following its publication. We will publish a notice to this effect in the **Federal Register**, before the effective date of this direct final rule, confirming that it is effective on the date indicated in this document.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule will provide an additional treatment option, high temperature forced air, for grapefruit and mangoes imported from Mexico. Because this new treatment will be optional, this rule should have no significant economic impact on entities using the currently prescribed hot water and vapor heat treatments.

Also, since high temperature forced air treatment provides for longer fruit shelf life than do hot water and vapor heat treatments, we anticipate that some private treatment enterprises will convert their facilities to employ this treatment. We believe, though, that any costs of facility conversion would be offset through the production of higher quality fruit. Therefore, we anticipate no significant change in the price or production of grapefruit and mangoes as a result of this rule.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have 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 Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

List of Subjects in 7 CFR Part 300

Incorporation by reference, Plant diseases and pests, Quarantine.

Accordingly, 7 CFR part 300 is amended as follows:

PART 300—INCORPORATION BY REFERENCE

1. The authority citation for part 300 is revised to read as follows:

Authority: 7 U.S.C. 150ee, 154, 161, 162, 167; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 300.1, paragraph (a) is revised to read as follows:

§ 300.1 Materials incorporated by reference.

(a) The Plant Protection and Quarantine Treatment Manual, which was revised and reprinted November 30, 1992, and includes all revisions through June 1993, has been approved for incorporation by reference in this chapter by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

* * * * *

Done in Washington, DC, this 18th day of February 1994.

Patricia Jensen,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 94–4488 Filed 2–28–94; 8:45 am]

BILLING CODE 3410–34–P

Federal Crop Insurance Corporation

7 CFR Part 457

Common Crop Insurance Regulations; Fig Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Interim rule.

SUMMARY: The Federal Crop Insurance Corporation hereby issues additional regulations for provisions to insure figs. This action will add a second set of fig regulations, the Fig Crop Insurance Provisions, to the crop insurance regulations. The present regulations are based on the Marketing Order for Dried Figs that was in effect at the time the regulations were promulgated. This marketing order has since been amended which severely reduces the amount of indemnity to which the insured may otherwise have been entitled. These new regulations will provide quality adjustment provisions and reflect the lower prices received for figs based on the grades contained in the amended marketing order. The intended effect of this action is to offer insurance on figs with added coverage for quality adjustment that is not in the current Fig Endorsement.

DATES: This rule was effective on February 1, 1994. Comments, data, and opinions must be received by May 2, 1994.

ADDRESSES: Written comments on this rule should be sent to Mari Dunleavy, Regulatory and Procedural Development Staff, Federal Crop Insurance Corporation, USDA, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Mari L. Dunleavy, Regulatory and Procedural Development Staff, Federal Crop Insurance Corporation, USDA, Washington, DC 20250. Telephone (202) 254–8314.

SUPPLEMENTARY INFORMATION: This rule has been determined not significant for purposes of Executive Order 12866 and therefor has not been reviewed by the Office of Management and Budget.

This rule does not contain information collections that require clearance by the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35, the Paper Reduction Act.

The Office of General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies and procedures contained in this rule will not have substantial direct effects on states or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

This action requires no more of the reinsured company or sales and service contractor than is considered normal in the ordinary conduct of business. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act and 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.

The Manager, FCIC, has certified to the Office of Management and Budget (OMB) that these regulations meet the applicable standards provided in subsections 2(a) and 2(b)(2) of Executive Order 12778.

This rule has been reviewed in accordance with Executive Order 12778. The provisions of this rule will preempt state and local laws to the extent such state and local laws are inconsistent herewith. The administrative appeal provisions located at 7 CFR part 400, subpart J must be exhausted before judicial action may be brought. The rule is retroactive to February 1, 1994 so as to allow insureds the opportunity to purchase this policy prior to the sales closing date. Because the Corporation has publicized the policy and the provisions of the rule to all companies and fig policyholders, those persons have actual notice of the contents of the rule and will not be adversely affected by the rule's retroactivity.

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.

Expedited publication of this additional fig insurance policy is necessary in order for FCIC to be responsive to the effects that the amended California Marketing Order for Dry Figs has upon fig producers insured by FCIC. It is necessary to promulgate the new policy so that insureds will be fully compensated from any loss under the 1994 crop year policy, therefore, good cause is found to make this rule final upon publication.

Background

During the 1992 crop year the California Fig Advisory Board amended the State Marketing Order for Dried Figs. Prior to the amendment, figs were graded merchantable or substandard. The amended marketing order provides three grades: regular dried figs (previously merchantable); manufacturing grade (new grade added); and substandard.

The current fig endorsement contained in 7 CFR 401.125 specifies in subsection 7.(b) that the total production to be counted for a unit will include all harvested and appraised marketable figs as defined by the Marketing Order for Dried Figs, as amended. Paragraph 7.(b)(1) of the current fig endorsement further specifies that substandard production will not be counted as production if such production is inspected by the insurer and the insurer gives written consent to the insured to deliver the figs to the substandard pool. If substandard production is not inspected or written consent is not given prior to delivery to the substandard pool, all such production will be counted as marketable production.

Figs which now grade manufacturing under the new marketing order would have graded substandard under the previous marketing order and would not have counted as production if written consent was given prior to delivery to the substandard pool. However, due to the new marketing order, manufacturing grade figs are sold through normal marketing outlets and therefore, consistent with the current fig crop insurance regulations, are considered production to count. The price received for manufacturing grade figs is considerably lower than the price received for regular dried figs. In 1992, manufacturing grade figs sold for 35 cents a pound and regular dried figs sold for 82 cents per pound. Under the current figs endorsement, manufacturing grade and regular dried figs are counted equally as production to count. The new Fig Crop Insurance Provisions provide a method to allow an insured to sell his manufacturing grade figs while also providing the insurer with a method to include the sale as a part of the insured production.

This rule is being promulgated to provide for a quality adjustment on production to count in order to offset the lower price received for manufacturing grade figs resulting from an insurable cause of loss.

List of Subjects in 7 CFR Part 457

Crop insurance, Figs.

Final Rule

Pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends the Common Crop Insurance Regulations (7 CFR part 457) in the following instances:

PART 457—COMMON CROP INSURANCE REGULATIONS; REGULATIONS FOR THE 1994 AND SUBSEQUENT CONTRACT YEARS

1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. 7 CFR part 457 is amended by adding a new section, § 457.110 Fig Crop Insurance Provisions, to read as follows:

§ 457.110 Fig Crop Insurance Provisions.

The Fig Crop Insurance Provisions for the 1994 and subsequent crop years are as follows:

United States Department of Agriculture—Federal Crop Insurance Corporation

Fig Crop Provisions

If a conflict exists between the Common Crop Insurance Policy (§ 457.8) and the Special Provisions, the Special Provisions will control. If a conflict exists between these Crop Provisions and the Special Provisions, the Special Provisions will control.

1. Definitions

(a) *Good farming practices*—The cultural practices necessary for the insured crop to make usual and normal progress toward maturity and which can be expected to produce at least the yield used to determine the production guarantee. Good farming practices are generally those in use in the county for production of the insured crop and are recognized by the Cooperative Extension Service as compatible with agronomic and weather conditions in the area.

(b) *Harvest*—The picking of the figs from the trees or ground by hand or machine for the purpose of removal from the orchard.

(c) *Irrigated practice*—A method of producing a crop by which water is artificially applied during the growing season by appropriate systems, and at the proper times, with the intention of providing the quantity of water needed to produce at least the yield used to establish the irrigated production guarantee on the irrigated acreage for the insured crop.

(d) *Manufacturing grade production*—Production that meets the minimum grade standards and is defined as "manufacturing grade" by the Marketing Order for Dried Figs, as amended, which is in effect on the date insurance attaches.

(e) *Marketable figs*—Figs that grade manufacturing grade or better in accordance with the Marketing Order for Dried Figs, as amended, which is in effect on the date insurance attaches.

(f) *Noncontiguous land*—Land which is not touching at any point, except that land which is separated by only a public or private right-of-way will be considered contiguous.

(g) *Production guarantee*—The number of pounds determined by multiplying the approved yield per acre by the coverage level percentage you elect.

(h) *Substandard production*—Production that does not meet minimum grade standards and is defined as "substandard" by the Marketing Order for Dried Figs, as amended, which is in effect on the date insurance attaches.

2. Unit Division

In addition to the provisions of subsection 1.(tt) of the Common Crop Insurance Policy (§ 457.8), a unit will consist of all the insurable acreage of an insurable type of fig in the county. Unless limited by the Special Provisions, these units may be further divided into optional units if, for each optional unit you claim, all the conditions of subsections 2.(a), and (b) are met, or if we agree in writing. Optional units must be established at the time you file your report of acreage for each crop year.

(a) You must have verifiable records of acreage and production for each optional unit for at least the last crop year used to determine your production guarantee.

(b) The acreage of insured figs must be located on noncontiguous land. Basic units may not be divided into optional units on any basis (production practice, type, variety, planting period, etc.) other than as described under this section. If you do not comply fully with these conditions, we will combine all optional units which are not established in compliance with these provisions into the basic unit from which they were formed. We may do this at any time we discover that you have failed to comply with these conditions. If failure to comply with these provisions is determined to be inadvertent, and if the optional units are recombined, the premium paid for electing optional units will be refunded to you.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

In addition to the requirements under section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Common Crop Insurance Policy (§ 457.8), you may select only one price election for each fig type designated in the Special Provisions, and insured in the county under this policy.

4. Contract Changes

The contract change date is October 31 preceding the cancellation date (see the provisions under section 4 (Contract Changes) of the Common Crop Insurance Policy (§ 457.8)).

5. Cancellation and Termination Dates

The cancellation and termination dates are February 28.

6. Report of Acreage

By applying for fig crop insurance, you authorize us to have access to and to determine or verify your production and acreage from records maintained by the California Fig Advisory Board and the fig packer.

7. Insured Crop

The crop insured will be all the commercially grown dried figs that are grown in the county on insurable acreage, and for which a premium rate is provided by the actuarial table:

(a) In which you have a share;

(b) That are grown for harvest as dried figs;

(c) That are irrigated;

(d) That have reached the seventh growing season after being set out; and

(e) For which acceptable production records for at least the previous crop year are provided;

(f) That are not figs:

(1) Grown on acreage with less than 90 percent of a stand based on the original planting pattern unless we agree, in writing, to insure such figs;

(2) Which we inspect and consider not acceptable;

(3) Grown for the crop year the application is filed unless inspected and accepted by us; or

(4) Grown on acreage acquired for the crop year unless such acreage has been inspected and accepted by us.

8. Insurance Period

In lieu of the provisions of section 11 (Insurance Period) of the Common Crop Insurance Policy (§ 457.8), insurance attaches on each unit the later of the date you submit your application or March 1 of the crop year and ends at the earliest of:

(a) Total destruction of the fig crop;

(b) The date harvest of the figs (by type) should have started on any acreage that will not be harvested;

(c) Harvest of the figs;

(d) Final adjustment of a loss;

(e) Abandonment of the crop; or

(f) October 31 of the crop year.

