2	0.4	0.4	0.4	0.2	0.2	0	0	0.1	0.1	0.1	0.1	0.5	0.6
13	0.1	0.1	0.3	0.2	0.2	0.2	0	0	0	0	0.2	0.2	0.2	0.5	0.5	0.5	0.2	0.2	0	0	0.1	0.1	0.1	0.1	0.6	0.7
15	0.1	0.1	0.4	0.3	0.3	0.3	0	0	0	0	0.2	0.3	0.3	0.5	0.6	0.6	0.3	0.3	0	0	0.2	0.2	0.2	0.2	0.7	0.9
17	0.1	0.1	0.4	0.3	0.3	0.3	0	0	0	0	0.3	0.3	0.3	0.6	0.7	0.7	0.3	0.3	0	0.1	0.2	0.2	0.2	0.2	0.9	1.0
19	0.1	0.1	0.5	0.4	0.4	0.4	0	0	0	0	0.3	0.4	0.4	0.7	0.8	0.8	0.4	0.4	0	0.1	0.2	0.2	0.2	0.2	1.0	1.1
21	0.2	0.2	0.5	0.4	0.4	0.4	0	0	0	0	0.3	0.4	0.4	0.8	0.9	0.8	0.4	0.4	0	0.1	0.3	0.2	0.3	0.2	1.1	1.3
23	0.2	0.2	0.6	0.5	0.5	0.5	0	0	0	0	0.4	0.5	0.5	0.9	1.0	0.9	0.5	0.5	0	0.1	0.3	0.3	0.3	0.3	1.2	1.4
25	0.2	0.2	0.7	0.5	0.5	0.5	0	0	0	0	0.4	0.5	0.5	1.0	1.1	1.0	0.5	0.5	0	0.1	0.3	0.3	0.3	0.3	1.3	1.5
27	0.2	0.2	0.7	0.5	0.6	0.5	0	0	0	0	0.4	0.5	0.6	1.1	1.2	1.1	0.6	0.6	0	0.1	0.3	0.3	0.3	0.3	1.4	1.7
29	0.2	0.2	0.8	0.6	0.6	0.6	0	0	0	0	0.5	0.6	0.6	1.2	1.3	1.2	0.6	0.6	0	0.1	0.4	0.3	0.4	0.3	1.5	1.8
31	0.3	0.2	0.8	0.6	0.7	0.6	0	0	0	0	0.5	0.6	0.7	1.3	1.3	1.4	0.7	0.7	0	0.1	0.4	0.4	0.4	0.4	1.6	1.9
33	0.3	0.3	0.9	0.7	0.7	0.7	0	0	0	0	0.6	0.7	0.7	1.3	1.4	1.4	0.7	0.7	0	0.1	0.4	0.4	0.4	0.4	1.7	2.1
35	0.3	0.3	1.0	0.7	0.8	0.7	0	0	0	0	0.6	0.7	0.8	1.4	1.5	1.5	0.8	0.8	0	0.2	0.5	0.4	0.5	0.4	1.8	2.2
37	0.3	0.3	1.0	0.8	0.8	0.8	0	0	0	0	0.6	0.8	0.8	1.5	1.6	1.6	0.8	0.8	0	0.2	0.5	0.5	0.5	0.5	1.9	2.3
39	0.3	0.3	1.1	0.8	0.9	0.8	0	0	0	0	0.7	0.8	0.9	1.6	1.7	1.7	0.9	0.9	0	0.2	0.5	0.5	0.5	0.5	2.0	2.4
41	0.4	0.3	1.1	0.9	0.9	0.9	0	0.1	0	0.1	0.7	0.9	0.9	1.7	1.7	1.8	0.9	0.9	0	0.2	0.6	0.5	0.6	0.5	2.1	2.6
43	0.4	0.4	1.2	0.9	1.0	0.9	0	0.1	0	0.1	0.7	0.9	1.0	1.8	1.8	1.9	1.0	1.0	0.1	0.2	0.6	0.5	0.6	0.5	2.2	2.7
45	0.4	0.4	1.2	0.9	1.0	0.9	0	0.1	0	0.1	0.8	0.9	1.0	1.8	1.9	2.0	1.0	1.0	0.1	0.2	0.6	0.6	0.6	0.6	2.3	2.8
47	0.4	0.4	1.3	1.0	1.1	1.0	0	0.1	0	0.1	0.8	1.0	1.1	1.9	2.0	2.1	1.1	1.1	0.1	0.2	0.6	0.6	0.6	0.6	2.4	2.9
49	0.4	0.4	1.4	1.0	1.1	1.0	0	0.1	0	0.1	0.8	1.0	1.1	2.0	2.1	2.2	1.1	1.1	0.1	0.2	0.7	0.6	0.7	0.6	2.5	3.1
51	0.5	0.5	1.4	1.1	1.2	1.1	0	0.1	0	0.1	0.9	1.1	1.2	2.1	2.2	2.2	1.2	1.2	0.1	0.3	0.7	0.7	0.7	0.7	2.6	3.2
53	0.5	0.5	1.5	1.1	1.2	1.1	0	0.1	0	0.1	0.9	1.1	1.2	2.2	2.3	2.3	1.2	1.2	0.1	0.3	0.7	0.7	0.7	0.7	2.7	3.3
55	0.5	0.5	1.5	1.2	1.2	1.2	0	0.1	0	0.1	1.0	1.2	1.2	2.3	2.3	2.4	1.3	1.3	0.1	0.3	0.8	0.7	0.8	0.7	2.8	3.4
57	0.5	0.5	1.6	1.2	1.3	1.2	0	0.1	0	0.1	1.0	1.2	1.3	2.3	2.4	2.5	1.3	1.3	0.1	0.3	0.8	0.7	0.8	0.7	2.9	3.5
59	0.5	0.5	1.6	1.3	1.3	1.3	0	0.1	0	0.1	1.0	1.3	1.3	2.4	2.5	2.6	1.4	1.4	0.1	0.3	0.8	0.8	0.8	0.8	3.0	3.6

*The washbasin referred to here is the one the inspector uses while enroute from the head rack to high rail inspection.

**This refers to the carcass in the bleeding area.

BILLING CODE 3410-DM-C

(B) Rules for determining adjusted maximum per hour per line rates for two-inspector kills considering walking distance according to the table in this subdivision. Determine the distances the inspectors actually walk between the points shown in columns 2 through 9 of the following table. Column 9 is used only if the condemned brand and tags the viscera inspector uses are kept at a location other than at the washbasin-sterilizer. For each column, determine the deduction figure opposite the appropriate number of feet in column 1. Compute the total of the deduction figures for columns 2 through 9. Divide this total by 2. The adjusted maximum rate is the maximum rate in paragraph (b)(2)(i) of this section minus the number calculated above. If the resultant number is not a whole number, it must be rounded off to the next *lowest* whole number.

TWO-INSPECTOR CATTLE KILL - VISCERA TRUCK

Table of Deductions from Maximum Kill Rates for Each Two Feet Between Points (in Tenths of Cattle Per Hour)

