7 CFR Part 907

[Navel Orange Reg. 552; Navel Orange Reg. 551; Amdt. 1]

Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona navel oranges that may be shipped to market during the period November 19–25, 1982, and increases the quantity of such oranges that may be so shipped during the period November 12–18, 1982. Such action is needed to provide for orderly marketing of fresh navel oranges for the periods specified due to the marketing situation confronting the orange industry.

DATES: This regulation becomes effective November 19, 1982, and the amendment is effective for the period November 12–18, 1982.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, 202–447–5975.

SUPPLEMENTARY INFORMATION:

Findings

This rule has been reviewed under USDA procedures and Executive Order 12291 and has been designated a "non-major" rule. The Deputy Administrator, Agricultural Marketing Service, has determined that this action will not have a significant economic impact on a substantial number of small entities. This action is designed to promote orderly marketing of the California-Arizona navel orange crop for the benefit of producers and will not substantially affect costs for the directly regulated handlers.

This regulation and amendment are issued under the marketing agreement, as amended, and Order No. 907, as amended (7 CFR Part 907), regulating the handling of navel oranges grown in Arizona and designated part of California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendation and information submitted by the Navel Orange Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the Act.

This action is consistent with the marketing policy for 1982–83. The marketing policy was recommended by the committee following discussion at a public meeting on September 21, 1982. The committee met again publicly on November 16, 1982 at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of navel oranges deemed advisable to be handled during the specified weeks. The committee reports the demand for navel oranges is improving.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when the information became available upon which this regulation and amendment are based and the effective date necessary to effectuate the declared policy of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and the amendment relieves restrictions on the handling of navel oranges. It is necessary to effectuate the declared purposes of the Act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 907

Marketing agreements and orders, California, Arizona, Oranges (navel).

PART 907—[AMENDED]

1. Section 907.852 is added as follows:

§ 907.852 Navel Orange Reg. 552.

The quantities of navel oranges grown in Arizona and California which may be handled during the period November 19, 1982, through November 25, 1982, are established as follows:

(1) District 1: 1,012,000 cartons;

(2) District 2: Unlimited cartons;

(3) District 3: 88,000 cartons;

(4) District 4: Unlimited cartons.

2. Section 907.851 (1) through (4) Navel Orange Regulation 551 (47 FR 51553) are revised to read:

§ 907.851 Navel Orange Reg. 551.

* * * * *

(1) District 1: 1,175,000 cartons;

(2) District 2: Unlimited cartons;

(3) District 3: 125,000 cartons;

(4) District 4: Unlimited cartons.

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

Dated: November 17, 1982.

D. S. Kuryloski,

Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 82–31873 Filed 11–18–82; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 910

[Lemon Reg. 386; Lemon Reg. 385, Amdt. 1]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action establishes the quantity of California-Arizona lemons that may be shipped to the fresh market during the period November 21–27, 1982, and increases the quantity of lemons that may be shipped during the period November 14–20, 1982. Such action is needed to provide for orderly marketing of fresh lemons for the periods specified due to the marketing situation confronting the lemon industry.

EFFECTIVE DATES: The regulation becomes effective November 21, 1982, and the amendment is effective for the period November 14–20, 1982.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291, and has been designated a "non-major" rule. The Deputy Administrator, Agricultural Marketing Service, has determined that this action will not have a significant economic impact on a substantial number of small entities. This action is designed to promote orderly marketing of the California-Arizona lemon crop for the benefit of producers, and will not substantially affect costs for the directly regulated handlers.

This final rule is issued under Marketing Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendations and information submitted by the Lemon Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy for 1981–82. The marketing policy was recommended by the committee following discussion at a public meeting on July 6, 1982. The committee met again publicly on November 16, 1982, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommend a quantity of lemons deemed advisable to be handled during the specified weeks. The committee reports the demand for lemons continues good.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation and amendment are based and the effective date necessary to effectuate the declared policy of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting, an the amendment relieves restrictions on the handling of lemons. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective times.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

PART 910—[AMENDED]

1. Section 910.686 is added as follows:

§ 910.686 Lemon Regulation 386.

The quantity of lemons grown in California and Arizona which may be handled during the period November 21, 1982, through November 27, 1982, is established at 200,000 cartons.

2. Section 910.685 Lemon Regulation 385 (47 FR 51347) is revised to read as follows:

§ 910.685 Lemon Regulation 385.

The quantity of lemons grown in California and Arizona which may be handled during the period November 14, 1982, through November 20, 1982, is established at 250,000 cartons.

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

Dated: November 17, 1982.

D. S. Kuryloski,

Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 82–32011 Filed 11–18–82; 11:54 am]

BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Parts 1823, 1861, 1942, 1951, and 1990

Servicing of Community Program Loans and Grants

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) revises and redesignates its regulations pertaining to the servicing of Community Programs Loans and Grants. This action results from an internal reorganization where certain loan and grant servicing functions have been transferred from county to district offices. The intended effects of this action are to clarify certain sections for easier understanding and provide a more effective and efficient method of assisting borrowers and grantees in all servicing functions.

EFFECTIVE DATE: November 19, 1982.

FOR FURTHER INFORMATION CONTACT: Harry Puffenberger, Loan Officer, Community Facilities Loan Division, Farmers Home Administration, U.S. Department of Agriculture, Room 6304, Washington, DC 20250, telephone: (202) 382–1490.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Secretary's Memorandum 1512–1 which implements Executive Order 12291 and has been determined to be "nonmajor".

This action has been determined "nonmajor" since the annual effect on the economy is less than $100 million and there will be no increase in costs or prices for individuals, organizations or other government agencies affected. There will be no 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. Charles W. Shuman, Administrator, has determined that this action will not have a significant economic impact on a substantial number of small entities because the changes will have little or no effect on any state or local government receiving grants from the FmHA, since this action involves the servicing functions of financial assistance previously made.

FmHA is revising and redesignating its regulations concerning servicing of Community Program loans and grants from Subpart F of Part 1861 to a new Subpart E of Part 1951 of Chapter XVIII, Title 7, Code of Federal Regulations.

The present FmHA servicing regulations need to be rearranged, and in some instances clarified, for easier understanding by the Servicing Office. This is being accomplished because of certain servicing functions which have been transferred from the county to district offices. In addition, certain changes in interest rates charged to eligible and ineligible applicants in transfers and assumptions are being made. This will result in uniformity of interest rates charged to both public bodies and non-profit organizations and be consistent with the rates charged to Community Program borrowers.

Other than this action, the alternative would be to take no action. However, to do so would leave the present regulation in a status which would not address the duties transferred from the county to district offices, and leave the regulation format in a less than desirable arrangement.

FmHA has reviewed these changes and determined that they are cost-effective since they will provide for more efficient servicing actions while reducing FmHA administrative costs.

The FmHA programs and projects which are affected by this regulation are subject to State and local clearinghouse review in the manner delineated in FmHA Instruction 1901–H.

This action affects the following programs as listed in the Functional Index of the Catalog of Federal Domestic Assistance: 10.408—Grazing Association Loans, 10.409—Irrigation, Drainage and other Soil and Water Conservation Loans, 10.414—Resource Conservation and Development Loans, 10.418—Water and Waste Disposal Systems for Rural Communities, 10.419—Watershed Protection and Flood Prevention Loans, 10.421—Indian Tribes and Tribal Corporation Loans, 10.423—Community Facilities Loans, 10.424—Industrial Development Grants, 10.430—Energy Impacted Area Development Assistance Program.

This document has been reviewed in accordance with 7 CFR Part 1901, Subpart G, "Environmental Impact Statements." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy

Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

Background

A proposed rule was published in the **Federal Register** (47 FR 11521) on March 17, 1982. That proposed rule provided for a 60-day comment period through May 17, 1982. Six written comments were received and this final rule reflects FmHA's consideration of all of these comments. The following is a discussion of the comments received:

One comment expressed concern that the servicing of Grazing Association Loans, Irrigation, Drainage and other Soil and Water Conservation Loans, and Indian Tribes and Tribal Corporation Loans should continue to be performed in the County Office. The intent of this regulation is to keep the servicing functions of these loans in the County Office. We believe that the regulation is clear on this item and the term "Servicing Office" is defined in section 1951.203 as the "District or County Office responsible for the immediate servicing functions of the borrower or grantee."

Section 1951.204. One comment from the Department of Justice suggested the inclusion of three additional nondiscrimination statutes in this section. We agree that reference should be made to Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 *et seq.*) and Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and these are included in the final rule. However, we do not see the need to refer to the Equal Credit Opportunity Act of 1974, as amended (15 U.S.C 1691 *et seq.*), since this act prohibits discrimination in credit transaction and imposes various requirements on lenders. The purpose of Section 1951.204 is to prohibit discrimination in the use of the security property being conveyed by obtaining the transferee's agreement to abide by the various Federal nondiscrimination requirements.

Section 1951.207(d)(1). One comment stated that we should be more specific concerning what is to be kept in the borrower's file regarding other insurance policies. The final rule has been clarified.

Section 1951.210. One comment was received, stating that we should be "positive" rather than "negative" in indicating what FmHA's policy is in regard to transfers and assumptions. We agree and have reworded this section.

Section 1951.210(b)(2)(ii). In the cases where transfers of security are made and the transferor is to be relieved of liability, one comment suggested that the County Committee Certification be deleted. Since the Consolidated Farm and Rural Development Act, as amended, contains the requirement for County Committee Certification in the release of liability, the section must remain as written.

Section 1951.211(a)(4). Two comments were received regarding the approvals required by a majority of the members of both organizations involved in proposed mergers. The comments requested that this requirement be relaxed. This section has been revised to require that the membership of each organization need only be made aware of the proposed merger, and that there is compliance with applicable State law.

In addition to these changes FmHA's review of the proposal resulted in the following revisions:

Section 1951.206. This paragraph has been revised to allow the State Director to redelegate authority to the appropriate designee rather than the Program Chief.

Section 1951.207(b)(1)(i). In the distribution of extra payments, a change is made to apply payments to the account secured by the lowest priority of lien. We believe that this change would allow FmHA to maintain a stronger lien position when other lenders are involved.

Section 1951.207(e)(2). This paragraph is revised to include the giving of parity position. Section 1951.207(e)(1)(xi) has been added to indicate that ascertaining the existence and obtaining consent of other security interests are necessary in parity requests.

Section 1951.207(a)(2). This paragraph contains a clarification that FmHA's consent on Form FmHA 465-1 will be signed concurrently with Form FmHA 460-2.

Section 1951.207(h). This paragraph has been revised to permit the State Director to authorize in whole or part, a facility to be operated, maintained or managed, by a third party under contract, management agreement, or written lease. This revision will enable FmHA to work more effectively with borrowers who are not necessarily in a problem situation.

Section 1951.207(i). An addition to this paragraph is made to include a notation on Form FmHA 1905-10, "Management System Card-Association," showing necessary servicing action in membership liability.

Section 1951.209(b)(6). This paragraph is added to require that property which is acquired in whole or part through the use of grant funds shall be disposed of in accordance with the grant agreement.

Section 1951.210(b)(2)(ii). In instances where transfers are made to eligible applicants, the required determinations are made and the transferor is to be released from liability, a clarification is added to this paragraph to indicate that any balance remaining on the transferor's debt will be charged off.

Section 1951.210(c)(3). This paragraph is revised in respect to the interest rate charged to ineligible transferees of security property. The revision allows for the interest rate specified in the note of the transferor or the market rate for Community Programs, whichever is greater. This revision strengthens the conditions whereby ineligible applicants should not qualify for a lower rate than that charged to eligible applicants.

Section 1951.210(d)(3). In cases where proposed transfers and assumptions are required to be submitted to the National Office, the addition of the reference to § 1951.210(b)(1) is made. The final rule now requires that proposals for transfers and assumptions which are on more liberal terms than those set forth for both eligible and ineligible applicants are to be forwarded to the National Office.

Information collection requirements contained in this regulation (§§ 1951.207(f)(3)(i), 1951.207(f)(3)(ii) and 1951.210(c)(3)(i)) have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB number 0575-0066.

List of Subjects in 7 CFR Part 1951

Account servicing, Grant programs—housing and community development, Loan programs—housing and community development, Reporting requirements, Rural areas.

Accordingly, FmHA amends Chapter XVIII, Title 7, Code of Federal Regulations as follows:

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

Subpart B—Association Loans for Shift-in-Land-Use Projects

§ 1823.66 [Amended]

1. Section 1823.66 is amended by changing the reference from "Subpart C of Part 1861" to "Subpart E of Part 1951."

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

§ 1823.280 [Amended]

2. Section 1823.280 is amended by changing the reference from "Subpart F of Part 1861" to "Subpart E of Part 1951."

Subpart N—Loans to Indian Tribes and Tribal Corporations

§ 1823.415 [Amended]

3. Section 1823.415 is amended by changing the reference in line 4 from "Subpart F of Part 1861" to "Subpart E of Part 1951."

PART 1942—ASSOCIATIONS

Subpart A—Community Facility Loans

§ 1942.13 [Amended]

4. Section 1942.13 is amended by changing the reference from "Subpart F of Part 1861 of this Chapter (FmHA Instruction 451.5)" to "Subpart E of Part 1951 of this Chapter."