9. Causes of Loss

(a) In addition to the provisions under section 12 (Causes of Loss) of the Common Crop Insurance Policy (§ 457.8), any loss covered by this policy must occur within the insurance period. The specific causes of loss for figs are:

(1) Adverse weather conditions;

(2) Earthquake;

(3) Fire;

(4) Volcanic eruption;

(5) Wildlife; or

(6) Failure of the irrigation water supply.

(b) In addition to the causes of loss not insured against contained in section 12 (Causes of Loss) of the Common Crop Insurance Policy (§ 457.8), we will not insure against:

(1) Any loss of production due to fire, where weeds and other forms of undergrowth have not been controlled or tree pruning debris has not been removed from the grove; or

(2) The inability to market the fruit as a direct result of quarantine, boycott, or refusal of any entity to accept production.

10. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide records of production that are acceptable to us for any:

(1) Optional unit, we will combine all optional units for which acceptable records of production were not provided; or

(2) Basic unit, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for each unit.

(b) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting from this the total production to count;

(3) Multiplying the remainder by your price election; and

(4) Multiplying this result by your share.

(c) The total production (pounds) to count from all insurable acreage on the unit will include all harvested and appraised marketable figs.

(1) Figs, which due to insurable causes, grade manufacturing grade will be adjusted by:

(i) Dividing the value per pound of the manufacturing grade production by the highest price election available for the insured type; and

(ii) Multiplying the result (not to exceed 1) by the number of pounds of such manufacturing grade production.

(2) Figs, which due to insurable causes, grade substandard and are delivered to the substandard pool will not be considered production to count, provided all the insured's substandard production is inspected by us and we give written consent to such delivery prior to delivery. If we do not give written consent prior to the delivery to the substandard pool, all production will be counted as undamaged marketable production. Substandard production for which we give written consent to you prior to delivery to the substandard pool, which is not delivered to the substandard pool, and is sold by you, will be considered production to count and adjusted as follows:

(i) Dividing the value per pound received for such substandard production by the highest price election available for the insured type; and

(ii) Multiplying the result (not to exceed 1) by the number of pounds of such substandard production.

(3) Appraised production to be counted will include:

(i) Potential production lost due to uninsured causes and failure to follow recognized good fig farming practices;

(ii) Not less than the production guarantee for the figs on any acreage:

(A) That is abandoned without our consent;

(B) Damaged solely by uninsured causes;

(c) If the figs are destroyed by you without our consent; or

(D) For which you fail to provide records of production that are acceptable to us;

(iii) Unharvested production which would be marketable if harvested; and

(iv) Potential production on insured acreage that you want to abandon and no longer care for if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end if you abandon the crop. If agreement on the appraised amount of production is not reached:

(A) We may require you to continue to care for the crop so that a subsequent appraisal may be made or the crop harvested to determine actual production. You must notify us within three days of the date harvest should have started if the crop is not harvested; or

(B) You may elect to continue to care for the crop. We will determine the amount of production to count for the acreage using the harvested production or our reappraisal if the crop is not harvested.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 94-4551 Filed 2-28-94; 8:45 am]

BILLING CODE 3410-08-M

Animal and Plant Health Inspection Service

9 CFR Part 91

[Docket No. 93-150-1]

Ports Designated for Exportation of Animals, Stockton, CA

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Direct final rule.

SUMMARY: We are amending the "Inspection and Handling of Livestock for Exportation" regulations by removing the listing for the Hemet Flying Service, Stockton, CA, export inspection facility, which is no longer operating. Also, we are removing Stockton, CA, as a port of embarkation. These actions will update the regulations.

DATES: This rule will be effective on May 2, 1994 unless we receive written adverse comments or written notice of intent to submit adverse comments on or before March 31, 1994.

ADDRESSES: Please send an original and three copies of any adverse comments or notice of intent to submit adverse comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your submission refers to Docket No. 93–150–1. Submissions received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments and notices are encouraged to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Andrea Morgan, Senior Staff Veterinarian, Import-Export Animals Staff, National Center for Import-Export, Veterinary Services, APHIS, USDA, room 763, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8383.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 91, "Inspection and Handling of Livestock for Exportation" (referred to below as the regulations), prescribe conditions for exporting animals from the United States. Section 91.14(a) contains a list of designated ports of embarkation and export inspection facilities.

This rule will amend § 91.14(a) in accordance with the procedures explained below under "Dates." The amendments will remove the listing for the Hemet Flying Service, Stockton, CA, export inspection facility, which has ceased operations. Also, because Stockton, CA, does not have any other export inspection facility, the amendments will remove Stockton, CA, as a port of embarkation.

Dates

We are publishing this rule without a prior proposal because we view this action as noncontroversial and anticipate no adverse public comment. This rule will be effective, as published in this document, 60 days after the date of publication in the **Federal Register** unless we receive written adverse comments or written notice of intent to submit adverse comments within 30 days of the date of publication of this rule in the **Federal Register**.

Adverse comments are comments that suggest the rule should not be adopted or that suggest the rule should be changed.

If we receive written adverse comments or written notice of intent to submit adverse comments, we will publish a notice in the **Federal Register** withdrawing this rule before the effective date. We will then publish a proposed rule for public comment. Following the close of that comment period, the comments will be considered, and a final rule addressing the comments will be published.

As discussed above, if we receive no written adverse comments nor written notice of intent to submit adverse comments within 30 days of publication of this direct final rule, this direct final rule will become effective 60 days following its publication. We will publish a notice to this effect in the **Federal Register**, before the effective date of this direct final, confirming that it is effective on the date indicated in this document.

Executive Order 12866 and Regulatory Flexibility Act

This rule was reviewed under Executive Order 12866.

Currently, the State of California is served by designated ports of embarkation in Los Angeles, San Francisco, and Stockton. This rule will remove Stockton as a port of embarkation for the State of California. Because this export inspection facility has already ceased operating as an animal export inspection facility, its deletion from the regulations will have no economic impact. Further, two ports of embarkation located in San Francisco, CA, approximately 60 miles west of Stockton, CA, are available to animal exporters who had used the Hemet Flying Service animal export inspection facility.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have 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 Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 91

Animal diseases, Animal welfare, Exports, Livestock, Reporting and recordkeeping requirements, Transportation.

Accordingly, 9 CFR part 91 is amended as follows:

PART 91—INSPECTION AND HANDLING OF LIVESTOCK FOR EXPORTATION

1. The authority citation for part 91 continues to read as follows:

Authority: 21 U.S.C. 105, 112, 113, 114a, 120, 121, 134b, 134f, 612, 613, 614, 618; 46 U.S.C. 466a, 466b; 49 U.S.C. 1509(d); 7 CFR 2.17, 2.51, and 371.2(d).

§ 91.14 [Amended]

2. In § 91.14, paragraph (a)(1)(iii) is removed.

* * * * *

Done in Washington, DC, this 18th day of February 1994.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 94–4591 Filed 2–28–94; 8:45 am]

BILLING CODE 3410–34–P

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9 CFR Part 92

[Docket No. 91–165–2]

RIN 0579–AA56

Harry S Truman Animal Import Center (HSTAIC); Exclusive Use

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations governing the use of the Harry S Truman Animal Import Center (HSTAIC): To require a $32,000 deposit in the form of a certified check or money order, payable in U.S. funds, for each application; to change the application and lottery dates; to require the lottery winner to pay the costs of maintaining HSTAIC for certain periods when it is reserved for the lottery winner and not available to other importers; to state that we will not accept applications from or enter into HSTAIC cooperative-service agreements with persons with outstanding debts to

the Animal and Plant Health Inspection Service; and to discontinue the practice of "tiering" the lottery that currently gives certain categories of animals priority to use HSTAIC. These changes are necessary to discourage frivolous applications, to help ensure that there is adequate time to assemble necessary information prior to each lottery, and to minimize financial losses incurred by the Animal and Plant Health Inspection Service.

EFFECTIVE DATE: This regulation is effective August 31, 1994. This rule will first apply to the lottery to be held in 1994 for importations during calendar year 1995, then to all subsequent lotteries.

FOR FURTHER INFORMATION CONTACT: Dr. David Vogt, Staff Veterinarian, Import Export Animals Staff, National Center for Import-Export, Veterinary Services, APHIS, USDA, room 767, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8172.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 92, subparts D and E, govern the importation of animals into the United States through the Harry S Truman Animal Import Center (HSTAIC) in Fleming Key, Florida. Under the regulations, the Animal and Plant Health Inspection Service (APHIS) holds an annual lottery to allocate space in HSTAIC for each calendar year. To participate in the lottery, prospective importers must submit an application for each importation.

On July 14, 1993, we published in the Federal Register (58 FR 37878–37884, Docket No. 91–165–1) a proposal to amend the regulations: (1) To require a $32,000 deposit in the form of a certified check or money order, payable in U.S. funds, for each application; (2) to change the application and lottery dates; (3) to require the lottery winner to pay the costs of maintaining HSTAIC for certain periods when it is reserved for the lottery winner and not available to other importers; (4) to state that we will not accept applications from or enter into HSTAIC cooperative-service agreements with persons with outstanding debts to APHIS; and (5) to discontinue the practice of "tiering" the lottery that currently gives certain categories of animals priority to use HSTAIC. We proposed to apply the changes to the regulations first to the lottery to be held in 1994 for importations during calendar year 1995.

We solicited comments concerning our proposal for a 60-day period ending September 13, 1993. We received one comment by that date, from an importer who expressed concerns regarding certain provisions of the proposed rule. We carefully considered this comment and discuss it below.

In our proposal, we proposed to require that applicants for the HSTAIC lottery deposit with APHIS $32,000 in the form of a certified check or money order payable in U.S. funds prior to the date of the lottery. This provision was proposed as a replacement for the existing requirement that an application for the lottery be accompanied by a deposit in the form of a $50,000 irrevocable letter of credit. We proposed the change to allow small businesses to compete more equitably with large importers, who can more easily obtain multiple letters of credit for multiple applications.

The commenter disagreed that the proposed change would benefit small importers. According to the commenter, under the requirement for a $50,000 letter of credit, a small importer would be most likely either to utilize his or her credit line with a bank, or to post the funds in a certificate of deposit and borrow against those funds for a letter of credit. According to the commenter, if the latter option were chosen, the applicant would pay the financial institution only the difference between the rate of return on the certificate of deposit and the lending rate. The commenter stated that the proposed change would make it more difficult for a small importer to submit multiple applications, by tying up the importer's funds with USDA for up to a year with no interest, and removing those funds from the bank, thereby reducing the importer's collateral.

