

a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (See 7 CFR 3015, Subpart V)

Paperwork Reduction Act

The final rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Brown-tail moth, Plant diseases, Plant pests, Plants (agriculture), Quarantine, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, 7 CFR Part 301 is amended as follows:

1. The authority citation for Part 301 continues to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 161, 162, and 164-167; 7 CFR 2.17, 2.51, and 371.2(c).

2. The subpart heading "Subpart—Gypsy Moth and Brown-tail Moth" is changed to "Subpart—Gypsy Moth".

§ 301.45 [Amended]

3. In paragraph (a) of § 301.45 "and the States of Maine and Massachusetts in order to prevent the spread of the brown-tail moth, *Nygmia phaeorrhoea* (Donovan), dangerous insects" is changed to "a dangerous insect".

§ 301.45-1 [Amended]

4. Paragraph (b) of § 301.45-1 is removed and designated as "Reserved".

5. In paragraph (j) of § 301.45-1, the first sentence is amended by removing "or brown-tail moths", and the third sentence is removed.

6. Paragraphs (k) and (x) of § 301.45-1 are revised to read as follows:

§ 301.45-1 Definitions.

(k) *Infestation*. (1) The presence of gypsy moths as determined by the trapping of male moths in accordance with the program manual in a pattern indicating an estimated population; or (2) the detection of any other life stage of the gypsy moth through visual inspection; however, it does not include the presence of life stages of gypsy moth not established in the wild which are

found as a result of hitchhiking on transitory means of conveyance.

(x) *Regulated articles*. (1) Trees with roots, and shrubs with roots and persistent woody stems, *except* if greenhouse grown throughout the year.

(2) Logs and pulpwood *except* if moved to a mill operating under a compliance agreement.²

(3) Firewood (unless moved as an outdoor household article).

(4) Mobile homes and associated equipment.

(5) Recreational vehicles and associated equipment (unless moved as an outdoor household article), moving from hazardous recreational vehicle sites listed in § 301.45-2c.

(6) Any other products, articles, or means of conveyance, of any character whatsoever, when it is determined by an inspector that any life stage of gypsy moth is in proximity to such articles and the articles present a high risk of artificial spread of gypsy moth infestation and the person in possession thereof has been so notified.

8. In § 301.45-2, "or brown-tail moth" is removed from paragraph (a), and from paragraph (b); "and brown-tail moth" is removed from paragraph (a)(2); and paragraph (c) is revised to read as follows:

§ 301.45-2 Authorization to designate, and terminate designation of, regulated areas and high-risk and low-risk areas and hazardous recreational vehicle sites.

(c) *Termination of designation as a regulated area*. The Deputy Administrator shall terminate the regulation of any area whenever he or she determines that such action is appropriate or required under the criteria specified in Section I, Part G. of the Appendix in this subpart. The Deputy Administrator shall change the designation of an area from a high-risk area to a low-risk area whenever he or she determines that such redesignation is appropriate or required under the criteria specified in paragraph (a) of this section.

§ 301.45-3 [Amended]

9. In paragraphs (b) and (c) of § 301.45-3, "or brown-tail moth" is removed.

² Names of mills under compliance agreement are available upon request to the Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, or from an inspector.

§ 301.45-4 [Amended]

10. In paragraphs (a)(1), (2), and (3) of § 301.45-4 "pests" is changed to "gypsy moth".

§ 301.45-4 [Amended]

11. In paragraph (b) of § 301.45-4 "or brown-tail moth" is removed.

§ 301.45-5 [Amended]

12. In paragraph (a) of § 301.45-5 "and brown-tail moth" is removed.

§ 301.45-8 [Amended]

13. In § 301.45-8, "or brown-tail moths" is removed.

§ 301.45-9 [Amended]

14. In § 301.45-9, "and brown-tail moths" is removed from the heading and the text.

Appendix to Subpart—Portion of "Gypsy Moth and Brown-tail Moth" Program Manual—[Amended]

15. In the appendix, a new footnote 8 is added to the heading to state that:

⁸ "The quarantine and regulations in this subpart were amended to delete the provisions relating to the brown-tail moth.";

And the provisions in III. D. are removed (these provisions are captioned "Approved Treatments—Trees and Shrubs—Brown-tail Moth").

Done at Washington, D.C., this 6th day of June 1986.

Harvey L. Ford,

Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 86-13125 Filed 6-10-86; 8:45 am]

BILLING CODE 3410-34-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 330

Clarification and Definition of Deposit Insurance Coverage

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation ("FDIC") is amending its regulations governing the recordkeeping requirements applicable to the insurance coverage of trust accounts. The amendment, which deletes the requirement that the deposit account records of an insured bank disclose the names of the settlor and trustee of the trust and contain an account signature card executed by the trustee, recognizes the current

environment pertaining to the pension and retirement industry insofar as recordkeeping is concerned and makes uniform the stances of the FDIC and the Federal Savings and Loan Insurance Corporation regarding this issue.

EFFECTIVE DATE: June 11, 1986.

FOR FURTHER INFORMATION CONTACT:

Robert E. Feldman, Attorney, Legal Division, (202) 898-3743, Federal Deposit Insurance Corporation, 550 17th Street, Washington, DC 20429.

SUPPLEMENTARY INFORMATION: Section 11(f) of the Federal Deposit Insurance Act ("Act") (12 U.S.C. 1821(f)) provides that when an insured bank shall have been closed, the Federal Deposit Insurance Corporation ("FDIC") shall pay insured deposits as soon as possible and that the FDIC may require proof of claims prior to paying insurance. Section 3(m)(1) of the Act (12 U.S.C. 1813(m)(1)) authorizes the Board of Directors of the FDIC to issue regulations prescribing the net amount due any depositor for deposits in an insured bank based on the rights and capacities in which deposits are held. Section 12(c) of the Act (12 U.S.C. 1822(c)), in turn, provides that the FDIC is not required, except by any rules issued by the Board of Directors, to recognize as the owner of any portion of any deposit appearing on the records of a closed bank under a name other than that of the claimant, any person whose name or interest is not disclosed on the records of a closed bank if such recognition would increase the aggregate amount of insured deposits in the closed bank.

Based on the foregoing statutory provisions, § 330.10 of the FDIC's regulations (12 CFR 330.10) provides separate insurance for each trust interest in a deposit account established pursuant to a valid trust agreement when, in addition to certain substantive requirements, various recordkeeping requirements are met. Those recordkeeping requirements, which also apply to agency, custodial, and executorship accounts as well as to trust accounts, establish the insured bank's records as conclusive of the existence of any relationship pursuant to which funds in an account are deposited and on which a claim for insurance coverage is founded. 12 CFR 330.1(b)(1). For trust accounts alone, however, the regulations require additionally that the deposit account records disclose the names of both the settlor (grantor) and the trustee and contain an account signature card executed by the trustee. 12 CFR 330.1(b)(3).

The Federal Home Loan Bank Board ("FHLBB"), as operating head of the Federal Savings and Loan Insurance

Corporation ("FSLIC"), maintained the same additional requirement for the insurance of trust accounts held at institutions insured by FSLIC. On April 4, 1986, the FHLBB amended its regulations to remove the requirements that trust accounts—to be insured to \$100,000 per trust interest—reveal the names of the trust's settlor and trustee and contain an account signature card executed by the trustee. 51 FR 12122. As its rationale for the amendment, the FHLBB first noted that the provision was promulgated in 1967 "in order to prevent post-default creation of trust relationships which would increase applicable insurance coverage." According to the FHLBB, the continued usefulness of the additional recordkeeping requirements for trust accounts was questionable because of the recognition that "the pension and retirement industry has changed markedly since 1967, when the requirement was initially promulgated, and . . . in view of the present Internal Revenue Code and ERISA safeguards." The Board of Directors of the FDIC is in full accord with the rationale cited by the FHLBB. Furthermore, it is of paramount importance to the FDIC whenever possible not to permit a competitive imbalance to come about between FDIC-insured institutions and FSLIC-insured institution based on varying insurance coverage rules.

Because it is essential for the current competitive imbalance regarding recordkeeping requirements to be corrected as soon as possible, and because of the liberalizing nature of the amendment, the Board of Directors hereby finds that good cause exists to consider notice and public comment on the amendment contrary to the public interest. See 5 U.S.C. 553(b)(3)(B). Therefore, the Board of Directors is adopting the amendment as a final rule. Following the effective date of this final rule, insurance coverage for trust accounts will no longer be dependent upon the deposit account records of an insured bank disclosing the names of the settlor and trustee of the trust and containing an account signature card executed by the trustee. This amendment in no way affects the existing provision that insurance per trust interest of a trust is applicable only where the deposit account records of the bank disclose the existence of the trust relationship. See 12 CFR 330.1(b)(2).

The Board has further determined that, because it relieves a restriction, the amendment will become effective upon publication. See 5 U.S.C. 553(d)(1). As these amendments do not entail the creation of any new recordkeeping or reporting requirements, the Paperwork

Reduction Act is inapplicable. Finally, the requirements of the Regulatory Flexibility Act are inapplicable as the amendments are not subject to required public comment under the Administrative Procedure Act.

List of Subjects

12 CFR Part 330

Bank deposit insurance, Banks, Banking.

For the reasons set out above, Part 330 of Title 12 of the Code of Federal Regulations is amended as set forth below.

PART 330—CLARIFICATION AND DEFINITION OF DEPOSIT INSURANCE COVERAGE

1. The authority citation for Part 330 continues to read as follows:

Authority: 12 U.S.C. 1813, 1817, 1821, 1822, unless otherwise noted.

§ 330.1 [Amended]

2. Section 330.1 is amended by removing and reserving paragraph (b)(3) thereof.

By Order of the Board of Directors this 3rd day of June, 1986.

Hoyle L. Robinson,
Executive Secretary.

[FR Doc. 86-13145 Filed 6-10-86; 8:45 am]

BILLING CODE 6714-01-M

FARM CREDIT ADMINISTRATION

12 CFR Parts 622 and 623

Rules of Practice and Procedure and Practice Before the Farm Credit Administration

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA), by the Farm Credit Administration Board (FCA Board), publishes final regulations to be designated as 12 CFR Parts 622 and 623. 12 CFR Part 622 establishes rules of practice and procedure applicable to formal and informal hearings held before the FCA, and to formal investigations conducted under the Farm Credit Act of 1971, as amended (12 U.S.C. 2001, et seq.) (Act). 12 CFR Part 623 prescribes rules with regard to persons who may practice before the FCA and the circumstances under which such persons may be suspended or debarred from practice before the FCA.

EFFECTIVE DATE: The regulation shall become effective upon the expiration of 30 days after this publication during which either or both Houses of Congress are in session. Notice of effective date will be published.

FOR FURTHER INFORMATION CONTACT:

Kathleen M. Mullarkey or Nancy E. Lynch, Office of the General Counsel, (703) 883-4020, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090.

SUPPLEMENTARY INFORMATION:

On March 31, 1986, the FCA noticed and published for public comment proposed regulations to be designated as 12 CFR Parts 622 and 623. Part 622 establishes rules of practice and procedure applicable to formal and informal hearings held before the FCA and to formal investigations conducted under the Act. Part 623 prescribes rules concerning persons who may practice before the FCA and the circumstances under which such persons may be suspended or debarred from practice before the FCA.

FCA received one letter on behalf of the Farm Credit System indicating the System had elected not to comment on the proposed regulations. No comments were received on the proposed regulations. In addition to minor editorial changes made to Part 622 and 623, §§ 622.80 and 622.82 were changed to provide for notice to the FCA's Office of General Counsel in informal hearings under Subpart C of Part 622.

List of Subjects**12 CFR Part 622**

Administrative practice and procedure, hearing procedures, ex parte communication

12 CFR Part 623

Administrative practice and procedure, Practice and procedure.

As stated in the preamble, Chapter VI, Title 12, of the Code of Federal Regulations, is amended as follows:

1. Part 622 is added to 12 CFR Chapter VI to read as follows:

PART 622—RULES OF PRACTICE AND PROCEDURE**Subpart A—Rules Applicable to Formal Hearings**

Sec.

- 622.1 Scope of regulations.
- 622.2 Definitions.
- 622.3 Appearance and practice.
- 622.4 Commencement of proceedings.
- 622.5 Answer.
- 622.6 Opportunity for informal settlement.
- 622.7 Conduct of hearings.
- 622.8 Rules of evidence.
- 622.9 Subpoenas.
- 622.10 Depositions.
- 622.11 Motions.
- 622.12 Proposed findings and conclusions; recommended decision.
- 622.13 Exceptions.
- 622.14 Briefs.

Sec.

- 622.15 Oral argument before the Board.
- 622.16 Notice of submission to the Board.
- 622.17 Decision of the Board.
- 622.18 Filing.
- 622.19 Service.
- 622.20 Documents in proceedings confidential.
- 622.21 Computing time.
- 622.22 Retained Authority.
- 622.23-622.50 [Reserved]

Subpart B—Rules and Procedures for Assessment and Collection of Civil Money Penalties

- 622.51 Definitions.
- 622.52 Purpose and Scope.
- 622.53 Notice of assessment of civil money penalty.
- 622.54 Prenotice conference.
- 622.55 Request for formal hearing on assessment.
- 622.56 Waiver of hearing; Consent.
- 622.57 Hearing on assessment.
- 622.58 Assessment order.
- 622.59 Relevant considerations.
- 622.60 Payment of civil money penalty.
- 622.61-622.75 [Reserved]

Subpart C—Rules and Procedures Applicable to Suspension or Removal of an Individual Where Certain Crimes are Charged or Proven

- 622.76 Definitions.
- 622.77 Purpose and scope.
- 622.78 Suspension, prohibition or removal.
- 622.79 Petition for informal hearing.
- 622.80 Informal hearing.
- 622.81 Default.
- 622.82 Decision of the Board.
- 622.83-622.100 [Reserved]

Subpart D—Rules and Procedures Applicable to Formal Investigations

- 622.101 Definitions.
- 622.102 Scope.
- 622.103 Formal investigations are confidential.
- 622.104 Order to conduct formal investigation.
- 622.105 Conduct of investigation.
- 622.106 Service of subpoena and payment of witness fees.
- 622.107 Transcripts.