	Heads and Low Rail Inspection								Viscera and High Rail Inspection							
1	2		3		4		5		6		7		8		9*	
Number of Feet Between Points	Head Rack and Washbasin		Head Rack and Carcasses**		Washbasin and Low Rail		Head Rack and Low Rail		Viscera and brands tags (Washbasin)		Viscera and High Rail		High Rail and Washbasin		Viscera and Washbasin	
	Strs. Hfrs.	Cows Bulls	Strs. Hfrs.	Cows Bulls	Strs. Hfrs.	Cows Bulls	Strs. Hfrs.	Cows Bulls	Strs. Hfrs.	Cows Bulls	Strs. Hfrs.	Cows Bulls	Strs. Hfrs.	Cows Bulls	Strs. Hfrs.	Cows Bulls
1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
3	0.1	0	0.1	0	0.1	0	0	0	0	0	0	0	0	0	0.1	0.2
5	0.1	0.1	0.1	0.1	0.1	0.1	0.8	0.7	0.4	0.5	0.5	0.5	0.1	0.2	0.2	0.3
7	0.1	0.2	0.1	0.1	0.1	0.1	1.5	1.4	0.7	0.9	1.0	0.9	0.3	0.3	0.3	0.4
9	0.2	0.2	0.1	0.2	0.1	0.2	2.2	2.0	1.1	1.3	1.5	1.3	0.4	0.5	0.4	0.5
11	0.2	0.3	0.1	0.2	0.2	0.2	2.8	2.7	1.4	1.7	1.9	1.8	0.5	0.6	0.4	0.6
13	0.2	0.4	0.1	0.3	0.2	0.2	3.5	3.3	1.7	2.1	2.4	2.2	0.6	0.7	0.5	0.8
15	0.3	0.4	0.1	0.3	0.2	0.3	4.1	3.9	2.0	2.5	2.9	2.6	0.7	0.9	0.6	0.9
17	0.3	0.5	0.1	0.4	0.2	0.3	4.8	4.5	2.4	2.9	3.3	3.0	0.8	1.0	0.7	1.0
19	0.3	0.6	0.2	0.4	0.3	0.4	5.4	5.1	2.7	3.3	3.7	3.4	0.9	1.2	0.7	1.2
21	0.3	0.6	0.2	0.4	0.3	0.4	6.0	5.7	3.0	3.7	4.2	3.7	1.0	1.3	0.8	1.3
23	0.4	0.7	0.2	0.5	0.3	0.5	6.6	6.3	3.3	4.0	4.6	4.1	1.2	1.4	0.9	1.4
25	0.4	0.7	0.2	0.5	0.3	0.5	7.2	6.8	3.6	4.4	5.0	4.5	1.3	1.6	1.0	1.6
27	0.4	0.8	0.2	0.6	0.4	0.5	7.8	7.4	3.9	4.7	5.4	4.9	1.4	1.7	1.0	1.7
29	0.5	0.9	0.2	0.6	0.4	0.6	8.3	7.9	4.2	5.1	5.8	5.2	1.5	1.8	1.1	1.8
31	0.5	0.9	0.2	0.7	0.4	0.6	8.9	8.5	4.5	5.4	6.2	5.6	1.6	2.0	1.2	2.0
33	0.5	1.0	0.2	0.7	0.4	0.7	9.4	9.0	4.8	5.8	6.5	5.9	1.7	2.1	1.3	2.1
35	0.6	1.1	0.3	0.8	0.5	0.7	10.0	9.5	5.0	6.1	6.9	6.3	1.8	2.2	1.3	2.3
37	0.6	1.1	0.3	0.8	0.5	0.7	10.5	10.0	5.3	6.4	7.3	6.6	1.9	2.4	1.4	2.4
39	0.6	1.2	0.3	0.9	0.5	0.8	11.0	10.5	5.6	6.8	7.6	6.9	2.0	2.5	1.5	2.5
41	0.7	1.2	0.3	0.9	0.6	0.8	11.5	11.0	5.9	7.1	8.0	7.2	2.1	2.6	1.5	2.6
43	0.7	1.3	0.3	0.9	0.6	0.9	12.0	11.4	6.1	7.4	8.3	7.6	2.2	2.8	1.6	2.8
45	0.7	1.4	0.3	1.0	0.6	0.9	12.5	11.9	6.4	7.7	8.[illegible]	7.9	2.4	2.9	1.7	2.9
47	0.8	1.4	0.3	1.0	0.6	1.0	13.0	12.4	6.7	8.0	9.0	8.2	2.5	3.0	1.8	3.0
49	0.8	1.5	0.3	1.1	0.7	1.0	13.4	12.8	6.9	8.3	9.4	8.5	2.6	3.2	1.8	3.1
51	0.8	1.6	0.3	1.1	0.7	1.0	13.9	13.3	7.2	8.6	9.7	8.8	2.7	3.3	1.9	3.3
53	0.9	1.6	0.4	1.2	0.7	1.1	14.4	13.7	7.4	8.9	10.0	9.1	2.8	3.4	2.0	3.4
55	0.9	1.7	0.4	1.2	0.7	1.1	14.8	14.1	7.7	9.2	10.3	9.4	2.9	3.5	2.0	3.5
57	0.9	1.7	0.4	1.3	0.8	1.2	15.2	14.6	7.9	9.5	10.6	9.7	3.0	3.7	2.1	3.6
59	0.9	1.8	0.4	1.3	0.8	1.2	15.7	15.0	8.2	9.7	10.9	9.9	3.1	3.8	2.2	3.8

*This column to be used only if brands and tags are not located at the washbasin.
**This refers to the carcasses in the bleeding area.

(ii) Inspection Using the Viscera Table, Tongue-In Presentation of Heads.

Steers and Heifers

Head per hour per line	Number of inspectors by stations		
	Head	Viscera	Carcass
1-32	a	a	a
33-58	b	b	b
59-84	1	1	1
85-86	1	2	1
87-143	2	2	1
144-171	3	2	1
172-198	3	3	1
199-226	3	3	2
227-253	4	3	2
254-280	4	4	2
281-306	5	4	2
307-333	5	5	2

Cows and Bulls

Head per hour per line	Number of inspectors by stations		
	Head	Viscera	Carcass
1-29	a	a	a
30-56	b	b	b
57-77	1	1	1
78-81	1	2	1
82-134	2	2	1
135-159	2	3	1
160-187	3	3	1
188-213	3	4	1
214-234	3	4	2
235-264	4	4	2
265-289	5	4	2
290-314	5	5	2

(iii) Inspection Using the Viscera Table, Tongue-Out Presentation of Heads.

Steers and Heifers

Head per hour per line	Number of inspectors by stations		
	Head	Viscera	Carcass
1-32	a	a	a
33-58	b	b	b
59-86	1	1	1
87-103	1	2	1
104-156	2	2	1
157-186	2	3	1
187-216	3	3	1
217-246	3	3	2
247-275	3	4	2
276-304	4	4	2
305-333	4	5	2
334-362	5	5	2
363-390	5	6	2

Cows and Bulls

Head per hour per line	Number of inspectors by stations		
	Head	Viscera	Carcass
1-29	a	a	a
30-56	b	b	b
57-79	1	1	1
80-98	1	2	1
99-147	2	2	1
148-174	2	3	1
175-205	3	3	1
206-233	3	4	1
234-256	3	4	2
257-288	4	4	2
289-316	5	4	2
317-343	5	5	2

Dr. Donald L. Houston, Administrator, Food Safety and Inspection Service, has determined that immediate implementation of this rule, on an interim basis, is necessary in order to meet existing budgetary constraints. The adjustments of staffing levels and related facility requirements will accommodate increased industry production, will reduce the Agency's projected labor costs, and will provide continued, high levels of public protection under the Federal Meat Inspection Act.

Therefore, pursuant to the authority in 5 U.S.C. 553, it is found upon good cause that notice and other public procedures with respect to this amendment at this time are impracticable and contrary to the public interest, and good cause is found for making this amendment effective less than 30 days after publication in the **Federal Register.**

Done at Washington, DC, on: June 29, 1981.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 81-20586 Filed 7-13-81; 8:45 am]

BILLING CODE 3410-DM-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 21 and 73

Change of Telephone Number for NRC Regional IV Office

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule; change of telephone number.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations to change the telephone number for NRC's Region IV office located in Arlington, Texas. The amendments are intended to inform the public of the new telephone number for NRC Region IV.

EFFECTIVE DATE: July 14, 1981.

FOR FURTHER INFORMATION CONTACT: J. M. Felton, Director, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 Telephone (301) 492-7086.

SUPPLEMENTARY INFORMATION: The Nuclear Regulatory Commission has changed the telephone number of its Inspection and Enforcement Regional Office IV in Arlington, Texas. The new telephone number for the Region IV office is (817) 465-8100.

The amendments are made to a portion of the footnote in § 21.2 and as a complete revision of Appendix A to Part 73. This latter amendment is needed to include the address and telephone number of, and states included under, the Region IV office. In addition, certain minor editorial revisions have been made in the authority for Parts 21 and 73.

Since these amendments are administrative and relate solely to a minor procedural matter, notice of proposed rulemaking and public procedure thereon are unnecessary, and good cause exists to make the amendments effective upon publication in the **Federal Register.**

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and sections 552 and 553 of Title 5 of the United States Code, the following amendments to Parts 21 and 73 of Title 10, Chapter I, Code of Federal Regulations are published as a document subject to codification.

PART 21—REPORTING OF DEFECTS AND NONCOMPLIANCE

1. The authority citation for Part 21 is revised to read as follows:

Authority: Secs. 161i and 161o, Pub. L. 83-703, 68 Stat. 949 and 950, as amended, sec. 234, Pub. L. 91-161, 83 Stat. 444; secs. 201 and 206, Pub. L. 93-438, 88 Stat. 1242 and 1246, as amended (42 U.S.C. 2201(i), 2201(o), 2282, 5841, 5846).