We are making no changes based on the comment. While we agree that a $32,000 deposit represents more of a financial commitment than a $50,000 letter of credit, we disagree that the proposed change would be less advantageous to small importers than are the existing regulations. We continue to believe, as we stated in the proposal, that large importers, because of their stronger credit and deposit relationship with banks, can obtain letters of credit significantly more easily than can small importers. Our experience with the HSTAIC lottery has been that a number of these multiple applications have been frivolous, with the applicants having no intention of using their "winning" slots in the lottery to import animals. We expect that requiring a $32,000 deposit in the form of a check or money order will reduce the number of multiple applications received and will minimize frivolous applications.

Although we expect significantly fewer applications under the new regulations, we anticipate that the applications that are received will in most cases be from applicants actually intending to import animals through HSTAIC. With fewer applicants in the lottery, and with those that are chosen serious about importing animals, applicants will have a better idea than at present what their chances are of importing animals through HSTAIC in a given year. This will enable the applicants to decide whether it is worthwhile to leave their deposit with APHIS after the lottery results are announced. Those that have little chance of importing animals could choose to withdraw their money shortly after the lottery.

The commenter also expressed concern that the proposed requirement that the lottery winner pay the costs of maintaining HSTAIC for certain periods when it is reserved for the lottery winner and not available to other importers would put the winner of the lottery at a disadvantage compared to the applicants drawn later in the lottery. Under the provisions of the proposal, we would draw upon the $32,000 deposit of the winner of the lottery from the day the winner receives a cooperative-service agreement for the use of HSTAIC from us, and we would continue drawing on it either until we receive a signed cooperative-service agreement from the applicant or until the applicant provides written notification to us that he or she does not intend to sign the cooperative-service agreement, up to a maximum of 30 days.

The commenter stated that this provision would require the winner of the lottery to rush to put his or her import together, while the third or fourth applicants chosen would have extra time while we negotiate with the applicants chosen earlier in the lottery. According to the commenter, it is impossible for any importer to determine the feasibility of a high security animal import in less than 30 days.

We are making no changes based on this comment. The very purpose of the proposed change was to discourage applicants who are not seriously considering importing animals through HSTAIC, and therefore to minimize unnecessary "downtime" at HSTAIC. We believe that applicants seriously interested in importing animals through HSTAIC should already have closely examined the feasibility of a particular importation before submitting an application. Further, once the cooperative-service agreement is signed, the importer has 42 days to complete arrangements with responsible officials in the country from which the animals are to be exported. We consider this a reasonable period of time to make such arrangements.

Therefore, based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposal as a final rule with only minor nonsubstantive changes.

Executive Order 12866 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12866. Based on information compiled by the Department, we have determined that this rule: (1) Will have an effect on the economy of less than $100 million; (2) will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (3) will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (4) will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations of recipients thereof; and (5) will not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

In the past we have received approximately 230 applications to use HSTAIC during a particular calendar year. However, many of these applications were duplicative. Therefore, when the provisions in this rule become effective, we expect that number to drop significantly. Although we cannot determine precisely how many importers will submit applications, based on past experience we believe only approximately 5 percent will be small entities.

We expect that requiring a deposit of $32,000 in the form of a certified check or money order with each application will reduce the number of multiple applications by large importers and discourage applications from importers who are not sure whether they will use HSTAIC. We expect this final rule to have the ultimate effect of increasing the possibility that small entities will use HSTAIC.

The regulations prior to the effective date of this rule require that applicants for the importation of certain animals through HSTAIC deposit an irrevocable letter of credit for $50,000. Requiring a deposit in the form of a certified check or money order will have an impact on potential importers, in that earnings will be foregone on the deposit while it is held by APHIS. Under this rule, the deposit will have to be "received by APHIS at least 7 calendar days prior to the date of the lottery." Prospective importers can minimize the time their money is on deposit by submitting their deposit as close to this deadline as possible. We have calculated that, based on a rate of return of from 5–7 percent, the interest foregone on a deposit will be approximately $4.10 to $6.15 per day. The minimum amount of time applicants will forego interest will be for the week before the lottery and for at least one week following the lottery until notification of the lottery results. Therefore, all applicants will forego approximately $61.60 to $86.10 in interest. This compares with an average cost to import one animal through HSTAIC of $3,747.

Of the parties that will submit applications for importations through HSTAIC in 1995, most of whom will probably not be small entities, we expect that only approximately 5 will be picked high enough in the lottery to provide them a reasonable chance of bringing animals through HSTAIC. If these applicants choose to stay on the lottery list, they will lose interest for each day they remain on the list until their deposit is applied toward an importation, or until they choose to remove their name from the list. How long they remain on the list will be their decision, and we are unable to calculate at this time the interest they will forego.

Changing application and lottery dates will impose no financial burden on prospective importers. The current regulations require that importers wishing to import in the next calendar year submit their application no earlier than September 1 and no later than September 15 for the lottery held during the first seven days of October of the current calendar year. Shifting these dates to October and December, respectively, would likely shorten the waiting period between application and actual import dates.

Requiring the lottery winner to pay the costs of maintaining HSTAIC for periods when it is maintained in readiness for that importer, and not available to other importers, will shift the burden of operating costs from APHIS, and ultimately the taxpayer, to persons offered the right to use HSTAIC. According to the regulations prior to the effective date of this rule, a lottery winner has 30 days from the date of the receipt of the cooperative-service agreement to either accept or reject the cooperative-service agreement regarding the importation of animals. During that time, the facility is reserved, and APHIS prepares and maintains it in readiness for that importer's animals. Charging the importer for this time, on a daily basis, will increase the importer's costs by approximately $1,067 per day, up to a maximum of $32,000. This compares with an average total cost for an importation through HSTAIC of $857,000. The length of time that expires before the cooperative-service agreement is accepted or rejected will be up to the lottery winner.

Under this rule, APHIS will not accept applications from, or enter into HSTAIC cooperative-service agreements with, entities with outstanding debts to APHIS. If a prospective applicant has not paid outstanding debts, they will not be allowed to use HSTAIC. However, this provision will not necessarily impose a financial burden on prospective applicants because the decision whether to pay off debts will be entirely the prospective applicant's.

We are also eliminating the practice of giving certain types of animals, and animals from certain locations, priority in the lottery. This amendment, which will simplify the drawing for the lottery, will not affect a substantial number of importers. In the past we have received approximately 230 applications to use HSTAIC during a particular year. As stated above, we expect fewer applicants when this rule takes effect. Of the total number of applicants, only two to three will actually be able to use HSTAIC in any given year. Additionally, as we stated above, we expect the great majority of applicants to be other than small entities, so the chances are small that each of the two or three importers using HSTAIC will be small entities.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule will be submitted for approval to the Office of Management and Budget.

List of Subjects in 9 CFR Part 92

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 92 is amended as follows:

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for part 92 continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

§ 92.430 [Amended]

2. Section 92.430 is amended as follows:

a. Paragraph (a) is amended by adding, immediately after the first sentence, "Applications for the HSTAIC lottery will not be accepted from, and a cooperative-service agreement to use HSTAIC will not be offered to or entered into with, any person who has debts owing to APHIS that have not been paid by the date specified in APHIS's original billing notification to the person. Any person who has debts owing to APHIS that have not been paid by the date specified in APHIS's original billing notification to that person will be removed from the current priority list."

b. Paragraph (a) is amended by adding, immediately after the fourth sentence, "The animal qualification process begins on the date the cooperative-service agreement is delivered to the address listed on the importer's HSTAIC application, for the importer's signature, if HSTAIC is not available to other importers, up to a maximum of 30 days. A cooperative-service agreement will be deemed to have been delivered when the importer signs the U.S. Postal Service domestic return receipt, or the importer refuses delivery of the cooperative-service agreement by the U.S. Postal Service, or the cooperative-service agreement is returned by the U.S. Postal Service as either unclaimed or undeliverable."

c. Paragraph (b)(1)(ii) is revised to read as set forth below.

d. Paragraph (b)(2)(i) is amended by removing "October" both times it appears, and by adding "December" in its place; and by removing "September" where it appears in the second sentence, and adding "October" in its place.

e. In paragraph (b)(2)(i), footnote 12 is amended by removing "October" and adding "December" in its place.

f. Paragraph (b)(2)(ii) is amended by removing the last sentence and adding in its place "Deposits required by paragraph (b)(1)(ii) of this section must be received by APHIS at least 7 calendar days prior to the date of the lottery."

g. Paragraph (b)(3)(i) is removed.

h. Paragraph (b)(3)(ii) is redesignated as paragraph (b)(3) and is revised to read as set forth below.

i. Paragraph (b)(4) is amended by revising the first sentence to read as set forth below; removing "October" in the fifth sentence and adding "December" in its place; and removing "September" where it appears in the fifth and sixth sentences, and adding "October" in its place.

j. Paragraph (b)(5) is amended by removing "October" both times it appears and adding "December" in its place; and by removing "September" both times it appears and adding "October" in its place.

k. In paragraph (b)(6), the second sentence is amended by removing ", in lieu of an irrevocable letter of credit,"; and by removing "$50,000" and adding "$32,000 by certified check or money order, payable in U.S. funds" in its place.

l. In paragraph (b)(6), footnote 13 is amended by removing "September" and adding "October" in its place.

m. In paragraph (c) introductory text, the third and fourth sentences are revised to read as set forth below, and the fifth sentence is removed.

n. In paragraph (c)(1), the second sentence is amended by adding "any portion of" immediately before "the importer's deposit" and by adding "that has not been expended" immediately before the period.

o. In paragraph (c)(3), the second sentence is amended by adding "expenses for preparing and maintaining HSTAIC in readiness for the importation;" immediately after "must assume responsibility includes:".

p. In paragraph (d), sample cooperative-service agreement, under "The importer agrees:", paragraph 2 is revised to read as set forth below.

q. In paragraph (d), sample cooperative-service agreement, under "The importer agrees:", paragraph 3 is removed, and paragraphs 4 through 13 are redesignated as paragraphs 3 through 12, respectively.

r. In paragraph (d), sample cooperative-service agreement, under "The importer agrees:", redesignated paragraph 4, the first sentence is amended by adding "preparing and maintaining HSTAIC in readiness for the importation, and to" immediately after "all costs (except capital expenditures at HSTAIC) attributable to".

s. In paragraph (d), sample cooperative-service agreement, under "The importer agrees:", redesignated paragraph 12 is revised to read as set forth below.

§ 92.430 Importation of ruminants through the Harry S Truman Animal Import Center (HSTAIC).