Authority: Secs. 5.9, 5.10, 5.17, 5.25-5.37, Pub. L. 99-205, 99 Stat. 1678, 12 U.S.C. §§ 2243, 2244, 2252, 2261-2273.

Subpart A—Rules Applicable to Formal Hearings**§ 622.1 Scope of regulations.**

This Subpart prescribes rules of practice and procedure in connection with any formal hearing before the Farm Credit Administration (FCA) that is required by the Farm Credit Act of 1971, as amended (Act) or is ordered for other reasons by the FCA. In connection with any particular matter, reference should also be made to any special requirements of practice and procedure that may be contained in applicable provisions of the Act or the rules adopted by the FCA in Subpart B of this

Part, which special requirements are controlling. The rules in Subpart A do not apply to the informal hearings described in Subpart C of this Part, to any other informal hearing that may be ordered by the FCA, or to formal investigations described in Subpart D of this Part.

§ 622.2 Definitions.

As used in this part:

(a) "Act" means the Farm Credit Act of 1971, as amended. 12 U.S.C. 2001, *et seq.*

(b) "FCA" means the Farm Credit Administration.

(c) "Board" means the Farm Credit Administration Board.

(d) The terms "institution in the System", "System institution" and "institution" mean all institutions enumerated in section 1.2 of the Act, any service organization chartered under Part D of Title IV of the Act, and the Farm Credit System Capital Corporation.

(e) "Party" means the FCA or a person or institution named as a party in any notice that commences a proceeding, or any person or institution who is admitted as a party or who has filed a written request and is entitled as of right to be a party.

(f) "Presiding officer" means an administrative law judge or any FCA employee or other person designated by the Board to conduct a hearing.

(g) "Ex parte communication" means an oral or written communication not on the record with respect to which reasonable prior notice to all parties is not given. It does not include requests for status reports.

§ 622.3 Appearance and practice.

(a) Appearance before the Board or a presiding officer.

(1) *By nonattorneys.* An individual may appear in his or her own behalf; a member of a partnership may represent the partnership; a duly authorized officer or other agent of a corporation, trust association or other entity not specifically listed herein may represent the corporation, trust association, or other entity; and a duly authorized officer or employee of any government unit, agency or authority may represent that unit, agency or authority. Any person appearing in a representative capacity shall file a written notice of appearance with the Board which shall contain evidence of his or her authority to act in such capacity.

(2) *By attorneys.* A party may be represented by an attorney who is a member in good standing of the bar of the highest court of any State,

possession, territory, Commonwealth or the District of Columbia, and who has not been suspended or debarred from practice before the FCA in accordance with the provisions of Part 623 of this chapter. Prior to appearing, an attorney representing a person in a proceeding shall file a written notice of appearance with the Board, which shall contain a declaration that he or she is currently qualified as provided by paragraph (a)(2) of this section and is authorized to represent the party on whose behalf he or she acts.

(3) *Representation of multiple interests.* A person shall not represent more than one party without informing each party of any actual or potential conflict of interest that may be involved in such representation. Such person shall file a statement with the Board indicating that such disclosure has been made. The presiding officer has authority to take protective measures at any stage of a proceeding, including the authority to prohibit multiple representation when deemed appropriate.

(b) *Summary suspension.* Dilatory, obstructionist, egregious, contemptuous, contumacious, or other unethical or improper conduct at any proceeding before the Board or a presiding officer shall be grounds for exclusion therefrom and suspension for the duration of the proceeding, or other appropriate action by the Board or presiding officer.

§ 622.4 Commencement of proceedings.

Proceedings under this Subpart are commenced by the issuance of a notice by the Board. Such notice shall state the time, place, and nature of the hearing, the name and address of the presiding officer if one has been designated, and a statement of the matters of fact and law constituting the grounds for the hearing. The matters of fact and law alleged in a notice may be amended by the Board at any stage of the proceeding and such amended notice may require an answer from the party or parties served and may set a new hearing date. A copy of any notice served by the FCA on any System association, director, officer or other person participating in the conduct of the affairs of the association will also be sent to the supervisory bank.

§ 622.5 Answer.

(a) *Answer is required.* Unless a different period is specified by the Board, a party who does not wish to consent to a final order must file an answer within 20 days after being served with a notice that commences the proceeding. Any subsequent notice which contains amended allegations and by its terms requires an answer

must similarly be answered within 20 days after service.

(b) *Requirements of answer; effect of failure to deny.* An answer filed under this section shall concisely state any defenses and specifically admit or deny each allegation in the notice. A party who lacks information or knowledge sufficient to form a belief as to the truth of any particular allegation shall so state and this shall have the effect of a denial. Any allegation not denied shall be deemed to be admitted. A party who intends in good faith to deny only a part of or to qualify an allegation shall specify so much of it as is true and shall deny only the remainder.

(c) *Admitted allegations.* If a party filing an answer under this section elects not to contest any of the allegations of fact set forth in the notice, the answer shall consist of a statement admitting all of the allegations to be true. Such answer constitutes a waiver of hearing as to the facts alleged in the notice, and together with the notice will provide a record basis on which the presiding officer shall file with the Board a recommended decision in accordance with 5 U.S.C. 557. The recommended decision shall be served on the party, who may file exceptions thereto within the time provided in § 622.13.

(d) *Effect of failure to answer.* Failure of a party to file an answer required by this section within the time provided constitutes a waiver of the party's right to appear and contest the allegations in the notice and authorizes the presiding officer, without further notice to the party, to find the facts to be as alleged in the notice and to file with the Board a recommended decision containing such findings and appropriate conclusions. The Board or the presiding officer may, for good cause shown, permit the filing of a delayed answer after the time for filing and the answer has expired.

§ 622.6 Opportunity for informal settlement.

Any interested party may at any time submit to the Board for consideration written offers or proposals for settlement of a proceeding, without prejudice to the rights of the parties. No offer or proposal shall be admissible into evidence over the objection of any party in any hearing in connection with such proceeding. The foregoing provisions of this section shall not preclude settlement of any proceeding through the regular adjudicatory process by the filing of an answer as provided in § 622.5(c), or by submission of the case to the presiding officer on a stipulation of facts and an agreed order.

§ 622.7 Conduct of hearings.

(a) *Authority of presiding officer.* All hearings governed by this Subpart shall be conducted in accordance with the provisions of Chapter 5 of Title 5 of the United States Code. The presiding officer designated by the Board to preside at any such hearing shall have complete charge of the hearing, shall have the duty to conduct it in a fair and impartial manner and shall take all necessary action to avoid delay in the disposition of the proceeding. Such officer shall have all powers necessary to that end, including the following:

(1) To administer oaths and affirmations;

(2) To issue subpoenas and subpoenas duces tecum, as authorized by law, and to revoke, quash, or modify any such subpoena;

(3) To receive relevant evidence and to rule upon the admission of evidence and offers of proof;

(4) To take or cause depositions to be taken;

(5) To regulate the course of the hearing and the conduct of the parties and their counsel;

(6) To hold conferences for the settlement or simplification of issues or for any proper purpose; and

(7) To consider and rule upon, as justice may require, all procedural and other motions appropriate in a proceeding under this Subpart, except that a presiding officer shall not have power to decide any motion to dismiss the proceeding or other motion which results in a final determination of the merits of the proceeding. This power rests only with the Board. Without limitation on the foregoing, the presiding officer shall, subject to the provisions of this Subpart, have all the authority set forth in 5 U.S.C. 556(c).

(b) *Prehearing conference.* The presiding officer may, on his or her own initiative or at the request of any party, direct counsel for all parties to meet with him or her at a specified time and place prior to the hearing, or to submit suggestions to him or her in writing, for the purpose of considering any or all of the following:

(1) Simplification and clarification of the issues;

(2) Stipulations, admissions of fact and of the contents and authenticity of documents;

(3) Matters of which official notice will be taken; and

(4) Such other matters as may aid in the orderly disposition of the proceeding.

At the conclusion of such conference(s) the presiding officer shall enter an order

which recites the results of the conference. Such order shall include the presiding officer's rulings upon matters considered at the conference, together with appropriate directions, if any, to the parties. Such order shall control the subsequent course of the proceeding, unless modified at the hearing for good cause shown.

(c) *Exchange of information.* Thirty (30) days prior to the hearing, parties shall exchange a list of the names of witnesses with a general description of their expected testimony, and a list and one copy of all documents or other physical exhibits which will be introduced in evidence in the course of the proceeding.

(d) *Attendance at hearings.* All hearings shall be private and shall be attended only by the parties, their counsel or authorized representatives, witnesses while testifying, and other persons having an official interest in the proceeding. However, if the Board, in its discretion, after fully considering the views of the party afforded the hearing, determines that a public hearing is necessary to protect the public interest, the Board may in its sole discretion order that the hearing be public.

(e) *Transcript of testimony.* Hearings shall be recorded. A copy of the transcript of the testimony taken at any hearing, duly certified by the reporter, together with all exhibits accepted into evidence shall be filed with the presiding officer. The presiding officer shall promptly serve notice upon all parties of such filing. The parties shall make their own arrangements with the person recording the testimony for copies of the testimony and exhibits. The presiding officer shall have authority to correct the record sua sponte with notice to all parties and to rule upon motions to correct the record. In the event the hearing is public, transcripts will be furnished to interested persons upon payment of the cost thereof.

(f) *Continuances and changes or extensions of time and changes of place of hearing.* Except as otherwise provided by law, the presiding officer may extend time limits prescribed by these rules or by any notice or order issued in the proceedings, may change the time for beginning any hearing, continue or adjourn a hearing from time to time, and/or change the location of the hearing. Prior to the appointment of a presiding officer and after the filing of a recommended decision pursuant to § 622.12, the Board may grant such extensions or changes. Subject to the approval of the presiding officer, the parties may by stipulation change the

time limits specified by these rules or any notice or order issued hereunder.

(g) *Closing of hearing.* The record of the hearing shall be closed by an announcement to that effect by the presiding officer when the taking of evidence has been concluded. In the discretion of the presiding officer, the record may be closed as of a future date in order to permit the admission into the record, under circumstances determined by the presiding officer, of exhibits to be prepared.

(h) *Call for further evidence, oral arguments, briefs, reopening of hearing.* The presiding officer may call for the production of further evidence upon any issue, may permit oral argument and submission of briefs at the hearing and, upon appropriate notice, may reopen any hearing at any time prior to the filing of his or her recommended decision. The Board may reopen the record at anytime permitted by law.

(i) *Order of procedure.* The FCA shall open and close.

(j) *Ex parte communications.*

(1) No person shall make or knowingly cause to be made an ex parte communication relevant to the merits of the proceeding to the presiding officer or anyone who is or may reasonably be expected to be involved in the decisional process.

(2) No person who is or may reasonably be expected to be involved in the decisional process shall make or knowingly cause to be made an ex parte communication relevant to the merits of the proceeding to any person.

(3) Except as authorized by law, the presiding officer shall not consult anyone on any fact in issue, unless upon notice and opportunity for all parties to participate. The presiding officer shall not be responsible to, or subject to the supervision or direction of, any officer, employee, or agent of the FCA engaged in the performance of investigative or prosecuting functions. An officer, employee or agent engaged in the performance of such functions in any case shall not, in that case or a factually related case, participate or advise in the decision of the presiding officer, except as a witness or counsel in the proceedings, or as otherwise authorized by law.

(4) If an ex parte communication is made or knowingly caused to be made, all such communications, and any responses, shall be placed in the record.

(5) Upon receipt of a communication knowingly made or caused to be made in violation of paragraph (j) of this section, the responsible party may be required to show cause why such party's claim or interest should not be

dismissed, denied, or otherwise adversely affected. To the extent consistent with the interests of justice, a knowing violation of paragraph (j) of this section may be grounds for a decision adverse to a party in violation.

(6) The prohibitions against ex parte communications apply from the time a proceeding is noticed for hearing. However, when the person responsible for the communication has knowledge that the proceeding will be noticed, the prohibitions apply from the time such knowledge is acquired.

§ 622.8 Rules of evidence.

(a) *Evidence.* Every party shall have the right to present a case or defense by oral and documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. Irrelevant, immaterial or unduly repetitious evidence shall be excluded.

(b) *Objections.* Objections to the admission or exclusion of evidence shall be in short form, stating the grounds of objection relied upon but no argument thereon shall be permitted, except as ordered, allowed, or requested by the presiding officer. Rulings on such objections and all other matters shall be part of the transcript. Failure to object timely to the admission or exclusion of evidence or to any ruling constitutes a waiver of such objection.

(c) *Stipulations.* Independently of the orders or rulings issued as provided by § 622.7(b), the parties may stipulate as to any relevant matters of fact or the authenticity of any relevant documents. Such stipulations may be received in evidence at the hearing, and when so received shall be binding on the parties with respect to the matters therein stipulated.

(d) *Official notice.* All matters officially noticed by the presiding officer shall appear on the record.

§ 622.9 Subpoenas.