§ 21.2 [Amended]

2. The authority citation for § 21.2 is removed.

3. Footnote 1 and § 21.2 is amended by changing the telephone number of NRC Regional Office IV to read as follows:

1 * * *

IV (Dallas)..(817) 465-8100

* * * * *

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

4. The authority citation for Part 73 is revised to read as follows:

Authority: Secs. 53, 161b, 161i, 161o, Pub. L. 85-703, 68 Stat. 930, 948-950, as amended, Pub. L. 85-507, 72 Stat. 327, Pub. L. 88-489, Stat. 602, Pub. L. 93-377, 88 Stat. 475 (42 U.S.C. 2073, 2201); Sec. 201, Pub. L. 93-438, 88 Stat. 1242, 1243, as amended, Pub. L. 94-79, 89 Stat. 413 (42 U.S.C. 5841). For the purposes of Sec. 223, 68 Stat. 958, as amended, 42 U.S.C. 2273, § 73.55 is issued under Sec. 161b, 68 Stat. 948, as amended, 42 U.S.C. 2201(b); §§ 73.20, 73.24, 73.25, 73.26, 73.27, 73.37, 73.40, 73.45, 73.46, 73.50, 73.55, and 73.67 are issued under Sec. 161i, 68 Stat. 949, as amended, 42 U.S.C. 2201(i); and §§ 73.20(c)(i), 73.24(b)(i), 73.26 (b)(3), (h)(6), (i)(6), and (k)(4), 73.27 (a) and (b), 73.40 (b) and (d), 73.46 (g)(6), and (h)(2), 73.50 (g)(2), (3)(iii)(B) and (h), 73.55(h)(2), and (4)(iii)(B), 73.70, 73.71, and

73.72 are issued under Sec. 161o, 68 Stat. 950, as amended, 42 U.S.C. 2201(o).

5. Appendix A of Part 73 is revised to read as follows:

Appendix A—*United States Nuclear Regulatory Commission Inspection and Enforcement Regional Offices*

	Address and Telephone No.
Region I: Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont.	Region I: USNRC, Office of Inspection and Enforcement, 631 Park Avenue, King of Prussia, PA. 19406, (215) 337-5000
Region II: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, Puerto Rico, South Carolina, Tennessee, The Virgin Islands, Virginia, and West Virginia.	Region II: USNRC, Office of Inspection and Enforcement, 101 Marietta St., Suite 3100, Atlanta, Ga. 30303, (404) 221-4503
Region III: Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin.	Region III: USNRC, Office of Inspection and Enforcement, 799 Roosevelt Road, Glen Ellyn, Ill. 60137, (312) 932-2500
Region IV: Arkansas, Colorado, Idaho, Kansas, Louisiana, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah, and Wyoming.	Region IV: USNRC, Office of Inspection and Enforcement, 611 Ryan Plaza Drive, Arlington, Texas 76102, (817) 465-8100
Region V: Alaska, Arizona, California, Hawaii, Nevada, Oregon, Pacific Trust Territories, and Washington.	Region V: USNRC, Office of Inspection and Enforcement, 1990 N. California Blvd., Suite 202, Walnut Creek, California 94596, (415) 943-3700

Dated at Bethesda, Maryland, this 7th day of July 1981.

For the Nuclear Regulatory Commission.

William J. Dircks,

Executive Director for Operations.

[FR Doc. 81-20679 Filed 7-13-81; 8:45 am]

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10 CFR Part 72

Reporting Requirements for Spent Fuel Storage Facilities Subject to IAEA Safeguards

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending its regulations to make it clear that licensees required to submit inventory change reports and material status reports pursuant to the US/IAEA Safeguards Agreement are not additionally required to submit material status reports and nuclear material transfer reports under NRC domestic safeguards regulations. This amendment clarifies Commission intent that a licensee need not submit duplicative reports.

EFFECTIVE DATE: August 13, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. E. R. Morgan, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (301-443-5976).

SUPPLEMENTARY INFORMATION: On July 31, 1980, the Nuclear Regulatory Commission published in the **Federal Register** (45 FR 50705) a new Part 75 to Title 10 of the Code of Federal Regulations and amendments to 10 CFR Parts 40, 50, 70, 150, and 170 to implement the Agreement Between the United States of America and the International Atomic Energy Agency for the Application of Safeguards in the United States of America.

On November 2, 1980 (45 FR 74693), the Commission added a new Part 72 to Title 10 implementing licensing requirements for the storage of spent fuel in an independent spent fuel storage installation.

Parts 75 and 72 both contain requirements for the submittal of material status reports and material transfer reports (the latter are referred to in Part 75 by the IAEA nomenclature as inventory change reports). The amendments which follow clarify that the Commission does not intend that a licensee submit duplicative reports.

These amendments are of a minor and nonsubstantive nature in that they clarify existing requirements. As a result, the publication of a notice of proposed rulemaking is unnecessary and the requirements of the Regulatory Flexibility Act do not apply. No new reporting requirements subject to the Paperwork Reduction Act are imposed.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and sections 552 and 553 of Title 5 of the United States Code, the following amendments to Part 72 of Title 10, Chapter I, Code of Federal Regulations are published as a document subject to codification.

PART 72—LICENSING REQUIREMENTS FOR THE STORAGE OF SPENT FUEL IN AN INDEPENDENT SPENT FUEL STORAGE INSTALLATION

1. Section 72.53 is revised to read as follows:

§ 72.53 Material status reports.

(a) Except as provided in paragraph (b) of this section, each licensee shall complete and submit Material Status Reports to the Commission on Form NRC-742, in accordance with printed instructions for completing the form. The reports shall provide information concerning the special nuclear material contained in spent fuel possessed, received, transferred, disposed of, or lost by the licensee. All such reports shall be made as of March 31 and September 30 of each year and shall be filed with the U.S. Department of Energy, P.O. Box E, Oak Ridge, Tennessee 37830, within 30 days after the end of the period covered by the report. The Commission may, when good cause is shown, permit a licensee to submit Material Status Reports at other times.

(b) Any licensee who is required to submit routine material status reports pursuant to § 75.35 of this chapter (pertaining to implementation of the US/IAEA Safeguards Agreement) shall prepare and submit such reports only as provided in that section.

2. Section 72.54 is revised to read as follows:

§ 72.54 Nuclear material transfer reports.

(a) Except as provided in paragraph (b) of this section, whenever the licensee transfers or receives spent fuel, the licensee shall complete and distribute a Nuclear Material Transaction Report on Form NRC-741. Each licensee who transfers spent fuel shall submit a copy of Form NRC-741 to the U.S. Department of Energy, P.O. Box E, Oak Ridge, Tennessee 37830, and three copies to the receiver of the material promptly after the transfer takes place. Each licensee who receives spent fuel shall submit a copy of Form NRC-741 to the Department of Energy and to the shipper of the material within 10 days after the spent fuel is received and unloaded and its identity is verified.

(b) Any licensee who is required to submit inventory change reports on DOE/NRC Form-741 pursuant to § 75.34 of this chapter (pertaining to implementation of the US/IAEA Safeguards Agreement) shall prepare and submit such reports only as provided in that section.

(Sec. 161o, Pub. L. 83-703, 68 Stat. 950 (42 U.S.C. 2201(o); sec. 201, as amended, Pub. L. 93-438, 88 Stat. 1242, as amended by Pub. L. 94-79, 89 Stat. 413 (42 U.S.C. 5841))

Dated at Bethesda, Md. this 11th day of June, 1981.

For the Nuclear Regulatory Commission

William J. Dircks,

Executive Director for Operations.

[FR Doc. 81-20684 Filed 7-13-81; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210, 239, 270, 274

[Release Nos. 33-6326, IC-11850, AS-294, File No. S7-865]

Standardization of Financial Statement Requirements in Management Investment Company Registration Statements and Reports to Shareholders

AGENCY: Securities and Exchange Commission.

ACTION: Final rules and amendments to forms.

SUMMARY: The Securities and Exchange Commission is adopting today uniform requirements governing the content of and periods to be covered by financial statements included in shareholder reports and prospectuses in (or annual updates of) management investment company registration statements. The general regulation governing the form and content of and requirements for financial statements is amended by including special provisions for prospectuses and shareholder reports of registered management investment companies. In consequence, the Commission is removing most of the detailed financial statement instructions which were previously in the registration statement from and the rule governing shareholder reports. As a result of these changes, most of the differences between the requirements applicable to financial statements in prospectuses and those applicable to financial statements in shareholder reports are being eliminated. Therefore, management investment companies will be able to prepare annually a single set of uniform, updated financial statements that may be used in both the prospectus (or annual update of the registration statement) and the annual report to shareholders. In addition, open-end management investment companies, at their option, will be able either to incorporate financial statements included in any shareholder report by reference into the prospectus or to transmit a currently effective prospectus as the equivalent of any report to shareholders. Although the Commission is retaining certain differences between the financial information required in prospectuses and that required in annual reports, the provisions adopted herein eliminate the necessity for open-end management investment companies to print and mail the same financial statements in two different documents. The Commission is adopting these amendments to reduce the costs incurred in preparing and transmitting essentially duplicative financial information and to provide an opportunity for open-end management investment companies to reduce the length of their prospectuses or, in the alternative, to eliminate separate preparation of periodic reports.

EFFECTIVE DATE: Effective July 14, 1981.