* * * * *

(b) * * *

(1) * * *

(ii) Each applicant for the importation of animals through HSTAIC must make a deposit of $32,000 in the form of a certified check or money order, payable in U.S. funds. The deposit of each applicant who is not given the opportunity to use HSTAIC will be returned to the applicant at the end of the calendar year of the prospective importation, or whenever the applicant removes his or her name from the priority list described in paragraph (b)(4) of this section. The Animal and Plant Health Inspection Service will draw on the deposit of the applicant whose application is selected, to pay for the costs of preparing and maintaining HSTAIC in readiness for the applicant's animals. A charge of $1,067 will be made for each day that HSTAIC is not available to another importer, starting on the date the cooperative-service agreement is delivered to the address listed on the importer's HSTAIC application, and ending either with the day that APHIS receives the signed cooperative-service agreement or the day the applicant notifies APHIS in writing that he or she does not intend to sign the cooperative-service agreement, up to a maximum of 30 days. A cooperative-service agreement will be deemed to have been delivered when the importer signs the U.S. Postal Service domestic return receipt, or refuses delivery of the cooperative-service agreement by the U.S. Postal Service, or the cooperative-service agreement is returned by the U.S. Postal Service as either unclaimed or undeliverable.

* * * * *

(3) The priority list established by the annual December lottery will remain effective from January 1 through December 31 of the next calendar year, superseding all previous lists. Which year's list is used is governed by the date exclusive use of HSTAIC is offered and not by the date the applicant's

animals are scheduled to arrive at HSTAIC.

(4) The names of all applicants whose applications have reached the Import-Export Animals Staff, Veterinary Services, no earlier than October 1 and no later than October 15 (see paragraphs (b)(1) and (2) of this section), and whose deposits have reached APHIS at least 7 calendar days prior to the date of the lottery, will be drawn during the December lottery. * * *

* * * * *

(c) * * * The cooperative-service agreement must be accompanied by a certified check or money order, or an irrevocable letter of credit (the letter of credit having an effective date 90 days after the animals' scheduled release date from HSTAIC), payable in U.S. funds, for the amount specified in the cooperative-service agreement. Any funds remaining from the $32,000 deposit will be applied to the quarantine costs, and will be deducted from the balance due with the cooperative-service agreement. * * *

* * * * *

(d) * * *

The importer agrees:

* * * * *

2. To remit with the cooperative-service agreement a certified check, money order, or irrevocable letter of credit having an effective date that extends 90 days beyond the animals' scheduled release from HSTAIC, payable in U.S. funds to the United States Department of Agriculture, Animal and Plant Health Inspection Service, in the amount of $__________. (This amount represents the estimated cost (except capital expenditures at HSTAIC) of qualifying the animals for importation through HSTAIC, less any unused portion of the $32,000 deposited in conjunction with the application for the exclusive right to use HSTAIC.

* * * * *

12. To pay, upon receipt, post-quarantine billings incurred during this importation, for costs exceeding the amount remitted with this cooperative-service agreement plus the initial $32,000 deposit.

* * * * *

§ 92.522 [Amended]

3. Section 92.522 is amended as follows:

a. Paragraph (a) is amended by adding, immediately after the first sentence, "Applications for the HSTAIC lottery will not be accepted from, and a cooperative-service agreement to use HSTAIC will not be offered to or entered into with, any person who has debts owing to APHIS that have not been paid by the date specified in APHIS's original billing notification to the person. Any person who has debts owing to APHIS that have not been paid by the date specified in APHIS's original billing notification to that person will be removed from the current priority list."

b. Paragraph (a) is amended by adding, immediately after the fourth sentence, "The animal qualification process begins on the date the cooperative-service agreement is delivered to the address listed on the importer's HSTAIC application, for the importer's signature, if HSTAIC is not available to other importers, up to a maximum of 30 days. A cooperative-service agreement will be deemed to have been delivered when the importer signs the U.S. Postal Service domestic return receipt, or the importer refuses delivery of the cooperative-service agreement by the U.S. Postal Service, or the cooperative-service agreement is returned by the U.S. Postal Service as either unclaimed or undeliverable."

c. Paragraph (b)(1)(ii) is revised to read as set forth below.

d. Paragraph (b)(2)(i) is amended by removing "October" both times it appears and adding "December" in their place; and by removing "September" both times it appears in the second sentence, and adding "October" in its place.

e. In paragraph (b)(2)(i), footnote 11 is amended by removing "October" and adding "December" in its place.

f. Paragraph (b)(2)(ii) is amended by removing the last sentence and adding in its place "Deposits required by paragraph (b)(1)(ii) of this section must be received by APHIS at least 7 calendar days prior to the date of the lottery."

g. Paragraph (b)(3)(i) is removed.

h. Paragraph (b)(3)(ii) is redesignated as paragraph (b)(3) and is revised to read as set forth below.

i. Paragraph (b)(4) is amended by revising the first sentence to read as set forth below; removing "October" in the fifth sentence and adding "December" in its place; and removing "September" where it appears in the fifth and sixth sentences and adding "October" in its place.

j. Paragraph (b)(5) is amended by removing "October" both times it appears and adding "December" in its place; and by removing "September" both times it appears and adding "October" in its place.

k. In paragraph (b)(6), the second sentence is amended by removing ", in lieu of an irrevocable letter of credit,"; and by removing "$50,000" and adding "$32,000 by certified check or money order, payable in U.S. funds" in its place.

l. In paragraph (b)(6), footnote 12 is amended by removing "September" and adding "October" in its place.

m. In paragraph (c) introductory text, the third and fourth sentences are revised to read as set forth below, and the fifth sentence is removed.

n. In paragraph (c)(1), the second sentence is amended by adding "any portion of" immediately before "the importer's deposit" and by adding "that has not been expended" immediately before the period.

o. In paragraph (c)(3), the second sentence is amended by removing the word "Expenses" and adding in its place "expenses"; and by adding "Expenses for preparing and maintaining HSTAIC in readiness for the importation;" immediately after "must assume responsibility includes:".

p. In paragraph (d), sample cooperative-service agreement, under "The importer agrees:", paragraph 2 is revised to read as set forth below.

q. In paragraph (d), sample cooperative-service agreement, under "The importer agrees:", paragraph 3 is removed and paragraphs 4 through 13 are redesignated as paragraphs 3 through 12, respectively.

r. In paragraph (d), sample cooperative-service agreement, under "The importer agrees:", redesignated paragraph 4, the first sentence is amended by adding "preparing and maintaining HSTAIC in readiness for the importation, and to" immediately after "all costs (except capital expenditures at HSTAIC) attributable to".

s. In paragraph (d), sample cooperative-service agreement, under "The importer agrees:", redesignated paragraph 12 is revised to read as set forth below.

§ 92.522 Importation of swine through the Harry S Truman Animal Import Center (HSTAIC).

* * * * *

(b) * * *

(1) * * *

(ii) Each applicant for the importation of animals through HSTAIC must make a deposit of $32,000 in the form of a certified check or money order, payable in U.S. funds. The deposit of each applicant who is not given the opportunity to use HSTAIC will be returned to the applicant at the end of the calendar year of the prospective importation, or whenever the applicant removes his or her name from the priority list described in paragraph (b)(4) of this section. The Animal and Plant Health Inspection Service will draw on the deposit of the applicant whose application is selected, to pay for the costs of preparing and maintaining HSTAIC in readiness for the applicant's animals. A charge of $1,067 will be made for each day HSTAIC is not available to another importer, starting on the date the cooperative-service agreement is delivered to the address listed on the HSTAIC application, and ending either with the day that APHIS receives a signed cooperative-service agreement from the applicant or the day the applicant notifies APHIS in writing that he or she does not intend to sign the cooperative-service agreement, up to a maximum of 30 days. A cooperative-service agreement will be deemed to have been delivered when the importer signs the U.S. Postal Service domestic return receipt, or refuses delivery of the cooperative-service agreement by the U.S. Postal Service, or the cooperative-service agreement is returned by the U.S. Postal Service as either unclaimed or undeliverable.

* * * * *

(3) The priority list established by the annual December lottery will remain effective from January 1 through December 31 of the next calendar year, superseding all previous lists. Which year's list is used is governed by the date exclusive use of HSTAIC is offered, and not by the date the applicant's animals are scheduled to arrive at HSTAIC.

(4) The names of all applicants whose applications have reached the Import-Export Animals Staff, Veterinary Services, no earlier than October 1 and no later than October 15 (see paragraphs (b) (1) and (2) of this section), and whose deposits have reached APHIS at least 7 days prior to the date of the lottery, will be drawn during the December lottery. * * *

* * * * *

(c) * * * The cooperative-service agreement must be accompanied by a certified check, a money order, or an irrevocable letter of credit (the letter of credit having an effective date 90 days after the animals' scheduled release date from HSTAIC), payable in U.S. funds, for the amount specified in the cooperative-service agreement. Any funds remaining from the $32,000 deposit will be applied to the quarantine costs, and will be deducted from the balance due with the cooperative-service agreement. * * *

* * * * *

(d) * * *

The importer agrees:

* * * * *

2. To remit with the cooperative-service agreement a certified check, money order, or irrevocable letter of credit having an effective date that extends 90 days beyond the animals' scheduled release from HSTAIC, payable in U.S. funds to the United States Department of Agriculture, Animal and Plant Health Inspection Service, in the amount of $__________. (This amount represents the estimated cost (except capital expenditures at HSTAIC) of qualifying the animals for importation through HSTAIC, less any unused portion of the $32,000 deposited in conjunction with the application for the exclusive right to use HSTAIC.)

* * * * *

12. To pay, upon receipt, post-quarantine billings incurred during this importation, for costs exceeding the amount remitted with this cooperative-service agreement plus the initial $32,000 deposit.

* * * * *

Done in Washington, DC, this 18th day of February 1994.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 94–4593 Filed 2–28–94; 8:45 am]

BILLING CODE 3410–34–P

FARM CREDIT ADMINISTRATION

12 CFR Part 650

RIN 3052–AB49

Federal Agricultural Mortgage Corporation; Conflicts of Interest

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA), by the Farm Credit Administration Board, adopts a new regulation relating to reporting and disclosure of conflicts of interest by directors, officers, and employees of the Federal Agricultural Mortgage Corporation (Corporation). The regulation is adopted in response to section 514 of the Farm Credit Banks and Associations Safety and Soundness Act of 1992. Section 514 directs the FCA to ensure that its regulations require the disclosure of financial information and the reporting of potential conflicts of interest by directors, officers, and employees of all Farm Credit System (System) institutions and that such requirements are adequate to fulfill the purposes of the section.

The regulation requires the Corporation to adopt a conflict-of-interest policy that defines the types of relationships, transactions, or activities that might reasonably be expected to give rise to a potential conflict of interest. The regulation also requires the reporting of sufficient information about financial interests, transactions, relationships, and activities to inform the Corporation about potential conflicts of interest. The regulation further requires disclosure to shareholders, investors, and potential investors of any unresolved conflicts of interest involving its directors, officers, and employees identified by the Corporation under the policy. Such disclosure is in addition to disclosures already required under the Federal securities laws.