(a) *Issuance.* The presiding officer or, in the event he or she is unavailable, the Board may issue subpoenas and subpoena duces tecum at the request of any party requiring the attendance of witnesses or the production of documents at a designated place. The person seeking the subpoena may be required, as a condition precedent to the issuance of the subpoena, to show the general relevance and reasonable scope of the testimony or other evidence sought. Where it appears to the presiding officer that a subpoena may be unreasonable, oppressive, excessive in scope, unduly burdensome, or delay the

proceeding, the presiding officer has discretion to refuse to issue a subpoena or to issue it only upon such conditions as fairness requires.

(b) *Motions to quash.* Any person to whom a subpoena is directed may, prior to the time specified therein for compliance but in no event more than 10 days after the date the subpoena was served, with notice to the party requesting the subpoena, apply to the presiding officer, or in the event he or she is unavailable to the Board, to quash or modify the subpoena, accompanying such application with a brief statement of the reasons therefor. The presiding officer may deny the application or, upon notice to the party on whose behalf the subpoena was issued and after affording that party an opportunity to reply, may quash or modify the subpoena or impose reasonable conditions including, in the case of a subpoena duces tecum, a requirement that the party on whose behalf the subpoena was issued pay in advance the reasonable cost of copying and transporting the documentary evidence to the designated place.

(c) *Service of subpoena.* A subpoena may be served upon the person named therein by personal service or certified mail with a return receipt to the last known address of the person. The fees for one day's attendance and mileage as specified in paragraph (d) of this section must be tendered at the time of service unless the subpoena is issued on behalf of the FCA. If personal service is made by a U.S. marshal, a deputy U.S. marshal, or an employee of the FCA, such service shall be evidenced by the return thereon. If personal service is made by any other person, such person shall sign an affidavit describing the manner in which service is made, and return such affidavit with a copy of the subpoena. In case of failure to make service, reasons for the failure shall be stated on the original subpoena. The original or a copy of the subpoena, bearing or accompanied by the required return, affidavit, statement or return receipt, shall be returned without delay to the presiding officer.

(d) *Attendance of witnesses.* The attendance of witnesses at a designated place may be required from any place in any State or territory subject to the jurisdiction of the United States. Witnesses who are subpoenaed shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States. Fees required by this paragraph shall be paid by the party upon whose application the subpoena is issued.

(e) *Production of documents.* The production of documents at a designated

place may be required from any place in any State or territory subject to the jurisdiction of the United States. In lieu of an original document, a certified or authenticated copy may be produced. However, any party has the right to inspect the original document.

§ 622.10 Depositions.

(a) *Application to take deposition.* Any party desiring to take the deposition of any person shall make written application to the presiding officer setting forth the name and address of the witness, the subject matter concerning which the witness is expected to testify, its relevance, the time and place of the deposition, and the reasons why such deposition should be taken. The application may include a request that specified documents be produced at the deposition. A copy of the application shall be served on the other parties at the same time the application is filed with the presiding officer.

(b) *Subpoena; notice to other parties.* Upon a showing that the testimony or other evidence sought will be material, and the taking of the deposition will not result in any undue burden to the witness or any party or undue delay of the proceedings, the presiding officer may issue a subpoena or subpoena duces tecum. Notice of the issuance of such subpoena shall be served upon all parties at least 10 days in advance of the date set for deposition.

(c) *Deposition by notice.* The requirements of paragraphs (a) and (b) of this section may be waived by agreement of the parties and the witness whose testimony or documentary evidence is sought. Such agreement shall be embodied in a stipulation which becomes part of the record and may provide for the taking of depositions upon notice without leave of the presiding officer.

(d) *Procedure on deposition.* Depositions may be taken before any person having the power to administer oaths. Each witness whose testimony is taken by deposition shall be duly sworn before any question is propounded. Examination and cross-examination of deponents may proceed as permitted at the hearing. Objections to questions or documents shall be in short form, stating the grounds relief upon for the objection. Failure to object to questions or evidence is deemed a waiver if the ground of the objection is one which might have been obviated or removed if presented at that time. The questions propounded and the answers thereto, together with all objections made (but not including argument or debate) shall be recorded by or under the direction of

the person before whom the deposition is taken. The deposition shall be signed by the witness, unless the parties by stipulation waive the signing or the witness is physically unable to sign, cannot be found, or refuses to sign. The deposition shall also be certified as a true and complete transcript by the person recording the testimony. If the deposition is not signed by the witness, the person recording the testimony shall state this fact and the reason therefor on the record. The person before whom the deposition is taken shall promptly file the transcript and all exhibits with the presiding officer. Interested parties shall make their own arrangements with the person recording the testimony for copies of the testimony and exhibits.

(e) *Introduction as evidence.* Subject to appropriate rulings by the presiding officer on such objections and answers as were noted at the time the deposition was taken or as would be valid were the witness personally present and testifying at the hearing, the deposition or any part thereof may be received in evidence by the presiding officer in his or her discretion. Only such part of a deposition as is received in evidence at a hearing shall constitute a part of the record upon which a decision may be based.

(f) *Payment of fees.* Deponents whose depositions are taken and the reporter taking the same shall be entitled to the same fees as are paid for like services in the district courts of the United States, which fees shall be paid by the party upon whose application the deposition is taken.

§ 622.11 Motions.

(a) *How made.* An application or request for an order or ruling not otherwise specifically provided for in this Subpart, unless made during a hearing, shall be made by written motion supported by a memorandum which concisely states the grounds therefor.

(b) *Opposition.* Within 10 days after service of any written motion, or within such other period of time as may be fixed by the presiding officer, any party may file a memorandum in opposition thereto. The moving party has no right to reply except as permitted by the presiding officer. The presiding officer has discretion to waive the requirements of this section as to motions for extension of time and may rule upon such motions ex parte.

(c) *Oral argument.* No oral argument will be heard on motions except as otherwise directed by the presiding officer or the Board.

(d) *Rulings and orders.* Except as otherwise provided in this Subpart, the presiding officer shall rule on all motions and may issue appropriate orders, except that motions may be referred to the Board if the presiding officer is unavailable or determines that such motion should be referred to the Board. Prior to the appointment of a presiding officer and after a recommended decision is filed pursuant to § 622.12, the Board shall rule on motions filed by the parties.

(e) *Appeal from rulings on motions.* All answers, motions, objections and rulings shall become part of the record. Rulings of a presiding officer on any motion may not be appealed to the Board prior to its consideration of the presiding officer's recommended decision, except by special permission of the Board. However, such rulings shall be considered by the Board in reviewing the record. Requests to the Board for special permission to appeal from a ruling of the presiding officer shall be filed in writing within 5 days of the ruling, and shall briefly state the grounds relied on. The moving party shall immediately serve a copy thereof on every other party to the proceeding who may then respond to such request within 5 days after service.

(f) *Continuation of hearing.* Unless otherwise ordered by the presiding officer or the Board, the hearing shall continue pending the determination of any request or motion by the Board.

§ 622.12 Proposed findings and conclusions; recommended decision.

(a) *Proposed findings and conclusions by parties.* Within 30 days after the hearing transcript has been filed, any party may file proposed findings of fact and conclusions of law. Such proposals shall be supported by citation of such statutes, decisions, and other authorities, and by specific page references to such portions of the record as may be relevant. All such proposals shall become a part of the record.

(b) *Recommended decision by presiding officer.* Within 30 days after the expiration of time allowed under paragraph (a) of this section, or within such further time as the Board for good cause allows, the presiding officer shall file the entire hearing record, including a recommended decision and findings and conclusions, the transcript, exhibits (including on request of any of the parties any exhibits excluded from evidence or tender of proof), exceptions, rulings and all briefs and memoranda filed in connection with the hearing. Promptly upon such filing, the presiding officer shall serve a copy of the recommended decision, findings and

conclusions upon each party to the proceeding.

(c) *Board as presiding officer.* In proceedings in which the Board or one or more of its members has presided at the reception of evidence, the presiding officer's recommended decision, findings of fact, and conclusions of law will be omitted. In such proceedings the proposed findings and conclusions, briefs, and other submissions permitted under paragraph (a) of this section shall be filed with the Board for consideration.

§ 622.13 Exceptions.

(a) *Filing.* Within 15 days after service of the recommended decision of the presiding officer, any party may file exceptions thereto or to any portion thereof, or to the failure of the presiding officer to make any recommendation, finding, or conclusion, or to the admission or exclusion of evidence, or to any other ruling of the presiding officer.

(b) *Contents.* Each exception shall be supported by a concise argument and by citation of such statutes, decisions and other authorities, and by page references to such portions of the record as may be relevant. If the exception relates to the admission or exclusion of evidence, the substance of the evidence admitted or excluded shall be set forth in the brief with appropriate references to the transcript.

(c) *Waiver.* Failure of a party to file exceptions to those matters specified in paragraph (a) of this section within the time prescribed shall be a waiver of objection thereto.

§ 622.14 Briefs.

(a) *Contents.* Any brief filed in a proceeding shall be confined to the particular matters in issue, citing statutes, decisions, and other authorities, and page references to such portions of the record or the recommended decision of the presiding officer as may be relevant.

(b) *Reply briefs.* Reply briefs may be filed within 10 days after service of original briefs of opposing parties, and shall be confined to matters in such briefs. Further briefs may be filed only with permission of the presiding officer or the Board with respect to a matter before the Board.

(c) *Delayed filing.* Briefs not filed on or before the time fixed in this Subpart or by the presiding officer will be received only upon special permission of the Board.

§ 622.15 Oral argument before the Board.

Upon its own initiative or upon written request by any party, the Board,

in its discretion, may order the matter to be set down for oral argument before the Board or one or more members thereof.

Any request for oral argument by a party filing exceptions shall be made within the time prescribed for filing such exceptions, or by any other party, within the time prescribed for the filing of a reply brief. Oral argument before the Board shall be recorded unless otherwise ordered by the Board.

§ 622.16 Notice of submission to the Board.

Upon the filing of the record with the Board, and upon the expiration of the time for the filing of exceptions and all briefs, including reply briefs or any further briefs permitted by the presiding officer or the Board, and upon the hearing of oral argument by the Board, if ordered by the Board, the Board shall notify the parties in writing that the case has been submitted for final decision.

§ 622.17 Decision of the Board.

Any person who has not engaged in the performance of investigative or prosecuting functions in the case, or in a factually related case, may advise and assist the Board in the consideration of the case. Copies of the decision and order of the Board shall be served upon the parties. A copy of the order will also be sent to the supervisory bank if the order relates to a System association, director, officer, or other person participating in the conduct of the affairs of the association.

§ 622.18 Filing.

(a) *Filing.* Papers required or permitted to be filed with the Board shall be filed with the Chairman of the Board, FCA, 1501 Farm Credit Drive, McLean, VA 22102-5090 or with the person designated to receive papers for the agency in a proceeding. Papers sent by mail must be postmarked or received within the prescribed time limit for filing. Papers sent by any other means must be received within the prescribed time limit for filing.

(b) *Formal requirements.* All filed papers shall be printed, typewritten, or otherwise reproduced, and copies shall be clear and legible. The original of all papers filed by a party shall be signed and dated as of the date of execution by the party filing the same, or a duly authorized agent or attorney. The signer's address and telephone number must appear on the original. Counsel for the FCA shall sign the original of all papers filed on behalf of the FCA. All papers filed must name in the heading or on a title page, the parties, the docket number and the subject of the papers.

(c) *Copies.* Parties shall file an original and three copies of all documents and papers required or permitted to be filed under this Subpart (except the transcript of testimony and exhibits), unless otherwise specifically provided by the Board.

§ 622.19 Service.

(a) *Service.* Except as otherwise provided in these rules, each party who files papers is responsible for serving a copy thereof upon the presiding officer and upon every other party or the attorney or representative of record of that party. A copy of all papers filed by the presiding officer or the Board, except for the transcript of testimony and exhibits, shall be served upon each of the parties. Service may be by personal service, private delivery service, or by express, certified or regular first-class mail. If a party is not represented, service shall be made at the last known address of the party or an officer thereof as shown on the records of the FCA.

(b) *Proof of service.* Proof of service of papers filed by a party shall be filed before action is to be taken thereon. The proof shall show the date and manner of service, and may be by written acknowledgment of service, by declaration of the person making service, or by certificate of an attorney or other representative of record. Failure to make proof of service shall not affect the validity of service. The presiding officer may allow the proof to be amended or supplied, unless to do so would result in material prejudice to a party.

§ 622.20 Documents in proceedings confidential.

Unless otherwise ordered by the Board or required by law, the entire record in any proceeding under this Subpart, including the notice of hearing, transcript, exhibits, proposed findings and conclusions, recommended decision of the presiding officer, exceptions thereto, decision and order of the Board, and any other papers which are filed in connection with the proceeding shall not be made public, and shall be for the confidential use only of the FCA and its staff, the presiding officer, the parties, and other appropriate supervisory authorities.

§ 622.21 Computing time.

(a) *General rule.* In computing any period of time prescribed or allowed by this Subpart, the date of the act or event from which the designated period of time begins to run is not to be included. The last day so computed shall be

included, unless it is a Saturday, Sunday or Federal holiday, in which event the period shall run until the end of the next day which is not a Saturday, Sunday, or Federal holiday. When the period of time prescribed or allowed is 10 days or less, intermediate Saturdays, Sundays, and Federal holidays shall not be included in the computation.

(b) *Service by mail.* Whenever any party has the right or is required to do some act within the period of time prescribed in this Subpart after the service upon the party of any document or other paper of any kind, and such service is made by mail, three days shall be added to the prescribed period from the date when the matter served is deposited in the United States mail.

§ 622.22 Retained authority.

Nothing in this Part is in derogation of powers of examination and investigation conferred on the FCA by any provision of law.

§ 622.23-622.50 [Reserved]

Subpart B—Rules and Procedures for Assessment and Collection of Civil Money Penalties

§ 622.51 Definitions.

