Federal Register
Vol. 53, No. 184
Thursday, September 22, 1988

Presidential Documents

Title 3—

The President

Executive Order 12652 of September 19, 1988

Return of Authority To Administer Federal Employees' Compensation Act to the Department of Labor From the Panama Canal Commission

By virtue of the authority vested in me as President by the Constitution and laws of the United States of America, including the Panama Canal Act of 1979 (93 Stat. 452; 22 U.S.C. 3601 *et seq.*), section 8146 of Title 5 of the United States Code, section 301 of Title 3 of the United States Code, and in order to return to the Secretary of Labor from the Panama Canal Commission the administration of the Federal Employees' Compensation Act as it applies to the employees of the Panama Canal Commission, it is hereby ordered as follows:

Section 1. Section 1–307 of Executive Order No. 12215 of May 27, 1980, is rescinded.

Sec. 2. The transfer and other exercises of authority made pursuant to Section 1–307 of Executive Order No. 12215 in Department of Defense Memorandum, "Implementation of Executive Order 12215, 'Delegation of Panama Canal Functions'," July 18, 1980, are rescinded.

Sec. 3. This Order shall be effective January 1, 1989.

Ronald Reagan

THE WHITE HOUSE,
September 19, 1988.

[FR Doc. 88–21764
Filed 9–20–88; 12:25 pm]
Billing code 3195–01–M

Rules and Regulations

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

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1632

Public Observation of Meetings

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Final rule.

SUMMARY: The Federal Retirement Thrift Investment Board (the Board) was established by Pub. L. 99-335 (June 6, 1986), to administer the Thrift Savings Plan for Federal employees. Regulations of the Board are contained in Title 5 CFR (Chapter VI) Parts 1600 through 1699. The Executive Director of the Board is publishing in Part 1632 final regulations concerning procedures which will govern public meetings of the Board. These regulations implement the Government in the Sunshine Act (5 U.S.C. 552b).

EFFECTIVE DATE: September 22, 1988.

FOR FURTHER INFORMATION CONTACT: John J. O'Meara, Assistant General Councel (202) 523-6367.

SUPPLEMENTARY INFORMATION: The Federal Retirement Thift Investment Board published a notice of proposed rulemaking in the **Federal Register** on April 11, 1988 (53 FR 11864). No comments were received. After further review it was determined that no changes in the proposed notice were required. Accordingly, the proposed rule is published as a final rule.

The Federal Employees' Retirement System Act of 1986 established a five member Board which is responsible for policies governing investments and the administration of the Thrift Savings Plan. They are appointed by the President; however, the Speaker of the House of Representatives and the Majority Leader of the Senate each recommends one candidate for appointment. Initial appointments were made without the advice and consent of the Senate. See 5 U.S.C. 8472 note. Subsequent appointments will be made with the advice and consent of the Senate. Since the Government in the Sunshine Act applies to any agency which is headed by a collegial body composed of two or more individual members, a majority of whom are appointed by the President with the advice and consent of the Senate, the initial Board members will serve until such time as a majority of the Board is confirmed by the Senate. At that time these regulations will apply to public meetings of the Board. As of September 16, 1988, a majority of Board Members had not been confirmed by the Senate.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities. They will affect only internal procedures applicable to the public meetings of the Board.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

Rulemaking and 30-Day Delay of Effective Date

Pursuant to 5 U.S.C. 553(d)(3), I find that good cause exists for making these regulations effective in less than 30 days.

List of Subjects in 5 CFR Part 1632

Administrative practice and procedure, Sunshine Act, Information, Public meetings.

Accordingly, Title 5 of the Code of Federal Regulations is amended to add Part 1632 to Chapter VI as set forth below.

Federal Retirement Thrift Investment Board.
Francis X. Cavanaugh,
Executive Director.

PART 1632—RULES REGARDING PUBLIC OBSERVATION OF MEETINGS

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Authority: 5 U.S.C. 552b and 5 U.S.C. 8474.