EFFECTIVE DATE: The regulation shall become effective 180 days after publication in the **Federal Register** or on such later date as may be necessary to comply with the statutory requirement for a delayed effective date of 30 days after **Federal Register** publication during which either or both Houses of Congress are in session. Notice of the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Suzanne J. McCrory, Director, Office of Secondary Market Oversight, Farm Credit Administration, McLean, VA 22102–5090 (703) 883–4280, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: On October 14, 1993, the FCA published for comment conflict-of-interest regulations (58 FR 53161) for the Corporation. The regulations were proposed in response to section 514 of the Farm Credit Banks and Associations Safety and Soundness Act of 1992, Pub. L. 102–552, 106 Stat. 4102 (1992 Act). The 1992 Act directed the FCA to review its current regulations regarding the disclosure of financial information and the reporting of potential conflicts of interest by the directors, officers, and employees of System institutions to determine whether the regulations: (1) Are adequate to fulfill the purpose of section 514 and other purposes determined by the FCA to be necessary or appropriate, consistent with the Farm Credit Act of 1971, as amended (1971 Act); (2) require the disclosure of financial information and reporting of potential conflicts of interest by the directors, officers, and employees of all System institutions; and (3) require such disclosure of all of the appropriate directors, officers, or employees of System institutions. The 1992 Act further directed the FCA to amend its current financial disclosure and conflict-of-interest regulations to carry out the purpose of section 514, which is to ensure that FCA regulations require the disclosure of financial information and the reporting of potential conflicts of interest to provide sufficient information for: (1) Stockholders to make informed decisions regarding the operation of the institutions; (2) investors and potential investors to make informed investment decisions; and (3) the FCA to examine and regulate all System institutions effectively and efficiently.

The comment period closed on November 15, 1993. Comments were received from the Corporation and from

The Farm Credit Council (FCC), a trade association for the banks and associations of the System. The Farm Credit Bank of Baltimore submitted a letter endorsing the comments of the FCC.

The Corporation supported the regulatory approach to conflicts of interest, but made a number of substantive and clarifying comments. Most notably, the Corporation asserted that the definition of "employee" is broader than necessary to effectuate the stated purpose of the 1992 Act and will result in irrelevant or immaterial reporting by receptionists, secretaries, bookkeepers, clerks, and other employees without regard to their functions or duties at the Corporation. The Corporation noted that its existing policies also define "employee" broadly, but reporting requirements are tailored to screen out reporting by employees who are not in a position to influence activity with respect to their financial interests.

The Corporation suggested that the term "employee" be replaced with the term "key employee," defined to mean "any salaried manager or supervisor or part-time, full-time, or temporary salaried employee who is involved in any significant activity related to the processing, analysis, or guarantee of loan pools or other significant financial activity or who is engaged in any policy-making, managerial, supervisory, or professional function for the Corporation." This definition would apply only to employees other than officers and directors, who are already specifically referenced in the regulation.

The FCA is opposed to removing groups of employees from the regulation's applicability. Although the proposed regulation broadly defines potential conflicts of interest to apply to all employees, it requires the Corporation to define the types of specific transactions, relationships, and activities that reasonably could be expected to give rise to potential conflicts of interest and to require reporting of sufficient information to inform the Corporation of these potential conflicts of interest. The FCA believes that the regulation gives the Corporation sufficient latitude to tailor its reporting requirements based upon the function various employees perform for the Corporation. The FCA believes that each employee, no matter what his or her function, should be subject to a requirement to report any matter that might adversely affect impartiality in the performance of his or her duties. Accordingly, the FCA declines to replace the term "employee" with the term "key employee" in the definition of "potential conflict of interest." However, because officers are separately defined, the FCA has amended the definition of "employee" to exclude officers.

The Corporation and the FCC requested that the language of the regulation be amended to clarify that only material conflicts need to be resolved to avoid disclosure. The FCA confirms that this is the intended result and adopts minor language changes to the definition of "resolved" and to § 650.3 to make this point clearer.

The Corporation requested that the regulation be modified to provide a defined period of time for the development of the conflict-of-interest policy by the Corporation and suggested that a reasonable time period would be 180 days from the effective date of the final rule, noting that developing such a policy will involve issues that must be decided by the Corporation's Board (Board).

The FCA recognizes that the policy required by the regulation may be different from the Corporation's existing policy and that Board participation in its development is required. Indeed, in requiring the Corporation to adopt a conflict-of-interest policy, the FCA contemplated that the Corporation must act through its board of directors. The FCA views the request as a reasonable one, but believes that 180 days from the date of publication of the final rule should be a sufficient period to develop a policy. Consequently, the FCA has adopted a delayed effective date of 180 days after publication in the **Federal Register** or such later date as may be necessary to comply with the statutory requirement for a delayed effective date of 30 days during which either or both Houses of Congress are in session. In the interim, the FCA expects that employees of the Corporation and its subsidiaries will adhere to high standards of honesty, integrity, impartiality, loyalty, and care consistent with applicable law and regulation in furtherance of the Corporation's public purpose. The FCA further expects that the Corporation will be vigilant in monitoring and resolving potential conflicts of interest under its existing policy.

The Corporation also suggested adding a requirement to establish procedures for resolving material conflicts of interest and for maintaining adequate records of non-material conflicts of interest and resolutions of material conflicts of interest. The FCA believes that these requirements are fairly implied from the requirement to disclose unresolved conflicts of interest and the requirement to retain, for a period of 6 years, reports and statements on potential conflicts of interests and documentation of materiality determinations and resolutions of conflict of interests. However, an express requirement to develop procedures for resolving material conflicts of interest has been added as paragraph (e) of § 650.2 of the final regulation and succeeding paragraphs have been renumbered.

The FCC expressed general agreement with the rationale underlying the FCA's decision to treat the Corporation differently from System banks and associations, but expressed reservations about the extent of delegation granted to the Corporation to define its own conflict-of-interest policy, especially with regard to standards that may be established for members of the Board. In particular, the FCC asserted that the emphasis in the preamble on the fiduciary duties of directors to all of the shareholders ignores the representative character of the board of directors.[1] Although the FCC agrees that traditional concepts of fiduciary responsibility apply, it asserts that System and non-System directors are under no obligation to disregard the interests of the shareholders who elected them, and that to prohibit participation by System directors or non-System directors in board deliberations and voting on matters potentially affecting the interests of System institutions or non-System institutions would be contrary to congressional intention.

In addition, the FCC asserted that it would be inappropriate for the Corporation to adopt a policy that prohibits directors from discussing matters deemed confidential by Corporation management with anyone other than Board members and employees of the Corporation, as it would impede directors in the exercise of their independent business judgment if they were unable to disclose information to their own advisors. The FCC noted that "legitimately confidential" information would, of course, be disclosed to advisors on a confidential basis. In addition, the FCC asserted that System directors must be free to discuss information with a reasonable number of other individuals who represent System institutions, subject to strict guarantees of confidentiality.

The principles of statutory construction require that all of a statute's provisions be interpreted

[1] The Corporation's Board is composed of 15 directors—5 elected by class A shareholders (non-System financial institutions such as commercial banks and insurance companies), 5 elected by class B shareholders (System institutions), and 5 appointed by the President.

together. As the FCC has noted, the representative character of the Corporation's Board must be reconciled with its corporate structure and associated principles of corporate governance. In the FCA's opinion, such a reconciliation can be achieved by: (1) Interpreting "representative" to be a qualification for office; and (2) recognizing that directors owe fiduciary duties to the Corporation and all its shareholders (rather than to the electing class of shareholders exclusively or primarily). The FCA's interpretation of "representative" does not require elected directors to disregard the perspectives of the electing class. Rather, directors should share these perspectives with the Board at large so that each director can act in the best interests of the Corporation and all of its shareholders.

The FCA believes that the statutory term "representative" means that elected directors must have an official affiliation with a class A or class B institution in order to serve as a Corporation director. The FCA views an official affiliation as a substantial and visible connection such as serving as director, officer, or employee of a class A or class B institution. This interpretation of "representative" stems in part from the vacancy and continuation of membership provisions of sections 8.2(a)(4) and 8.2(b)(5)of the 1971 Act. Vacancy of an elected Board seat is filled by the permanent Board "from among persons eligible for election to the position for which the vacancy exists," suggesting that some objective eligibility criterion exists other than being elected by the shareholder class. The continuation provision has the effect of terminating the term of a director when he or she ceases to be "a representative." By contrast, were "representative" interpreted broadly to mean anyone who is selected by the institutions to act as a delegate, everybody would be eligible for election when a vacancy occurred and the automatic termination provisions would not work. Taken together, these provisions suggest that elected directors must have an official affiliation that is visible and substantial so that the presence and termination of this affiliation can be readily ascertained.

Although the Board is representative in nature, Congress chose a corporate structure to govern the operations of the Corporation. Common law corporate principles affirm the fiduciary duty of directors to act in the best interests of the Corporation and all of its shareholders. The FCA believes that the representative character of the Board does nothing to alter this fiduciary duty of directors.[2] That is, irrespective of the manner of appointment or election, each director has a duty to act in the best interests of the Corporation and all of its shareholders. The legislative history supports this interpretation by indicating, "There is to be no distinction between the three categories of directors in terms of their duties and responsibilities as directors to the Mortgage Corporation and all stockholders."[3]

When "representative" is interpreted as a qualification that directors must satisfy to be elected, directors can discharge their fiduciary duties in the context of a representative Board. Although directors may attain Board seats through different processes, each needs the same opportunity to understand the perspectives of different shareholders and secondary market participants on an issue to properly discharge his or her fiduciary duties to the Corporation. With an official affiliation, elected directors are authoritatively able to bring the perspectives of the class to the Board's deliberations. When the elected directors convey such perspectives to the Board at large, each director gets the information needed to discharge his or her fiduciary duties to the Corporation and all of its shareholders.

The FCA believes that "representative" should not be interpreted to mean a delegate elected solely to further the viewpoints of the electing class without regard to the impact on the Corporation and all its shareholders. Such an interpretation implies that directors need not consider the interests of any class of Corporation shareholders lacking authority to elect them—a result inconsistent with corporate common law principles of a director's fiduciary duties and congressional intent.

Specifically, the FCA responds to the FCC's comment by noting that the use of information gained in private consultations with class members about Corporation matters to inform only a director's personal judgments but not the Board deliberations would systematically prevent class A directors from learning the views of class B institutions and class B directors from learning the views of class A institutions. The "public directors" would have neither perspective. This withholding of information would likely lead to factional voting patterns because no director would be able to understand and weigh the many and different views of all shareholders. Because each director is obliged to act in the best interests of the Corporation and all of its shareholders, the FCA believes that withholding from Board deliberations useful perspectives and pertinent information gained from private consultations could undermine the ability of directors to carry out their fiduciary duties.

In light of its interpretation of the "representative" nature of the Corporation's Board, the FCA makes the following determinations about three amendments requested by the FCC related to the representative character of the Board.

First, the FCC requested that the definition of "potential conflict of interest" be modified to recognize that it is not a conflict of interest for Corporation directors to consider or act on matters that affect the financial interests of the class of shareholders that elected them if the matter is one of general applicability that affects all the shareholders in that class and does not have its effect exclusively or disproportionately on the particular shareholder with which that director is affiliated.