Unless noted otherwise, the definitions set forth in § 622.2 or Subpart A shall apply of this Subpart.

§ 622.52 Purpose and scope.

The rules and procedures specified in this Subpart and in Subpart A are applicable to proceedings by the FCA to assess and collect civil money penalties for a violation of the terms of a final cease-and-desist order issued under §§ 5.25 and 5.26 of the Act.

§ 622.53 Notice of assessment of civil money penalty.

(a) *Notice of assessment.* Civil money penalty proceedings commence with the issuance by the Board of a notice of assessment of civil money penalty. The notice of assessment shall state:

- (1) The legal authority for the assessment;
- (2) The amount of the civil money penalty being assessed;
- (3) The date by which the civil money penalty shall be paid;
- (4) The matter of fact or law constituting the grounds for assessment of the civil money penalty;
- (5) The right of the institution or person being assessed to a formal hearing to challenge the assessment; and
- (6) The time limit to request such a formal hearing.

(b) *Service.* The notice of assessment may be served upon the institution or person being assessed by personal service or by certified mail with a return receipt to the institution's or the person's last known address. Such service constitutes issuance of the notice.

§ 622.54 Prenotice conference.

In the sole discretion of the FCA's General Counsel, the General Counsel may, prior to the issuance by the FCA of a notice of assessment of civil money penalty, advise the affected institution or person that the issuance of a notice of assessment of civil money penalty is being considered and the reasons and authority for the proposed assessment. The General Counsel may provide the institution or person an opportunity to present written materials or request a conference with members of the FAC's staff to show that the penalty should not be assessed or, if assessed, should be reduced in amount.

§ 622.55 Request for formal hearing on assessment.

An institution or person being assessed may request a formal hearing to challenge the assessment of civil money penalty. The request must be filed in writing, within 10 days of the issuance of the notice of assessment, with the Chairman of the Board, FCA, 1501 Farm Credit Drive, McLean, VA 22102-5090.

§ 622.56 Waiver of hearing; Consent.

(a) *Waiver.* Failure to request a hearing pursuant to § 622.55 constitutes a waiver of the opportunity of a hearing and the notice of assessment issued pursuant to § 622.53 shall constitute a final and unappealable order.

(b) *Consent.* Any party afforded a hearing who does not appear at the hearing personally or by a duly authorized representative is deemed to have consented to the issuance of an assessment order.

§ 622.57 Hearing on assessment.

(a) *Time and place.* An institution or person requesting a hearing shall be informed by order of the Board of the time and place set for hearing.

(b) *Answer; procedures.* The hearing order may require the person requesting the hearing to file an answer as prescribed in § 622.5 of Subpart A. The procedures of the Administrative Procedure Act (5 U.S.C. 554-557) and Subpart A of these Rules shall apply to the hearing.

§ 622.58 Assessment order.

(a) *Consent.* In the event of consent of the parties concerned to an assessment, or if, upon the record made at a hearing ordered under this Subpart, the Board finds that the grounds for having assessed the penalty have been established, the Board may issue an order of assessment of civil money penalty. In its assessment order, the Board may reduce the amount of the penalty specified in the notice of assessment.

(b) *Effective date and period.* An assessment order is effective immediately upon issuance, or upon such other date as may be specified therein, and shall remain effective and enforceable unless it is stayed, modified, terminated, or set aside by action of the Board or a reviewing court.

(c) *Service.* An assessment order may be served by personal service or by certified mail with a return receipt to the last known address of the institution or person being assessed. Such service constitutes issuance of the order.

§ 622.59 Relevant considerations.

In determining the amount of the penalty assessed, the Board shall consider the financial resources and good faith of the institution or person charged, the gravity of the violation, any previous violations, and such other matters as justice may require.

§ 622.60 Payment of civil money penalty.

(a) *Payment date.* Generally, the date designated in the notice of assessment for payment of the civil money penalty will be 60 days from the issuance of the notice. If, however, the Board finds, in a specific case, that the purposes of the statute would be better served if the 60-day period were changed, the Board may shorten or lengthen the period or make the civil money penalty payable immediately upon receipt of the notice of assessment. If a timely request for a formal hearing to challenge an assessment of a civil money penalty is filed, payment of the penalty shall not be required unless and until the Board issues a final order of assessment following the hearing. If an assessment order is issued, it will specify the date by which the civil money penalty is to be paid or collected.

(b) *Method of payment.* Checks in payment of civil money penalties should be made payable to the "Farm Credit Administration". Upon collection, the FCA shall forward the amount of the penalty to the Treasury of the United States.

§§ 622.61-622.75 [Reserved]**Subpart C—Rules and Procedures Applicable to Suspension or Removal of an Individual Where Certain Crimes Are Charged or Proven****§ 622.76 Definitions.**

Unless noted otherwise, the definitions set forth in § 622.2 of Subpart A shall apply to this Subpart.

§ 622.77 Purpose and scope.

The rules and procedures set forth in this Subpart apply to informal hearings afforded to any officer, director, or other person participating in the conduct of the affairs of a System institution who has been suspended or removed from office or prohibited from further participation in any manner in the conduct of the institution's affairs by a notice or order issued by the Board upon the grounds set forth in section 5.29 of the Act.

§ 622.78 Suspension, prohibition or removal.

(a) *Content.* The Board may serve a notice of suspension or prohibition or order of removal upon a director, officer or other person participating in the conduct of the affairs of an institution. A copy of such notice or order shall also be served upon the institution, whereupon the individual concerned shall immediately cease service to the institution or participation in the affairs of the institution. Any notice or order shall indicate the basis for the suspension, prohibition, or removal and shall inform the individual of the right to request in writing, within 30 days of being served with such notice or order, an opportunity to show at an informal hearing that continued service to or participation in the conduct of the affairs of the institution does not, or is not likely to, pose a threat to the interests of the institution's shareholders or the investors in Farm Credit System obligations or threaten to impair public confidence in the institution or the Farm Credit System.

(b) *Service.* A notice or order of suspension, removal or prohibition may be served by personal service or by certified mail with a return receipt to the last known address of the person being served.

§ 622.79 Petition for informal hearing.

(a) *Filing.* To obtain a hearing, the subject individual must file an original and three copies of a petition with the Board within 30 days of being served with the notice or order.

(b) *Content.* The petition shall:

(1) State whether the petitioner is requesting termination or modification of the notice or order;

(2) State with particularity how the petitioner intends to show that his or her continued service to or participation in the conduct of the affairs of the institution would not, or is not likely to, pose a threat to the interests of the institution's shareholders or the investors in Farm Credit System obligations or threaten to impair public confidence in the institution or the Farm Credit System;

(3) Include a request to present oral testimony or witnesses at the hearing, if the petitioner desires to do so. The request should specify the names of the witnesses and a summary of their expected testimony; and

(4) Indicate whether the petitioner desires oral argument or elects to have the matter determined solely on the basis of written submissions.

§ 622.80 Informal hearing.

(a) *Time and place.* Upon receipt of a timely petition for a hearing, the Board shall notify the petitioner of the time and place fixed for the hearing and shall designate one or more Board members or FCA employees to preside ("designated FCA representative"). The hearing shall be scheduled to be held no later than 30 days from the date a petition for hearing is received unless the time is extended at the request of the petitioner. Notice of the hearing shall also be sent to the FCA's Office of General Counsel.

(b) *Appearance.* A petitioner may appear personally or through counsel to submit relevant written materials and oral argument. An attorney is subject to all the requirements and limitations imposed on attorneys in § 622.3 of Subpart A. A representative(s) of the FCA's Office of General Counsel may participate in the hearing to the extent such representative deems appropriate.

(c) *Written material.* Any written material the petitioner wishes to have considered must be submitted to the designated FCA representative and the FCA's Office of General Counsel at least 10 days prior to the date of the hearing.

(d) *Oral testimony.* Oral testimony may be presented only if expressly permitted by the Board in the notice of hearing. The designated FCA representative may ask questions of any witness.

(e) *Transcripts.* Oral testimony, if any, and oral argument shall be recorded. A copy of the transcript shall be filed with the designated FCA representative, who shall have authority to correct the record sua sponte upon notice, or upon

the motion of the petitioner or the representative of the FCA's Office of General Counsel. The designated FCA representative shall promptly serve notice upon the petitioner and the FCA's Office of General Counsel of such filing. Such parties shall make arrangements with the person recording the testimony or argument for copies of the transcript.

(f) *Closing of record.* Upon the request of the petitioner or representative of the FCA's Office of General Counsel, the record shall remain open for a period of 5 business days following the hearing, during which time additional submissions for the record may be made. Thereafter, the record shall be closed.

(g) *Rules of evidence and procedure.* Neither the formal rules of evidence nor the adjudicative procedures of the Administrative Procedure Act (5 U.S.C. 554-557) or Subpart A of these Rules shall apply to the informal hearing ordered under this Subpart unless the Board orders that they apply in whole or in part.

§ 622.81 Default.

If the subject individual fails to file a petition for a hearing, or fails to appear at a hearing, either in person or by an attorney, or fails to submit a written argument where oral argument has been waived, the notice shall remain in effect until the information, indictment, or complaint is finally disposed of and the order shall remain in effect until terminated by the Board.

§ 622.82 Decision of the Board.

(a) *Recommended decision.* Within 30 days of the hearing, the designated FCA representative shall make a recommendation with findings and conclusions to the Board concerning the notice or order of suspension, removal, or prohibition.

(b) *Final decision.* Within 60 days of the hearing, the Board shall notify the subject individual and the FCA's Office of General Counsel whether the suspension or removal from office, or prohibition from participation in any manner in the affairs of the institution, will be continued, terminated, or otherwise modified. The Board's final decision, if adverse to the individual, shall contain a statement of the basis thereof. The Board may satisfy this requirement where it adopts the recommended decision of the designated FCA representative.

(c) *Guilt not an issue.* In deciding upon any suspension or prohibition by notice, the ultimate question of the guilt or innocence of the individual with respect to the criminal charge that is outstanding will not be considered. A

finding of not guilty or other disposition of the charge shall not preclude the Board from thereafter instituting removal proceedings pursuant to section 5.28 of the Act.

(d) *Effective period.* A removal or prohibition by order remains in effect until terminated by the Board. A suspension or prohibition by notice remains in effect until the criminal charge is finally disposed of or until terminated by the Board.

(e) *Reconsideration.* A suspended or removed individual may petition the Board to reconsider the decision any time after the expiration of a 12-month period from the date of the decision, but no petition for reconsideration may be made within 12 months of a previous petition. A petition shall state with particularity the relief sought and the grounds therefor and may be accompanied by a supporting memorandum and any other documentation the petitioner wishes to have considered. No hearing need be granted on the petition for reconsideration.

§ 622.83-622.100 [Reserved]

Subpart D—Rules and Procedures Applicable to Formal Investigations

§ 622.101 Definitions.

Unless noted otherwise, the definitions set forth in § 622.2 of Subpart A shall apply to this Subpart.

§ 622.102 Scope.

The rules in this Subpart apply to formal investigations initiated by order of the Board and pertain to the exercise of powers specified in section 5.37 of the Act. These rules do not restrict or in any way affect the authority of the FCA, including but not limited to the powers enumerated in section 5.37 of the Act, to conduct examinations of System institutions.

§ 622.103 Formal investigations are confidential.

Information or documents obtained or testimony recorded in the course of a formal investigation shall be confidential and shall be disclosed only in accordance with the provisions of 12 CFR Part 602.

§ 622.104 Order to conduct formal investigation.

A formal investigation begins with the issuance of an order by the Board. The order shall designate the person or persons who will conduct the investigation, issue, revoke, quash or modify subpoenas and subpoenas duces tecum, take or cause to be taken depositions, administer oaths, and

receive affirmations as to any matter under investigation by the FCA. Upon application and for good cause shown, the Board may limit, modify, or withdraw the order at any stage of the proceeding.

§ 622.105 Conduct of investigation.

(a) *Review of order.* Any person who is compelled or requested to furnish testimony, documentary evidence, or other information with respect to any matter under formal investigation shall upon request be shown the order initiating such investigation.

(b) *Right to counsel.* Any person who, in a formal investigation, is compelled to appear and testify or who appears and testifies by request or permission of the Board may be accompanied, represented, and advised by counsel. The right to be accompanied, represented, and advised by counsel shall mean the right of a person testifying to have an attorney present at all times while testifying and to have this attorney:

(1) Advise such person before, during and after the conclusion of testimony;

(2) Question such person briefly at the conclusion of testimony to clarify any of the answers given; and

(3) Make summary notes during the testimony solely for the use of such person.

(c) *Appearance.* The provisions of § 622.3 are applicable to this Subpart.

(d) Exclusion.

(1) Any person who has given or will give testimony, and counsel representing such person, may be excluded from the taking of testimony of any other witness in the discretion of the designated FCA representative conducting the investigation.

(2) The designated FCA representative conducting the investigation shall report to the Board any instances where any person has been guilty of dilatory, obstructionist, egregious, contemptuous, contumacious or other unethical or improper conduct during the course of the proceeding or any other instance involving a violation of these rules. The Board may thereupon take such action as the circumstances may warrant, including exclusion of the offending individual or individual from participation in the proceeding.

§ 622.106 Service of subpoena and payment of witness fees.

(a) *Service.* A subpoena may be served upon the person named therein by personal service or certified mail with a return receipt to the last known address of the person. Witnesses who are subpoenaed shall be paid the same

fees and mileage that are paid witnesses in the district courts of the United States. The fees and mileage need not be tendered at the time a subpoena is served.