FOR FURTHER INFORMATION CONTACT: Dianne E. O'Donnell, Special Counsel, (202) 272-2093, Lawrence A. Friend, Senior Accountant, (202) 272-2095, or Susan P. Hart, Attorney, (202) 272-2098, Division of Investment Management, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission announced today the adoption of: (1) amendments to Regulation S-X [17 CFR 210], the Commission's general regulation regarding the form and content of and requirements for financial statements filed under, *inter alia*, the Securities Act of 1933 ("1933 Act") [15 U.S.C. 77a et seq.] and the Investment Company Act of 1940 ("1940 Act") [15 U.S.C. 80a-1 et seq.]; (2) amendments to Form N-1 [17 CFR 239.15, 17 CFR 274.11] and Form N-2 [17 CFR 239.14, 17 CFR 274.11a], the registration statement forms for, respectively, open-end and closed-end management investment companies under both the 1933 Act and the 1940 Act; and (3) a revised rule 30d-1 [17 CFR 270.30d-1], regarding reports to shareholders under section 30(d) of the 1940 Act [15 U.S.C. 80a-29(d)]. The amendments reconcile most of the differences in the financial statement requirements of prospectuses and shareholder reports by including special provisions for registered management investment companies in the uniform financial statement requirements and instructions, of Regulation S-X. In turn, these instructions, with certain modifications, are made applicable to prospectuses and to annual updates of 1940 Act registration statements by amendments to the registration statement forms. Finally, revised rule 30d-1, which replaces the current rule, makes the financial statement requirements of the prospectus applicable to shareholder reports, and extends the time in which such reports must be transmitted to shareholders from forty-five days to sixty days after the close of the period for which the report is made.

In addition, amendments to Form N-1 and revised rule 30d-1 provide open-end management investment companies two new options for transmitting disclosure documents containing financial information to shareholders and prospective investors. Such companies are permitted either to incorporate financial statements from shareholder reports by reference into the prospectus or to transmit a currently effective prospectus as the equivalent of any annual or semiannual report to shareholders, provided that certain conditions are satisfied. These provisions are optional, so that companies may, if they choose, continue to include financial statements in prospectuses and to transmit separate shareholder reports. The standardization of financial statement requirements is intended to reduce the costs, imposed by current disclosure requirements, of preparing and transmitting various disclosure documents containing financial statements that are substantively identical but not interchangeable. The options with respect to transmission of financial information are intended to provide open-end companies with opportunities for further reductions in costs by using their prospectuses as a substitute for shareholder reports or, in the alternative, by reducing the length of their prospectuses.

Background

Section 30(d) of the 1940 Act and rule 30d-1 thereunder require management investment companies to transmit a report to shareholders at least semiannually. These reports are required to contain certain financial statements and other information covering either the first six months of the company's fiscal year (the "semiannual report"), or, in the report made as of the end of the fiscal year (the "annual report"), the entire fiscal year. The financial statements required by the statute and the rule are complemented by the requirements of generally accepted accounting principles ("GAAP").

In addition to the semiannual and annual reports required by section 30(d), open-end management investment companies engaged in a continuous offering of their shares to the public (the type commonly known as "mutual funds") must bring their prospectuses up to date on an annual basis, pursuant to section 10(a)(3) of the 1933 Act [15 U.S.C. 77j(a)(3)] and section 24(e)(3) of the 1940 Act [15 U.S.C. 80a-24(e)(3)]. Those management investment companies that file Form N-1R (the annual report of certain information to the Commission) must also bring their 1940 Act registration statements up to date annually pursuant to rule 8b-16 under the 1940 Act [17 CFR 270.8b-16] (the "annual update"). Like section 30(d) reports, the prospectus (and the annual update) is required to contain specified financial statements, which must be audited. The form and content of financial statements in the prospectus and annual update are governed by Regulation S–X.

The financial statements now required to appear in prospectuses and annual reports are similar. Both documents must contain: (1) a balance sheet or statement of assets and liabilities as of the close of the most recent fiscal year, (2) a schedule of investments as of the date of the balance sheet or the date of the statement of assets and liabilities, (3) an income statement, (4) statements of changes in net assets, and (5) condensed financial information in the form of a table of per share income and capital changes (the "per share table"). Nevertheless, under current requirements certain differences prevent the financial statements in the prospectus and the annual report from being interchangeable.[1]

As a result of these discrepancies in current financial statement requirements, investment companies prepare two different sets of audited financial statements containing similar information, one set for their prospectuses and one for their annual reports to shareholders. Moreover, there is considerable overlap in the readership of the two docments. Although the prospectus and the annual report are intended for different purposes—the prospectus is primarily designated to disclose material information to potential investors, while the annual report is intended to provide information to existing shareholdes—many investment companies furnish their annual reports to new investors, and many investment companies send a current prospectus to existing shareholders as a matter of course. Differences in financial statements required in prospectuses and annual reports are not related to the different purposes for which the documents are intended, but are rather the result of the fact that prospectuses and annual reports evolved at different times from different statutory bases.

It appeared to the Commission that no useful purpose was served by maintaining the vast majority of the differences between prospectus and annual report financial statement requirements and that the discrepancies between the two documents could be confusing to the investor who receives both sets of financial statements without an explanation of the differences. Accordingly, on December 15, 1980, the Commission proposed amendments to Regulation S-X, including new rule 3–18 of that regulation; revised financial statement items for the registration statement forms (Item 18 of Form N–1 and Item 20 of Form N–2); and revised rule 30d–1, to standardize the financial statement requirements of the prospectus and annual report to shareholders (Investment Company Act Release No. 11490) [45 FR 83517, Dec. 19, 1980] ("Release No. 11490"). Under the amendments as proposed, both the annual report to shareholders and the current prospectus (or, in the case of a closed-end company, the annual update) of a management investment company would be required to contain the following audited financial statements:

(1) A balance sheet or statement of assets and liabilities as of the close of the most recent fiscal year;

(2) A schedule of investments as of the date of the balance sheet or the statement of assets and liabilities;

(3) An income statement for the most recent fiscal year; and

(4) Statements of changes in net assets for the two most recent fiscal years.

The proposals reconciled current differences between financial statement requirements for prospectuses and shareholder reports, with three exceptions. First, with respect to condensed financial information, the Commission proposed to continue to require the annual report to include a per share table for the five most recent fiscal years, with at least the latest year audited, with the current prospectus of open-end companies to include such information for the ten most recent fiscal years, with at least the five latest years audited. Second, the Commission proposed to continue the differences with regard to disclosure of aggregate management remuneration, with the annual report required to contain the somewhat more extensive disclosure specified by section 30(d)(5) of the 1940 Act [15 U.S.C 80a–29 (d)(5)]. Finally, the Commission proposed to continue to require the cost of individual securities to appear in the schedule of investments in prospectuses, pursuant to Article 12 of Regulation S–X, but not in the comparable schedule in shareholder reports.

As a part of these amendments, the Commission also proposed two options with respect to the transmittal of financial information. First, the Commission proposed to amend Form N–1 to permit an open-end management investment company to incorporate financial statements from a shareholder report by reference into the prospectus, provided that a copy of such report accompanied the prospectus. Alternatively, as part of revised rule 30d–1, an open-end management investment company would be permitted to send a prospectus to shareholders in lieu of any shareholder report, if that prospectus included financial statements for the latest fiscal year.

The Commission today adopts the amendments to Regulation S–X, to Forms N–1 and N–2, and revised rule 30d–1 with the modifications discussed below. Because the amendments are being adopted in substantially the same form as they were proposed, only the changes from the amendments as proposed and the major issues raised by commentators are being discussed in detail in this release. Readers are referred to Release No. 11490 for a more extensive discussion of the amendments.

In addition, in a separate release, the Commission is proposing amendments to rule 465 under the 1933 Act [17 CFR 230.465] to facilitate the process by which certain investment company registrants may bring their prospectuses up to date to use them in place of an annual report to shareholders.

Public Comments and Modifications to Proposed Amendments and Revised Rule 30d–1

The Commission received fourteen comments on Release No. 11490.[2] Twelve of the commentators endorsed the standardization of financial statement requirements in investment company registration statements and reports to shareholders and the optional provisions regarding transmission of financial information.[3] However, most commentators had specific objections to some of the provisions of the proposed

[1] These differences are explained in detail in Investment Company Act Release No. 11490 (Dec. 15, 1980) [45 FR 83517, Dec. 19, 1980].

[2] Comments were received from the following: the Association of Publicly Traded Investment Funds; the Subcommittee on Investment Companies and Investment Advisers of the Federal Regulation of Securities Committee, Section of Corporation, Banking and Business Law of the American Bar Association; Committee on Investment Companies of the American Institute of Certified Public Accountants; Coopers & Lybrand; Gaston Snow & Ely Bartlett; Investment Company Institute; Investors Diversified Services, Inc.; Lord, Abbett & Co.; Price Waterhouse & Co.; Touche Ross & Co.; United Funds; the Vanguard Group of Investment Companies; Lipper Analytical Distributors, Inc.; and one shareholder (Mrs. Paul Ingle of High Point, N.C.). Copies of the comments are located in File No. S7–865.