The FCA agrees that "potential conflict of interest" should not be so broadly defined as to make it impermissible for any of the 10 elected directors to participate in matters affecting the financial interests of the class or the institution with which he or she is affiliated. To regard participation by an elected director in such matters as impermissible would render the Board nonfunctional since such decisions are unavoidable and large blocs of directors would be disenfranchised on certain general questions being deliberated by the Board. However, the FCA believes that no change is needed to respond to the FCC's concerns because the regulation does not disqualify directors from participating in deliberations affecting the electing class of institutions.

The FCA believes that matters affecting class institutions as secondary market participants would not likely constitute potential conflicts of interests. Therefore, the regulatory definition of "potential conflict of interest" does not impute the interests of the class to the directors elected from

[2] Some public companies have boards with representative features analogous though not identical to the Corporation's. For example, public companies may have seats designated to be elected by minority shareholders or seats designated to be filled by a union representative. However, the fiduciary responsibilities of directors are unchanged by the representational aspects of these boards, according to an official from the Securities and Exchange Commission with whom the FCA consulted. Each director owes fiduciary duties to the Corporation and its shareholders collectively.

[3] Senate Report 100–230, p. 52 (November 20, 1987).

that class. However, FCA notes that any Board action having differential effects on the class as shareholders may constitute a breach of fiduciary duties by directors. A director must act in the best interest of the Corporation and all of its shareholders.

Second, the FCC requested that the regulation be modified to provide that Corporation directors may discuss with representatives of the shareholder class that elected them the implications of a proposed action that has general applicability and that such activity not be considered a conflict of interest.

The regulation neither permits nor prohibits consultations by Corporation directors with outside parties. The appropriateness of such consultations depends on the facts and circumstances at hand. FCA declines to create a safe harbor for director consultations in order to avoid sanctioning consultations that might be inconsistent with a director's fiduciary duties.

While the FCA agrees with the FCC that directors have a duty to exercise informed independent judgment on Corporation matters, and may from time to time need to consult knowledgeable advisors, the FCA also recognizes the right of the Corporation's Board to maintain the confidentiality of the Corporation's business matters. Consequently, the consultation of advisors in order to make an independent judgment must be undertaken with due regard for the Corporation's interest in maintaining confidentiality. Any advisors consulted by a director on a confidential matter would be bound by the Board's confidentiality constraints and could, by virtue of the consultation, become insiders of the Corporation subject to the prohibitions of the Securities Exchange Act of 1934 and rules thereunder. The director should make every effort to ensure that the confidentiality of consultations can and will be maintained. Fiduciary duty to the Corporation requires the director to share with the Board any material information in his or her possession that is germane to Board decisions, regardless of its source.

Third, the FCC requested that the regulation be modified to recognize that the Corporation's directors are free to vigorously advance the interest of the institutions they represent, provided they make clear that they are not acting in their capacity as Corporation directors.

The FCA declines to modify its regulation as requested because it believes that such a modification might sanction actions inconsistent with a director's fiduciary duties. As the FCC's comment letter noted, inherent within the organizational framework of the Corporation's Board is the potential for perceived conflicts of interest. Elected directors typically have simultaneous responsibilities to the Corporation and to a competing class A or B institution.

The FCA agrees with the FCC's comment that such directors are not agents of the Corporation in all their doings and may also owe fiduciary duties to other institutions. However, the FCA believes a Corporation director who advances the interests of another institution must be mindful of his or her fiduciary duties to the Corporation and its shareholders, including System and non-System shareholders. Where directors have fiduciary duties to competing institutions, they must balance these duties to avoid harming either institution. To advance the interests of one corporation to which a director owes duties in a manner that injures another corporation to which he also owes fiduciary duties could heighten shareholder concern about the good faith and fair dealing of the director. The difficulty of balancing fiduciary duties to competing institutions has previously led the FCA to prohibit directors of Farm Credit banks and associations from serving as directors of competing institutions. While the FCA cannot prohibit such dual responsibilities, it is reluctant to sanction by regulation those actions by directors to advance the interests of one institution that are potentially at the expense of the Corporation's interests.

As in the previous matter, the FCA believes that the appropriateness of a director's action must be evaluated in light of the specific circumstances. In some cases, action might be considered improper; in others it might not. As a result, the FCA declines to exclude from the definition of "potential conflict of interest" those actions by the Corporation's directors to "advance vigorously the interests" of a competing institution. The effect of declining to make such a change will be to continue to subject such actions to scrutiny as potential conflicts of interest.

In addition to its general comments, the FCC made a number of specific suggestions regarding particular sections of the regulation.

The FCC suggested that the definition of "potential conflict of interest" be changed to parallel the definition of "conflict of interest" in the regulations proposed for System banks and associations. Specifically, the FCC recommended changing "might adversely affect or appear to adversely affect" to "actually affects or appears to affect."

The change proposed by the FCC would narrow the reportable conflicts to those that an individual believes would affect or would appear to affect the individual's impartiality. The FCA believes that it would be inappropriate to adopt the FCC's suggestion in light of the fact that the approach taken for Farm Credit banks and associations differs from the regulatory approach for the Corporation. Specifically, the FCA has prohibited certain activities for employees and directors of Farm Credit banks and associations. Because most conflicts are banned in the regulation, a narrower definition of reportable conflicts of interest seems appropriate. By contrast, Corporation directors, officers, and employees are not subject to similar regulatory prohibitions. In the absence of specific prohibitions, the FCA believes it important to have reporting requirements that establish the broadest possible net so that the actual existence of a conflict is determined by the Corporation rather than the reporting individual. The regulation allows the Corporation to review all potential conflicts of interest for materiality before determining that an actual conflict must be resolved or disclosed. Because the FCA believes the different regulatory approaches warrant different reporting requirements, the FCA declines to make the change requested by the FCC.

The FCC asserted that the regulation should be extended to agents in a manner similar to that currently in effect for agents of System banks and associations, especially since many of the various aspects of the Corporation's business are accomplished through agents, and recommended a definition similar to that used for banks and associations.

Although responding to the direction of the 1992 Act does not require that the regulation address conflicts of interest of agents, the FCA considered this suggestion in light of how the Corporation's business activities are structured. Since the statute permits the activities of the Corporation to be carried out through affiliates chartered under state law, the FCA concluded that the intention of section 514 could be subverted were the requirements of the regulation not applied to such affiliates. Accordingly, the final regulation clarifies that the Corporation policy required by the regulation must also apply to officers, directors, and employees of any affiliates the Corporation establishes to carry out its function. The clarification is accomplished by expanding the definition of "Corporation" to include affiliates established under section 8.3(b)(13) of the 1971 Act.

Similarly, with respect to agents that are not affiliates, the final regulation would require the Corporation's policy to address potential conflicts of interest by agents. The FCA recognizes that the Corporation has less control over agents that are not affiliates. The FCA believes the regulation is sufficiently flexible to permit the Corporation to make reasonable distinctions. Definitions of "agent" and "affiliate" have been added in the final regulation.

The FCC suggested that the same basic due process and other protections set forth in the recently proposed System bank and association regulation be incorporated in the final regulation for the Corporation. The FCC deems this especially important in view of the fact that the penalties of part C of title V of the 1971 Act are available to enforce the policy. Specifically, the FCC suggested adding the following:

(1) A requirement that all directors and employees be informed of the regulatory and policy requirements;

(2) A requirement that the policy establish various criteria for business relationships and transactions to provide guidance to directors and employees;

(3) A requirement that there be a reasonable time during which directors and employees may terminate prohibited transactions;

(4) A requirement for recusal procedures;

(5) A requirement for a standards-of-conduct officer and documentation of his or her actions; and

(6) A requirement for appeal procedures.

The FCA has considered each of these suggestions in light of the different approaches taken in the proposed regulations for the Corporation and for System banks and associations. Because of the different approach, the FCA believes that the specific requirements outlined in the proposed bank and association regulation are appropriate in some cases but not others. Specifically:

(1) The FCA agrees that all directors and employees should be informed of the conflict-of-interest requirements and has added § 650.2(g) to accomplish this.

(2) Because § 650.2(a) already requires the Corporation to define the types of activities, transactions, and relationships that could give rise to potential conflicts of interests, criteria for permissible business relationships and transactions will be established, at least by exclusion. Consequently, the FCA finds changing the regulation unnecessary.

(3) The FCA agrees with the FCC that directors, officers, and employees should have an opportunity to bring themselves into compliance when the policy changes and has added language to that effect in § 650.2(g).

(4) In response to a Corporation comment, the FCA added a requirement that the Corporation's policy establish procedures for resolving and disclosing material conflicts of interest. The FCA has not specifically included a requirement that recusal procedures be established because recusal is just one way in which a conflict of interest can be resolved.

(5) The FCA finds it unnecessary to require a standards-of-conduct officer, although the Corporation is free to appoint one, and believes that documentation requirements are already fairly implied from the recordkeeping requirement.

(6) The Corporation may opt to establish appeals procedures as part of its resolution methods. However, the FCA declines to add such a requirement by regulation because procedures for conflict resolution are to be specified by the Corporation. The FCA believes that the appropriateness of appeal procedures can only be evaluated in light of the policy and procedures, which are yet to be developed. Finally, since the Corporation's policy must be adopted by the Board, directors will have an opportunity to address the concerns expressed in the FCC's letter as they deem appropriate.

At the request of the FCC, the FCA changed "highest standards" to "high standards" in § 650.4(a)(1) to achieve consistency with the regulation governing Farm Credit banks and associations. The FCA finds it unnecessary to define "director" as the FCC requested. The FCA previously eliminated the definition in its proposed rules for Farm Credit banks and associations, making both regulations consistent.

List of Subjects in 12 CFR Part 650

Agriculture, Banks, Banking, Conflicts of interest, Rural areas.

For the reasons stated in the preamble, a new part 650 of chapter VI, title 12 of the Code of Federal Regulations is added to read as follows:

PART 650—FEDERAL AGRICULTURAL MORTGAGE CORPORATION

Subpart A—Conflicts of Interest

Subpart B—[Reserved]

Authority: Secs. 5.9, 5.17, 8.11 of the Farm Credit Act; 12 U.S.C. 2243, 2252, 2279aa–11; sec. 514 of Pub. L. 102–552, 106 Stat. 4102.

Subpart A—Conflicts of Interest

§ 650.1 Definitions.

(a) *Agent* means any person (other than a director, officer, or employee of the Corporation) who represents the Corporation in contacts with third parties or who provides professional services such as legal, accounting, or appraisal services to the Corporation.

(b) *Affiliate* means any entity established under authority granted to the Corporation under section 8.3(b)(13) of the Farm Credit Act of 1971, as amended.

(c) *Corporation* means the Federal Agricultural Mortgage Corporation and its affiliates.

(d) *Employee* means any salaried individual working part-time, full-time, or temporarily for the Corporation.