§ 1942.17 [Amended]

5. Section 1942.17(r)(5) is amended by changing the reference from "Subpart F of Part 1861 of this Chapter (FmHA Instruction 451.5)" to "Subpart E of Part 1951."

Subpart G—Industrial Development Grants

§ 1942.320 [Amended]

6. Section 1942.320 is amended by changing the reference from "Subpart F of Part 1861 of this Chapter (FmHA Instruction 451.5)" to "Subpart E of Part 1951 of this Chapter."

Subpart H—Development Grants for Community Domestic Water and Waste Disposal Systems

§ 1942.365 [Amended]

7. Section 1942.365 is amended by changing the reference from "Paragraph XIV of FmHA Instruction 451.5" to "§ 1951.215 of Subpart E of Part 1951 of this Chapter."

Subpart I—Resource Conservation and Development (RCD) Loans and Watershed (WS) Loans and Watershed Advances

§ 1942.423 [Amended]

8. Section 1942.423 is amended by changing the reference from "FmHA Instructions 451.5 and 1955–A" to "Subpart E of Part 1951 and Subpart A of Part 1955."

9. Subpart F of Part 1861 is revised and redesignated to a new Subpart E of Part 1951 which reads as follows:

PART 1951—SERVICING AND COLLECTIONS

* * * * *

Subpart E—Servicing of Community Program Loans and Grants

Sec.

Subpart E—Servicing of Community Program Loans and Grants

§ 1951.201 Purpose.

This Subpart prescribes the policies, authorizations, and procedures for servicing Community Water and Waste Disposal System loans and grants, Community Facility Loans, Industrial Development grants, loans for Grazing and other shift-in-land use projects, Association Recreation loans, Association Irrigation and Drainage loans, Watershed loans and advances, Resource Conservation and Development loans, Economic Opportunity Cooperative loans, loans to Indian Tribes and Tribal Corporations, loans to Timber Development Organizations, Rural Renewal loans and Energy Impacted Area Development Assistance Program grants.

§ 1951.202 Objectives.

Loan and grant servicing functions are directed toward assisting recipients to meet the objectives of the loans and grants, repaying loans on schedule, complying with agreements, and protecting the Farmers Home Administration's (FmHA) financial interest.

§ 1951.203 Definitions.

(a) *Approval official.* An official who has been delegated loan and/or grant approval authorities within applicable programs, subject to the dollar limitations of Exhibits B and C of Part 1901, Subpart A.

(b) *Assumption of debt.* The means by which one party agrees to legally bind itself to pay the debt incurred by another.

(c) *Eligible applicant.* An entity that would be legally qualified for financial assistance under the particular loan or grant program involved in the servicing action.

(d) *Ineligible applicant.* An entity or individual that would be considered not eligible for financial assistance under the particular loan or grant program involved in the servicing action.

(e) *Servicing office.* The District or County Office responsible for the immediate servicing functions of the borrower or grantee.

§ 1951.204 Nondiscrimination.

Each instrument of conveyance required for a servicing action (Transfer, assumption, sale, etc.) under this Subpart will contain the following covenant: "The property described herein was obtained or improved through Federal financial assistance. This property is subject to the provisions of title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, as amended, and the regulations issued pursuant thereto for so long as the property continues to be used for the same or similar purposes for which the Federal financial assistance was extended."

§ 1951.205 Present market value determination.

The value of security to be subordinated, sold, merged or transferred under this Subpart is determined by the approval official as follows:

(a) *Security representing a relatively small portion of the total value of the security property.* The approval official will determine that the real estate and chattels are disposed of at a reasonable price. A current appraisal report may be required.

(b) *Security representing a relatively large portion of the total value of the security property.* The approval official will require a current appraisal report, and the sale prices of the real estate and chattels disposed of will at least equal the present market value, as determined by this appraisal.

(c) *Appraisal report.* If required, a current appraisal report will be completed in accordance with § 1942.3 of Subpart A of Part 1942. The appraisal will be completed by a qualified FmHA employee or an independent appraiser as determined appropriate by the approval official.

§ 1951.206 Redelegation of authority.

Servicing functions under this Subpart which are specifically assigned to the State Director may be redelegated in writing to the appropriate sufficiently trained designee.

§ 1951.207 General servicing actions.

(a) *Regular payments.* Regular payments for Community Program borrowers are all payments other than extra payments and refunds. Regular payments are usually derived from facility revenues, and do not include proceeds from the sale of basic chattel or real estate security. Regular payments also include payments derived from sources which do not decrease the value of the government's security. Regular payments for Grazing Association, Irrigation, Drainage and Other Soil and Water Conservation, and Indian Tribes and Tribal Corporation loan borrowers are defined in § 1951.8(a) of Subpart A of Part 1951.

(1) *Distribution of regular payments* for the program areas covered by this regulation are made as follows:

(i) *Community Programs.* When a borrower owes one or more FmHA loans, regular payments received from the facility revenue will be distributed in accordance with the following priorities, except as otherwise established by the note or bond.

(A) First, to FmHA loans in proportion to the delinquencies existing on each. If the payment exceeds the amount of the delinquencies on each loan, the excess should be distributed according to § 1951.207(a)(1)(i)(B).

(B) Second, to FmHA loans in proportion to the approximate amounts due on each. If the payment exceeds the amount due on each loan for the year, then the excess should be distributed according to § 1951.207(a)(1)(i)(C).

(C) Third, as advance payments on FmHA loans. In making such distributions, consider the principal balance outstanding on each loan, the security position of the liens securing each loan, the borrower's request, and related circumstances.

(ii) *Grazing Association Loans, Irrigation, Drainage and other Soil and Water Conservation Loans, and Indian Tribes and Tribal Corporation Loans.* Distribution of regular payments will be made according to § 1951.9(a) of Subpart A of Part 1951, except as otherwise established by the note or bond.

(2) Except as otherwise established by the note or bond, regular payments will be applied first to the interest accrued on the account as of the date of receipt of the payment. Any excess will be applied to the principal balance.

(b) *Extra payments.* Extra payments for Community Program borrowers are derived from sale of basic chattel or real estate security; refund of unused loan funds; cash proceeds of real property insurance as provided in § 1806.5(b) of Subpart A of Part 1806 (paragraph V B of FmHA Instruction 426.1); and transactions of a similar nature which reduce the value of basic security. Also, at the option of the borrower, regular facility revenue may be used as extra payments when regular payments are current.

(1) Distribution of extra payments for the program areas covered by this regulation are as follows:

(i) *Community Programs* extra payments, except as otherwise established in the note or bond, will be applied to the account secured by the lowest priority of lien on the property from which the extra payment was obtained. When the payment exceeds the unpaid balance of the FmHA lien having the lowest priority, the balance of such payment will be distributed to the FmHA loan having the next highest priority. The amount to be applied to principal will be applied to the final unpaid installment(s).

(ii) *Grazing Association Loans, Irrigation, Drainage and other Soil and Water Conservation Loans, and Indian Tribes and Tribal Corporation Loans.* Distribution of extra payments will be made according to § 1951.9(b) of Subpart A of Part 1951.

(2) Application of extra payments for the program areas covered by this regulation are as follows:

(i) *Community Programs* extra payments will be applied first to interest accrued to the date of the receipt and second to principal. The amount applied to principal will be applied to the final unpaid installment(s).

(ii) *Grazing Association Loans, Irrigation, Drainage and Other Soil and Water Conservation Loans, and Indian Tribes and Tribal Corporation Loans.* Extra payments will be applied in accordance with § 1951.11(b)(2) of Subpart A of Part 1951.

(c) *Collections.* Collections are processed according to Subpart B of Part 1951.

(d) *Actions by FmHA for account of borrower, including advances for protection of security of lien.* (1) Community Program borrowers shall continuously maintain adequate insurance coverage as required by the loan agreement and § 1942.17(j)(3) of Subpart A of Part 1942. Ordinarily, FmHA should be listed as mortgagee on the property insurance policies when FmHA has a lien on the property. Insurance coverage should be monitored to determine that adequate policies and bonds are in force. A copy of the fidelity bond(s) should be maintained in the borrower's case file. Other insurance policies are not required to be maintained in the file. Evidence of adequate insurance must be furnished by the borrower. For all other types of loans covered by this Subpart, property insurance will be serviced according to Subpart A of Part 1806 (FmHA Instruction 426.1) in real estate mortgage cases and according to the loan agreement in other cases.

(2) Borrower's real property taxes are serviced according to Part 1863 (FmHA Instruction 425.1). If State statutes permit a personal property tax lien to have priority over FmHA's lien, personal property taxes are serviced according to § 1863.3 and § 1863.4 of Part 1863 (paragraphs III and IV of FmHA Instruction 425.1).

(3) The State Director is authorized to approve vouchers to pay costs, without regard to any loan or total indebtedness limitation, to preserve and protect the security (including insurance), or the lien, or priority of the lien securing the loan or other indebtedness owing to or insured by FmHA. Vouchers are prepared in an original and two copies using Standard Form 1034, "Public Voucher for Purchases and Services Other Than Personal." The name and address of the party to whom payment is due is inserted in the heading. The amount of the vouchered items is inserted in the appropriate spaces. The notation inserted in the space for description of the services includes the purpose of the payment, the location and a simple description of the property, the name and case number of the borrower, and the fact that the amount will be charged to the borrower's account. A sample notation could be as follows:

> For payment of water rights of real property in *(community), (state), (case no.), (loan type code)* for the period of July 15, 19 , through August 19 , to be charged to the borrower's loan account.

After the voucher has been approved by the State Director, the original with any attached reports is sent to the Finance Office. One copy is held in the borrower's servicing office loan docket and one copy is given to the borrower. After the voucher has been processed in the Finance Office, the U.S. Treasury Check is issued to the appropriate payee and mailed to the servicing office for delivery. The purpose of the payment is stated on each check. Any amount advanced is entered as a recoverable charge on the borrower's account in the Finance Office. The advance bears interest at the rate specified in the most recent debt instrument under which the advance is authorized to be made. After the check is issued, Form FmHA 451-26, "Transaction Record," is prepared by the Finance Office and sent to the appropriate servicing office, showing the amount of the recoverable charge and the applicable rate of interest. Protective advances are not to be used as a replacement for a loan.

(e) *Subordination or giving parity position of security.* (1) *Request for subordination or giving parity position.* When a borrower requests FmHA to subordinate a security instrument so that another creditor or lender can refinance, extend, reamortize, or increase the amount of a prior lien, or be on parity with, or place a lien ahead of the FmHA lien, it will submit a written request to the servicing office which may be Form FmHA 465-1, "Application for Partial Release, Subordination or Consent." This request should contain the purpose of the Subordination, or parity action, exact amount of money or property involved, description of security property involved, type of security instrument, name, address, line of business and other general information pertaining to the party in favor of which the request is made, and other pertinent information which will be of assistance in determining need for the request. Requests for subordination will be submitted to the National Office, except that the approval official is authorized to execute subordination on Form FmHA 460-2, "Subordination by the Government," if all the following requirements and conditions are met:

(i) The amount of the subordination does not exceed the official's loan approval authorizations as set forth in Exhibits B and C of Subpart A of Part 1901.

(ii) The borrower is unable to refinance the FmHA mortgage on terms which the borrower can reasonably be expected to meet.

(iii) The transaction will either further the objectives for which the FmHA loan was made or improve the borrower's debt-paying ability and, in either case, result in the FmHA debt being adequately secured.

(iv) The terms and conditions of the prior lien will be such that the borrower can reasonably be expected to meet them as well as all other debts.

(v) Any proposed development work will be planned and performed according to Appendix B of Subpart A of Part 1942 or in a manner directed by the creditor which reasonably attains the objectives of Subpart A of Part 1942.

(vi) All contracts, pay estimates, and change orders will be reviewed and concurred in by the FmHA State Director.

(vii) In case of land purchase, the FmHA will obtain a mortgage on the purchased land.

(viii) When the transaction involves more than $1,000 and the approval official considers it necessary, a present market value appraisal report will be obtained. However, a current appraisal report need not be obtained if there is an appraisal report not over one year old in the file which will permit the proper determination as to the present market value of the total property after the transaction.

(ix) The subordination is for a specific amount.

(x) The proposed action will not so change the nature of the borrower's activities as to make it ineligible for FmHA loan assistance.

(xi) In requests for parity position, FmHA must ascertain the existence of any other outstanding security interests and the borrower must obtain the necessary consent and subordination of all concerned.

(2) *Processing.* All requests for subordination and giving parity position, including those pertaining to pledges of revenue, but excluding those affecting other chattel liens, will be closed according to Office of General Counsel (OGC) instructions. FmHA's consent on Form FmHA 465-1 will be signed concurrently with Form FmHA 460-2. When National Office approval is required or the State Director desires advice pertaining to the request, the borrower's case file will be sent to the National Office and will include—

(i) Current balance sheet, income statement and budget (budget on Form FmHA 442-2, "Statement of Budget, Income, and Equity", schedules 1 and 2);

(ii) Copy of proposed lien;

(iii) Appraisal report;

(iv) Borrower's written request on Form FmHA 465-1;

(v) OGC opinion on the request;

(vi) Exhibit A (available in any FmHA Office) of this Subpart, appropriately completed, including recommendations and comments by the District Director, Program Chief, and State Director; and

(vii) Any other necessary supporting information.