[3] One commentator made no comment on the proposals generally but addressed only the issue of cost disclosure. The shareholder commentator opposed the proposals on the grounds that annual reports do not provide sufficient information to shareholders.

amendments to Regulation S-X, Forms N-1, and N-2, and revised rule 30d-1. In addition, some of the commentators addressed issues that were not raised in Release No. 11490. The Commission has considered all the comments and has determined to adopt the amendments substantially as published with the modifications set forth below.

Differences in Financial Statement Requirements

Disclosure of the cost of individual securities. Eleven commentators responded to the Commission's specific request for comment on one of the three exceptions to uniform financial statement requirements—the proposal to retain existing requirements under which the cost of individual investments must be disclosed in the schedule of investments in the prospectus but not in the schedule of investments in reports to shareholders.

Nine of these commentators objected to the requirement, stating that such information was of little use and possibly misleading as a basis for judging fund performance. Most of these commentators argued that, in order to make the cost of portfolio securities meaningful disclosure, more information would be needed, and that to require such additional disclosure would be cumbersome and beyond the needs and expectations of current or prospective investors.

It was further argued that cost information might encourage investors to evaluate the fund's performance by looking at its individual securities, rather than by looking at overall performance in relation to the fund's stated investment objectives. Three commentators suggested that the per share table and the statement of net assets were better bases for judging fund performance. In addition, two commentators contended that cost disclosure could lead to "window-dressing" by portfolio managers with more of an eye to year-end disclosure than to the longer term interests of the fund. For example, one commentator suggested that a portfolio manager might decide to sell a security, which otherwise might have been held, because its value at the date of the schedule of investments was significantly lower than its cost.

Two commentators stated that cost information is generally superfluous for investors in income-oriented funds, and in particular for money market funds, where there is little cost fluctuation. They further stated that the disclosure about such funds' investment policies made cost information irrelevant.

Five commentators expressed the view that if the requirement for cost information in the schedule of investments in the prospectus was retained, most investment companies would choose to print different financial statements for the prospectus and annual report, rather than to make such statements interchangeable by including cost disclosure in the annual report, where it is not required. One commentator stated that the schedule of investments is normally the largest single financial statement, and that retention of different requirements would prevent investment companies from realizing any cost savings in the printing of uniform financial statements.

Two commentators noted that GAAP presently requires disclosure of cost information in shareholder reports by total cost per investment category (i.e., common stocks, preferred stocks, bonds, etc.). These commentators saw no reason for prospective investors to receive more detailed cost information.

Two commentators supported retention of cost disclosure. One argued that it was useful to users of financial statements in understanding the effectiveness of the investment adviser. In addition, this commentator argued that the GAAP requirement for disclosure of cost by category of investment was only a minimum requirement. Another commentator stated that disclosure of cost could indicate whether the investment skill of an adviser is specific or of broad applicability, the latter being indicated where the aggregate unrealized loss or gain in a portfolio is disproportionately associated with a limited number of positions. This commentator added that disclosure of the cost of individual investments is useful to some investors, such as taxable foundations, who need to identify unrealized appreciation or depreciation for tax and other purposes. Recognizing that most investors had no interest in cost information, however, the commentator recommended that cost disclosure be made available through Form N-1R under the 1940 Act [17 CFR 274.101] rather than in the prospectus.

The Commission has re-evaluated the need for cost disclosure in light of the comments and has decided to delete the requirement. It appears that cost information is of only marginal value to investors in judging an investment company's performance. Furthermore, it appears from the comments that the costs associated with retention of the requirement would be substantial. Several commentators stated that most investment companies would choose to print different financial statements for the prospectus and annual report if cost disclosure is retained in the prospectus. This argument is given added credibility by the fact that many registrants now go to the trouble and expense of printing two separate schedules of investments, one with the cost column and one without, rather than using the same schedule for both documents. Accordingly, the Commission has added a new Instruction C to the financial statement items (Item 18 of Part I of Form N-1, Item 20 of Part I of Form N-2) to make clear that the cost columns may be omitted entirely from the registration statement.[4] The Commission assumes, however, that investment companies will voluntarily make information about the cost of their portfolio securities available upon request to those members of the public who might desire it.

Condensed Financial Information (Per Share Table). A second instance in which the Commission proposed to retain differences between the financial statement requirements applicable to prospectuses and those applicable to shareholder reports concerns condensed financial information. The per share table in the annual report must cover the five most recent fiscal years, with at least the latest year audited; the per share table in the prospectus (of open-end companies) must include the ten most recent fiscal years, with at least the five latest years audited. Two commentators submitted comments regarding this exception, expressing opposite views. One commentator urged expansion of the per share table in the annual report to a ten year period and argued that, while a five year period would assertedly portray one cycle of up-down fluctuations in the market, disclosure as to two cycles would give the investor a much better basis for judging performance. This commentator concluded that adopting a ten year period for condensed financial information in both prospectuses and shareholder reports, and at the same time eliminating cost information, would result in a net gain of useful information to investors and a net decrease in the amount of effort necessary to prepare such information.

The second commentator, however, proposed reducing the per share table in the prospectus to five years offering three arguments: (1) a five year period

[4] Although rule 6-02(f) of Regulation S-X [17 CFR 210.6-02(f)] permits closed-end investment companies to reflect assets at cost, such companies comply with generally accepted accounting principles which require all investment companies to reflect assets at value.

has been accepted as a reasonable period of time to show significant trends for companies reporting under the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.] ("1934 Act"); (2) doing so would result in uniformity with the requirement in the annual report; and (3) doing so would further integrate Form N-1 with shareholder reports.

The Commission has decided not to change the requirements for the per share table at this time. There does not appear to be a compelling reason to increase the requirement for condensed financial information for a company that chooses to send a separate annual report. On the other hand, the Commission is not persuaded at this time that it should reduce the long-standing requirement that condensed financial information be presented in the prospectus for a period of ten years, with the latest five years audited.[5] This information may be material to a significant number of prospective investors, and retaining different requirements for the presentation of condensed financial information will not interfere with the overall objective of reconciling the basic financial statements in the prospectus and the annual report.

Age of Financial Statements. One commentator suggested amending requirements in Regulation S-X that pertain to the age of financial statements used in registration statements, because compliance with those requirements would make it necessary for investment companies to update their financial statements more frequently than is required by the provisions of the 1940 Act relating to periodic reporting. Regulation S-X now provides that the most current financial statements in a 1933 Act registration statement filed by a registered investment company may not be older than 134 days at the expected effective date of the registration statement, an aging requirement that derives from quarterly reporting under the 1934 Action Form 10-Q [17 CFR 249.308a]. Investment companies, however, file financial statements only semiannually and are not subject to the Form 10-Q requirement. As a result, imposing the 134-day rule on investment companies means that for certain registration statements filed during the company's fiscal year (such as for mergers), the investment company has to prepare additional financial statements which are not otherwise required. The commentator's suggested amendment to Regulation S-X would require management investment companies to update their financial statements only when more current financial statements were available pursuant to the rules under section 30(d) of the Investment Company Act. This would remove the necessity for odd period "stub" financial statements (otherwise not publicly available or required) in merger documents sent to shareholders. As a result, updated financial statements would be required only for registration statements becoming effective sixty days or more after the end of the fiscal annual and semiannual period.

The Commission believes that this suggestion has merit, and accordingly is modifying proposed rule 3-18 of Regulation S-X to tailor the requirement regarding the age of financial statements to the semiannual reporting requirements of investment companies. This requirement is contained in new paragraphs (b) and (c) of rule 3-18. Rather than complying with the 134-day rule, investment companies will be required to include more current unaudited financial information, in addition to the most current audited financial statements, where a post-effective amendment is expected to become effective with financial statements dated more than 244 days prior to the anticipated effective date. This change will result in prospective shareholders receiving the same financial information that is available to current shareholders receiving the semiannual report.

Disclosure of Management Remuneration. One commentator suggested that Instruction D(3) of the financial statement items, regarding disclosure of aggregate management remuneration, should make clear that a registrant which does not report "aggregate remuneration paid" in accordance with rule 6-04(b)(2) of Regulation S-X [17 CFR 210.6-04(b)(2)] would have to report this information separately in the shareholder report pursuant to section 30(d)(5) of the 1940 Act.

The Commission has decided not to make the change requested by this commentator. The Commission believes that the requirement of the instructions as proposed is clear, in that it explicitly states that a registrant must provide disclosure of aggregate management remuneration to satisfy section 30(d)(5) of the 1940 Act separately in a shareholder report if that disclosure is not "shown elsewhere . . . as part of the financial statements" required to appear in a report to shareholders by new Instructions E and F (Instructions D and E of the amendments as proposed) of the financial statement items.