(e) *Entity* means a corporation, company, association, firm, joint venture, partnership (general or limited), society, joint stock company, trust (business or otherwise), fund, or other organization or institution.

(f) *Material*, when applied to a potential conflict of interest, means the conflicting interest is of sufficient magnitude or significance that a reasonable observer with knowledge of the relevant facts would question the ability of the person having such interest to discharge official duties in an objective and impartial manner in furtherance of the interests and statutory purposes of the Corporation.

(g) *Officer* means the salaried president, vice presidents, secretary, treasurer, and general counsel, or other person, however designated, who holds a position of similar authority in the Corporation.

(h) *Person* means individual or entity.

(i) *Potential conflict of interest* means a director, officer, or employee of the Corporation has an interest in a transaction, relationship, or activity that might adversely affect, or appear to adversely affect, the ability of the director, officer, or employee to perform his official duties on behalf of the Corporation in an objective and impartial manner in furtherance of the interest of the Corporation and its statutory purposes. For the purpose of determining whether a potential conflict of interest exists, the following interests shall be imputed to a person subject to this regulation as if they were that person's own interests:

(1) Interests of that person's spouse;

(2) Interests of that person's minor child;

(3) Interests of that person's general partner;

(4) Interests of an organization or entity that the person serves as officer, director, trustee, general partner or employee; and

(5) Interests of a person, organization, or entity with which that person is negotiating for or has an arrangement concerning prospective employment.

(j) *Resolved*, when applied to a potential conflict of interest that the Corporation has determined is material, means that circumstances have been altered so that a reasonable observer with knowledge of the relevant facts would conclude that the conflicting interest would not adversely affect the person's performance of official duties in an objective and impartial manner in furtherance of the interests and statutory purposes of the Corporation.

§ 650.2 Conflict-of-interest policy.

The Corporation shall establish and administer a conflict-of-interest policy that will provide reasonable assurance that the directors, officers, employees, and agents of the Corporation discharge their official responsibilities in an objective and impartial manner in furtherance of the interests and statutory purposes of the Corporation. The policy shall, at a minimum:

(a) Define the types of transactions, relationships, or activities that could reasonably be expected to give rise to potential conflicts of interest.

(b) Require each director, officer, and employee to report in writing, annually, and at such other times as conflicts may arise, sufficient information about financial interests, transactions, relationships, and activities to inform the Corporation of potential conflicts of interest;

(c) Require each director, officer, and employee who had no transaction, relationship, or activity required to be reported under paragraph (b) of this section at any time during the year to file a signed statement to that effect;

(d) Establish guidelines for determining when a potential conflict is material in accordance with this subpart;

(e) Establish procedures for resolving or disclosing material conflicts of interest.

(f) Provide internal controls to ensure that reports are filed as required and that conflicts are resolved or disclosed in accordance with this subpart.

(g) Notify directors, officers, and employees of the conflict-of-interest policy and any subsequent changes thereto and allow them a reasonable period of time to conform to the policy.

§ 650.3 Implementation of policy.

(a) The Corporation shall disclose any unresolved material conflicts of interest involving its directors, officers, and employees to:

(1) Shareholders through annual reports and proxy statements; and

(2) Investors and potential investors through disclosure documents supplied to them.

(b) The Corporation shall make available to any shareholder, investor, or potential investor, upon request, a copy of its policy on conflicts of interest. The Corporation may charge a nominal fee to cover the costs of reproduction and handling.

(c) The Corporation shall maintain all reports of all potential conflicts of interest and documentation of materiality determinations and resolutions of conflicts of interest for a period of 6 years.

§ 650.4 Director, officer, employee, and agent responsibilities.

(a) Each director, officer, employee, and agent of the Corporation shall:

(1) Conduct the business of the Corporation following high standards of honesty, integrity, impartiality, loyalty, and care, consistent with applicable law and regulation in furtherance of the Corporation's public purpose;

(2) Adhere to the requirements of the conflict-of-interest policy established by the Corporation and provide any information the Corporation deems necessary to discharge its responsibilities under this subpart.

(b) Directors, officers, employees, and agents of the Corporation shall be subject to the penalties of part C of title V of the Farm Credit Act of 1971, as amended, for violations of this regulation, including failure to adhere to the conflict-of-interest policy established by the Corporation.

Subpart B—[Reserved]

Dated: February 23, 1994.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 94–4536 Filed 2–28–94; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 90–AWA–11]

Alteration of Class C Airspace; Bangor International Airport, ME

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; amendment and disposition of comments.

SUMMARY: This action amends the final rule published in the **Federal Register** on February 9, 1993, that established an airport radar service area (ARSA) (now, Class C airspace area) at Bangor International Airport, Bangor, ME. The final rule differed from the notice of proposed rulemaking (NPRM) wherein the final rule included the Brewer Airport within the surface area of the Bangor Class C airspace. Subsequently, the final rule was published and comments were solicited concerning the change to the surface area. This action represents the FAA's analysis of the comments and the final determination and rationale for modifying the Bangor Class C airspace area.

EFFECTIVE DATE: 0901 u.t.c., March 31, 1994.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9255.

SUPPLEMENTARY INFORMATION:

History

On April 23, 1991, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish an ARSA (now, Class C airspace) at Bangor International Airport, ME (56 FR 6584). The NPRM stated that the Brewer Airport would be excluded from the surface area. The original cutout for Brewer Airport excluded that airspace below 700 feet mean sea level (MSL) and extended from the Bangor Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) facility 111° radial clockwise to the Bangor 141° radial. The final rule on this action was published on February 9, 1993, with an effective date of April 1, 1993 (58 FR 7738). The rule cited concerns for aircraft operating under visual flight rules (VFR) in close proximity, in and out of the Brewer Airport, with instrument flight rules (IFR) traffic on approach to the Bangor International Airport. This concern prompted the FAA to remove the cutout for Brewer Airport, thereby placing the airport within the surface area of the Bangor Class C airspace area. To ascertain how changing the Bangor Class C airspace area would impact the airspace users, the FAA solicited comments on this issue. Fourteen comments were received during the comment period which closed on April 5, 1993.

Discussion of Comments

Most of the comments recommended that the FAA reconsider the design of the surface area for the Bangor Class C airspace to provide a cutout for the Brewer Airport as originally proposed.

Comments were received from the Brewer Airport Association (BAA) encouraging the FAA to reconsider the cutout, citing the meritorious history of safe aviation activity in the Bangor area. The association wrote that the Brewer Airport and the Bangor International Airport have co-existed without incident or near-incident for 50 years. BAA states that this unblemished track record for safety does not support the FAA's assertion that IFR operations at Bangor International Airport would be adversely affected by operations at Brewer Airport.

The Aircraft Owners and Pilots Association (AOPA) recommended that the FAA sign letters of agreement with the aircraft owners based at Brewer Airport and examine alternatives that would allow the Brewer Airport to be removed from the surface area.

Several of the commenters wrote to emphasize that operations under IFR are not common practice and not anticipated in the future at Brewer Airport.

Many of the commenters stated that they believe a 600-foot ceiling would allow for a 500-foot separation or buffer below the instrument landing system (ILS) glidepath on Runway 33 for approaches to Bangor. In the commenters' opinion, the 500-foot separation or buffer should be adequate to support operations at Bangor.

One commenter stated that he opposes a cutout for the Brewer Airport and does not believe it is in the best interest of the flying public or the residents of Brewer.

Each of the comments were fully considered. In response to these recommendations the FAA has reevaluated the Bangor Class C airspace area and reached the conclusion that the airspace can be safely modified to allow for a cutout to exclude the Brewer Airport from the surface area. The new cutout for the Brewer Airport is not the same as published in the NPRM. That NPRM proposed to exclude the airspace below 700 feet MSL between the 3- to 5-mile radius of the Bangor International Airport, from the Bangor VORTAC 111° radial clockwise to the Bangor VORTAC 141° radial. The new cutout area for Brewer Airport is slightly smaller in size than the original proposal, but only excludes that airspace below 700 feet MSL between the 3- to 5-mile radius of the Bangor International Airport extending between the Bangor VORTAC 122° radial to the Bangor VORTAC 142° radial.

While the Bangor Class C airspace will be modified to exclude the Brewer Airport from the surface area, the remainder of the Class C airspace area will not change.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) modifies the Class C airspace area at the Bangor International Airport, Bangor, ME. Bangor International Airport is a public airport with an operating control tower serviced by a Level II Radar Approach Control Facility.

During the rulemaking process and review, changes were made to include the Brewer Airport in the surface area for the Bangor Class C airspace area. The FAA had concluded that excluding Brewer Airport as proposed in the NPRM could adversely effect IFR traffic at Bangor International Airport. The rule stated that the potential for an unsafe condition existed because of the runway orientation at Brewer Airport in association with operations at Bangor Airport. This condition was intensified because aircraft would have been allowed to operate in and out of Brewer Airport without communications with the Bangor Air Traffic Control Tower (ATCT). The potential impact from the change affecting the Brewer Airport was recognized during the final review process and comments were solicited in the final rule. In reaching a final determination on this issue, the FAA reevaluated the airspace in the Bangor Class C airspace area, all of the user comments and, in particular, the changes affecting the Brewer Airport. The conclusion reached is that the Bangor Class C surface area can be safely modified to accommodate a cutout for the Brewer Airport without impacting operations or safety at the Bangor International Airport yet still meeting the needs of the users at the Brewer Airport. In addition, this modified cutout was aligned along prominent geographical landmarks to help pilots operate and navigate safely and easily within the boundaries of the cutout. These changes will allow aircraft to operate into, at, and out of the Brewer Airport, under VFR, below 700 feet MSL. This modified cutout closely mirrors the previous operating airspace at the Brewer Airport without impacting the approaches into the Bangor International Airport. This airspace, and the associated operations, has existed accident and incident free as noted by the Brewer Airport Association. Aircraft on an instrument approach to the Bangor International Airport pass directly over the top of, and perpendicular to, the Brewer Airport, well above the 700 foot ceiling imposed by the cutout, while aircraft operating at the Brewer Airport would be approaching or departing the airport perpendicular to, and below, the approach path of the large aircraft going into Bangor. Aircraft flying in the pattern at Brewer would be restricted to remain under 700 feet MSL, and would be remaining south of the Brewer Airport, further away from the Bangor International Airport, which further increases the altitude separation between them and any arriving aircraft on a descent going into the Bangor International Airport. Removing Brewer Airport from the Class C surface area also allows aircraft to operate at the Brewer Airport without communicating with the Bangor ATCT, particularly those local based aircraft without radio capabilities.

Although this airspace design differs from the NPRM and the final rule, the FAA believes that the changes to the Bangor Class C airspace area can, and will, accommodate all of the airspace user's needs and not compromise safe operations at either Bangor International, the primary airport, or the Brewer Airport. Class C airspace designations are published in paragraph 4000 of FAA Order 7400.9A date June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class C airspace designation listed in this document will be published subsequently in the Order.