§ 1632.1 Purpose and scope.

This part is issued by the Federal Retirement Thrift Investment Board (Board) under section 552b of Title 5 of the United States Code, the Government in the Sunshine Act, to carry out the policy of the Act that the public is entitled to the fullest practicable information regarding the decision making processes of the Board while at the same time preserving the rights of individuals and the ability of the Board to carry out its responsibilities. These regulations fulfill the requirement of subsection (g) of the Act that each agency subject to the provisions of the Act shall promulgate regulations to implement the open meeting requirements of subsections (b) through (f) of the Act.

§ 1632.2 Definitions.

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

(a) The term "Act" means the Government in the Sunshine Act, 5 U.S.C. 552b.

(b) The term "Board" means the Federal Retirement Thrift Investment Board and subdivisions thereof.

(c) The term "meeting" means the deliberations of at least the number of individual agency members required to take action on behalf of the Board where such deliberations determine or result in the joint conduct or disposition of official Board business. However, this term does not include—

(1) Deliberations required or permitted by subsections (d) or (e) of the Act (relating to decisions to close all or a portion of a meeting, or to decisions on the timing or content of an announcement of a meeting), or

(2) The conduct or disposition of official agency business by circulating written material to individual members.

(d) The term "number of individual agency members required to take action

on behalf of the agency" means three members.

(e) The term "member" means a member of the Board appointed under section 101 of the Federal Employees' Retirement System Act of 1986, 5 U.S.C. 8472.

(f) The term "public observation" means that the public shall have the right to listen and observe but not the right to participate in the meeting or to record any of the meeting by means of cameras or electronic or other recording devices unless approval in advance is obtained from the Secretary of the Board.

§ 1632.3 Conduct of agency business.

Members shall not jointly conduct or dispose of official Board business other than in accordance with this part.

§ 1632.4 Meetings open to public observation.

(a) Except as provided in § 1632.5 of this part, every portion of every meeting of the agency shall be open to public observation.

(b) The Freedom of Information Act, 5 U.S.C. 552, and the Board's implementing regulations, 5 CFR Part 1611, shall govern the availability to the public of copies of documents considered in connection with the Board's discussion of agenda items for a meeting that is open to public observation.

(c) The Board will maintain mailing lists of names and addresses of all persons who wish to receive copies of agency announcements of meetings open to public observation. Requests for announcements may be made by telephoning or by writing to the Office of External Affairs, Federal Retirement Thrift Investment Board, 805 Fifteenth Street NW., Washington, DC 20005.

§ 1632.5 Exemptions.

(a) Except in a case where the Board finds that the public interest requires otherwise, the Board may close a meeting or a portion or portions of a meeting under the procedures specified in § 1632.7 or § 1632.8 of this part, and withhold information under the provisions of §§ 1632.6, 1632.7, 1632.8, or 1632.11 of this part, where the Board properly determines that such meeting or portion of its meeting or the disclosure of such information is likely to:

(1) Disclose matters that are:

(i) Specifically authorized under criteria established by an Executive Order to be kept secret in the interests of national defense or foreign policy, and

(ii) In fact properly classified pursuant to such Executive Order;

(2) Relate solely to internal personnel rules and practices;

(3) Disclose matters specifically exempted from disclosure by statute (other than section 552 of Title 5 of the United States Code), provided that such statute:

(i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(ii) Established particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Involve accusing any person of a crime, or formally censuring any person;

(6) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) Disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would:

(i) Interfere with enforcement proceedings,

(ii) Deprive a person of a right to a fair trial or an impartial adjudication,

(iii) Constitute an unwarranted invasion of personal privacy,

(iv) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by a Federal agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source,

(v) Disclose investigative techniques and procedures, or

(vi) Endanger the life or physical safety of law enforcement personnel;

(8) Disclose information contained in or related to examination, operating, or condition reports prepared by or on behalf of, or for the use of the Board or other Federal agency responsible for the regulation or supervision of financial institutions;