Other Accounting Changes. In connection with the adoption of new rule 3-18 of Regulation S-X, the Commission is adopting technical amendments to three other rules in Regulation S-X: rule 3-01 [17 CFR 210.3-01] on consolidated balance sheets, rule 3-02 [17 CFR 210.3-02] on consolidated statements of income and changes in financial position, and rule 3-12 [17 CFR 210.3-12] on age of financial statements at effective date of registration statement or at mailing date of proxy statement. The three amendments refer registered management investment companies to the special instructions in new rule 3-18. As a result, the language in proposed rule 3-18 and in instructions E and F of the financial statement items of the forms which excepted registered management investment companies from the provisions of rules 3-01, 3-02 and 3-12 has been deleted from the rule as adopted. In addition, rule 3-18 as adopted has been restructured to include the requirements as to financial statements in paragraph (a) of the rule, special instructions as to age of financial statements in paragraphs (b) and (c), and special instructions as to interim financial statements in paragraph (d). These changes were made to conform rule 3-18 to other rules in Regulation S-X. These amendments are technical in nature and do not change the substance of rule 3-18. Accordingly, they may be adopted without republication. Two of these changes should be noted:

The title of rule 3-18 has been changed to make clear that only registered management investment companies (and companies required to be so registered) are required to comply with the rule, and that it does not apply to investment companies that are not registered under the 1940 Act (*e.g.*, business development companies);[6] and

As a matter of information for registrants, a reference to rule 3-06 of Regulation S-X has been added to paragraph (d) of rule 3-18 regarding a statement required by rule 3-06 to appear when unaudited interim financial statements are presented in a registration statement.

[5] The ten-year requirement was part of the previous 1933 Act registration statement forms for investment companies and was adopted as part of Forms N-1 and N-2 in 1978 (Investment Company Act Release No. 10378, August 28, 1978) [43 FR 39548, Sept. 5, 1978].

[6] The Commission's Division of Investment Management has addressed certain accounting qüestions for business development companies in another context. *See* Investment Company Act Release No. 11703, March 26, 1981 [46 FR 19459, March 31, 1981].

Transmission of Financial Information

Coordination of Rule 30d–1 and Rule 465(a). Release No. 11490 set forth a procedure to be used by a company that wanted to send its prospectus to current shareholders in place of an annual report, as permitted by proposed rule 30d–1(c), in the same year that it had to file its annual updating post-effective amendment pursuant to rule 465(a) under the Securities Act of 1933 because of a material change in its operations or other material event. In order to be able to use its prospectus in lieu of an annual report, the company would have to file a post-effective amendment under rule 465(a), updating the narrative portion of the prospectus, at least by the end of its fiscal year. After the effective date of such post-effective amendment, but within sixty days after the end of its fiscal year, the company would have to file another post-effective amendment updating its financial statements.[7]

Four commentators were of the opinion that the two-part filing procedure was too cumbersome and involved difficult time constraints. One commentator pointed out that, if the registrant had to wait for the first amendment to become effective under rule 465(a) before filing the financial update under rule 465(b), there would be a one- or two-day period when the fund either would have to print and distribute the prospectus with an updated narrative but old financials, or else discontinue sales altogether. Thus, the registrant would have three separate prospectuses within a short period of time: the old one, the one with an updated narrative portion but old financial statements, and the fully updated one.

The commentators suggested several solutions to the problem: extension of the time period for sending reports to shareholders under proposed rule 30d–1 from sixty days to seventy-five or ninety days; amendment of rule 465 to shorten the time period for automatic effectiveness of post-effective amendments under paragraph (a) from sixty to forty-five days; or amendment of rule 465(d) to provide that the filing of a subsequent amendment to update financials would not automatically suspend the sixty-day waiting period initiated by the filing of the narrative-only amendment under rule 465(a), so that the first amendment would become effective sixty days after it was filed or the two amendments would become effective simultaneously.

The Commission agrees with the commentators that a registrant that has to update its prospectus by means of a rule 465(a) filing should not be hindered in using its prospectus in place of its annual report. Accordingly, in a separate release, the Commission is proposing amendments to rule 465 to facilitate the updating procedure for such registrants.[8] Paragraph (d) of that rule would be amended to provide that the filing of a subsequent amendment to update the financial statements would not suspend the sixty-day waiting period started by the filing of an amendment containing an updated narrative under rule 465(a), provided that the subsequent amendment was filed under paragraph (b) and that it designated as its effective date the same day as the effective date of the paragraph (a) filing. Rule 465(b) would also be amended to make the amendment containing the updated financial statements eligible for filing under that provision.

Incorporation by Reference. One commentator objected to the undertaking required when an investment company incorporates financial statements into its prospectus by reference from its annual report to shareholders. Proposed Item 10(c) of Part II of Form N–1 would require an investment company to undertake "to deliver or cause to be delivered" the incorporated annual report with the prospectus, unless the recipient is a shareholder who has already received the report. The commentator expressed concern that this requirement might be construed to make an investment company that offers its shares through dealers liable for the failure of the dealer to give the purchaser the required report. It suggested that the undertaking state that the investment company's duty is only to use its "best efforts" to cause the report to be delivered.

Upon reconsideration, the Commission has decided to delete the proposed undertaking from Form N–1 and to replace it with a new condition in General Instruction E of Form N–1 on incorporation by reference.[9] The new condition states that a registrant may incorporate financial statements by reference from a shareholder report into the prospectus if the material incorporated by reference is provided along with the prospectus. The Commission believes that, if an issuer is incorporating financial statements from an annual report into the prospectus, its duty to deliver the incorporated annual report is the same as its duty to deliver the prospectus itself. Accordingly, in that situation delivery of a prospectus would not take place unless the annual report was also delivered. Nevertheless, the Commission is deleting the undertaking so that it will not be construed as establishing a different legal standard or potential liability, and to make clear that the issuer's duty with respect to prospectus delivery will not be changed in any way by the option of incorporation by reference. Because the requirement of delivery along with the prospectus of any material incorporated by reference was part of the proposed changes to Form N–1, it may be adopted as part of General Instruction E of Form N–1 without republication.

Other Comments

Some commentators addressed issues that were not raised by the proposals in Release No. 11490. The Commission is not now addressing the merits of the changes requested by these comments, but will reserve them for future consideration.

Text of Amendments and Rules

Chapter II of Title 17 of the Code of Federal Regulations is hereby amended as follows:

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

1. By amending paragraph (a)(4) of § 210.1–01 to read as follows:

§ 210.1–01 Application of Regulation S–X (17 CFR Part 210).

(a) * * *

(4) Registration statements and shareholder reports under the Investment Company Act of 1940 (Part 274 of this chapter), except as otherwise specifically provided in the forms which are to be used for registration under this Act.

* * * * *

2. By adding new paragraph (g) to § 210.3–01.

§ 210.3–01 Consolidated balance sheets.

* * * * *

(g) For filings by registered

[7] Release No. 11490 provided the following example of this procedure: A company with a December 31st fiscal year end, which had experienced a material event since its last post-effective amendment became effective, would file a post-effective amendment on December 20, 1980. This amendment would contain new narrative disclosure, but the financial statements would be as of December 31, 1979. The amendment would become effective automatically on February 18, 1981. The second post-effective amendment, which contained financial statements as of December 31, 1980, would have to be filed after February 18, but on or before March 1, 1981, and designate an effective date enabling the registrant to transmit it as a shareholder report on or before March 1, 1981, the end of the sixty days after the end of the fiscal year specified by proposed rule 30d–1(c).

[8] Securities Act Release No. 6327 published under Proposed Rules in this issue. Readers are referred to that release for a fuller explanation of the proposed amendment.

[9] General Instruction E of Form N–1 is also amended by deleting the reference to the undertaking.

management investment companies, the requirements of § 210.3–18 shall apply in lieu of the requirements of this section.

3. By adding new paragraph (c) to § 210.3–02.

§ 210.3–02 Consolidated statements of income and changes in financial position.

* * * * *

(c) For filings by registered management investment companies, the requirements of § 210.3–18 shall apply in lieu of the requirements of this section.

4. By adding new paragraph (d) to § 210.3–12.

§ 210.3–12 Age of financial statements at effective date of registration statement or at mailing date of proxy statement.

* * * * *

(d) For filings by registered management investment companies, the requiremens of § 210.3–18 shall apply in lieu of the requirements of this section.

5. By adding a new § 210.3–18 to read as follows:

§ 210.3–18 Special provisions as to registered management investment companies and companies required to be registered as management investment companies.