(f) *Loan reamortization.* (1) The State Director is authorized to approve reamortization of loans for borrowers having a delinquency which cannot be brought current within one year while maintaining a reasonable reserve when all of the following conditions exist:

(i) The debt(s) to be reamortized does not exceed the State Director's loan approval authorization.

(ii) The borrower has demonstrated for at least one year by actual performance or has presented a budget which clearly indicates that it is able to meet the proposed payment schedule.

(iii) There is no extension of the final maturity date.

(2) Proposals for reamortization exceeding the limits set in § 1951.207(f)(1) of this Subpart and those evidenced by notes which are not delinquent, may be reamortized with prior approval of the National Office. Requests forwarded to the National Office will contain the borrower's current case file which includes:

(i) Current budget and cash flow prepared on Form FmHA 442-2, schedules 1 and 2;

(ii) Current balance sheet;

(iii) Current income statement;

(iv) Exhibit A of this Subpart, appropriately completed, including recommendations and comments by the District Director, Program Chief, and State Director.

(v) Form FmHA 451-33, "Reamortization Request;" and

(vi) Any other necessary supporting information.

(3) *Processing.* (i) Borrowers requesting reamortization that have loans secured by notes will complete Form FmHA 451-33. Ordinarily the entire note including principal and interest is reamortized. Reamortization is accomplished through the use of a new evidence of debt unless the OGC recommends that the terms of the existing document be modified through the use of Form FmHA 451-33, or if that is legally inadequate, through the use of another appropriate form. Interest will be at the original rate.

(ii) Borrowers with loans secured by bonds may effect reamortization by procedures which in the opinion of the borrower's counsel and the OGC are legally permissible under State law and acceptable to the State Director. The procedure may include a new debt instrument for the total FmHA indebtedness including the delinquency, or a new debt instrument or agreement whereby the borrower agrees to repay the delinquency plus interest at the original bond rate over a determined number of years.

(iii) When a new debt instrument or agreement for only the delinquency is used, it will, after execution, be retained by the Finance Office. A new loan number will be assigned to the reamortization of the delinquency. The borrower will be required to pay the amount due on the reamortized loan plus its regular scheduled installments on the loan. Appendix C of Part 1942, Subpart A applies to any necessary new bonds except where precluded by State statutes or where an exception is approved by the National Office. The agreement will contain—

(A) The amount delinquent (which should equal the total of the delinquency of the account, the unpaid principal on the advance from the fund, and the accrued interest on the advance from the fund through the date of reamortization, less interest payments credited on the advance account);

(B) The date of reamortization;

(C) The number of years over which the delinquency will be reamortized;

(D) The repayment schedule; and

(E) The interest rate.

(iv) The properly executed new instrument(s) or endorsement, as appropriate, are handled as follows:

(A) *Notes.* The original new note should be attached to the existing note(s) and filed in the servicing office and retained by FmHA until the respective account is paid in full or otherwise satisfied. A copy of the endorsement will be forwarded to the Finance Office.

(B) *Endorsement.* Any endorsement required by OGC to accomplish reamortization will be attached to the existing note and retained in the servicing office until the respective account is paid in full or otherwise satisfied. A copy of the endorsement will be forwarded to the Finance Office.

(C) *Bonds.* State statutes regarding the reamortization of bonds may vary. Therefore, each State Office will work closely with OGC in the handling of bonds. If the State statutes do not require the release of the existing bonds, these will be held in the Finance Office and the new bond instructions or agreement will be forwarded to the Finance Office, attached to the original bond(s), and retained by FmHA until the respective account is paid in full or otherwise satisfied. If State statutes require the release of the existing bonds, the exchange will be accomplished by the District Director and the new bonds and/or agreement will be forwarded to the Finance Office in the usual manner.

(g) *Consent to borrower's granting lease of security.* (1) *State Director's consent.* The State Director may consent to the leasing of all or a portion of security property when—

(i) The lease will not adversely affect the repayment of the loan or the Government's rights under the security or other instruments;

(ii) Leasing is not an alternative to, or means of, delaying liquidation action;

(iii) The lease and use of any proceeds from the lease will further the objectives of the loan;

(iv) Rental income is assigned to FmHA in an amount sufficient to make regular payments on the loan, and operate and maintain the facility unless such payments are otherwise adequately secured; and

(v) The lease is advantageous to the borrower and is not disadvantageous to the Government.

(vi) If foreclosure action has been approved and the case has been submitted to OGC, consent to lease and use of proceeds will be granted only with OGC's concurrence.

(vii) The lease shall not exceed a one-year period. The property may not be under lease more than two consecutive years without authorization from the National Office. Refer to § 1951.207(g)(3) of this subpart for processing.

(2) *Mineral leases.* Unless liquidation is pending, the State Director is authorized to approve mineral leases when—

(i) The lessee agrees in the lease or elsewhere, or is liable without any agreement, to pay adequate compensation for any damage to the real estate surface and improvements. Damage compensation will be assigned to the FmHA or the prior lienholder by the use of Form FmHA 443-16, "Assignment of Income from Real Estate Security," or other appropriate instrument;

(ii) Royalty payments are adequate and are assigned to FmHA on Form FmHA 443-16;

(iii) All or a portion of delay rentals and bonus payments may be assigned on Form FmHA 443-16 if needed for protection of the Government's interest;

(iv) The lease, subordination, or consent form is acceptable to the OGC; and

(v) The lease will not interfere with the purposes for which the loan or grant was made.

(3) *Processing.* When FmHA's consent to a lease is required, the borrower will complete and submit Form FmHA 465-1. The form will include the terms of the proposed lease and will specify the use of proceeds including any proceeds to be released to the borrower. When another lienholder's mortgage requires consent to lease, the lienholder's consent will be obtained. When the approval of the National Office is required or if the State Director wishes a lease transaction reviewed prior to approval, the borrower's case file will be forwarded to the National Office and will include—

(i) A copy of the proposed lease;

(ii) Exhibit A of this Subpart appropriately completed, including recommendations and comments by the District Director, Program Chief, and State Director; and

(iii) Any other necessary supporting information.

(h) *Third party operation, maintenance, and management of all or part of a facility.* The State Director may authorize all or part of a facility to be operated, maintained, or managed by a third party under a contract, management agreement, or written lease in accordance with § 1942.17(b)(3) of Part 1942, Subpart A. In such cases, the borrower shall retain ultimate responsibility for operating, maintaining, and managing the facility, and for its continued availability and use at reasonable rates and terms.

(i) *Membership liability.* As a loan approval requirement, some borrowers may have special agreements with members for the purchase of shares of stock or for the payment of a pro-rata share of the loan in event of default, or they may have in their corporate instruments authority to make special assessments in that event. The agreements may be referred to as individual liability agreements and may be assigned to and held by the FmHA as additional security for the loan. In other cases the borrower's note may be endorsed by individuals. The liability instruments will be serviced in a manner indicated by their contents and the advice of OGC to adequately protect the interest of the FmHA. A notation will be made on Form FmHA 1905-10, "Management System Card-Association," showing necessary servicing action.

(j) *Other security.* Other security such as collateral assignments, water stock certificates, notices of lienholder interest (Bureau of Land Management grazing permits) and waivers of grazing privileges (Forest Service grazing permits) will be serviced to protect the interest of FmHA, and under any special servicing actions developed by the State Director with the OGC's assistance. Evidence of the security will be filed in the loan docket in the servicing office. A notation will be made on Form FmHA 1905-10, showing necessary servicing action.

(k) *Correcting errors in security instruments.* Land, buildings, or chattels included in the mortgage through mutual mistake may be released from the mortgage by the State Director when substantiated by the factual situation. The release is contingent on the State Director, with the advice of the OGC, determining that a mutual error existed at the time the property was included in the Government's mortgage.

§ 1951.208 Liquidation of security.

When the District Director believes that continued servicing will not accomplish the objectives of the loan the District Director will complete a report using the format shown in Exhibit A (available in any FmHA Office) of this Subpart, and submit it along with the District Office file to the State Office. If the State Director determines the account should be liquidated, the State Director will encourage the borrower to voluntarily sell the property and remit the proceeds to FmHA. The State Director will give the borrower a specified period of time, not to exceed 180 days, to accomplish the action. If the voluntary sale cannot be accomplished, the loan will be liquidated according to § 1951.210 of this Subpart or Subpart A or Part 1955.

§ 1951.209 Sale or exchange of security property.

(a) *General.* In cases where a substantial loss to the government will result from the sale or the prospective buyer is a member(s) of the borrower's organization, the State Director will forward all pertinent information regarding the sale to the National Office prior to making any commitment. It is not FmHA's policy to sell security property to a member(s) of the borrower's organization at a price which will result in a loss to the Government. This information will include—

(1) Borrower's case file;

(2) Exhibit A (available in any FmHA Office) of this Subpart appropriately completed, including recommendations of the District Director, Program Chief, and State Director;

(3) Appraisal report; and

(4) Name of purchaser, anticipated sale price, terms and conditions.

(b) *Authorities.* Subject to the conditions of this section, the District Director is authorized to approve a cash sale of all or a portion of the borrower's assets or an exchange of security property when only chattels are involved. The State Director is authorized to approve real estate transaction. Approvals may be given when the approval official determines that—

(1) The consideration is adequate;

(2) The release will not prevent carrying out the purpose of the loan;

(3) The remaining property is adequate security for the loan or the transaction will not adversely affect FmHA's security position;

(4) If the property to be sold or exchanged is to be used for the same or similar purposes for which the loan or grant was made, the purchaser will execute Form FmHA 400-4, "Assurance Agreement". This will remain in effect as long as the property continues to be used for the same or similar purposes for which the loan or grant was made; and

(5) The proceeds (after paying any reasonable and necessary selling expenses) are used for one or more of the following purposes:

(i) To pay on FmHA debts according to § 1951.207 (a) and (b) of this Subpart, on debts secured by a prior lien, and on debts secured by a subsequent lien if it is to FmHA's advantage.

(ii) To purchase or to acquire through exchange property more suitable to the borrower's needs, if the FmHA secured debt will be as well secured after the transaction as before.

(iii) To develop or enlarge the facility if the action is necessary to: (A) Improve the borrower's debt-paying ability, (B) place the operation on a sounder basis, and (C) otherwise further the objectives of the loan.

(6) Disposition of property acquired in whole or part through the use of grant funds will be in accordance with the grant agreement.

(7) The FmHA liens will not be released until the appropriate sale proceeds are received for application on the Government's claim. In any State in which it is necessary to obtain the insured note from the lender to present to the recorder before a release of a portion of the land from the mortgage, the borrower must pay any cost for postage and insurance of the note while in transit. The District Director will advise the borrower when it requests a partial release that it must pay these costs. If the borrower is unable to pay the costs from personal funds, the costs may be deducted from the sale proceeds. The amount of the charge will be based on the statement of actual cost furnished by the insured lender.

(c) *Processing partial security release.* When a borrower requests permission to sell or exchange a portion of FmHA's security property, the borrower will complete Form FmHA 465-1, for real estate or Form FmHA 462-2, "Written Consent to Sell and Statement of Conditions on Which Lien Will Be Released," for chattels. For real estate transactions the District Director will forward (1) Form FmHA 465-1, (2) the appropriate appraisal report, (3) the District Office loan docket including an executed Form FmHA 400-4, (4) the District Director's recommendation, and (5) all other pertinent information to the State Director.

(d) *Releasing security.* (1) Chattel security. The District Director is authorized to satisfy or terminate chattel security instruments when § 1951.209(b) of this Subpart and § 1962.17 of Subpart A of Part 1962 have been complied with. Satisfaction or termination of chattel security instruments will be accomplished according to § 1962.27 of Subpart A of Part 1962. Partial release may be made by using Form FmHA 460-1, "Partial Release," or Form FmHA 462-12, "Statements of Continuation, Partial Release, Assignment, etc." Form FmHA 460-4, "Satisfaction," will be used when a debt has been paid in full or satisfied by debt settlement action.

(2) Real estate. Subject to § 1951.209 (b) of this Subpart, the State Director is authorized to consent to disposition of a part or all of an interest in real estate security by approving Form FmHA 465-1. Partial release of real estate security may be made by use of Form FmHA 460-1 or other form approved by OGC. Form FmHA 460-4, or other form approved by OGC, will be used when a debt has been paid in full or satisfied by debt settlement.

(e) *Release of liability.* (1) When the FmHA debt is paid in full from the sale of proceeds, the borrower will be released from liability by use of Form FmHA 465-8, "Release from Personal Liability."

(2) When sale proceeds are not sufficient to pay the FmHA debt in full and all security property has been disposed of, the remaining debt will be accelerated and the case reclassified to collection only according to FmHA Instruction 404.1 (available in any FmHA Office).