(b) *Motions to quash.* Any person to whom a subpoena is directed may, prior to the time specified therein for compliance, but in no event more than 5 days after the date of service of such subpoena, apply to the FCA representative authorized in the order, or if unavailable to the Board, to quash or modify such subpoena, accompanying such application with a brief statement of the reasons therefor. The FCA representative, or the Board, may:

- (1) Deny the application;
- (2) Quash or revoke the subpoena;
- (3) Modify the subpoena; or
- (4) Condition the granting of the application on such terms as the FCA representative or the Board, determines, his, her, or its discretion, to be just, reasonable, and proper.

§ 622.107 Transcripts.

Transcripts, if any, of an investigative proceeding shall be recorded by any means authorized by the designated FCA representative conducting the investigation. A person who has given testimony in an investigative proceeding (or counsel for such person) upon proper identification shall have the right to inspect the transcript of the person's testimony but may not obtain a copy if the FCA's representative conducting the investigation has cause to believe that the contents should not be disclosed.

2. Part 623 is added to 12 CFR Chapter VI to read as follows:

PART 623—PRACTICE BEFORE THE FARM CREDIT ADMINISTRATION

Sec.

- 623.1 Scope of Part.
- 623.2 Definitions.
- 623.3 Who may practice.
- 623.4 Suspension and debarment.
- 623.5 Reinstatement.
- 623.6 Duty to file information concerning adverse judicial or administrative action.
- 623.7 Proceeding under this part.

Authority: Secs. 5.9, 5.10, 5.17, Pub. L. 99-205, 99 Stat. 1678, 12 U.S.C. 2243, 2244, 2252.

§ 623.1 Scope of Part.

This Part prescribes rules with regard to persons who may practice before the Farm Credit Administration and the circumstances under which attorneys, accountants, appraisers, or other persons may be suspended or debarred, either temporarily or permanently, from practicing before the Farm Credit Administration. In connection with any particular matter, reference also should be made to any special requirements of

procedure and practice that may be contained in the particular statute involved or the rules and forms adopted by the Farm Credit Administration thereunder, which special requirements are controlling. In addition to any suspension hereunder, a person may be excluded from further participation in a particular adjudicative proceeding in accordance with § 622.3 or in a formal investigation in accordance with § 622.105.

§ 623.2 Definitions.

As used in this part:

- (a) "FCA" means the Farm Credit Administration.
- (b) "Board" means the Farm Credit Administration Board.
- (c) "Act" means the Farm Credit Act of 1971, as amended, 12 U.S.C. 2001, et seq.
- (d) The terms "institution in the System", "System institution" and "institution" means all institutions enumerated in section 1.2 of the Act, any service organization chartered under Part D of Title IV of the Act, and the Farm Credit System Capital Corporation.
- (e) The term "presiding officer" includes the Board, one or more members thereof, FCA employees, or an administrative law judge. As used in this part, the term shall be construed to refer to whichever of the above-identified individuals presides at a hearing or other proceeding, except as otherwise specified in the text;
- (f) The term "attorney" means any person who is a member in good standing of the bar of the highest court of any State, possession, territory, Commonwealth or the District of Columbia;
- (g) The term "practice" means transacting any business with the FCA, including but not limited to:

(1) The representation of another person at any adjudicatory, investigatory, removal or rulemaking proceeding conducted before the FCA or a presiding officer;

(2) The preparation or certification of any statement, opinion, report of financial condition and performance, financial statement, appraisal report, audit report, or other document or report by any attorney, accountant, appraiser or other person which is filed with or submitted to the FCA, with such person's consent or knowledge in connection with any filing with the FCA;

(3) A presentation to the FCA or a presiding officer at a conference or meeting relating to an institution's or person's rights, privileges or liabilities under the laws administered by the FCA

and rules and regulations promulgated thereunder;

(4) Any business correspondence or communication with the FCA or a presiding officer; and

(5) The transaction of any other business with the FCA on behalf of another, in the capacity of an attorney, accountant, appraiser, licensed expert or any other capacity.

§ 623.3 Who may practice.

(a) *By nonattorneys*—(1) An individual may appear on his or her own behalf; a member of a partnership may represent the partnership; a bona fide and duly authorized officer or other designated representative of a corporation, trust, association or other entity not specifically listed herein may represent the corporation, trust, association or other entity; and an authorized officer or other designated representative of any government unit, agency or authority may represent that unit, agency or authority.

(2) Any accountant, appraiser or licensed expert may practice before the FCA in a professional capacity.

(b) *By attorneys.* Any entity noted in paragraph (a) of this section may be represented in any proceeding or other matter before the FCA by an attorney.

(c) Any person transacting business with the FCA in a representative capacity may be required to show evidence of his or her authority to act in such capacity and certification of credentials.

§ 623.4 Suspension and debarment.

(a) *Grounds.* The Board may censure any person practicing before the FCA or may deny, temporarily or permanently, the privilege of any person to practice before the FCA if such person is found by the Board, after notice of and opportunity for hearing in the matter:

(1) Not to possess the requisite qualifications to represent others;

(2) To be lacking in character or professional integrity;

(3) To have engaged in any dilatory, obstructionist, egregious, contemptuous, contumacious or other unethical or improper conduct before FCA; or

(4) To have willfully violated, or willfully aided and abetted the violation of, any provision of the laws administered by the FCA or the rules and regulations promulgated thereunder.

(b) *Automatic suspension.*

(1) Any person who, after being licensed as a professional or expert by any competent authority, has been convicted by a Federal or State court of a felony, or of a misdemeanor involving moral turpitude, personal dishonesty or

breach of trust, shall be suspended automatically from practicing before the FCA without a hearing.

(2) Any accountant, appraiser or licensed expert whose license to practice has been revoked in any State, possession, territory, Commonwealth or the District of Columbia, or who has been suspended or otherwise barred from practice before any Federal or State regulatory authority, shall be suspended automatically from practicing before the FCA without a hearing.

(3) Any attorney who has been suspended or disbarred by a court of the United States or in any State, possession, territory, Commonwealth or the District of Columbia, shall be suspended automatically from practicing before the FCA without a hearing.

(4) A conviction (including a judgment or order on a plea of *nolo contendere*), revocation, suspension or disbarment under paragraphs (b)(1)(2) and (3) of this section shall be deemed to have occurred when the convicting, revoking, suspending or disbarring agency or tribunal enters its judgment or order, regardless of whether an appeal is pending or could be taken.

(5) For purposes of this section, it shall be irrelevant that any attorney, accountant, appraiser or licensed expert who has been suspended, disbarred or otherwise disqualified from practice before a court, regulatory authority, or in a jurisdiction continues in professional good standing before other courts, regulatory authorities, or in other jurisdictions.

(c) Temporary suspension.

(1) The Board, with due regard to the public interest and without preliminary hearing, by order, may temporarily suspend any person from appearing or practicing before it who by name, has been:

(i) Permanently enjoined (whether by consent, default or summary judgment or after trial) by any court of competent jurisdiction or by the Board in a final administrative order, by reason of his or her misconduct in any action brought by the FCA based upon violations of, or aiding and abetting the violation of any provision of any law that is administered by the FCA or of any rule or regulation promulgated thereunder; or

(ii) Found by any court of competent jurisdiction (whether by consent, default, upon summary judgment or after hearing) or in any administrative proceeding in which the FCA is a complainant and he or she is a party, to have willfully committed, caused, aided or abetted a violation of any provision of any law that is administered by the FCA, or of any rule or regulation promulgated thereunder.

(2) An order of temporary suspension shall become effective when served by certified mail with a return receipt directed to the last known business or residential address of the person involved. No order of temporary suspension shall be entered by the Board pursuant to paragraph (c)(1) of this section more than 3 months after the final judgment or order entered in a judicial or administrative proceeding described in paragraph (c)(1) (i) or (ii) of this section has become effective and all review or appeal procedures have been completed or are no longer available.

(3) Any person temporarily suspended from appearing and practicing before the FCA in accordance with paragraph (c)(1) of this section may, within 30 days after service of the order of temporary suspension, petition the Board to lift such suspension. If no petition is received by the Board within 30 days, the suspension shall become permanent.

(4) Within 30 days after the filing of a petition in accordance with paragraph (c)(3) of this section, the Board shall either lift the temporary suspension or set the matter down for hearing at a time and place to be designated by the Board, or both. After opportunity for hearing, the Board may censure the petitioner or may suspend the petitioner from appearing or practicing before the FCA temporarily or permanently. In any case in which the temporary suspension has not been lifted, the hearing and any other action taken pursuant to this paragraph shall be expedited by the Board in order to ensure the petitioner's right to address the allegations.

(5) In any hearing held on a petition filed in accordance with paragraph (c)(3) of this section, a showing that the petitioner has been enjoined or has been found to have committed, caused, aided or abetted violations as described in paragraph (c)(1) of this section, without more, may be a basis for suspension or debarment; that showing having been made, the burden shall then be on the petitioner to show why the petitioner should not be censured or be temporarily or permanently suspended or debarred. A petitioner will not be permitted to contest any findings against the petitioner or any admissions made by the petitioner in the judicial or administrative proceedings upon which the proposed censure, suspension or debarment is based. A petitioner who has consented to the entry of a permanent injunction or order as described in paragraph (c)(1)(i) of this section, without admitting the facts set forth in the complaint, shall nevertheless be presumed for all purposes under this section to have been enjoined or

ordered by reason of the misconduct alleged in the complaint.

§ 623.5 Reinstatement.

(a) Any person who is suspended from practicing before the FCA under § 623.4 (a) or (c) of this part may file an application for reinstatement at any time. Denial of the privilege of practicing before the FCA shall continue unless and until the applicant has been reinstated by order of the Board for good cause shown.

(b) Any person suspended under § 623.4(b) shall be reinstated by the Board, upon appropriate application, if all of the grounds for application of the provisions of that paragraph are removed subsequently by a reversal of the conviction or termination of the suspension, disbarment or revocation. An application for reinstatement on any other grounds by any person suspended under § 623.4(b) may be filed at any time. Such application shall state with particularity the relief requested and the grounds therefor and shall include supporting evidence, when available. The applicant shall be accorded an opportunity for an informal hearing in the matter, unless the applicant has waived a hearing in the application and, instead, has elected to have the matter determined on the basis of written submissions. Such hearing shall utilize the procedures established in Part 622, Subpart C. However, such suspension shall continue unless and until the applicant has been reinstated by order of the Board for good cause shown.

§ 623.6 Duty to file information concerning adverse judicial or administrative action.

Any person appearing or practicing before the FCA who has been or is the subject of a conviction, suspension, debarment, license revocation, injunction or other finding of the kind describe in § 623.4(b) or (c) of this Part is an action not instituted by the FCA shall promptly file a copy of the relevant order, judgment or decree with the Board together with any related opinion or statement of the agency or tribunal involved. Any person who fails to file a copy of such an order, judgment or decree within 30 days after the later of the entry of the order, judgment or decree, or the date such person initiates practice before the FCA, for that reason alone may be disqualified from practicing before the FCA until such time as the appropriate filing shall be made, but neither the filing of these documents nor the failure of a person to file them shall in any way impair the operation of any other provision of this Part.

§ 623.7 Proceeding under this part.

(a) **Rules.** All hearings required or permitted to be held under paragraphs (a) and (c) of § 623.4 of this part shall be held before a presiding officer utilizing the procedures established in the rules of practice and procedure under Part 622, Subpart A.

(b) **Closed hearings.** All hearings held under this Part shall be closed to the public unless the Board directs otherwise on its own motion or upon the request of a party.

(c) **Collateral proceedings.** Any proceeding brought under any section of this Part shall not preclude a proceeding under any other section of this Part or any other Part of the FCA's regulations.

Frank W. Naylor, Jr.,

Chairman, Farm Credit Administration Board.

[FR Doc. 86-13118 Filed 6-10-86; 8:45 am]

BILLING CODE 6705-01-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 5, and 31

Fees for Contract Market Designation, Contract Market Rule Enforcement and Financial Reviews, and Audits of Leverage Transaction Merchants

AGENCY: Commodity Futures Trading Commission.

ACTION: Final schedule of fees.

SUMMARY: The Commission has promulgated a number of fees for Commission services and activities. It is the Commission's intention to review those fees periodically in order to apply the formulas in the regulations to more recent fiscal year cost data.

The Commission has recently reviewed the actual costs for reviewing applications for contract market designations (17 CFR Part 5, Appendix B) and rule enforcement and financial reviews (17 CFR Part 1, Appendix B) and has determined that fees for these services should be increased. Contract market designation fees are being raised from \$10,000 to \$14,000 per application and the rule enforcement review fee for each contract market is being raised as indicated herein in order to keep these fees in line with current costs. The rise in these costs is not attributable to a corresponding increase in Commission staffing levels, but reflects a revised method of computing overhead and increased accuracy in recording the working hours of Commission employees.

This notice also advises affected parties that the \$8,000 leverage audit fee

for FY 1986 (17 CFR Part 31, Appendix B) will be due 30 days after publication of this final schedule of fees in the **Federal Register**. This release puts affected parties on notice of the fees which result from the application of those regulations to cost data from FY 1983, FY 1984 and FY 1985.

EFFECTIVE DATE: July 11, 1986.

FOR FURTHER INFORMATION CONTACT:

Gerry Smith, Office of the Executive Director, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, telephone number 202-254-6090.

SUPPLEMENTARY INFORMATION: The Commission published previously the following final regulations and schedules for fees discussed herein: fee for contract market designation, 48 FR 38214 (August 23, 1983); fee for audits of leverage transaction merchants, 49 FR 20644 (May 16, 1984); fee for leverage commodity registration, 49 FR 25834 (June 25, 1984); and fee for contract market rule enforcement reviews and financial reviews, 50 FR 930 (January 8, 1985). In those **Federal Register** releases, the Commission indicated its intention to review periodically the actual costs of providing these services and to adjust its fees accordingly. The Commission has recently undertaken such a review and is now changing the fees charged for contract market designation applications and for rule enforcement reviews. All other fees will remain the same at this time.