(a) For filings by registered management investment companies, the following financial statements shall be filed:

(1) An audited balance sheet or statement of assets and liabilities as of the end of the most recent fiscal year;

(2) An audited statement of operations for the most recent fiscal year (including statements of income and expense, realized gain or loss on investments, and unrealized appreciation or depreciation of investments which conform to the requirements of §§ 210.6–04, 6–05 and 6–06, respectively); and

(3) Audited statements of changes in net assets conforming to the requirements of § 210.6–08 for the two most recent fiscal years.

(b) If the filing is made within 60 days after the end of the registrant's fiscal year and audited financial statements for the most recent fiscal year are not available, the balance sheet or statement of assets and liabilities may be as of the end of the preceding fiscal year and the filing shall include an additional balance sheet or statement of assets and liabilities as of an interim date within 245 days of the date of filing. In addition, the statements of operations and changes in net assets shall be provided for the one and two preceding fiscal years, respectively, and for the interim period between the end of the preceding fiscal year and the date of most recent interim balance sheet or statement of assets and liabilities being filed. Financial statements for the corresponding interim period of the preceding fiscal year need not be provided.

(c) If the current balance sheet or statement of assets and liabilities in a filing is as of a date 245 days or more prior to the date the filing is expected to become effective, the financial statements shall be updated with a balance sheet or statement of assets and liabilities as of an interim date within 245 days. In addition, the statements of operations and changes in net assets shall be provided for the interim period between the end of the most recent fiscal year for which a balance sheet or statement of assets and liabilities is presented and the date of the most recent interim balance sheet or statement of assets and liabilities filed.

(d) Interim financial statements provided in accordance with these requirements may be unaudited but shall be presented in the same detail as required by §§ 210.6–01 to 6–10. When unaudited financial statements are presented in a registration statement, they shall include the statement required by § 210.3–06(d).

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

1. By amending General Instruction E of Form N–1 to add the following paragraph to the existing text of the Instruction.

2. By amending Item 18 of Part I of Form N–1 (§§ 239.15 and 274.11) to read as follows:

§ 239.15 Form N–1 for open-end management investment companies registered on Form N–8A.

§ 274.11 Form N–1, registration statement of open-end management investment companies.

* * * * *

[General Instructions

* * * * *

E. *Incorporation by Reference*

* * * * *

Subject to the above rules, a registrant may incorporate by reference, in response to Item 3(a), "Condensed Financial Information," Item 18, "Financial Statements," or to both Items, the information contained in any report to shareholders meeting the requirements of section 30(d) of the 1940 Act and rule 30d–1 thereunder, provided the following additional conditions are satisfied:

1. The material that is incorporated by reference is prepared in accordance with, and covers the periods specified by, this Form;

2. The registrant includes a statement at each place in the prospectus where the information required by Item 3(a), Item 18, or both, would otherwise appear, that the information is incorporated by reference from a report to shareholders. The registrant, at its option, may also specifically describe, in either the prospectus or both the prospectus and Part II of the Registration Statement (in response to Item 1(a)), those portions of the report to shareholders that are not incorporated by reference and are not a part of the Registration Statement]; and

3. The material incorporated by reference is provided along with the prospectus to each person to whom the prospectus is sent or given, unless the person to whom such prospectus is provided currently holds securities of the registrant and otherwise has received a copy of the material incorporated by reference, in which case the registrant shall state in the prospectus that it will furnish, without charge, a copy of such report on request, and the name, address and telephone number of the person to whom such a request should be directed.]

* * * * *

[Item 18. *Financial Statements Instructions:*

A. A Registration Statement on Part I of this Form shall contain, in a separate section following the responses to the foregoing Items, the financial statements and schedules required by Regulation S–X [17 CFR 210]. The specimen price-make-up sheet required by Item 16.a. of this Form may be furnished as a continuation of the balance sheet or statement of assets and liabilities specified by Regulation S–X [17 CFR 210.6–01].

B. Notwithstanding the requirements of Instruction A above, the following statements and schedules required by Regulation S–X may be omitted from the *prospectus* part of the Registration Statement and included in Part II of such Registration Statement:

(1) The statements of any subsidiary which is not a majority-owned subsidiary; and

(2) All schedules in support of the most recent balance sheet or statement of assets and liabilities, except the following: (a) Schedule I [17 CFR 210.12–12]; (b) columns A, E, and G of Schedule II [17 CFR 210.12–13]; and (c) columns A, B, and D of Schedule III [17 CFR 210.12–14], omitting the information called for by paragraph (b) of footnote 1 to column A.

C. Notwithstanding the requirements of Instruction A above, the following information may be omitted from any *Registration Statement:*

(1) Column C of Schedule I [17 CFR 210.12–12];

(2) Column F of Schedule II [17 CFR 210.12–13]; and

(3) Column C of Schedule III [17 CFR 210.12–14].

D. In addition to the requirements of rule 3–18 of Regulation S–X [17 CFR 210.3–18], any company registered under the 1940 Act which has not previously had an effective Registration Statement under the 1933 Act shall include in its initial Registration Statement under the 1933 Act such additional financial statements and condensed financial information (which need not be audited) as is necessary to make the financial statements and condensed financial information included in the registration statement as of a date within 90 days prior to the date of filing.

E. Every annual report to shareholders required pursuant to section 30(d) of the 1940 Act and rule 30d–1 thereunder [17 CFR 270.30d–1] shall contain the following information:

(1) the audited financial statements required by Regulation S–X, as modified by Instructions B and C above, for the periods specified by Regulation S–X;

(2) the condensed financial information required by Item 3(a) of this Form, for the five most recent fiscal years, with at least the most recent year audited; and

(3) unless shown elsewhere in the report as

part of the financial statements required by (1) above, the aggregate remuneration paid by the company during the period covered by the report (a) to all directors and to all members of any advisory board for regular compensation; (b) to each director and to each member of an advisory board for special compensation; (c) to all officers; and (d) to each person of whom any officer or director of the company is an affiliated person.

F. Every report to shareholders required by section 30(d) of the 1940 Act and rule 30d-1 thereunder [17 CFR 270.30d-1], except the annual report, shall contain the following information (which need not be audited):

(1) The financial statements required by Regulation S-X, as modified by Instructions B and C above, for the period commencing either with (a) the beginning of the company's fiscal year (or date of organization, if newly organized) or (b) a date not later than the date after the close of the period included in the last report conforming with the requirements of rule 30d-1, and the most recent preceding fiscal year;

(2) The condensed financial information required by Item 3(a) of this Form, for the period of the report as specified by (1) above, and the most recent preceding fiscal year; and

(3) Unless shown elsewhere in the report as part of the financial statements required by (1) above, the aggregate remuneration paid by the company during the period covered by the report (a) to all directors and to all members of any advisory board for regular compensation; (b) to each director and to each member of an advisory board for special compensation; (c) to all officers; and (d) to each person of whom any officer or director of the company is an affiliated person.

G. Reference is made to General Instruction E regarding incorporations by reference.]

3. By amending Item 20 of Part I of Form N-2 (§§ 239.14 and 274.11a-1) to read as follows:

§ 239.14 Form N-2 for closed-end management investment companies registered on Form N-8A.

§ 274.11a-1 Form N-2, registration statement of closed-end management investment companies.

* * * * *

Item 20. *Financial Statements*

Instructions:

A. A Registration Statement on Part I of this Form shall contain, in a separate section following the responses to the foregoing Items, the financial statements and schedules required by Regulation S-X [17 CFR 210].

B. Notwithstanding the requirements of Instruction A above, the following statements and schedules required by Regulation S-X may be omitted from the *prospectus* part of the Registration Statement and included in Part II of such Registration Statement:

(1) The statements of any subsidiary which is not a majority-owned subsidiary; and

(2) All schedules in support of the most recent balance sheet or statement of assets and liabilities, except the following: (a) Schedule I [17 CFR 210.12-12]; (b) columns A, E, and G of Schedule II [17 CFR 210.12-13]; and (c) columns A, B, and D of Schedule III [17 CFR 210.12-14], omitting the information called for by paragraph (b) of footnote 1 to column A.

C. Notwithstanding the requirements of Instruction A above, the following information may be omitted from any *Registration Statement:*

(1) Column C of Schedule I [17 CFR 210.12-12];

(2) Column F of Schedule II [17 CFR 210.12-13]; and

(3) Column C of Schedule III [17 CFR 210.12-14].

D. In addition to the requirements of rule 3-18 of Regulation S-X [17 CFR 210.3-18], any company registered under the 1940 Act which has not previously had an effective Registration Statement under the 1933 Act shall include in its initial Registration Statement under the 1933 Act such additional financial statements and condensed financial information (which need not be audited) as is necessary to make the financial statements and condensed financial information included in the registration statement as of a date within 90 days prior to the date of filing.