(9) Disclose information the premature disclosure of which would:

(i) Be likely to (A) lead to significant speculation in currencies, securities, or commodities, or (B) significantly endanger the stability of any financial institution; or

(ii) Be likely to significantly frustrate implementation of a proposed action except that paragraph (a)(9)(ii) of this section shall not apply in any instance where the Board has already disclosed to the public the content or nature of its proposed action, or where the Board is required by law to make such disclosure on its own initiative prior to taking final action on such proposal; or

(10) Specifically concern the issuance of a subpoena, participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition of a particular case of formal agency adjudication pursuant to the procedures in section 554 of Title 5 of the United States Code or otherwise involving a determination on the record after opportunity for a hearing.

(b) [Reserved]

§ 1632.6 Public announcement of meetings.

(a) Except as otherwise provided by the Act, public announcement of meetings open to public observation and meetings to be partially or completely closed to public observation pursuant to § 1632.7 of this part will be made at least one week in advance of the meeting. Except to the extent such information is determined to be exempt from disclosure under § 1632.5 of this part, each such public announcement will state the time, place and subject matter of the meeting, whether it is to be open or closed to the public, and the name and phone number of the official designated to respond to requests for information about the meeting.

(b) If a majority of the members of the Board determines by a recorded vote that Board business requires that a meeting covered by paragraph (a) of this section be called at a date earlier than that specified in paragraph (a) of this section, the Board shall make a public announcement of the information specified in paragraph (a) of this section at the earliest practicable time.

(c) Changes in the subject matter of a publicly announced meeting, or in the determination to open or close a publicly announced meeting or any portion of a publicly announced meeting to public observation, or in the time or place of a publicly announced meeting made in accordance with the procedures specified in § 1632.9 of this part, will be publicly announced at the earliest practicable time.

(d) Public announcements required by this section will be posted at the Board's External Affairs Office and may be made available by other means or at other locations as may be desirable.

(e) Immediately following each public announcement required by this section, notice of the time, place and subject matter of a meeting, whether the

meeting is open or closed, any change in one of the preceding announcements and the name and telephone number of the official designated by the Board to respond to requests about the meeting, shall also be submitted for publication in the **Federal Register**.

§ 1632.7 Meetings closed to public observation.

(a) A meeting or a portion of a meeting will be closed to public observation, or information as to such meeting or portion of a meeting will be withheld, only by recorded vote of a majority of the Members of the Board when it is determined that the meeting or the portion of the meeting or the withholding of information qualifies for exemption under § 1632.5. Votes by proxy are not allowed.

(b) Except as provided in paragraph (c) of this section, a separate vote of the Members of the Board will be taken with respect to the closing or the withholding of information as to each meeting or portion thereof which is proposed to be closed to public observation or with respect to which information is proposed to be withheld pursuant to this section.

(c) A single vote may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to public observation or with respect to any information concerning such series of meetings proposed to be withheld, so long as each meeting or portion thereof in such series involves the same particular matters and is scheduled to be held no more than thirty days after the initial meeting in such series.

(d) Whenever any person's interests may be directly affected by a portion of the meeting for any of the reasons referred to in exemption (a)(5), (a)(6) or (a)(7) of § 1632.5 of this part, such person may request in writing to the Secretary of the Board that such portion of the meeting be closed to public observation. The Secretary, or in his or her absence, the Acting Secretary of the Board, shall transmit the request to the members and upon the request of any one of them a recorded vote shall be taken whether to close such meeting to public observation.

(e) Within one day of any vote taken pursuant to paragraphs (a) through (d) of this section, the agency will make publicly available at the Board's External Affairs Office a written copy of such vote reflecting the vote of each member on the question. If a meeting or a portion of a meeting is to be closed to public observation, the Board, within one day of the vote taken pursuant to paragraphs (a) through (d) of this section, will make publicly available at the Board's External Affairs Office a full written explanation of its action closing the meeting or portion of the meeting together with a list of all persons expected to attend the meeting and their affiliation, except to the extent such information is determined by the Board to be exempt from disclosure under subsection (c) of the Act and § 1632.5 of this part.