§ 1951.210 Transfer of security and assumption of loans.

(a) *General.* It is the policy of FmHA to approve transfers and assumptions of loans to transferees who will continue the original purpose of the loan. Transfers and assumptions may be approved subject to the following:

(1) When the transaction is to a member(s) of the borrower's organization at a price which will not result in a loss to the Government.

(2) Transfers to eligible applicants will receive preference over transfers to ineligible applicants if recovery to

FmHA from the sale price is not less than it would be if the transfer were to an ineligible applicant.

(3) The present borrower is unable or unwilling to accomplish the objectives of the loan and the transfer will be to the Government's advantage.

(4) If the debt(s) exceeds the present market value of the security, the transferee will assume an amount at least equal to the present market value.

(5) If the FmHA debt is less than the present market value, the transferee will assume an amount at least equal to the debt owed the FmHA.

(6) The transfer will not adversely affect the FmHA program in the area.

(7) FmHA concurs in the plans for disposition of funds in the transferor's debt service, reserve, and operation and maintenance account.

(b) *Eligible applicants.* (1) The State Director is authorized to approve transfers of security property to and assumptions of FmHA debts by transferees who would be eligible for the type of loan being transferred as follows:

(i) If the terms of the loan are changed, Form FmHA 460-5, "Assumption Agreement (New Terms)", will be executed by a nonpublic body transferee. The new repayment period may not exceed the lesser of the repayment period for a new loan of the type involved or the expected life of the collateral securing the loan. The interest rate will be that rate specified in the note(s) or bond(s) being assumed.

(ii) If the full debt is assumed and the same interest rate and terms will prevail, the transferee will execute Form FmHA 460-9, "Assumption Agreement (Same Terms—Eligible Transferee)".

(iii) When the property to be transferred is to be used for the same or similar purposes for which the loan or grant was made, to avoid any doubt as to the continuation of the nondiscrimination covenants, the transferee will execute Form FmHA 400-4.

(iv) A loan for which the transferee is eligible may be made in connection with a transfer, subject to the policies and procedures governing the kind of loan being made.

(v) If the transferor is to receive a payment for its equity, the total FmHA debt must be assumed.

(2) Release of transferor from liability. Transferors may be released from personal liability under the following conditions:

(i) When all FmHA security is transferred to an eligible applicant and the total outstanding debt is assumed, it will be the policy to release the transferor from liability.

(ii) In those cases where the security is transferred to an eligible applicant and an amount at least equal to the present market value of the security will be assumed, the transferor may be released from liability if the State Director determines that the transferor does not have reasonable debt-paying ability considering its assets and income at that time of the transfer, and the County Committee certifies that the transferor has cooperated in good faith, used due diligence to maintain the security property against loss, and has otherwise fulfilled the covenants incident to its loan to the best of its ability. If the County Committee recommends a release of liability, the County Committee must execute a memorandum containing the following statement:

"______ ______ in our opinion does not have reasonable debt-paying ability to pay the balance of the debt not assumed after considering its assets and income at the time of the transfer. The transferors have cooperated in good faith, used due diligence to maintain the security against loss, and otherwise fulfilled the covenants incident to the loan to the best of its ability. Therefore, we recommend that the transferor be released of liability upon the transferee's assumption of that portion of the indebtedness equal to the present market value of the security." In such cases the balance remaining on the debt will be charged off.

(c) *Ineligible applicants.* Transfers are considered only when needed as a method for servicing problem cases when an eligible transferee is not available. Transfers should not be considered as a means by which members can obtain an equity or as a method of providing a source of easy credit for purchasers. Transfers are made as follows:

(1) State Directors are authorized to approve all transfers of incorporated Economic Opportunity Cooperative loans to ineligible applicants.

(2) For all other loans covered by this Subpart, the State Director is authorized to approve a transfer of indebtedness to, and assumption of loan by, a transferee who does not meet the eligibility requirements for the kind of loan being assumed when the ineligible applicant will:

(i) Make a significant downpayment.

(ii) Agree to pay the remaining balance within not more than 15 years. Annual installments will be at least equal to the amount amortized over a period not greater than the remaining life of the debt being transferred and the balance will be due the fifteenth year.

(3) Interest rates to ineligible transferees will be the rate specified in the note of the transferor or the market rate for Community Programs, whichever is greater on the date the transfer is approved, and according to the following:

(i) Transferees must have the ability to pay the FmHA debt according to the assumption agreement and must have the legal capacity to enter into the contract. The applicant will submit a current balance sheet and may use Form FmHA 442-3, "Balance Sheet." This information should be supplemented by a credit report from an independent source such as Dun and Bradstreet or verified by an independent certified public accountant. In all transfers, consideration will be given to obtaining individual liability agreements from members of the transferee organization.

(ii) The transferee will execute Form FmHA 465-5, "Transfer of Real Estate Security," modified as appropriate.

(iii) Where the property to be transferred is to be used for the same or similiar purposes for which the loan or grant was made, the transferee will execute Form FmHA 400-4.

(iv) This Subpart does not preclude the transferor from receiving equity payments when the full amount of the FmHA debt is assumed. However, equity payments will not be made on more favorable terms than those on which the balance of the FmHA debt will be paid.

(4) Release of transferor from liability may be granted by the State Director as follows:

(i) When the full amount of the debt is assumed; or

(ii) When the transferee assumes that portion of the security indebtedness at least equal to the current market value of the security property on terms not to exceed five annual installments from the date of assumption, and the determinations, certifications, and recommendations of § 1951.210(b)(2)(ii) of this Subpart are made.

(d) *Submissions to National Office.* Under any of the following conditions, a proposed transfer or assumption will be forwarded to the National Office for prior review and approval before making any commitments:

(1) Where a loss to the Government will result;

(2) The prospective transferee is a member(s) of the present borrower's organization;

(3) Proposals for transfer or assumption are made on more liberal terms than set forth in § 1951.210 (b)(1) and (c) of this subpart;

(4) Proposals for a cash downpayment to the present borrower in an amount which exceeds the actual sales expenses; or

(5) Water and Waste Disposal loans representing indebtedness for projects financed in part by FmHA development grants.

(6) All submissions to the National Office will contain:

(i) Transfer case file.

(ii) OGC comments on the proposed transfer or assumption.

(iii) Appropriate forms according to Exhibit D for transferee. When the transferee is a public body, transfer and assumption documents prepared by the transferee will be included.

(iv) Any other necessary supporting information.

(e) *Processing transfers and assumptions.* Refer to Exhibit D (available in any FmHA Office) for a listing of forms to be processed in connection with all transfers and assumptions either to eligible or ineligible applicants. The District Director will submit these forms to the State Director. The following conditions also apply: In cases where the transferee is a public body and Forms FmHA 460-5 and 460-9 are not suitable, the transferee's attorney should prepare the documents necessary to effect the transfer and assumption, and submit these for approval (with OGC concurrence) by FmHA.

(1) *Effective date of transfer* is the actual date the transfer is closed, which is the same date Form FmHA 460-5, Form FmHA 460-9, or other appropriate assumption agreement is signed.

(2) *Accrued interest* entered in Table I of either Forms FmHA 460-5 or 460-9, or other appropriate assumption agreement, is computed on either: Form FmHA 451-11, "Statement of Account," Form FmHA 451-25, "Status of Account," or Form FmHA 451-26.

(3) *Form FmHA 460-5.* If this form is used, the transferee should be informed of the amount needed to be on schedule by the next installment due date.

(4) *Form FmHA 460-9.* If this form is used, the transferee will be informed of the amount of principal and interest owed as shown on the latest "Transaction Record" or "Statement of Account." The transferee will also be advised as to the amount that would be required to place the account on schedule as of the previous installment due date and any amounts that must be paid to bring any payments up to date.

(5) *Title to all assets* will be conveyed from the transferor to the transferee unless other arrangements are agreed upon by all parties concerned, including FmHA.

(6) *Lien judgments or claims.* There must be no lien, judgment, or other claims of parties other than FmHA against the security being transferred unless the transferee is willing to accept the claims and the FmHA approving official determines that the claims will not affect the transferee's ability to repay FmHA's debt, meet all operating and maintenance costs, and maintain the required reserves. The written consent of any other lienholder will be obtained where required.

(7) *If an insured loan is involved,* the Finance Office will have the insured "note" assigned to the fund when the "Assumption Agreement" changes the terms of note or bond.

(8) *The transferee will obtain insurance* according to the requirements for the outstanding loan(s) involved unless the approval official requires additional insurances as a condition of approval. If insurance is required, it may be obtained either by transfer of the existing coverage by the transferor or by acquisition of a new policy by the transferee. When the full amount of the FmHA debt is being assumed and an amount has been advanced for insurance premiums or any other purposes the transfer will not be completed until the Finance Office has charged the advance to the transferor's account.

(9) *The parties to the transfer* are responsible for obtaining the legal services necessary to accomplish the transfer.

(10) *Transfer closings* are accomplished according to OGC instructions.

(11) *When the transferee will be an eligible applicant,* any development funds not to be refunded remaining in the transferor's supervised bank account will be transferred to the transferee's supervised bank account simultaneously with the closing of the transfer for use in completing planned development. All funds remaining in the supervised bank account will be refunded to FmHA as a condition of transfer to an ineligible applicant.

(12) *Forms transmitted to Finance Office.* The following forms will be sent immediately to the Finance Office:

(i) Forms FmHA 460-5, 460-9 (original and signed copy for insured loan) or other appropriate assumption agreement.

(ii) Form FmHA 451-2, "Schedule of Remittance," when applicable.

(iii) Form FmHA 465-8 when applicable, signed copy.

(13) *If the transfer or assumption is not within the State Director's approval authority under this Subpart,* the docket will be forwarded along with the State Director's recommendations to OGC for review and comment. Upon receipt of OGC's comments, the file will be sent to the National Office, including the documentation indicated in § 1951.210(d)(6) of this subpart.

(14) *Assumption agreement, release from personal liability, receipts.* Forms FmHA 460-5 or FmHA 460-9, FmHA 451-2 and FmHA 465-8 will be completed and executed simultaneously with the closing transaction, in each case where the full amount of the debt is assumed or a release from personal liability is otherwise approved under this subpart, and all of the security is being transferred.

(f) *Transfers not completed.* If for any reason the transfer is not completed after approval, the Finance Office will be notified to resume servicing of the account in the name of the existing borrower.

§ 1951.211 Mergers.

(a) *General.* State Directors are authorized to approve mergers or consolidations (which are herein referred to as mergers) when the resulting organization will be eligible for an FmHA loan and assumes all the liabilities and acquires all the assets of the merged borrower. Mergers may be approved when:

(1) The merger is in the best interest of the Government and the merging borrower.

(2) The resulting borrower can meet all required operating and maintenance expenses, debt repayment, and maintain required reserves.

(3) All security property can be legally transferred to the resulting borrower.

(4) The membership of each organization involved is made aware of the proposed merger, and there is compliance with all applicable requirements of State law.

(b) *Distinguished from transfers and assumptions.* Mergers occur when one corporation combines with another corporation in such a way that the first corporation ceases to exist as a separate entity while the other continues. In a consolidation, two or more corporations combine to form a new, consolidated corporation, with the original corporations ceasing to exist. In both mergers and consolidations, the surviving or emerging corporation takes the assets and assumes the liabilities of the corporations which ceased to exist. Such transactions must be distinguished from transfers and assumptions in which a transferor will not necessarily go out of existence, and the transferee will not always take all the transferor's assets, nor assume all the transferor's liabilities. Procedures relating to transfers and assumptions appear above at section 1951.210.

(c) *Processing mergers.* Processing is made according to all applicable items of § 1951.210(e) (1) through (14) of this subpart. In addition:

(1) *When reamortization* of one or more notes is proposed in connection with the merger, § 1951.207(f) of this subpart will be followed.

(2) If the loan is held by an insured lender, then the loan will be assigned to FmHA.

(d) *Merger not completed.* If for any reason the merger is not completed after the statement of the account has been received, the Finance Office will be notified to resume servicing of the account in the name of the existing borrower.

§ 1951.212 Special provisions applicable to Economic Opportunity (EO) Cooperative loans.

(a) *Withdrawal of member and transfer to and assumption by new members of Unincorporated Cooperatives.* (1) Withdrawal of a member who is no longer utilizing the services of an association and transfer of withdrawing member interest in the association to a new member who will assume the entire unpaid balance of the indebtedness of the withdrawing member may be permitted, if the remaining members agree to accept the new member and the transfer will not adversely affect the collection of the loan. The Servicing Office will submit to the State Office the borrower case file and the following—

(i) Form FmHA 460–9, executed by the proposed new member;

(ii) Statement of the current amount of the indebtedness involved;

(iii) A description and statement of the value of the security property;

(iv) A memorandum to justify the transaction;

(v) Form FmHA 440–2, "County Committee Certification or Recommendation";

(vi) Form FmHA 450–12, "Bill of Sale (Transfer by Withdrawing Member)," executed by the withdrawing member; and

(vii) Exhibit B of this subpart, "Agreement for New Member (With or Without Withdrawing Member)," (available in any FmHA Office) as executed by remaining members of the association, the proposed new member, and the withdrawing member.