I. Revised Computation of Overhead Costs

The schedule of fees reflects an analysis of actual costs including a revision to the Commission's method of calculating overhead. In previous calculations of actual costs, the Commission first determined personnel costs by extracting data from the agency's Budget Account Code system, added 10% for personnel benefits (including CFTC's contribution to retirement, insurance, and other fringe benefits and medicare), and then multiplied these salary and benefit costs by a general and administrative overhead factor of 32%, resulting in a total overhead factor of 45% over salaries. The 32% general and administrative factor was derived by computing the average percentage of Commission appropriations spent on salary and benefits (68%) and the average percentage spent on non-personnel overhead such as space, supplies and travel (32%) over a period of three years.

Subsequent to the promulgation of the regulations relating to fees, the Commission has determined that the method of calculating overhead contained in OMB Circular A-76 and upheld in recent decision (*Central and Southern Motor Freight Tariff Association, Inc. v. United States and Interstate Commerce Commission*, 777 F.2d 722 (D.C. Cir., 1985)) is more accurate and, therefore, preferable to the Commission's present method. The OMB method of calculation includes three types of overhead costs: Benefits, General and Administrative, and Operational. Because, in the above court case, the ICC's method of calculating Operational overhead was remanded to the ICC for revision, the Commission has determined not to include an operational overhead figure in its overhead calculations for the purposes of the fees. However, the government-wide benefits standard and the method of calculating General and Administrative costs as set forth in A-76 are included in the Commission's revision to its overhead calculations. It should be noted that the benefits calculation includes the cost to the federal government (not just the Commission) of retirement and includes the cost of leave and holiday time. As a result, the Commission's revised overhead calculation includes the following:

	Percent
Benefits (A-76 Government-Wide Standard)	55.4
Retirement	27.9
Insurance	4.7
Other Fringes	1.8
Medicare	1.3
Leave/holidays	19.7
General and Administrative (Based on CFTC budget)	43.4
Travel	3.6
Transportation	0.1
Communications, Rent, Utilities	26.7
Printing and Reproduction	1.6
Other Services	8.3
Supplies	2.1
Equipment	1.0
Total overhead	98.8

The 98.8% factor is rounded to 98% for purposes of computing the cost of overhead. Because the Commission previously applied an overhead factor of 45% for benefits and non-personnel costs in calculating its costs through FY 1984, the Commission intends to apply the revised 98% overhead factor only to costs incurred in FY 1985 and beyond.

Therefore, in calculating the costs for purposes of this Federal Register notice, a 45% overhead figure was applied to salary costs for FY 1983 and FY 1984 and a 98% overhead figure was applied to salary costs for FY 1985.

The Commission intends to continue to apply the 98% overhead factor in future years and, accordingly, fees are likely to increase.

II. Contract Market Designation Fees

As the Commission noted in its initial contract market designation fee proposal, the Commission intends to publish a new schedule of application fees each year based on a three-year moving average of actual costs and the number of contracts reviewed during that period of time (48 FR 27412, June 15, 1983).

The Commission spent \$1,420,593 in FY 1983, FY 1984 and FY 1985 to review 98 contracts. The average cost of review of a single contract during this period of three years was \$14,496. This cost includes the cost of staff time, a 45% overhead factor for FY 1983 and FY 1984, and a 98% overhead factor for FY 1985. Therefore, the Commission is raising the fee for applications for contract market designation from \$10,000 to \$14,000. The fee will continue to be due at the time the application is submitted. Part (d) of Appendix B to Part 5 is being deleted since it was relevant only to the treatment of contracts pending at the time the fee was initiated.

III. Rule Enforcement and Financial Review Fees

The FY 1986 fee to be charged to each exchange for rule enforcement and financial reviews is shown below, along with the fee charged in FY 1985. The FY 1986 fee was determined by applying the formula contained in the Commission's regulations (17 CFR Part 1, Appendix B) which takes into account the trading volume of the exchange (see Attachment 1 to this notice), the number of approved contracts (see Attachment 2), and the average annual review costs which the Commission incurred with respect to each exchange during the last three years. As indicated above, the calculation of the costs incurred by the Commission includes the cost of staff time, a 45% overhead factor for FY 1983 and FY 1984, and a 98% overhead factor for FY 1985. The average cost per year for the three period was \$485,630.

	FY 1985 fee	FY 1986 fee
Chicago Board of Trade	\$63,000	\$125,000
Chicago Mercantile Exchange	47,000	76,000
Commodity Exchange, Inc.	22,000	32,000
MidAmerica Commodity Exchange	18,000	(²)

	FY 1985 fee	FY 1986 fee
Coffee, Sugar and Cocoa Exchange	11,000	15,000
New York Mercantile Exchange	11,000	16,000
New York Cotton Exchange	8,000	9,000
Kansas City Board of Trade	8,000	10,000
New York Futures Exchange	8,000	10,000
Minneapolis Grain Exchange	6,000	7,000
Chicago Rice & Cotton Exchange	5,000	(²)
Philadelphia Board of Trade		5,000
Amex Commodities Corp.		5,000
Total fees	207,000	310,000
Total actual average cost	298,648	485,630

¹ Due to the ownership by the Chicago Board of Trade of the MidAmerica Commodity Exchange and the earlier affiliation of the Chicago Rice and Cotton Exchange with the MidAmerica Commodity Exchange, the calculations for the Chicago Board of Trade for FY 1986 include the trading volume, approved contracts, and review costs of MidAmerica Commodity Exchange and Chicago Rice and Cotton Exchange. Approximately 30% of the total amount is attributable to MidAmerica and Chicago Rice and Cotton Exchange.

² See CBT.

Rule enforcement and financial review fees for FY 1986 will be due from each exchange no later than 60 days after publication of this schedule.

IV. Other Fees

Because the Commission has had less than two full years of experience in performing audits of leverage transaction merchants and in reviewing leverage commodity registrations, no change to these fees is contemplated. However, the Commission's actual costs for the first two years of performing these audits and registration reviews were higher than these fees. The \$3,500 fee for leverage commodity registration required under 17 CFR Part 31, Appendix A will continue to be due with each application. The \$8,000 audit fee for FY 1986 (see 17 CFR Part 31, Appendix B) will be due not later than 30 days after publication of this schedule of fees.

The Commission is in the process of reviewing actual costs for other services, and will publish a separate notice on revisions to fees for these services including subscriptions to the weekly advisory calendar (17 CFR Part 145, Appendix D), requests for Commission records (17 CFR Part 145, Appendix B and 17 CFR Part 146, Appendix A), *Commitments of Traders* reports (17 CFR Part 145, Appendix C), and transcripts of Commission meetings (17 CFR 147.9).

V. Regulatory Flexibility Act

The changes proposed in this release affect contract markets (also referred to as "exchanges"). The Commission has previously determined that contract markets are not "small entities" for purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* 47 FR 18618 (April 30, 1982). The requirement of the Regulatory Flexibility Act, therefore, does not apply to contract markets. Accordingly, the Chairman, on behalf of the Commission, certifies that the

schedule of fees proposed herein will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 17 CFR Parts 1, 5, and 31

Contract market rule enforcement reviews, Contract market financial reviews, Contract market designation, Audits of leverage transaction merchants, Leverage commodity registration, Fees.

For the reasons set out in the preamble, Title 17, Part 5, Appendix B, is amended as set forth below.

PART 5—DESIGNATION OF AND CONTINUING COMPLIANCE BY CONTRACT MARKETS

Appendix B—Schedule of Fees

1. The authority citation for Part 5, Appendix B, continues to read as follows:

Authority. 7 U.S.C. 6c(c), 7, 7a, 12a(5) and 16a, 31 USCA 9701.

2. Appendix B, paragraph (a) is revised to read as follows: (a) Applications for Contract Market Designation. Each application for designation as a contract market must be accompanied by a check or money order in the amount of \$14,000 made payable to the Commodity Futures Trading Commission.

3. Appendix B, paragraph (d) is removed.

* * * * *

Attachment 1

The following is a list of the 106 contracts traded during fiscal year 1985 in which 13 boards of trade have been designated as contract markets.

Chicago Board of Trade (20)—18.87%

Corn
Oats
Soybeans
Soybean Meal
Soybean Oil
Wheat
Silver
Gold
GNMA Mortgages, CDR
GNMA II
T-Bonds
T-Notes (6½—10 yr.)
Municipal Bond
Major Market Index
MMI Maxi
T-Bonds, Option
T-Notes, Option
Soybeans Option
Corn, Option
Silver Option

Chicago Mercantile Exchange (25)—23.58%

Live Hogs
Pork Bellies

Live Cattle	Gasoline, New York Leaded	New York Mercantile Ex-	
Feeder Cattle	Gasoline, New York Unleaded	change—3.39%	
Lumber	Crude Oil	1983.....	3,580,697
Gold	Kansas City Board of Trade (4)—3.78%	1984.....	5,010,738
T-Bills, 90-Day	Wheat	1985.....	7,090,555
Certificates of Deposit, 90-Day	Value Line Index	SUM.....	15,681,990
Eurodollar	Mini Value Line	New York Cotton Exchange—	
British Pound	Wheat, Option	0.89%	
Canadian Dollar	New York Futures Exchange (2)—1.89%	1983.....	1,648,433
Deutsche Mark	NYSE Composite Index	1984.....	1,588,481
Japanese Yen	NYSE Composite Index, Option	1985.....	878,456
Mexican Peso	Minneapolis Grain Exchange (3)—2.83%	SUM.....	4,115,370
Swiss Franc	Wheat	Kansas City Board of Trade—	
French Franc	White Wheat	1.18%	
S&P 100 Stock Index	Spring Wheat, Option	1983.....	1,744,388
Live Hogs, Option	Chicago Rice and Cotton Exchange (2)—	1984.....	1,837,882
Live Cattle, Option	1.89%	1985.....	1,871,128
Eurodollar, Option	Rice, Rough	SUM.....	5,453,389
British Pound, Option	Cotton Short Staple	New York Futures Ex-	
Chicago Mercantile Exchange	New York Cotton Exchange (4)—3.78%	change—2.23%	
Deutsche Mark, Option	Cotton #2	1983.....	3,413,827
Swiss Franc, Option	Orange Juice, Frozen Concentrated	1984.....	3,775,408
French Franc	Propane	1985.....	3,118,450
S&P 500 Index, Option	Cotton, Option	SUM.....	10,307,685
Commodity Exchange, Inc. (6)—5.66%	Amex Commodities Corporation (1)—0.95%	Minneapolis Grain Ex-	
Copper	Gold, Option	change—0.22%	
Silver	Philadelphia Board of Trade (2)—1.89	1983.....	383,350
Gold	Eurodollar Time Deposit, Option	1984.....	337,346
Aluminum	National Over-the-Counter Index Futures	1985.....	318,555
Gold, Option	Attachment 2	SUM.....	1,039,251
Silver, Option	The following is a list of trading volume, by	Chicago Rice and Cotton Ex-	
MidAmerica Commodity Exchange (23)—	exchange, for fiscal years 1983, 1984 and 1985.	change—0.0038%	
21.70%	Chicago Board of Trade—	1983.....	9,546
Wheat	45.56%	1984.....	6,168
Corn	1983.....	1985.....	1,782
Oats	1984.....	SUM.....	17,496
Soybeans	1985.....	Amex Commodities Corpora-	
Soybean Meal	SUM.....	tion—0.0071%	
Live Cattle	Chicago Mercantile Ex-	1983.....	0
Live Hogs	change—28.99%	1984.....	0
Silver	1983.....	1985.....	32,779
New York Silver	1984.....	SUM.....	32,779
Gold	1985.....	Philadelphia Board of Trade—	
New York Gold	SUM.....	0.0001%	
Platinum	133,936,328	1983.....	0
Copper	Commodity Exchange, Inc.—	1984.....	0
T-Bonds	12.71%	1985.....	270
T-Bills	1983.....	SUM.....	270
British Pound	20,369,008	All Exchanges—100%	
Swiss Franc	1984.....	1983.....	136,077,049
Deutsche Mark	20,190,027	1984.....	156,775,762
Japanese Yen	1985.....	1985.....	169,184,715
Canadian Dollar	SUM.....	SUM.....	462,037,526
Gold, Option	58,748,555		
Soft Red Winter Wheat, Option	MidAmerica Commodity Ex-		
Soybeans, Option	change—1.93%		
Coffee, Sugar and Cocoa Exchange (7)—	1983.....		
6.61%	3,041,461		
Coffee "C"	1984.....		
Sugar #11	3,360,077		
Sugar #12	2,536,858		
Sugar #14	SUM.....		
Cocoa	8,938,396		
CPI-W	Coffee, Sugar and Cocoa Ex-		
Sugar, Option	change—2.89%		
New York Mercantile Exchange (7)—6.61%	1983.....		
Palladium	4,637,263		
Platinum	1984.....		
Potatoes	4,374,944		
Heating Oil, New York #2	1985.....		
	SUM.....		
	13,361,520		

Issued in Washington, DC on June 5, 1986,
by the Commission.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 13116 Filed 6-10-86; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 4, 6, 24, 111, 123, and 145

(T.D. 86-109)

Amendments to the Customs Regulations Regarding Users Fees for Customs Service

AGENCY: Customs Service, Treasury.

ACTION: Interim regulations.