E. Every annual report to shareholders required pursuant to section 30(d) of the 1940 Act and rule 30d-1 thereunder [17 CFR 270.30d-1] shall contain the following information:

(1) The audited financial statements required by Regulation S-X, as modified by Instructions B and C above, for the periods specified by Regulation S-X;

(2) The condensed financial information required by Item 3(a) of this form, for the five most recent fiscal years, with at least the most recent year audited; and

(3) Unless shown elsewhere in the report as part of the financial statements required by (1) above, the aggregate remuneration paid by the company during the period covered by the report (a) to all directors and to all members of any advisory board for regular compensation; (b) to each director and to each member of an advisory board for special compensation; (c) to all officers; and (d) to each person of whom any officer or director of the company is an affiliated person.

F. Every report to shareholders required by section 30(d) of the 1940 Act and rule 30d-1 thereunder [17 CFR 270.30d-1] except the annual report, shall contain the following information (which need not be audited):

(1) The financial statements required by Regulation S-X, as modified by Instructions B and C above, for the period commencing either with (a) the beginning of the company's fiscal year (or date of organization, if newly organized) or (b) a date not later than the date after the close of the period included in the last report conforming with the requirements of rule 30d-1 and the most recent preceding fiscal year;

(2) The condensed financial information required by Item 3(a) of this form, for the period of the report, as specified by (1) above, and the most recent preceding fiscal year; and

(3) Unless shown elsewhere in the report as part of the financial statements required by (1) above, the aggregate remuneration paid by the company during the period covered by the report (a) to all directors and to all members of any advisory board for regular compensation; (b) to each director and to each member of an advisory board for special compensation; (c) to all officers; and (d) to each person of whom any officer or director of the company is an affiliated person.

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. By revising § 270.30d-1 to read as follows:

§ 270.30d-1 Reports to stockholders of management companies.

(a) Every registered management company shall transmit to each stockholder of record, at least semiannually, a report containing the financial statements required to be included in such reports by the company's registration statement form under the 1940 Act (instructions E and F of Item 18 of Form N-1 or Item 20 of Form N-2) except that the initial report of a newly registered company shall be made as of a date not later than the close of the fiscal year or half-year first occurring on or after the date on which the company's notification of registration under the 1940 Act is filed with the Commission.

(b) Each report shall be mailed within 60 days after the close of the period for which such report is being made.

(c) As the equivalent of any report required to be transmitted to shareholders by this rule, an open-end company may transmit a copy of its currently effective prospectus under the Securities Act, provided such prospectus includes the following additional information: (1) in the case of the prospectus serving as an annual or semiannual report, the remuneration disclosure required by section 30(d)(5) of the 1940 Act for the period for which the prospectus is serving as a report; (2) in the case of the prospectus serving as a semiannual report, financial statements and condensed financial information for the fiscal half-year period of the report. Such prospectus shall be mailed within 60 days after the close of the period for which the report is being made.

(d) The period of time within which any report prescribed by this rule shall be mailed may be extended by the Commission upon written request showing good cause therefor. Section 270.0-5 shall not apply to such requests.

Statutory Authority

The Commission hereby adopts amendments to Regulation S-X and to Form N-1 and Form N-2, and revised rule 30d-1 pursuant to the authority of sections 7, 8, and 19(a) of the Securities Act of 1933 [15 U.S.C. 77g, 77h, and 77s(a)] and sections 8, 30(d), 31(c), and 38(a) of the Investment Company Act of 1940 [15 U.S.C. 80a-8, 80a-29(d), 80a-30(c), and 80a-37(a)].

By the Commission.
George A. Fitzsimmons,
Secretary.
July 8, 1981.
[FR Doc. 81-20697 Filed 7-13-81; 8:45 am]
BILLING CODE 8010-01-M

17 CFR Part 211

[Release Nos. 33-6325; 34-17912; 35-22116; IC-11845; AS-293; S7-889]

Last-In, First-Out Method of Accounting for Inventories

AGENCY: Securities and Exchange Commission.

ACTION: Issuance of an accounting series release.

SUMMARY: Several recent enforcement cases and the amendments to the Internal Revenue Service regulations concerning the last-in, first-out ("LIFO") book/tax conformity statute have caused the Commission to focus on certain LIFO practices and disclosures. In addition to finding out that some practices being used are inappropriate, the Commission, after careful consideration, has concluded that practices which potentially contradict the conceptual basis of LIFO, i.e., the matching of current costs and current revenues need to be examined.

The Commission also has included guidelines in this release for those LIFO companies who wish to make supplemental non-LIFO income disclosures.

DATE: July 2, 1981.

ADDRESSES: The Commission invites written submissions concerning the practical experience of accountants and registrants in applying the LIFO inventory method. All comments should be filed in triplicate with George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Submissions should refer to file No. S7-889 and, unless confidential treatment is authorized, will be available for public inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Arthur J. Schmeiser, George Diacont, or David F. Martin (202-272-2130), Office of the Chief Accountant, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION:

I. Background

LIFO is an inventory pricing method based on a flow-of-cost assumption that the last item purchased is the first item sold. In times of rising prices, LIFO generally results in higher current costs being charged against income, while older, lower costs are retained in inventory. Of the two fundamental reasons for using LIFO, one is oriented toward financial accounting and the other is income tax oriented. From the standpoint of financial accounting, proponents of LIFO argue that, by charging to expense those costs which more closely reflect the replacement cost of inventory, LIFO tends to reduce the illusionary profits obtained from merely holding inventories and thereby reflects more accurately the "true" income of a company.[1] Most companies that have changed to the LIFO method from other methods in the past decade have indicated that LIFO is a preferable method because of its ability to match current costs with current revenues during periods of rising prices. For income tax purposes many companies prefer LIFO because, during periods of rising prices, it generally reduces taxable income and thereby results in reduced income tax expense.

When LIFO become an acceptable tax method as announced in the Revenue Act of 1938, its application was limited to the specific identification method for raw materials in the inventories of leather tanners and producers and processors of certain nonferrous metals. Since then, the Internal Revenue Service ("IRS") regulations have been amended a number of times and today dollar value LIFO[2] is an acceptable method that can be used for almost all types of inventory goods. While allowing broad usage of the LIFO method, the statute was structured in a unique manner permitting only those taxpayers who use LIFO for financial accounting to use LIFO for tax purposes.

On January 13, 1981, the IRS published amended regulations[3] concerning the LIFO conformity rule. For many years, the IRS strictly enforced the conformity rule and required companies to apply LIFO in most cases identically for book and tax purposes and did not permit companies to disclose supplemental information about alternative methods of inventory pricing.[4] The Commission considers two aspects of the IRS amendments to be significant: (1) Companies may apply LIFO differently for book purposes than for tax purposes as long as they use some acceptable form of LIFO; and (2) companies may provide supplemental non-LIFO disclosures if they are not presented on the face of the income statement.

II. Applying LIFO for Book and Tax Purposes

The Commission believes that the conceptual basis for the LIFO method is the proper matching of current costs with current revenues. However, based on matters which the Commission and its staff have dealt with, we have concluded that when the dollar value method is used, changes in product mix, product prices and inventory pool liquidations can sometimes prevent a proper matching of cost and revenues. Accordingly, the Commission believes that the amended regulations which permit companies to compute LIFO differently for book and tax purposes are very positive. For too long, the application of the LIFO method for financial accounting and reporting has been unduly influenced by the tax application. Most explanations or analyses of LIFO in textbooks and articles have been oriented toward tax implications, rather than financial accounting and reporting. With few exceptions, the accounting profession has deferred to the IRS in this area; indeed, many accountants appear to view IRS LIFO regulations as if they were generally accepted accounting principles ("GAAP"). The Commission disagrees with this approach and believes that since LIFO may now be applied differently for book accounting and tax accounting, it is appropriate for the current practices used in the application of LIFO to be examined.[5]

Activities of the Commission and its staff concerning LIFO include the following: (1) a requirement to disclose the excess of replacement or current cost over LIFO value stated on the balance sheet, if material (Regulation S-

[1] The Commission, in Accounting Series release No. 151, January 3, 1974, stated, "[s]uch [inventory] profits do not reflect an increase in the economic earning power of a business and they are not normally repeatable in the absence of continued price level increase."

[2] The dollar value method, in contrast to the specific identification method, values dollar rather than quantity increases in ending inventory and the dollar, rather than the physical item, is the unit of measure. There are four major dollar value methods: double extension, index, link chain and retail.

[3] Treasury Decision 7756, Title 26 CFR 1.472-2(e).

[4] There have been exceptions to this rule, e.g., the IRS issued annual waivers to permit companies to comply with Accounting Series Release No. 190, involving replacement cost, without violating the conformity rule.

[5] The Commission is aware of a task force which has been established by the Accounting Standards Executive Committee of the American Institute of Certified Public Accountants to accumulate information about application problems. This type of effort, in addition to self-examination by individual registrants, is appropriate and should assist the Financial Accounting Standards Board in considering these matters.