(2) If, after review of the above information, the State Director determines that the proposed new member is an eligible applicant and that the transfer is justified, the State Director may approve the transfer and assumption by executing Form FmHA 460–9.

(3) Upon completion of the above actions, the State Director may release the outgoing member from personal liability. Form FmHA 465–8 will be used for this purpose.

(4) Form FmHA 460–9 and, if applicable, Form FmHA 465–8 should immediately be forwarded to the Finance Office and the Finance Office advised by memorandum that these forms are intended only to establish liability for a new member and release an old member from liability.

(b) *Withdrawal of members from Unincorporated Cooperatives.* (1) *Withdrawal when new member not available.* Withdrawal of a member who is no longer utilizing the services of an association may be permitted even though a new member is not available, if:

(i) The State Director determines that:

(A) The remaining members have sufficient need for the property, and

(B) The withdrawal of the member will not adversely affect the collection of the loan.

(ii) The remaining members obtain from the outgoing member an agreement conveying the outgoing member's interest in the cooperative property to them. They may also wish to agree to protect the outgoing member against liability on the debt owed to FmHA as well as any other debts. Exhibit C of this Subpart, "Agreement for Withdrawal of Member (Without New Member)," (available in any FmHA Office) may be used by the cooperative for the preparation of the agreement. The agreement will be between the withdrawing member and the remaining members of the cooperative; FmHA will not be a party to it.

(c) *Addition of new members (no withdrawing member or transfer involved) for both Incorporated and Unincorporated Cooperatives.* (1) A new member may be admitted to the association even though there is no withdrawing member, if:

(i) The members of the association agree to accept the proposed new member, and

(ii) The State Director determines that the association owns adequate facilities to provide service to the new member.

(2) The Servicing Office will submit to the State Office the Servicing Office file and the following:

(i) Form FmHA 460–9 executed by the proposed new member;

(ii) Servicing Office statement of the current amount of the indebtedness involved;

(iii) A description and statement of the value of the security property;

(iv) A memorandum to justify the transaction;

(v) Form FmHA 440–2; and

(vi) Exhibit B (available in any FmHA Office) as executed by the members of the association and the proposed new member.

(3) If, after review of the above information, the State Director determines that the proposed new member is an eligible applicant and the transaction is justified, the State Director may approve the transaction by executing Form FmHA 460–9.

(4) Form FmHA 460–9 should immediately be forwarded to the Finance Office and the Finance Office advised by memorandum that the form is intended only to establish liability for a new member.

(d) *Deceased members of Unincorporated Cooperatives.* Paragraph 10 of Form FmHA 442–24, "Operating Agreement," provides that in case of the death of any member, the heirs or personal representative of the deceased member shall take the deceased member's place in the association. This provision also covers sale of the decedent's interest in the association in case the sale is necessary for the payment of the debts of the estate.

(1) If the heirs or personal representative do not wish to continue membership in the association, the remaining members may be permitted to continue to operate the property if FmHA's financial interest will not be jeopardized. The remaining members should obtain from the deceased member's estate an agreement conveying the estate's interest in the cooperative property to them. The remaining members may wish to agree to protect the estate against liability on the debt to FmHA as well as any other debts of the cooperative.

(2) The requirement of § 1962.46 (h) of Subpart A of Part 1962 will also be followed.

(e) *Action which affects individual members of Unincorporated EO Cooperative security.* The borrower will be expected to protect the borrower's own interest in condemnation, trespass, quiet title, and other cases affecting the security. The Servicing Office will immediately furnish the complete facts concerning any action taken against individual members of Unincorporated Cooperatives to the State Director together with the Servicing Office case file.

§ 1951.213 Care, management and disposal of acquired property.

Property acquired by FmHA will be handled according to Subparts B and C of Part 1955.

§ 1951.214 Water and waste disposal systems which have become part of an urban area.

(a) *Servicing.* Water and/or waste disposal systems serving what were formerly rural areas, but which have become part of an urban area due to the growth of an urban community are serviced as follows:

(1) Service may not be curtailed or limited by the inclusion of a system within an urban area;

(2) The borrower may continue to operate the system; or

(3) The borrower may agree to transfer the system to the urban community, provided that:

(i) The urban community will purchase the facility and immediately pay the FmHA debt in full; or

(ii) The urban community will accept a transfer of the FmHA debt on an ineligible applicant basis; or

(iii) If (a)(3) (i) and (ii) of this section are not practical, and with the prior approval of the National Office, the urban community will operate and maintain the system on the basis of a lease-purchase arrangement with the FmHA borrower whereby:

(A) The urban community will:

(*1*) Assume responsibility for operation and maintenance of the facility, subject to nondiscrimination requirements and other requirements to be specified in the agreement between the parties which are applicable to the borrower, and

(*2*) Pay the association annually an amount necessary to enable it to meet all its obligations including reserve account requirements.

(B) The FmHA borrower will:

(*1*) Retain its corporate existence until FmHA has been paid in full, and if the parties desire,

(*2*) Convey title of the facility to the urban community when the FmHA debt has been paid in full.

(C) The provisions of § 1951.207(g)(1)(vii) of this subpart are not applicable to such lease-purchase arrangements.

(b) *Processing.* The State Director, with advice and guidance of OGC, will review the proposed agreement drafted by the borrower or the urban community. This draft agreement with the docket, any additional pertinent information, the State Director's recommendation, and OGC's comments will be forwarded to the National Office for review and approval authorization.

§ 1951.215 Water and waste disposal, industrial development, energy impacted area development assistance and other grants.

All grants are to be supervised and serviced to assure that the terms and conditions of the grant are met. In any case where it appears that the terms or conditions of the grant may have been violated, the State Director will forward the docket to OGC for review and comments. After receipt of OGC's comments, the State Director will forward the docket, together with a copy of OGC's comments, statement of the essential facts, and the State Director's recommendations, to the National Office for further action.

§ 1951.216 State Director's additional authorizations and guidance.

(a) *Promote financing purposes and improve or maintain collectibility.* State Directors are authorized to perform the following functions when they determine that the action is likely to promote the loan or grant purposes without jeopardizing collectibility of the loan or impairing the adequacy of the security, or will strengthen the security, or will facilitate, improve, or maintain the orderly collectibility of the loan:

(1) Approve requests for permission to make changes in rules and regulations of recipients whether included in bylaws or resolutions or ordinances including changes in rate schedules and fees.

(2) Give approval for recipient to incure additional indebtedness subject to applicable FmHA instructions.

(3) Renew existing security instruments.

(4) Approve, with OGC's concurrence, changes in a recipient's legal organization including revisions of articles of incorporation or charter and bylaws.

(5) Approve the extension of facilities and services.

(6) Require additional security when (i) existing security is inadequate and the loan or security instruments obligate the borrower to give security or (ii) in cases where the loan is in default and additional security is acceptable in lieu of other servicing actions.

(7) Release from mortgages securing Rural Renewal loans properties being sold by the borrower, if the notes and mortgages given by the purchaser to the borrower are equal to the present market value and are assigned and pledged to the FmHA, and any money payable to the borrower is applied as an extra payment on the Rural Renewal loan.

(8) Approve requests for rights-of-way, easements, and for any necessary subordination connected with rights-of-way or easements.

(b) *Referrals to National Office.* All proposed servicing actions which the State Director is not authorized by this Subpart to approve will be referred to the National Office.

§ 1951.217 Payment in full.

Payment in full of a loan is handled according to Part 1866 (FmHA Instruction 451.4). The District Director will notify the bonding company in writing that the Government no longer has an interest in the fidelity bond. The District Director will release the FmHA's interest in insurance policies according to the applicable provisions of Subpart A of Part 1806 (FmHA Instruction 426.1). The District Director will release the FmHA interest in any other security in the manner prescribed by the State Director.

§ 1951.218 State supplements.

State Supplements will be prepared with the advice and guidance of OGC, as necessary, to carry out this Subpart. Each State Supplement will include all particular information necessary to comply with appropriate State laws and regulations.

§ 1951.219 Forms.

Forms referred to in this Subpart may need to be modified in instances where the forms were designed for application to individuals rather than for corporate execution.

§ 1951.220 Servicing public bodies.

Servicing actions involving public bodies will be processed if feasible, according to the provisions of this Subpart. The State Director is authorized to vary from the provisions to any extent that the State Director, with the advice and concurrence of OGC, determines reasonably appropriate to accomplish the servicing action.

§§ 1951.221—1951.250 [Reserved]

PART 1990—BIOMASS ENERGY AND ALCOHOL FUELS LOANS AND GUARANTEES

Subpart B—Biomass Energy Project Insured Loans

§ 1990.115 [Amended]

10. Section 1990.115, undesignated first paragraph is amended by revising the reference from "Subpart F of Part 1861 (FmHA Instruction 451.5)" to "Subpart E of Part 1951."

(7 U.S.C. 1989; delegation of authority by the Secretary of Agriculture, 7 CFR 2.23;

delegation of authority by the Under Secretary for Small Community and Rural Development, 7 CFR 2.70)

Dated: October 4, 1982.

Charles W. Shuman,

Administrator, Farmers Home Administration.

[FR Doc. 82-31696 Filed 11-18-82; 8:45 am]

BILLING CODE 3410-07-M

FARM CREDIT ADMINISTRATION

12 CFR Part 614

Loan Policies and Operations; Correction

AGENCY: Farm Credit Administration.

ACTION: Final rule effective date; correction.

SUMMARY: On November 3, 1982, the Farm Credit Administration published a final regulation implementing approval requirements for certain types of loans and specifying which Farm Credit System bank is responsible for approving loans to directors, officers, and employees of System institutions (47 FR 49831). This document corrects the effective date of the final regulation.

FOR FURTHER INFORMATION CONTACT: Larry H. Bacon, Deputy Governor, Office of Administration, Farm Credit Administration, 490 L'Enfant Plaza, SW., Washington, DC 20578, (202) 755-2181.

Donald E. Wilkinson,

Governor, Farm Credit Administration.

The effective date of this regulation is subject to a statutory requirement that no final regulation of the Farm Credit Administration (except in cases of emergency) shall be effective prior to the expiration of 30 calendar days after publication in the **Federal Register** during which either or both Houses of Congress are in session. At the time this final regulation was published neither House was in session. It is anticipated that Congress will not have been in session for 30 days until sometime during January 1983, however the exact date cannot be determined at this time. In order to avoid the need for a second notice specifying the exact date by which the 30-day period will have expired, the effective date of this regulation will be February 1, 1983.

Accordingly, the Farm Credit Administration is correcting the effective date for 12 CFR 614.4460 as follows:

EFFECTIVE DATE: February 1, 1983.

[FR Doc. 82-31779 Filed 11-18-82; 8:45 am]

BILLING CODE 6705-01-M

CIVIL AERONAUTICS BOARD

14 CFR Part 253

[Economic Regs. Issuance of Part 253, Dockets 40772, 38021, 38348; Reg. ER-1302]

Notice of Terms of Contract of Carriage

AGENCY: Civil Aeronautics Board.

ACTION: Final rule; issuance of part.

SUMMARY: The CAB sets requirements for airlines operating in domestic transportation to notify passengers of any incorporation by reference of terms in the contract of carriage. The rules preempt the States from regulating the subject of the notice of contract terms to be given on passengers' tickets. They require carriers to ensure that information on specified terms is available wherever their tickets are sold. The rules clarify the law applicable to notice of airline passenger contract terms after the expiration of domestic tariffs on January 1, 1983.

DATED: Effective: January 1, 1983. (In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the notice requirements in § 253.5 have been submitted to the Office of Management and Budget for approval. They are not effective until OMB approval has been obtained.)

Adopted: September 27, 1982.

FOR FURTHER INFORMATION CONTACT: Richard B. Dyson, Associate General Counsel, Rules & Legislation, or Joseph A. Brooks, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428; (202) 673-5442.

SUPPLEMENTARY INFORMATION: By a notice of proposed rulemaking (EDR-444, 47 FR 28681, July 1, 1982), the Board asked for comment on the issue of what, if any, rules there should be concerning notice of contract terms in interstate and overseas air transportation after tariffs are eliminated. The Airline Deregulation Act (Pub. L. 95-504) states that domestic tariffs will cease to exist on January 1, 1983. Carriers will no longer be required or permitted to file domestic tariffs for any purpose after that date, and those on file as of that date shall have no force or effect.

Representatives of domestic and foreign air carriers had expressed to the Board their concern and uncertainty over what form their domestic ticketing should take after 1982. Contracts of carriage, as now contained in the tariffs, are long and complex—too much so, in their opinion, to practicably be contained within the size constraints of the short-form ticket generally used today for passenger air travel. Not only would the actual contracts be impracticably bulky, containing large amounts of verbiage of no interest to the typical passenger, but the differences in the contracts of the different air carriers would make it impossible for travel agents, who ticket all carriers, to use uniform ticket stock as they do now. Travel agent representatives maintained that stocking the contracts of each carrier would be a vast and unjustifiable burden.