SUMMARY: This document amends the Customs Regulations on an interim basis to provide for the payment of specific fees to Customs for the processing of persons, aircraft, vehicles, and merchandise arriving in the U.S., as well as for the payment of an annual fee by customs brokers. These fees were authorized as part of the recently enacted Consolidated Omnibus Budget Reconciliation Act of 1985 and must be paid in exchange for a variety of services performed by Customs officers relating to the arrival of commercial vessels of 100 net tons or more; the arrival of commercial trucks; the arrival of railway cars; the arrival of many private vessels and aircraft; the arrival of passengers (with certain exceptions) aboard commercial vessels or aircraft; the preparation of documentation in connection with dutiable mail entries; and an annual fee from customs brokers. The amendments are being made on an interim basis due to the limited period of time available to initiate these changes before the law becomes effective. However, any written comments received will be considered before a final rule is issued.

DATES: Interim regulations effective on July 7, 1986. Written comments must be received by August 11, 1986.

ADDRESS: Written comments (preferably in triplicate) may be submitted to and inspected at the Regulations Control Branch, Customs Services Headquarters, Room 2426, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT:

Operational Aspects: Charles Davies, Office of Inspection and Control (202-566-9425).

Legal Aspects: Arthur I. Rettinger, Office of the Chief Counsel, (202-566-2482). On carrier fees, John A. Mathias, Office of Regulations and Rulings, (202-566-5706), U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229.

Accounting Aspects: Robert Hamilton, National Finance Center, (317-298-1308), c/o Revenue Accounting, P.O. Box 68901, Indianapolis, Indiana 46278.

SUPPLEMENTARY INFORMATION:

Background

Section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (the Act, Pub. L. 99-272), establishes a schedule of fees chargeable to users of various services provided by the Customs Service in connection with the processing of persons, aircraft, vehicles, vessels, and merchandise arriving in the U.S., as well as for the payment of an annual fee by customs brokers. In addition to established specific fees, the Act sets forth certain limitations or conditions concerning the collection of fees, and authorizes the promulgation of such rules and regulations as may be necessary to carry out the provisions of the new law.

Prior to enactment of this legislation, Customs had no general legal authority to collect fees for the processing of persons, aircraft, vehicles, vessels, and merchandise arriving in or departing from the U.S. Customs does, however, have specific authority to charge fees under certain limited circumstances, such as when providing pre-clearance of passengers and private aircraft, when such services are of special benefit to particular persons. Customs also has authority to assess fees on operators of bonded warehouses and foreign trade zones and on the entry of vessels into ports. Further, Customs has authority to collect the navigation fees specified in § 4.98, Customs Regulations (19 CFR 4.98). Finally, Customs is authorized to receive reimbursement from carriers for overtime services provided during non-business hours, and reimbursement from local authorities for services provided to certain small airports.

By the terms of the Act, the Congress has given Customs the authority to collect fees for services provided in connection with:

- (1) The arrival of commercial vessels of 100 net tons or more.
- (2) The arrival of a commercial truck.
- (3) The arrival of railroad cars, whether passenger or freight.
- (4) The arrival of private vessels or aircraft.
- (5) The processing of dutiable mail for which Customs prepares documentation.
- (6) An annual fee for each customs broker permit held by individuals, partnerships, associations, or corporate brokers.
- (7) The processing of each passenger aboard a commercial vessel or aircraft arriving from outside the U.S.

Fees for several of the above categories of services are subject to certain limitations which are detailed later in this document. However, one

example of a limitation merits special mention. Pursuant to 46 U.S.C. (see § 4.94, Customs Regulations (19 CFR 4.94)), pleasure vessels from certain nations are granted cruising licenses which exempt them, after they report their first arrival to Customs, from formal entry, from filing manifests, from obtaining permits to proceed between ports of the U.S., and from clearance for a period of one year. Although there is no specific exemption for such vessels in the Act, neither is there an indication that the Congress intended to revise 46 U.S.C. 104, which specifically exempts such vessels from "charges for entering or clearing, dues, duty per ton, or tonnage taxes." Thus, an administrative exception is being made. Owing to the mid-year implementation date for these new requirements, it has been decided that for the calendar year 1986 only, the annual one-time fee for private vessels and aircraft will be \$12.50.

The main body of the amendments will appear as new §§ 24.22 and 111.96, Customs Regulations (19 CFR 24.22 and 111.96), with appropriate cross references added to the following parts of the Customs Regulations.

(1) For commercial vessels and passengers—Part 4, Customs Regulations (19 CFR Part 4).

(2) For private aircraft and commercial aircraft passengers—Part 6, Customs Regulations (19 CFR Part 6).

(3) For railroad cars and commercial trucks—Part 123, Customs Regulations (19 CFR Part 123).

(4) For mail entries—Part 145, Customs Regulations (19 CFR Part 145).

Comments

Before adopting the interim regulations as a final rule, Customs will give consideration to any written comments (preferably in triplicate) timely submitted. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on normal business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Customs Service Headquarters, Room 2426, 1301 Constitution Avenue, NW., Washington, DC 20229.

Inapplicability of Notice and Delayed Effective Date Provisions

The statutory effective date for collection of user fees is July 7, 1986. In light of the limited deadline imposed upon Customs to implement these changes, it has been determined that,

pursuant to 5 U.S.C. 553(b)(B), notice and public procedure is impracticable. For the same reason, pursuant to 5 U.S.C. 553(d)(3), we are dispensing with a delayed effective date. However, before adopting final regulations, consideration will be given to all written comments timely submitted.

E.O. 12291 and Regulatory Flexibility Act

Because the amendments do not meet the criteria for a "major rule" within the meaning of § 1(b) of E.O. 12291, Customs has not prepared a regulatory impact analysis.

Because no notice of proposed rulemaking is required for these interim regulations, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Paperwork Reduction Act

The collections of information contained in the interim regulations have been submitted to the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). Notice of OMB action will be published in the **Federal Register**.

List of Subjects

19 CFR Part 4

Cargo vessels, Passenger vessels, Vessels, Yachts.

19 CFR Part 6

Air carriers, Aircraft.

19 CFR Part 24

Accounting, Taxes.

19 CFR Part 111

Administrative practice and procedure, Brokers.

19 CFR Part 123

Canada, Mexico, Motor carriers, Railroads, Vessels.

19 CFR Part 145

Postal service.

Drafting Information

The principal author of this document was Larry L. Burton, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Amendments to the Regulations

Parts 4, 6, 24, 111, 123, and 145, Customs Regulations (19 CFR Parts 4, 6, 24, 111, 123, and 145), are amended as set forth below:

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. The authority for Part 24, Customs Regulations, continues to read as follows:

Authority: 19 U.S.C. 66, 1202, 1624; 31 U.S.C. 9701; Pub. L. 99-272.

2. Part 24 is amended by adding a new § 24.22 to read as follows:

§ 24.22 Fees for certain services.

(a) *Definitions.* For purposes of this section:

(1) The word "vessel" includes every description of watercraft or other contrivance used or capable of being used as a means of transportation on water, but does not include aircraft or any ferry.

(2) The word "arrival" means arrival at a port of entry in the customs territory of the U.S., or any place served by a port of entry.

(3) The words "calendar year" mean the period from January 1 to December 31 of any particular year.

(b) *Fee for arrival of a commercial vessel of 100 net tons or more.* (1) The master, licensed deck officer, or purser of any commercial vessel of 100 net tons or more which is required to enter under § 4.3 of this Chapter, and any U.S.-flag vessel proceeding coastwise under § 4.85 of this Chapter shall, upon arrival, proceed to Customs and tender a processing fee in the amount of \$397 for the services provided. The fee shall be collected at each port of arrival.

(2) *Exceptions.* Foreign passenger vessels making at least three trips a week from a port in the U.S. to the high seas and returning to the same U.S. port, not having touched any foreign port or place, shall be exempt from the payment of an arrival fee, even though formal entry is still required.

(c) *Fee for arrival of a commercial truck.*—(1) *Commercial truck defined.* For the purposes of this paragraph, a commercial truck is defined as a self-propelled vehicle designed and used for the transportation of commercial merchandise, or the transportation of non-commercial merchandise on a for-hire basis. Empty trucks and truck cabs without trailers fitting this description are also included.

(2) *Fee.* The driver or other person in charge of a commercial truck or truck cab entering the customs territory of the U.S. shall, upon arrival at a port of entry in the customs territory of the U.S., proceed to Customs and tender the sum of \$5 for the services provided.

(3) *Prepayment.* The owner or operator of a commercial truck may apply for a prepaid permit for a calendar year upon payment of \$100. The

following information, together with the payment, shall be provided:

(i) Vehicle make, model, and model year.

(ii) Vehicle Identification Number (VIN).

(iii) License numbers issued by state, province, or county.

(iv) Owner's name and address.

(4) Payment may be made to the Customs officer at the port of entry, or in accordance with the provision of paragraph (i) of this section. The prepaid permit will be in the form of a decal to be placed in the lower left hand corner of the truck windshield, prior to first clearance through Customs for any calendar year. No credit toward the annual fee shall be given for payments made at individual crossings.

(d) *Fee for arrival of each railroad car.*—(1) *Fee.* A fee of \$5 shall be charged for each railroad car, whether passenger or freight, loaded or empty, upon each arrival at a port of entry in the customs territory of the U.S. The railroad company receiving a rail car in interchange at a port of entry or, barring interchange, the company moving a car in line haul service into the customs territory of the U.S., shall be responsible for payment of the fee. No fee shall be required for locomotives and cabooses, but the \$5 fee shall be assessed for empty railroad cars which are dropped from an in-transit train in the U.S. and are placed in the railroad interchange system.

(2) *Prepayment.* Railroad companies may, at their option, prepay a \$100 calendar year fee for each railroad car. This payment shall be remitted in accordance with the provision of paragraph (i) of this section. No credit will be given for payments made toward the annual fee at individual crossings.

(3) *Payment and monthly statement procedures.* (i) The Association of American Railroads (AAR), and the National Railroad Passenger Corporation (AMTRAK), shall file monthly statements with the Director, National Finance Center, within 60 days after the end of each calendar month. Each statement shall indicate:

(A) The number of railroad cars entering the customs territory of the U.S. during the relevant period;

(B) The number of those railroad cars pulled by each carrier; and

(C) The total monthly processing fee due from each carrier.

(ii) The individual carriers shall remit the fees calculated by AAR, and AMTRAK shall remit the fees it has calculated, within 60 days after the end of each calendar month in which railroad cars entered the customs

territory of the U.S. The submission of monthly statements and the remission of fees shall be in accord with the procedures specified in paragraph (i) of this section.

(4) *Maintenance of records.* The Association of American Railroads (AAR), and the National Railroad Passenger Corporation (AMTRAK) shall maintain all such documentation necessary for Customs to verify the accuracy of fee computations and to otherwise determine compliance under the law. Such documentation shall be maintained for a period of 3 years from the date of fee calculation. The AAR, AMTRAK, and each railroad company responsible for making fee payments shall advise the Director, National Finance Center, of the name, address, and telephone number of a responsible officer who shall be able to verify any statements or records required to be filed or maintained under this paragraph. The Director, National Finance Center, shall be promptly notified of any changes in the identifying information submitted. The information required to be submitted under this subparagraph shall be in accord with the procedures set forth in paragraph (i) of this section.

(5) *Exemptions.* No fee shall be collected under this paragraph for Customs services provided in connection with the arrival of any railroad car that is part of a train whose journey originates and terminates in the same country, if—

(i) The car is part of the train when the train departs the U.S.; and

(ii) No passengers board or disembark from the car, and no cargo is loaded or unloaded from the car, while the train is within any country other than the country in which the train originates and terminates.

(e) *Fee for arrival of a private vessel or private aircraft.* Except as otherwise provided in this paragraph, the master or other person in charge of a private vessel or aircraft shall, upon first arrival at a port in the customs territory of the U.S. in any calendar year, proceed to Customs and tender the sum of \$25 for the services provided. Only one \$25 fee shall be collected in connection with arrivals of each private vessel or private aircraft in a calendar year. The \$25 fee may be prepaid to Customs. A receipt for the payment of the fee shall be provided by Customs to the master or other person in charge of the private vessel or private aircraft and shall be retained as proof of payment. The proof of payment shall be presented to Customs upon each arrival of the vessel or aircraft. The requirements of this paragraph shall not apply to private

pleasure vessels of less than 30 feet in length, so long as they are not carrying any goods required to be declared to Customs, nor to private pleasure vessels granted a cruising license under § 4.94 of this chapter, during the pendency of that license. The fee specified in this paragraph shall be in addition to any overtime charges.

(f) *Fee for dutiable mail.* The addressee of each item of dutiable mail for which a Customs officer prepares documentation shall be assessed a processing fee in the amount of \$5. When the merchandise is delivered by the Postal Service, the fee shall be shown as a separate item on the entry and collected at the time of delivery of the shipment along with any duty and taxes due. When Customs collects the fee directly from the importer or his agent, the fee will be included as a separate item on the informal entry or entry summary document.

(g) *Fee for arrival of passengers aboard commercial vessels and commercial aircraft.*—(1) *Fee.* Except as set forth in this paragraph, each passenger requiring Customs processing who is aboard a commercial vessel or commercial aircraft which arrives in the customs territory of the U.S. from a place outside thereof, shall be assessed a fee in the amount of \$5 for the processing.

(2) *Exceptions.* The fee set forth in paragraph (g)(1) of this section shall not be assessed for the following categories of arriving passengers:

(i) Persons whose journey originates in Canada, Mexico, a territory or possession of the U.S., or any adjacent island. The U.S. territories and possessions include American Samoa, Guam, the Northern Mariana Islands, Puerto Rico and the U.S. Virgin Islands. The adjacent islands include all of the islands in the Caribbean Sea, the Bahamas, Bermuda, St. Pierre, Miquelon, and the Turks and Caicos Islands.