(f) Any person may request in writing to the Secretary of the Board that an announced closed meeting, or portion of the meeting, be held open to public observation. The Secretary, or in his or her absence, the Acting Secretary of the Board, will transmit the request to the members of the Board and upon the request of any member a recorded vote will be taken whether to open such meeting to public observation.

§ 1632.8 Changes with respect to publicly announced meetings.

The subject matter of a meeting or the determination to open or close a meeting or a portion of a meeting to public observation may be changed following public announcement under § 1632.6 only if a majority of the Members of the Board determines by a recorded vote that that agency business so requires and that no earlier announcement of the change was possible. Public announcement of such change and the vote of each member upon such change will be made pursuant to § 1632.6(c). Changes in time, including postponements and cancellations of a publicly announced meeting or portion of a meeting or changes in the place of a publicly announced meeting will be publicly announced pursuant to § 1632.6(c) by the Secretary of the Board or, in the Secretary's absence, the Acting Secretary of the Board.

§ 1632.9 Certification of General Counsel.

Before every meeting or portion of a meeting closed to public observation under § 1632.7 of this part, the General Counsel, or in the General Counsel's absence, the Acting General Counsel, shall publicly certify whether or not in his or her opinion the meeting may be closed to public observation and shall state each relevant exemptive provision. A copy of such certification, together with a statement from the presiding officer of the meeting setting forth the time and place of the meeting and the persons present, witll be retained for the time prescribed in § 1632.10(d).

§ 1632.10 Transcripts, recordings, and minutes.

(a) The Board will maintain a complete transcript or electronic recording or transcription thereof adequate to record fully the proceedings of each meeting or portion of a meeting closed to public observation pursuant to exemption (a)(1), (a)(2), (a)(3), (a)(5), (a)(6), (a)(7), or (a)(9)(ii) of § 1632.5 of this part. Transcriptions of recordings will disclose the identity of each speaker.

(b) The Board will maintain either such a transcript, recording or transcription thereof, or a set of minutes that will fully and clearly describe all matters discussed and provide a full and accurate summary of any actions taken and the reasons therefor, including a description of each of the views expressed on any item and the record of any roll call vote (reflecting the vote of each member on the question), for meetings or portions of meetings closed to public observation pursuant to exemptions (a)(8), (a)(9)(i)(A) or (a)(10) of § 1632.5 of this part. The minutes will identify all documents considered in connection with any action taken.

(c) Transcripts, recordings or transcriptions thereof, or minutes will promptly be made available to the public in the External Affairs Office except for such item or items of such discussion or testimony as may be determined to contain information that may be withheld under subsection (c) of the Act and § 1632.5 of this part. These documents, disclosing the identity of each speaker, shall be furnished to any person at the actual cost of duplication or transcription.

(d) A complete verbatim copy of the transcript, a complete copy of the minutes, or a complete electronic recording or verbatim copy of a transcription thereof of each meeting or portion of a meeting closed to public observation will be maintained for a period of at least two years, or one year after the conclusion of any Board proceeding with respect to which the meeting or portion thereof was held, whichever occurs later.

§ 1632.11 Procedures for inspection and obtaining copies of transcriptions and minutes.

(a) Any person may inspect or copy a transcript, a recording or transcription, or minutes described in § 1632.10(c) of this part.

(b) Requests for copies of transcripts, recordings or transcriptions of recordings, or minutes described in § 1632.10(c) of this part shall specify the meeting or the portion of meeting desired and shall be submitted in writing to the Secretary of the Board, Federal Retirement Thrift Investment Board, 805 Fifteenth Street NW.,

Washington, DC 20005. Copies of documents identified in minutes may be made available to the public upon request under the provisions of 5 CFR Part 1630 (the Board's Freedom of Information Act regulations).