The solution they proposed was rules or legislation to allow carriers to continue to "incorporate by reference" on the tickets the contract terms governing carriage, while providing a means for interested persons to learn what any of those terms are. Uniform Federal rules for this inherently interstate activity were necessary, they maintained, because otherwise the State laws governing such matters as contract formation and limitations on liability could present a maze of differing and possibly even conflicting directives.

The Board responded by proposing rules concerning the form of the notice to passengers of the terms of the contract of carriage, including some categories of information it should contain. The proposed rules would require that the passenger be told that contract terms are being incorporated into the contract (that is, the passenger is being bound by terms in another document that is not given with the ticket), and require that those terms be available to the passenger if requested. As proposed, the rule also would have required the highlights of specific terms to be given to the passenger when the contract was made.

The Board has decided to adopt a rule with certain modifications suggested by the commenters. The rule specifically preempts State law with respect to notice about incorporated contract terms. It applies to all operations with large aircraft, including small-aircraft trip segments that are included on the same ticket with a large-aircraft segment. The rule requires notice, to be given with each ticket, that terms are incorporated by reference and that the passenger may obtain a free copy. It further requires that the notice set out certain key subjects that may be of specific interest to the passenger, and that the passenger be able to obtain more information about those terms from any location in the United States where the carrier's tickets are sold.

Comments were received from: the Air Transport Association of America (on behalf of Air California, Air Florida, Alaska Airlines, Aloha Airlines, American Airlines, Continental Airlines, Delta Air Lines, Eastern Air Lines, Frontier Airlines, Hawaiian Airlines, Midway Airlines, Northwest Airlines, Ozark Air Lines, Pan American World Airways, Piedmont Airlines, Republic Airlines, Trans World Airlines, United Airlines, USAir, Western Airlines, and Wien Air Alaska), the International Air Transport Association, the Regional Airline Association, American Airlines, Atlantic Express Airlines, Empire Airlines, Kodiak Western Alaska Airlines, Midway Airlines, People Express Airlines, Reeve Aleutian Airways, Southwest Airlines, Southcentral Air, Transamerica Airlines, United Air Lines, the State of California Department of Transportation and Department of Consumer Affairs, the Territory of Guam Attorney General, the State of Hawaii Division of Consumer Advocacy, the State of Iowa Department of Aeronautics, the State of Massachusetts Attorney General, the State of Minnesota Attorney General, the State of Nebraska Department of Aeronautics, the State of New Mexico Department of Aeronautics, the State of New York Department of Transportation, the American Automobiles Association, American Express Company, Association of Retail Travel Agents, the American Society of Travel Agents, the Aviation Consumer Action Project, Ms. Patricia Kennedy Butler, and numerous individual commenters.

In general, most of the industry commenters (trade associations and airlines) supported the need and authority for the rule. Many of them suggested changes in the rule, some technical and some involving substantive policy. The technical comments are discussed in the context of the language of the rule, and the substantive comments are discussed in greater detail below. In summary, some of the industry commenters asked that the Board not require travel agents to have on hand copies of the contract of carriage for distribution or copies of the text of the key terms that are listed in the rule. They also suggested that the text of the key terms of the contract be distributed not at the time the ticket is purchased as proposed, but instead be given prior to boarding the aircraft. Some commenters suggested that the requirement for distribution of the key terms be eliminated as unnecessary. The Board has decided to eliminate the distribution requirement for key terms and replace it with an explanation requirement, and also to require copies of the full contract only at carrier-controlled ticket offices. Some of these commenters also suggested that only the airline's nonfare terms be required to be distributed to passengers, and that there be allowed a charge for distribution of the contracts when requested. The Board did not adopt those suggestions.

People Express Airlines opposed the rule, arguing that there was no need for it. It stated that when domestic cargo tariffs were eliminated in 1979, the industry and the public were able to adjust without the need for uniform rules such as those proposed for passenger service. It further argued that the Board has no authority to implement such a rule preemting the States.

All of the State commenters in general supported the rule, except Massachusetts. Several of the States, in fact, asked that the rule be expanded to include operations by small aircraft. The Board is adopting its alternative proposal in this respect and is proposing to expand the coverage of the rule to all operations by direct carriers (other than those of on-demand air taxi operators) regardless of the size of the aircraft used. The Commonwealth of Massachusetts Attorney General opposed the rule, but made several suggestions for language changes for the rule if the Board did decide to adopt it.[1]

The Massachusetts Attorney General argued at length that the Board should not, in view of impending Board sunset, preempt the States with respect to the standard of contract notice. He also argued that the Board lacked the authority to preempt the States. The Aviation Consumer Action Project, in its supplemental comments, and Ms. Patricia Kennedy Butler opposed the rule on somewhat similar grounds. Both argued that there has not been sufficient need shown to justify the Board's preemption of the States in this area, and that the Board lacks the legal authority to adopt this rule. These commenters argued strongly against the changes suggested by the industry trade associations, stating that consumers would be unaware of the contract terms under which they are traveling.

Most of the individual commenters supported the rule; some suggested changes or raised issues that are discussed below.

Need for the Rule

The Board has determined that there is a need for this rule, and that the Board has the authority to adopt it. With the modifications adopted in the final rule, it will provide a flexible framework for the formation of passenger contracts in a regime of domestic air travel without tariffs for the first time in over 40 years.

There are three main reasons for this rule. The first is to ensure that with the ending of the tariff system that amounted to uniform national rules for contracts of carriage, carriers are still able to form their contracts for interstate travel under a set of uniform rules. The second, closely related, is to make easier the use of short-form uniform ticket stock by all marketing outlets, including travel agents. The third is to make sure that the traveling public are able to find out the terms they are "buying into" whenever they purchase an airline ticket, so that they can make an informed choice of carrier, class, and flight, and protect themselves (for example, by buying extra insurance) against undesired risks.

The Board believes that standard short-form ticket stock and efficient interline agreements are important aspects of the smooth operation of the air transportation system. This rule, in the absence of tariffs, will make the use of those techniques far easier. For example, without such ticket stock, it would be far more difficult for airlines and agents to provide ticketing services for trips involving more than one airline or on airlines not having a ticket office in that location, since they would have to have on hand ticket stock of many airlines whose contract terms and notice provisions may differ. Also, without uniform ticket stock, the present Area Settlement Plan, by which agent-written tickets are cleared for reimbursement, would be difficult to operate.

The short-form ticket now allows the airline and the agents to efficiently handle hundreds of thousands of tickets each day. It also sharpens competition by allowing the airlines to change their substantive contract terms quickly without the administrative and financial costs of reprinting and recalling existing ticket stock.

With the end of domestic tariffs on January 1, 1983, the airlines would be subject to the contract law of the States in issuing ticket contracts. Other industries that conduct business and provide services across State lines have used two approaches in adjusting to that situation: (1) Adoption of the rule of the most restrictive State, or (2) adoption of the rule for the State where the contract is issued or is to be used. The first approach, if possible at all, would make use of short-form ticket stock much more difficult and increase the risk of frequent

[1] After the close of the comment period, comments were received from State officials of North Carolina and Washington, opposing preemption of State law by the rule. The Washington comment also requested that the listing of enumerated items on the ticket be "open-ended."

changes. Under the first approach, airlines would have to constantly monitor and compare the rules of each State and make adjustments for local State law. The States, of course, in adopting their contract rules are primarily concerned with the effects and problems within that State, not the effects on a nationwide service industry that requires smooth and efficient interstate operations. The second is inherently contradictory to a uniform system. Under the second approach, airlines and agents would be required to have separate forms and procedures for each State at each of their ticketing offices, an unreasonable burden on airline interstate operations.

This rule takes a Federal approach to the structure of the contract notice that must be provided. It recognizes that a national approach is needed for the airline industry. These companies continually need to interact with each other, and actually sell each other's services, unlike industries such as credit cards or rental cars that are composed of companies selling only their own product.

People Express Airlines argued that when cargo tariffs were eliminated in 1979, a uniform notice requirement such as this rule was not imposed on the carriers, and there is, therefore, no need for this type of rule for passenger carriers. We disagree. Passenger and cargo service have different characteristics that require different treatment. For example, waybills have traditionally been more complete and sophisticated documents. Further, the consumers of cargo transportation, shippers and traffic managers, deal with contracts for transportation as part of their regular business routine. They know to look for or ask about such terms as liability and the time for filing claims. They are likely to have the finances and time to contest a term that is misapplied. On the other hand, passengers, even business travelers, are generally not educated in the intricacies of contracts of carriage. The American public has come to expect that people can buy an airline ticket without concerning themselves about the many incorporated terms that have a large impact on their rights and duties. For 40 years, they have relied on the Federal Government to supervise those matters.

Thus one of the main reasons for the rule is to ensure that users of passenger air transportation have the information needed to make a judgment about the contract of carriage that they receive. This rule is intended to alert passengers, and prospective passengers, that important terms are incorporated in ticket contracts and to ensure that information is available to answer their questions about those terms.

The Board recognizes that, in most cases, decisions by passengers about which airline to fly are unlikely to be influenced strongly by the detailed contract terms of a particular airline, other than the featured ones of price, origin and destination, class, and times. The importance of additional information is to enable passengers to take protective or responsive action. For example, if passengers know an airline's baggage liability rules, they might want to purchase extra insurance, or if the time for filing a claim against the airline is short, to take quick action to protect a claim. It is this basic information for decisionmaking that the rule is designed to provide, to help passengers and the industry to do business in an unregulated environment.

Authority for the Rule

We believe that the question of the Board's authority to issue a rule such as this is well settled. Under section 204(a) of the Federal Aviation Act, the Board has the authority to issue those rules necessary to carry out the provisions of the Act. Those provisions can be found in section 102 of the Act, stating its goals, and in Title IV of the Act, stating specific substantive provisions. The goals of the Act support the rule. Under section 102, the Board is to consider in the public interest, in the performance of its duties, the availability of adequate, economic, efficient, and low-priced services, the prevention of unfair and deceptive practices, and the development and maintenance of a sound regulatory environment responsive to the needs of the public, among other things.

In addition, under section 404(a) of the Act, the airlines have, and will continue even after sunset of the Board to have, the duty to provide safe and adequate service. Within the policy set forth by Congress in section 102, the Board may issue such reasonable rules as may be needed in the public interest to ensure that this duty is performed. In an important recent decision closely in point, a U.S. Court of Appeals reaffirmed the Board's power under this provision to issue its smoking rules. *Diefenthal v. CAB*, 681 F.2d 1039 (5th Cir. 1982). In ruling on the validity of that regulation issued under section 404(a), the court stated that even if there is no express provision to issue a specific rule, the Board may regulate as long as its action "reasonably advances the purposes of the enabling statute." (Slip Opinion at p. 3933).

The Board also has the specific authority under section 411 of the Act to prevent potentially unfair or deceptive practices. The Board believes that there is the potential for such practices, with unregulated passenger air service, in the area of incorporation by reference of terms of the travel contract. Without such a rule, the airlines would be subject to the various standards of notice imposed by the States. A consumer might, for example, be led to believe that the terms included in the contract by one airline in one State would be the same for airlines in other States.

The Board disagrees with the Massachusetts Attorney General's position that it is inappropriate for the Board to issue rules on this subject in view of the impending Board sunset in 1985. Congress, in the Airline Deregulation Act of 1978, deliberately phased out domestic tariffs 2 years before Board sunset, so that the Board would still be present to deal with problems caused by the changes. That is what we are doing here. While it is generally accepted that further legislation is needed to implement Board sunset, so that the post-sunset allocation of regulatory duties is as yet unknown, it appears very likely that a successor Federal agency will continue to have power to ensure safe and adequate service, *inter alia* by enforcing rules such as this. Even if that turns out not to be the case, it is clearly the Board's duty to continue to act in the public interest, in its considered judgment, while it still exists.

The Board believes that for these reasons there should be one standard for notice of contract terms for airlines in all States, and that it has ample statutory authority to issue rules to that end.

The Rule

Preemption

Most commenters supported Federal preemption by rule in this area. One commenter suggested that the Board make explicit in the rule its intent to preempt State regulation in this matter. This has been done in § 253.1, *Purpose*. The Minnesota Attorney General suggested that the preemption be more specific so as not to preempt State contract remedies and "plain-language" statutes. The Board agrees with this suggestion with respect to contract remedies, and has clarified the fundamental provision in § 253.4 by stating that the enforcement aspects of the rule are in adddition to other remedies at law. The effect and the validity of State law relating to other aspects of the contracting process, including State "plain- language" statutes, will depend on the detailed provisions of those laws, and cannot be determined in advance within the scope of this proceeding.

The Massachusetts Attorney General argued that the Board lacks the authority to preempt the States by this rule. To some extent this commenter may have misunderstood the intended scope of the rule, in that he spoke of reconciling State and Federal regulation rather than having the State "completely ousted," and that Congress did not intend the CAB's authority over unfair and deceptive practices to "totally occupy the field." In fact, far from totally occupying the field of unfair and deceptive practices, this rule is designed to preempt the States only in one narrow area: the notice that must be given to passengers in cases where an air carrier incorporates some of its contract terms by reference.