(ii) Crew members and persons directly connected with the operation, navigation, ownership, or business of the vessel or aircraft;

(iii) Diplomats, except for U.S. diplomats, who can show that their names appear on the accreditation listing maintained by the U.S. Department of State. In lieu of such listing an individual diplomat may present appropriate proof of diplomatic status to include possession of a diplomatic passport or visa, or diplomatic identification card issued by a foreign government;

(iv) Persons departing and returning to the U.S. without having touched a foreign port or place;

(v) Persons arriving as passengers on any aircraft used exclusively in the governmental service of the U.S. or a foreign government, including any agency or political subdivision thereof, so long as the aircraft is not carrying persons or merchandise for commercial purposes. Passengers on commercial aircraft under contract to the U.S. Department of Defense are exempted if they have been precleared abroad under the joint DOD/Customs Military Inspection Program; and

(vi) Persons arriving on an aircraft due to an emergency or forced landing when the original destination of the aircraft was a foreign airport.

(vii) Persons transiting the U.S. and not processed by Customs.

(3) The fees specified in this paragraph shall be collected under the following circumstances:

(i) When through tickets or travel documents are issued indicating travel to the U.S. which originates in a location other than as specified in paragraph (g)(2) of this section.

(ii) When through tickets or travel documents are issued in an exempt location indicating an arrival in the U.S. following a stopover (layover) in a location other than as specified in paragraph (g)(2)(i) of this section; and

(iii) When passengers arrive in the U.S. in transit from a non-exempt location and are processed by Customs.

(4) *Collection of fees.* Carriers issuing tickets or travel documents on or after July 7, 1986, are responsible for the collection of the passenger processing fee from all passengers transported into the U.S. for whom the fee applies. The ticket or travel document shall be marked to indicate that the required fee has been collected from the passenger. If the ticket is not so marked and was issued in a foreign country, the fee shall be collected and remitted by the departing carrier upon departure of the passenger from the U.S. If collected at time of departure from the U.S., the carrier making the collection shall issue a receipt to the passenger. U.S.-based tour wholesalers who contract for passenger space and issue non-carrier tickets will collect and remit the processing fee to Customs in the same manner as the carrier.

(5) *Payment and quarterly statement procedures.* Payment must be made no later than 31 days after the close of the calendar quarter in which the fees are collected. If the issuing carrier has not collected the required fee from passengers, the person who first collects that fee shall remit it to Customs.

(i) Fee payments shall be accompanied by a statement which includes the following information:

(A) Name and address of the party remitting payment;

(B) Taxpayer Identification number of the party remitting payment; and

(C) Calendar quarter covered by the payment.

(ii) Fee payments shall be at the location and in accordance with the procedures specified in paragraph (i) of this section.

(6) Carriers contracting with a U.S.-based tour wholesaler are responsible for notifying Customs of all flights or voyages contracted, the number of spaces contracted for, and the name, address and taxpayer identification number of the tour wholesaler all within 31 days after the close of the calendar quarter in which such a flight or voyage occurred.

(7) *Maintenance of records.* Each airline and vessel company affected by this paragraph shall maintain all such documentation necessary for Customs to verify the accuracy of fee computations and to otherwise determine compliance under the law. Such documentation shall be maintained for a period of 2 years from the date of fee calculation. The affected companies shall advise the Director, National Finance Center, of the name, address, and telephone number of a responsible officer who shall be able to verify any records required to be maintained under this paragraph. The Director, National Finance Center, shall be promptly notified of any changes in the identifying information submitted. Required information shall be submitted as set forth in paragraph (i) of this section.

(8) *Limitation on charges.* Other than the \$5 processing fee for arriving passengers specified in this paragraph, arriving scheduled airline flights as defined in § 6.1(f) of this chapter and operating within the requirements of § 6.2 of this chapter, shall be provided inspectional services for their passengers at no additional cost.

(h) *Annual customs broker fee.* Customs brokers are subject to an annual fee for each permit held by an individual, partnership, association, or corporate broker as specified in § 111.96 of this chapter.

(i) *Fee remittance and information submission procedures.*—(1) *Fee remittance.* All fees required to be remitted pursuant to this section shall be payable by check or money order to the U.S. Customs Service, in the amounts prescribed in these regulations. Unless otherwise provided for in this section, all fee remittances required by this section shall be mailed to: U.S.

Customs Service, P.O. Box 198151, Atlanta, Georgia 30384. Each payment shall be accompanied by information sufficient to identify the person or organization remitting the fee, a brief description of the type of fee being remitted (whether railroad, commercial airline passenger, or other), and the time period to which the payment applies.

(2) *Information submission.* Unless otherwise specified, all information, summaries, reports, or other data required to be submitted to Customs pursuant to this section shall be mailed to the Director, National Finance Center, Attn: Revenue Accounting, P.O. Box 68901, Indianapolis, Indiana 46278.

PART 111—CUSTOMS BROKERS

1. The authority citation for Part 111, Customs Regulations (19 CFR Part 111), is amended to read as set forth below. The statutory citations appearing elsewhere in Part 111 are removed.

Authority: 19 U.S.C. 66, 1202 (Gen. Hdnote 11), 1624, 1641.

2. Part 111 is amended by creating a new Subpart E and adding a new § 111.96, to read as follows:

Subpart E—Fees

§ 111.96 Fees.

(a) [Reserved].

(b) [Reserved].

(c) *User Fee.* An annual user fee of \$125 will be assessed for each permit held by an individual, partnership, association or corporate broker.

(1) The fee is payable for each calendar year in each district where a broker has a permit to do business. If a broker receives a permit at a time other than the beginning of a calendar year, the full \$125 must be paid immediately. If a broker fails to pay the fee by January 1 of each year or immediately at the time he receives his permit, the district director will notify the broker in writing of his failure to pay and that the permit is revoked. The notice will constitute revocation of the permit.

(2) For calendar year 1986, brokers must remit payment of \$125 by August 5, 1986, in each district where they have a permit to do business. If payment is not made by August 5, 1986, notice will be given and revocation will be effective August 5, 1986.

(d) [Reserved].

(e) *Payment of fee.* All fees shall be paid by check or money order payable to the U.S. Customs Service.

Conforming Amendments; Parts 4, 6, 123, and 145 Customs Regulations

To conform the Customs Regulations to the changes made by the amendments to Part 24, Customs Regulations (19 CFR Part 24), Parts 4, 6, 123, and 145, Customs Regulations (19 CFR Parts 4, 6, 123, and 145), are amended in the following manner:

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The authority citation for Part 4 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1624; 46 U.S.C. 3, 2103.

2. Part 4 is amended by adding a new paragraph (i) to § 4.98 to read as follows:

§ 4.98 Navigation fees.

(i) Vessels, whether private or commercial, and passengers arriving in the customs territory of the U.S. abroad commercial vessels, may be subject to the payment of fees for services provided them as set forth in § 24.22 of this chapter.

PART 6—AIR COMMERCE REGULATIONS

1. The authority citation for Part 6 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (Gen. Hdnote 11), 1624; 49 U.S.C. 1474, 1509.

2. Part 6 is amended by adding a new § 6.1a to read as follows:

§ 6.1a Customs private aircraft and commercial passenger fees.

Private aircraft and passengers aboard commercial aircraft arriving in the customs territory of the U.S., may be subject to the payment of fees for services provided them as set forth in § 24.22 of this chapter.

PART 123—CUSTOMS RELATIONS WITH CANADA AND MEXICO

1. The authority citation for Part 123 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (Gen. Hdnote 11), 1624.

§ 123.1 also issued under 19 U.S.C. 1459;

§ 123.2 also issued under 19 U.S.C. 1460;

§ 123.3 also issued under 19 U.S.C. 1459;

§ 123.4 also issued under 19 U.S.C. 1484,

1498;

§ 123.7 also issued under 19 U.S.C. 1498;

§ 123.8 also issued under 19 U.S.C. 1448,

1450-1454, 1459;

§ 123.9 also issued under 19 U.S.C. 1460,

1584, 1618;

§ 123.11 also issued under 19 U.S.C. 1465;

§ 123.12-123.18 also issued under 19 U.S.C. 1322;

§§ 123.21-123.23, 123.25-123.29, 123.41, 123.51 also issued under 19 U.S.C. 1554;

§ 123.24 also issued under 19 U.S.C. 1551;

§§ 123.31-123.34, 123.42, 123.52, 123.64 also issued under 19 U.S.C. 1553;

§ 123.63 also issued under 19 U.S.C. 1461, 1462;

§ 123.71 also issued under 19 U.S.C. 1595.

2. All other statutory authority cited at the end of the table of contents and various sections in Part 123 is removed.

3. Part 123 is amended by adding a new § 123.1a to read as follows:

§ 123.1a Customs railroad car and commercial truck fees.

Each commercial truck, truck cab, and railroad car (except locomotives and cabooses), whether passenger or freight, whether empty or otherwise, which enters the customs territory of the U.S., is subject to the payment of fees for services provided them as set forth in § 24.22 of this chapter.

PART 145—MAIL IMPORTATIONS

1. The authority citation for Part 145 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (Gen. Hdnote 11), 1624.

2. Part 145 is amended by adding a new § 145.1a to read as follows:

§ 145.1a Customs fees for certain dutiable mail entries.

Each item of dutiable mail for which Customs prepares documentation will be subject to the payment of a fee for services provided, as set forth in § 24.22 of this chapter.

William von Raab,
Commissioner of Customs.

Approved: June 4, 1986.

Francis A. Keating II,
Assistant Secretary of the Treasury.

[FR Doc. 86-13260 Filed 6-9-86; 1:22 pm]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404 and 416

Social Security Benefits and Supplemental Security Income for the Aged, Blind, and Disabled; Project to Improve the Hearing Process Through the Involvement of SSA Representatives

AGENCY: Social Security Administration, HHS.

ACTION: Notice of continuance and restructuring of the SSA representation

project under auspices of the adjudicatory improvement project.

SUMMARY: This provides notice of: (1) The Adjudicatory Improvement Project, an agency-wide task force that will manage all aspects of the field testing of the Social Security Administration (SSA) Representation Project and conduct all data collection, evaluation, and planning activities required to determine whether permanent implementation of SSA representation should be proposed; (2) restructuring of the operational format of the SSA Representation Project; and (3) evaluation of testing under this restructured format after 1 year beginning April 30, 1986. Operational experience under the SSA Representation Project as conducted to date indicates that representation may result in improvement in the hearing process. However, reaching a sound decision on whether to propose permanent implementation of SSA representation requires that testing be continued in a restructured format and evaluated under agency-wide auspices.

EFFECTIVE DATE: June 11, 1986.

FOR FURTHER INFORMATION CONTACT: Judith A. Hidalgo, Director, Program, Planning and Analysis Group, Adjudicatory Improvement Project, Social Security Administration, Room L2103 West Low Rise Building, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (301) 594-7002.

SUPPLEMENTARY INFORMATION: Final rules for the SSA Representation Project were published in the *Federal Register* on August 19, 1982 (47 FR 36117). The project commenced in October 1982 in five hearing offices located in Baltimore, MD; Brentwood, MO; Columbia, SC; Kingsport, TN; and Pasadena, CA. The Brentwood hearing office ceased to participate in October 1983. Continuance of the project was announced by notice published in the *Federal Register* on April 9, 1984 (49 FR 13872).

As stated in the final rules at 20 CFR 404.965(c) and 416.1465(c):

... [t]he purpose of the project is to determine whether participation of SSA representatives in the hearings process will—

- (i) Help to improve the overall disability adjudicatory process;
- (ii) Reduce delays in conducting hearings and issuing decisions;
- (iii) Improve the quality of hearing decisions;
- (iv) Increase the productivity of administrative law judges;
- (v) Achieve more uniformity and consistency in hearing decisions; and
- (vi) Reduce hearing costs.

The rules further define the project's purpose by stating that:

... [t]he results of the project will be evaluated to determine whether to propose the implementation of SSA representation on a larger scale.

Under the rules at 20 CFR 404.965(a) and 416.1465(a), project procedures apply to requests for administrative law judge (ALJ) hearings that are within the jurisdiction of the participating hearing offices and involve the issue of disability under title II and/or title XVI of the Social Security Act.

The rules define the authority and responsibilities of the SSA representatives. This notice does not modify the responsibilities or authority of the SSA representative. Instead, the notice announces continuance of the SSA Representation Project under a modified operational format.

The rules at §§ 404.965 and 416.1465 do not specify where project offices will be located or how they will be staffed, organized, and managed; nor are case processing/workflow procedures specified. The rules define the project's size by stating that project procedures will be applied to disability cases in a small number of ALJ hearing offices selected to participate. The duration of the project and the methodologies to be used in evaluating project results are not specified.

As originally implemented, the SSA Representation Project was designed to allow testing of representation under a format that would minimize the costs and any disruptive effects of testing during a period when ALJ hearing caseloads were increasing. Thus, it was decided to superimpose representation on existing case processing procedures at the ALJ hearing level, rather than to revise those procedures to maximize the efficiency of SSA representatives. The representatives were placed organizationally within SSA's Office of Hearings and Appeals (OHA), and their offices were collocated with or placed nearby the participating hearing offices. Cases requiring travel by the ALJ, and thus by the SSA representative as well, were excluded from the project. The SSA representatives were required to rely on ALJ hearing office personnel for staff and administrative support. Finally, it was also decided to evaluate project results through a relatively simple management analysis approach under which project data would be compared to available national data.

Testing under this format has provided valuable experience with SSA representation and has shown that it may constitute a practical approach to improving the appeals process.