[FR Doc. 88-21589 Filed 9-21-88 8:45 am]
BILLING CODE 6760-01-M

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 401

[Amdt. No. 33; Docket No. 5892S]

General Crop Insurance Regulations; Wheat Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby amends the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1989 and succeeding crop years, by amending the Wheat Endorsement, 7 CFR § 401.101, to clarify the quality adjustment of wheat in relation to the U.S. Grain Standards (7 CFR 810.2201 *et seq.).*

EFFECTIVE DATE: September 22, 1988.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is established as April 1, 1992.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) an annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

On Wednesday, June 8, 1988, FCIC published a proposed rule in the **Federal Register** at 53 FR 21455, to amend the Wheat Endorsement (7 CFR 401.101) to clarify the quality adjustment of wheat in relation to the U.S. Grain Standards (7 CFR 810.2201 et seq.). The public was given 30 days in which to submit written comments, data, and opinions on the proposed rule.

One comment was received from the Crop Hail Insurance Actuarial Association (CHIAA) correctly affirming that the stated purpose of the proposed rule was to make test weight by class a criteria for quality adjustment, thus correcting an omission in the Wheat Endorsement. The current Wheat Endorsement provides in this section that a test weight of 53 pounds will be used as a criteria in determining the adjustment, without reference to class of wheat.

In its comment, CHIAA stated that the rule proposed determines that mature production will be eligible for quality adjustment which grades U.S. No. 5 or Sample Grade and that the current endorsement has standards equal to U.S. No. 4 grade (53 pounds). CHIAA felt that the proposed rule would increase the minimum test weight from 50 to 53 pounds; and correspondingly increase the maximum total damaged kernels from 10 to 15 percent; and, the shrunken or broken kernels from 12 to 20 percent.

A careful reading of the present endorsement, however, determines that no change will be made for some classes of wheat and a change of only one pound in test weight will be made for other classes. Under either endorsement, the quality adjustment occurred when wheat graded U.S. No. 5 for certain factors.

Upon review of these regulations, FCIC determined that the test weight used for quality adjustment was not in accordance with the U.S. Grain Standards as was intended. The section currently provides that, a test weight of 53 pounds per bushel will be used as a criteria to determine the adjustment without reference to wheat class. To conform to the U.S. Grain Standards, the test weight by class of wheat insured should be used.

For this reason, FCIC does not accept CHIAA's recommendation that this proposal be revised to remain consistent with the current program, since there appears to be no difference in the meaning or intent of this section in the proposed rule and CHIAA's 1988—CHIAA 714 Small Grain Provisions on wheat test requirements for quality adjustment.

Discussions held with representatives of the Federal Grain Inspection Service resulted in suggested language which, while changing the wording as appearing in the proposed rule at 53 FR 21455, does not change the meaning of this section or the intent of the proposed rule.

FCIC hereby amends the Claim for Indemnity section of the Wheat endorsement to incorporate, by reference, the U.S. Grain Standards as to those factors which are relevant to the insured's claim.

This final rule is designed to become effective beginning with all wheat planted in the spring of 1989. It is the intention of FCIC to file this rule as a final rule by the next appropriate filing date of December 31, 1988, for those countries with an April 15 cancellation date, as provided in Section 9 of the Wheat Endorsement.

However, this action will have the effect of not providing appropriate provisions for test weight by class for those insured who produce fall planted 1989 wheat of certain classes (1989 wheat planted in the fall of 1988), because the filing date of December 31 is past the time when such wheat is planted.

For this reason, and in order to provide an equitable determination for insureds producing *both* spring and fall planted wheat, FICA will administratively consider claims for indemnity submitted by fall planted wheat insureds on the same basis as outlined in this rule.

List of Subjects in 7 CFR Part 401

General crop insurance regulations, Wheat endorsement.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.).*