Within that narrow area, however, the Board is of the opinion that the law clearly empowers it to preempt the States. Under Article VI of the Constitution, Federal law must prevail over State law that conflicts with, interferes with, or is contrary to it. It is also well established that duly authorized Federal regulations are included among the Federal "laws" that have this preemptive effect on State action. *Free v. Bland*, 369 U.S. 663 (1962); *Paul v. United States*, 371 U.S. 245 (1963); *PUC of California v. United States*, 355 U.S. 534 (1958).

The Massachusetts Attorney General's emphasis upon Congress' intent, or lack of it, to preempt the States on these specific issues is misplaced. Where, as here, Congress has set up an agency to administer a comprehensive program, and the Federal agency is acting within its authority delegated by Congress, it is the agency's intent that determines the scope of preemption. That is the reason why the Board has stated so clearly the preemptive intent of this regulation. Where the Federal authority and intent are clear, there is no need to look to the second test referred to in the Massachusetts comment—whether the State regulation would interfere with the Federal scheme. Even under that test, however, the outcome is clear: uniform national ticketing notice requirements, unhampered by diverse local regulations, are the very essence of this rule.

Applicability

The notice of proposed rulemaking asked for comment on whether the rule, as an alternative to an exemption for all small aircraft operations, should apply to all airline operations in single-ticket interline air transportation involving large aircraft on at least one segment. The commenters, including representatives of small airlines, generally supported this alternative. They asked, however, that the alternative be expanded to include all operations of all air carriers involved in scheduled interstate transportation. Within the scope of the proposal, as required by the Administrative Procedure Act, the Board cannot expand the applicability of the rule in such a fashion in the final rule. The Board is issuing contemporaneously with this final rule a notice of proposed rulemaking asking for comment on the expanded applicability suggested by the commenters. Because of the need to complete action in this proceeding as soon as possible, the Board is allowing 30 days for comment on that proposed change. In the meantime, the Board is adopting the broader alternative proposed in EDR-444. This ensures that the rule applies immediately to those trips where it is most needed: all operations involving large aircraft, including any flight segments by any airlines regardless of aircraft size that are included on the same ticket with a segment using large aircraft. The rule adopted today essentially sets a uniform notice standard for those situations where small-aircraft operators have been filing joint tariffs for the same purpose—to facilitate interline travel and provide information to passengers traveling on more than one carrier.

Several Alaska carriers asked that the rule apply to intra-Alaska passenger and cargo operations. By its terms the rule applies to all interstate and overseas scheduled passenger air transportation, including intra-Alaska markets. As the Board stated in EDR-444, cargo transportation is different in this respect from passenger transportation. As discussed above, cargo transportation does not share the factors that make this rule necessary.

The Board also has clarified the rule's applicability to make it clear that it applies only to those contracts that use incorporation. The rule is not intended to preclude carriers from giving the passenger the entire contract if they prefer. Nor are carriers precluded from providing more notice than the rule requires.

Incorporation by Reference

In the proposal, the Board stated that if the airline did not follow the requirement for notice to passengers in the rule, it could not claim the benefit against the passenger of any term incorporated by reference in the ticket contract. The proposed rule also required airlines to make the full text of its ticket contract available for inspection wherever its tickets were sold and to provide copies of the contract to passengers upon their request.

In response to the comments, the Board has made some clarifications and modifications in this section of the rule. It was the Board's intent to affirmatively allow, by Federal rule, airlines to incorporate terms by reference into their ticket contracts. Section 253.4 has been reworded to make this point clear. Further, as suggested in the comments, the Board has modified the provisions of the rule to make clear that the "penalty" of an airline not being able to enforce a term only applies with respect to a passenger who has not received the required notice. As proposed, the rule could have been interpreted to void an airline's contracts with all passengers upon a particular noncompliance with the rule at any time.

The Air Transport Association of America (ATA), the International Air Transport Association (IATA), and Southwest Airlines all suggested changes in the penalty provision of § 253.4(a) of the proposed rule. That is the provision that states that an air carrier may not claim the benefit, as against a passenger, of contract terms incorporated by reference if the notice requirement of the rule has not been followed. ATA and IATA suggested a change in wording to state that no passenger "shall be bound by the contract terms if notice is not given to that passenger as required." In addition, Southwest (incorporating its comments in D. 38348) argued that this part of the rule is unlawful because the Board has no authority to interfere in the common law of contracts with respect to ticket contracts.

As discussed above, the Board does have the legal authority to issue the rule. Southwest is correct, however, that it is the purpose of the rule to set the standard (altering common-law rules as applicable) for contract law notice with respect to airline ticket contracts. Without the enforcement mechanism of voiding the contract term, the penalty for violating the rule would be limited to a civil penalty action against the airline. The passenger, however, could still be disadvantaged in such a case if the term were still considered valid. Civil penalties will in most cases be far less effective, and far more costly to administer, than simply voiding the term and allowing the passenger to pursue available remedies.

The courts will still have an important role to play in determining whether the notice given was "conspicuous," and if so whether the term itself is proper. The airlines may in that context still raise the defense that conspicuous notice was given and that the passenger should be held to the contract. It is only where the required notice is found not to be conspicuous or not given at all that the penalty provision voiding the term comes into effect.

The Board is adopting IATA's and ATA's language in addition to that in the proposed rule and is retaining the enforcement mechanism as proposed. If the IATA and ATA language were adopted as a substitute, as suggested, it might arguably appear to address only one side of the contract, the passenger's duty and the resulting penalty if the duty is not followed. The combination of the two proposals, in any event, seems to cover each type of transaction adequately and effectively.

In § 253.4(b), the Board is adopting the suggestion that the full text of the contract of carriage be made available for public inspection only at the airlines' airport and city ticket offices rather than at all ticket sales locations, as proposed. This change was suggested by ATA, IATA, and the American Society of Travel Agents. The full text of tariffs is now required to be available only at airport and city ticket offices in most cases. The Board is persuaded that the proposed requirement would place an unnecessary and costly burden on the airlines and at the same time could overburden travel agents with volumes of contracts for each airline. As IATA points out, this is a subject that is best left to the airlines' relationship with the agent rather than imposed by regulation. In addition, if the airlines were required to distribute each change in the contract text to travel agents and ensure that the agent copy was correct, terms could not be changed as quickly in response to competition.

The Association of Retail Travel Agents (ARTA) asked that the carriers be required to provide copies of the full contract text to their agents because they need to know the terms of the contract that they are selling the public. While it is undoubtedly true that a better informed agent can better service the public, the Board believes that those travel agents that have the most need for the text will arrange to obtain it from the airline. The benefits of requiring such a distribution by the carrier do not outweigh the burdens that it would impose.

At the same time, recognizing ARTA's concern that its customers should have easy access to the contract, the Board is adopting IATA's suggestion that each carrier make available at each ticket outlet (including travel agents) information about how passengers can obtain a copy of the contract text. The Board is not adopting IATA's and ATA's suggestion that a request for a copy of the contract must be in writing, as confusing and unnecessarily restricting. In practice, a travel agent or ticket agent will have to write, or have the passenger write, the pertinent name and address for any request to be processed. In response to ATA and IATA suggestions, to allow flexibility the carrier response is to be by mail or other delivery service.

IATA, ATA, and Transamerica further suggested that only the full text of *nonfare* terms and conditions be required to be given to the passenger upon request. Transamerica argued that since the fare conditions change now on a frequent basis, it would be impossible for the carrier to keep its contract current, and that changes would be confusing to passengers. The Board considers that fare terms and conditions are some of the most important matters for the passenger. The Board is therefore not adopting this change. Carriers must publish changes in fares to its agents and ticket offices in a manner so that they can be understood. This same business necessity should therefore be easily adapted to contract changes.

Because of problems encountered in the past by persons wanting to inspect tariffs and rules at carrier offices, carriers should make clear to airline employees that the text required to be available under this rule is public information, and ticket counter personnel should have authority to readily release the information.

Notice of Incorporated Terms

ATA, IATA, and the Minnesota Attorney General made several suggestions to change the required general incorporation notice. Most of them have been adopted, since they were in response to changes in § 253.4. The Minnesota Attorney General suggested that the notice explain in more detail how the text of terms can be obtained. The Board has added a requirement that information sufficient to order the full text be available at each location where a carrier's tickets are sold.

In the proposal, the Board would have required that the substantive text of certain terms be given to passengers before boarding—normally with their tickets. This was in accordance with the original communications from airline representatives (now in this docket). This turned out, however, to be the most important and controversial issue to the airline and travel agent commenters, who opposed it strongly. They pointed out that this requirement would make it difficult or impossible to use uniform ticket stock (despite their earlier representations), one of the main reasons for the rule, and would make it much more expensive for the airlines to change any of their terms. Furthermore, it might tend to have the competitively undesirable effect of causing the industry by parallel action to standardize all its terms in these areas.

The Board reluctantly agrees that these industry arguments have merit, although enhanced consumer information is one of the main intended benefits of the rule. In order to preserve this aspect of the rule, the Board is requiring a two-step notice to consumers: Each ticket must have a notice, which can and presumably will be standardized, that the contract may incorporate terms in several enumerated areas (as discussed below); and each carrier must ensure that concise and correct information concerning these terms is immediately available to the public wherever its tickets are sold.

The Board has upon consideration decided, however, that terms restricting refunds of passengers' money, or requiring additional payments, are too crucial to be totally incorporated by reference. Where loss of money is concerned, the Board considers that direct, conspicuous, notice of the salient features of the terms, in writing on or with the ticket, must be given if those terms are to be valid. While every detail need not be in the ticket, a phrase such as "this ticket is not refundable" is necessary to alert the public. Actually, it appears most likely that this requirement will impose no additional burden, since for their own commercial reasons carriers would provide such notice in any event. A new § 253.7 has been added reflecting these judgments.

IATA, ATA, and the Minnesota Attorney General also submitted proposed changes to the wording of the key terms of the contract that must be included in the general notice. The Board has accepted some changes and denied others. The purpose of the notice is to alert passengers to ask the right questions about terms that might affect them. The terms that must be included in the notice and the changes adopted in the proposed rule are as follows:

1. *Limits on the air carrier's liability for personal injury or death of passengers.* The proposal had included

language on baggage liability, but that subject, including ticket notice, has been handled in a separate proceeding. Although limits on personal injury liability may be unenforceable in domestic transportation, as suggested by the Minnesota Attorney General, if the carrier attempts to include such a limit passengers should be alerted to it.

2. *Claim restrictions, including time periods within which passenger must file a claim or bring an action against the carrier for its acts or omissions or those of its agents.* The Board disagrees with arguments that this term should not be included in the notice. It is in fact one of the more critical terms about which the passenger needs to be alerted, since many other rights may depend on compliance with it. The Board has changed the format of this category to include "claim restrictions," so as to include an explanation of any restraints (e.g. special forms) on how the claim is to be made.

3. Refund restrictions were originally included, but the Board has decided that they are important enough to require direct ticket notice as discussed above.

4. *Rights of the carrier to change terms of the contract.* As pointed out in the comments, the carrier's right to change unilaterally any term of the contract may be unenforceable with respect to certain terms. The Board has thus deleted the word "any" so as not to mislead the passengers. Any change in the price will have to be noticed like refund restrictions.

5. *Rules about confirmation of reservations, check-in times, and refusal to carry.* The Board adopted ATA's and IATA's change concerning clarification of notice about reservation practices, limiting it to reconfirmations. The Board, however, did not delete notice of refusal to carry as requested. Although as ATA stated this term would cover such general conduct areas as intoxication, it would also cover such topics as carriage of handicapped persons, about which the Board has just issued specific rules. Reference to "oversales" has been deleted, since this subject, including ticket notice, is covered in Part 250.

6. *Rights of the carrier and limitations concerning delay or failure to perform service, including schedule changes, substitution of alternate air carriers or aircraft and rerouting, and policy on compensation for delay or nonperformance.* The Board accepted the suggested change made by ATA and by the Minnesota Attorney General.

One additional change is made in the notice requirement of specific key terms. As pointed out in the comments, it is important that passengers know how to obtain additional information if desired. The rule now requires the notice to state that information about the listed key terms can be obtained at any ticket outlet in addition to the availability of the full contract upon request at carrier ticket offices.

Explanation of Key Terms

As originally proposed, the rule would have required the airlines to give the passenger a summary of terms listed above. As explained above, the Board has reluctantly agreed that such a requirement is probably impracticable. The intent of the requirement was to give passengers the answers to the problems that they most often face in air travel. The Board continues to believe that it is important that this information be readily available to passengers who desire it at the point of ticket purchase. In making the requirement, the Board is stating it in performance terms, to give carriers and agents latitude to use the most efficient means for their situation. The Board is therefore requiring that concise and immediate information about the terms listed in the required notice be readily available to passengers upon request at the locations where the carrier's tickets are sold.

This requirement may be met in any manner that the carriers and their agents and ticket outlets consider practical and reasonable. It may consist of keeping ready for passenger inspection at ticketing locations a concise summary of the terms in question. (They could, for example, be included in the Official Airline Guide.) Or, it may consist of a telephone number, where informed personnel will give immediate answers to agents' questions. It might even be displayed upon queries through agents' computer terminals. If the ticket is mailed to the passenger, it should include a reasonable and quick method for the passenger to obtain the information. The Board believes that this type of performance requirement will allow flexibility to the travel industry, while providing important and timely information to passengers.

Carriage Without Advance Tickets

The Board has decided to delete the proposed section on this subject. Part of this section was intended to cover the eventual possibility that written tickets might not be issued and that some type of permanent nonwritten records might be used as a substitute, and also cover situations such as "shuttle" services where ticket sales take place on board, often after takeoff. For both cases, the proposed section stated that the required notice must be given prior to boarding. Upon consideration of the comments and the changes made from the proposal, the Board has decided that it is sufficient for the notice to be included with the actual ticket sale, with the information needed to answer passengers' questions available at that time. Passengers who board before ticketing have in fact opted to take their chances on the airline contract. If they want information ahead of time, they can still obtain it through any on-the-ground ticket outlets. Carriers, of course, may at their discretion provide information in advance of boarding in greater detail.

Other Matters

ATA in its comments included a sample ticket notice to meet the requirements of the rule including ATA's recommended changes. Aside from the changes in the notice required by the decisions discussed in this issuance, the Board notes that the notice appears to make no distinction between domestic and foreign air transportation. Tariffs will continue for travel in foreign air transportation. So that there is no confusion in this regard, any notice on or with the ticket should make clear that the applicability of tariffs only applies to foreign air transportation.

The Minnesota Attorney General questioned whether there would be any penalty outside of contract law for carriers refusing to comply with the rule. The Board has civil penalty authority under section 901 of the Act, can issue cease and desist orders, and can seek injunctive relief from a U.S. District Court if needed. However, we would expect that the primary enforcement mechanism would be contract law at the local level.

Some commenters argued that airlines should be able to impose a reasonable charge on passengers for the costs of receiving a copy of the text of the contract. They stated that to require a free copy would impose a larger proportional burden on small carriers. The Board believes that when two parties agree to a contract each should have equal access to the text of that contract. Since normal business practice would require that a substantial number of copies be made to distribute to ticket outlets and airline offices, the extra number needed for passenger requests should not impose a large added cost. The cost should also serve as an incentive to keep the document concise. The Board is thus retaining the requirement to give passengers a free copy of the contract upon request.

Two other procedural points were raised by the commenters. Two commenters argued that if the changes proposed by ATA and IATA were adopted in some form, the Board should issue another notice of proposed rulemaking asking for comment on the change. The Board has adopted some of these suggested changes and make other changes of its own. The Board is aware that if a final rule deviates so significantly from the notice of proposed rulemaking that the interested parties have effectively been deprived of an opportunity for comment, the action may be found wanting under section 553 of the Administrative Procedure Act. We are, however, of the opinion that such is not the case here. Considering the urgent need of the carriers to know the applicable rules so that they can begin ticketing for flights after December 31, the Board cannot justify another round of comments on the rule. Most of the changes are matters of detail and clarification. The main change is in the notice of salient terms. The proposal would have required carriers to furnish their particularized contract terms on specified subjects with each ticket. The final rule limits this requirement to refund or price-change information. Otherwise it requires that these important subject areas be noted conspicuously on or with the ticket, but that information about the actual terms be available upon request of passengers wherever the carrier's tickets are sold. The final rule is less burdensome for the carriers and agents, who are enabled to continue to use standardized short-form ticket stock, while at the same time providing a comparable level of information to the public. The Board concludes that the final rule is legally and practically within the scope of the proposal.

The Board will review the operation of this rule within the next year, and determine whether it should be retained, modified, or revoked.

One commenter argued that if the Board required that copies of the terms of the contract be given free to passengers when they ask, the Board should do a Regulatory Impact Statement of the rule's costs and burdens and ask for comment on that Statement. The Board's policy statement (14 CFR 399.72) states that the Board will perform such an analysis if the rule would have an annual effect on the economy of $100 million or more, would result in major increase in costs or prices or decrease in revenues for the industry, levels of government, or geographic regions, or where the Board finds that such an analysis is needed because of the importance or burden created by the rule. The Board finds that this rule does not meet those criteria. As adopted, the rules is imposing on the airlines loss of a burden than would be imposed by normal business and legal practice. In fact, the rule was proposed originally at the carriers' own request, to save costs that they foresaw without it. The costs involved in providing copies of contracts by mail upon requests, and explaining terms to passengers, will not have an effect on the economy of $100 million or more, and will not have a significant major effect on the prices, revenues, or costs of the industry, government, or any geographic region. Nor does the Board believe that this rule is so burdensome or costly as to warrant a Regulatory Impact Analysis on other grounds.

A definition section has been added, with standard definitions from other rules for "ticket office" and "large aircraft," but with a new definition of "passenger" to make sure that the information required is available to prospective as well as actual passengers.

Termination of Rulemaking

In Docket 38021 (EDR-396, 45 FR 25817, April 16, 1980) and Docket 38348 (EDR-404, 45 FR 42629, June 25, 1980), which were consolidated into EDR-404B (46 FR 35936, July 13, 1981), the Board proposed various alternatives concerning the domestic passenger contract of carriage. Those alternatives included eliminating the filing of rules tariffs and the revision of all Board-required notices. The Board believes that this rule, the ongoing revision of the Board's tariff regulations in 14 CFR Part 221, and its consumer-rule proceedings such as those on baggage liability and oversales make continuation of the previous rulemaking unnecessary. The Board is thus terminating the rulemakings in Dockets 38021 and 38348.

Effective Date

This rule is effective for tickets sold on or after January 1, 1983. That date coincides with the statutory expiration of tariff filing under the Airline Deregulation Act. Carriers may bring their ticketing practices into compliance with the rule before that date, at their discretion.

Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b), as added by the Regulatory Flexibility Act, Pub. L. 96-354, the Board certifies that none of the proposed changes will, if adopted, have a significant economic impact on a substantial number of small entities. The Board adopted the alternative proposal in the notice of proposed rulemaking. That alternative does affect small carriers that interline with large aircraft operators. Its economic impact, with the changes made in the rule, as discussed above, is not likely to be significant. It involves only minor changes in the ticketing process of those carriers, who generally favored their inclusion in the rule's scope.

List of Subjects in 14 CFR Part 253

Advertising, Air carriers, Air transportation, Claims, Consumer protection, Law, Travel.

Accordingly, the Civil Aeronautics Board amends 14 CFR chapter II by adding a new Part 253, Notices of Terms of Contract of Carriage, as follows:

1. The Table of Contents of 14 CFR Chapter II is amended to read:

CHAPTER II—CIVIL AERONAUTICS BOARD

SUBCHAPTER A—ECONOMIC REGULATIONS

2. Subchapter A of 14 CFR Chapter II is amended by adding a new Part 253 to read:

PART 253—NOTICE OF TERMS OF CONTRACT OF CARRIAGE

Authority: Secs. 204, 404, 411, Pub. L. 85-726, as amended, 72 Stat. 743, 760, 769; (49 U.S.C. 1324, 1374, 1381).

§ 253.1 Purpose.

The purpose of this rule is to set uniform disclosure requirements, which preempt any State requirements on the same subject, for terms incorporated by reference into contracts of carriage for scheduled service in interstate and overseas passenger air transportation.

§ 253.2 Applicability.

This rule applies to all scheduled direct air carrier operations in interstate or overseas air transportation involving large aircraft, including any flight segments, regardless of aircraft size or the identity of the carrier, that are included on the same ticket with a flight segment using large aircraft. It applies to all contracts with passengers, for such operations, that incorporate terms by reference.

§ 253.3 Definitions.

"Large aircraft" means any aircraft designed to have a maximum passenger capacity of more than 60 seats.

"Passenger" means any person who purchases, or who contacts a ticket office or travel agent for the purpose of purchasing, or considering the purchase of, air transportation.

"Ticket office" means station, office, or other location where tickets are sold that is under the charge of a person employed exclusively by the carrier, or by it jointly with another person.

§ 253.4 Incorporation by reference in the contract of carriage.

(a) A ticket or other written instrument that embodies the contract of carriage may incorporate contract terms by reference (i.e., without stating their full text), and if it does so shall contain or be accompanied by notice to the passenger as required by this part. In addition to other remedies at law, an air carrier may not claim the benefit as against the passenger of, and the passenger shall not be bound by, any contract term incorporated by reference if notice of the term has not been provided to that passenger in accordance with this part.

(b) Each air carrier shall make the full text of each term that it incorporates by reference in a contract of carriage available for public inspection at each of its airport and city ticket offices.

(c) Each air carrier shall provide free of charge by mail or other delivery service to passengers, upon their request, a copy of the full text of its terms incorporated by reference in the contract. Each carrier shall keep available at all times, free of charge, at all locations where its tickets are sold within the United States information sufficient to enable passengers to order the full text of such terms.

§ 253.5 Notice of incorporated terms.

Each air carrier shall include in or with a ticket, or other written instrument given to a passenger, that embodies the contract of carriage and incorporates terms by reference in that contract, a conspicuous written notice that—

(a) Any terms incorporated by reference are part of the contract, passengers may inspect the full text of each term incorporated by reference at the carrier's airport or city ticket offices, and passengers have the right, upon request at any location where the carrier's tickets are sold within the United States, to receive free of charge by mail or other delivery service the full text of each such incorporated term;

(b) The incorporated terms may include and passengers may obtain from any location where the carrier's tickets are sold within the United States further information concerning:

(1) Limits on the air carrier's liability for personal injury or death of passengers.

(2) Claim restrictions, including time periods within which passengers must file a claim or bring an action against the carrier for its acts or omissions or those of its agents.

(3) Rights of the carrier to change terms of the contract. (Rights to change the price, however, are governed by § 253.7).

(4) Rules about reconfirmation of reservations, check-in times, and refusal to carry.

(5) Rights of the carrier and limitations concerning delay or failure to perform service, including schedule changes, substitution of alternate air carrier or aircraft, and rerouting.

§ 253.6 Explanation of incorporated terms.

Each air carrier shall ensure that any passenger can obtain from any location where its tickets are sold within the United States a concise and immediate explanation of any terms incorporated by reference, concerning the subjects listed in § 253.5(b).

§ 253.7 Direct notice of certain terms.

A passenger shall not be bound by any terms restricting refunds of the ticket price, imposing monetary penalties on passengers, or permitting the carrier to raise the price, unless the passenger receives conspicuous written notice of the salient features of those terms on or with the ticket.

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

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BILLING CODE 6320-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 305

Rules for Using Energy Cost and Consumption Information Used in Labeling and Advertising of Consumer Appliances Under the Energy Policy and Conservation Act; Ranges of Comparability for Water Heaters

AGENCY: Federal Trade Commission.

ACTION: Rule related notice.

SUMMARY: Under the Federal Trade Commission's Appliance Labeling Rule, each required label or fact sheet for a covered appliance must show a range, or scale, indicating the range of energy costs or efficiencies for all models of a size or capacity comparable to the labeled model. The Commission publishes the ranges annually in the **Federal Register** if the upper or lower limits of the range change by 15% or more from the previously published range. If the Commission does not publish a revised range, it must publish a notice that the prior range is still applicable for the next year. The cost ranges for water heaters have not changed by as much as 15% since the last publication. Therefore, the ranges published in the **Federal Register** on March 25, 1980 for oil and electric water heaters, and on April 17, 1980 for gas water heaters remain in effect until new ranges are published.

EFFECTIVE DATE: November 19, 1982.

FOR FURTHER INFORMATION CONTACT: James Mills, 202-376-2891, or Lucerne D. Winfrey, 202-376-2805, Attorneys, Division of Enforcement, Federal Trade Commission, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: Section 324 of the Energy Policy and Conservation Act of 1975 [EPCA] [1] required the Federal Trade Commission to consider labeling rules for the disclosure of estimated annual energy cost or alternative energy consumption information for at least thirteen categories of appliances: (1) Refrigerators and refrigerator-freezers; (2) freezers; (3) dishwashers; (4) clothes dryers; (5) water heaters; (6) room air conditioners; (7) home heating equipment, not including furnaces; (8) television sets; (9) kitchen ranges and ovens; (10) clothes washers; (11) humidifiers and dehumidifiers; (12) central air conditioners; and (13) furnaces. Under the statute, the Department of Energy (DOE) is responsible for developing test procedures that measure how much energy the appliances use. In addition, DOE is required to determine the representative average cost a consumer pays for the different types of energy available.

On November 19, 1979, the Commission issued a final rule [2] covering seven of the thirteen appliance categories: refrigerators and refrigerator-freezers, freezers, dishwashers, water heaters, clothes washers, room air conditioners, and furnaces.

The rule requires that energy efficiency ratings or energy costs and related information be disclosed on labels, fact sheets and in retail sales catalogs for all covered products manufactured on or after May 19, 1980.

[1] Pub. L. 94-163, 89 stat. 871 (Dec. 22, 1975).

[2] 44 FR 66466, 16 CFR Part 305 (November 19, 1979).