Regulatory Evaluation Summary

The FAA has determined that this rulemaking is not a "significant rulemaking action" as defined by Executive Order 12866 (Regulatory Planning and Review) and is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). The anticipated costs and benefits associated with this action are summarized below. (A detailed discussion of costs and benefits is contained in the full regulatory evaluation contained in the docket for this action.)

Costs

The potential costs of amending the final rule that established the Bangor Class C airspace area could be the revision of aeronautical charts. However, the FAA has determined that these airspace revisions will not impose any costs. The FAA's rationale for this determination are discussed below.

Revising Aeronautical Charts

Modifying the Bangor Class C airspace area will make it necessary to revise the Bangor sectional chart to incorporate the modified Class C airspace boundaries. The FAA currently revises this sectional every six months. Changes of the type required to depict Class C airspace areas are made routinely during charting cycles, and can be considered an ordinary operating cost. Therefore, the FAA does not expect to incur any additional charting costs as a result of modifying the Bangor Class C airspace area. Pilots should not incur any additional costs obtaining current charts depicting Class C airspace because they should be using current charts.

Benefits

The benefits of providing a cutout in the Bangor Class C airspace surface area will be the added convenience and increased operational efficiency. The cutout for the Brewer Airport will generate added convenience for pilots by providing airspace in which they can land and depart from that airport without having to participate in Bangor Class C airspace procedures.

This amendment will increase the operational efficiency for air traffic controllers at Bangor International Airport. Controllers will not have to maintain radio contact with aircraft operating at Brewer Airport in order to provide separation from other aircraft operating in the Bangor Class C airspace area.

Conclusion

Amending the final rule that established the Bangor Class C airspace area will not result in any charting costs. The amendment will provide an added convenience to pilots and increased operational efficiency to air traffic controllers. Thus, the FAA has determined that amending the final rule that established the Bangor Class C airspace area would be cost-beneficial.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. Small entities are independently owned and operated small businesses and small not-for-profit organizations. The RFA requires agencies to review rules that may have "a significant economic impact on a substantial number of small entities."

The FAA contends that amending the Bangor Class C airspace area final rule will not result in a significant economic impact on a substantial number of small entities. This determination is based on the fact that the amendment will not impose any costs and on the fact that the benefits of added convenience are qualitative in nature.

International Trade Impact Assessment

The amendment will only affect U.S. terminal airspace operating procedures at and in the vicinity of Bangor, ME. The amendment will not impose a competitive trade advantage or disadvantage on foreign firms in the sale of either foreign aviation products or services in the United States. In addition, domestic firms will not incur a competitive trade advantage or disadvantage in either the sale of United States aviation products or services in foreign countries.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 4000—Subpart C—Class C Airspace

* * * * *

ANE ME C Bangor, ME [Revised]

Bangor International Airport, ME

(lat. 44°48′27″ N., long. 68°49′41″ W.)

Bangor (BGR) VORTAC

(lat. 44°50′31″ N., long. 68°52′26″ W.)

That airspace extending upward from the surface to and including 4,200 feet MSL within a 5-mile radius of Bangor International Airport, excluding that airspace below 700 feet MSL from the intersection of the 122° radial of the BGR VORTAC and 5-mile radius of the airport, to lat. 44°47′08″ N., long. 68°44′57″ W.; to lat. 44°46′43″ N., long. 68°46′07″ W.; to lat. 44°46′19″ N, long. 68°46′19″ W; to the intersection of the 142° radial of the BGR VORTAC and the 5-mile radius of the airport, thence counterclockwise on the 5-mile radius of the airport to the point of origin; that airspace extending upward from 2,000 feet MSL to and including 4,200 feet MSL within a 10-mile radius of the airport from the 111° radial of the BGR VORTAC clockwise to the 232° radial of the BGR VORTAC; and that airspace extending upward from 1,500 feet MSL to and including 4,200 feet MSL within a 10-mile radius of the airport from the 232° radial of the BGR VORTAC clockwise to the 111° radial of the BGR VORTAC.

* * * * *

Issued in Washington, DC, on February 18, 1994.

Harold W. Becker,

Manager, Airspace—Rules and Aeronautical Information Division.

Note: This appendix will not appear in the Code of Federal Regulations.

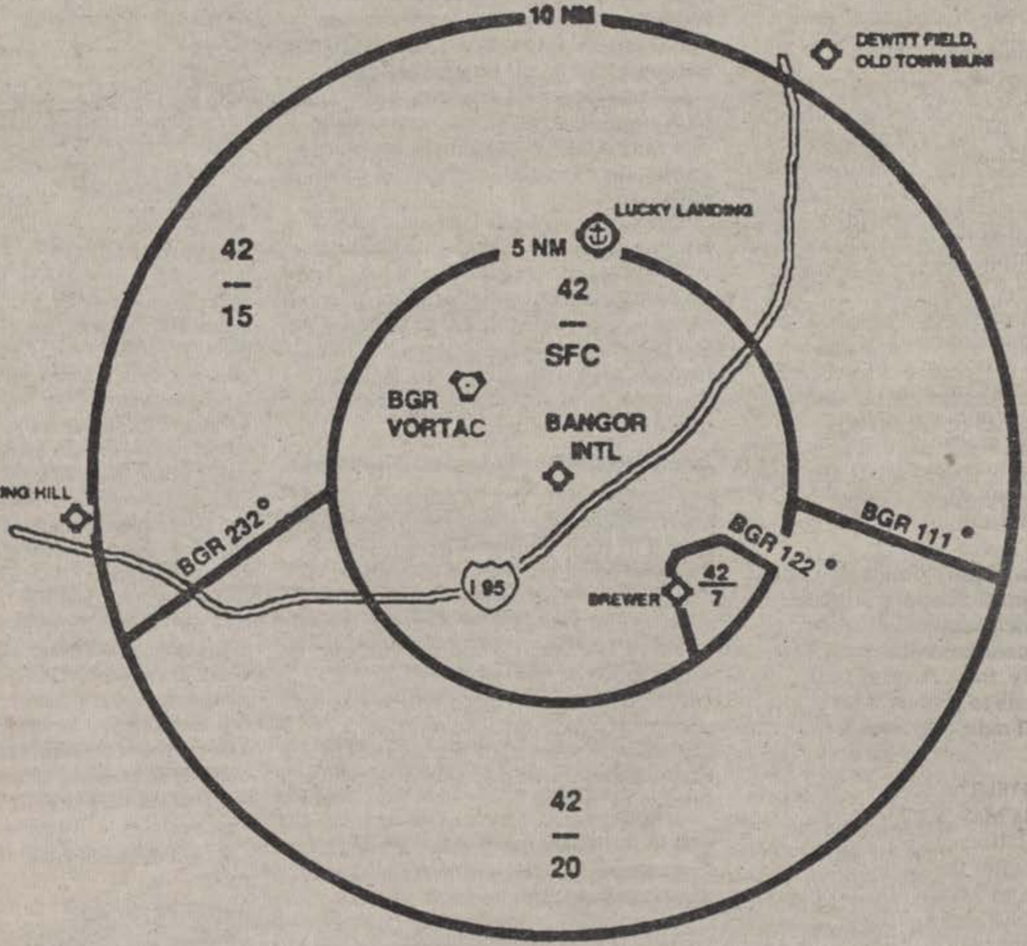
Appendix to Preamble—Bangor, Maine, Class C Airspace

BILLING CODE 4910–13–M

BANGOR, MAINE
CLASS C AIRSPACE

BANGOR INTERNATIONAL AIRPORT
FIELD ELEVATION - 192 FEET

(Not to be used for navigation)



Graphic prepared by the
FEDERAL AVIATION ADMINISTRATION
Cartographic Standards Section
(ATP - 220)

[FR Doc. 94-4468 Filed 2-28-94; 8:45 am]

BILLING CODE 4910-13-C

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 12

Rules Relating to Reparation Proceedings

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: Pursuant to the Futures Trading Practices Act of 1992, the Commodity Futures Trading Commission ("Commission" or "CFTC") published for comment a notice of proposed rulemaking setting forth new regulations (the "Class Action Proposal"),[1] to implement class action suits against registered persons. The Commission also invited the public to respond to specific questions. Upon consideration of the comments received and the Commission's own review of the proposed rule, it has determined not to adopt the Class Action Proposal.

In order to update and streamline Commission procedures in light of its experience, the Commission published for comment a notice of proposed rulemaking to amend and correct its rules relating to reparation proceedings (the "Reparation Rules Proposal").[2] This notice sets forth the regulations in final form.

Additionally, the Commission has received inquiries about punitive damages which suggest that the current regulations need to be clarified. Consequently, the Commission clarified the regulations to reflect Section 222 of the Futures Trading Practices Act of 1992.

EFFECTIVE DATE: The effective date of the regulations is May 2, 1994 and the revised regulations apply only to cases filed on and after that date. The Commission will consider comments from the public about the revisions of the regulations concerning punitive damages until the effective date.

ADDRESSES: Comments should be sent to Jean A. Webb, Secretary of the Commission, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: Merry Lymn, Assistant General Counsel, Office of the General Counsel, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone: (202) 254–9880.

[1] 58 FR 17369 (April 2, 1993).

[2] 58 FR 44623 (August 24, 1993).

SUPPLEMENTARY INFORMATION:

I. Background

In reviewing the reparations proposals, the Commission carefully considered all of the comments and the pertinent regulatory and legislative history. In addition, the Commission evaluated the proposals in light of the National Performance Review ("NPR"), which among other things, requires government agencies to develop a clear sense of mission, inject competition into the conduct of government business, and to measure success by customer satisfaction. To further the goals of NPR, the Commission has engaged in an effort to streamline its bureaucracy, to cut costs, and serve the public in the best way possible. As a part of this effort, the Commission identified the reparations program as one area of review. With the promulgation of these rules, the Commission's purpose is to improve the rules so as to facilitate efficient and just deliberations of reparations complaints in accordance with the Commission's regulatory mission to protect the public and the markets from price manipulation and fraud.

A. The Class Action Proposal

1. Proposed Rules

Section 224 of the Futures Trading Practices Act of 1992 (102 Cong., 2d Sess., Pub. L. 102–546) authorizes an action in reparations to be brought by any one or more persons for and in behalf of such person or persons and other persons similarly situated, if the Commission permits such actions pursuant to a final rule issued by the Commission.

The Futures Trading Practices Act does not mandate that the Commission adopt final rules providing for class actions unless the Commission decides such a rule should be permitted after considering "the potential impact of such actions on resources available to the reparations system * * * and the relative merits of bringing such actions in Federal court." Because the Commission was unsure of the desirability and need for class action suits in reparations it sought comments on the Class Action Proposal and raised several questions to which it requested responses.

2. Comments Received

The Commission received six written comments in response to the Class Action Proposal. The commenters included futures industry associations, bar associations, a law firm, and a futures commission merchant. None of the participants favor the implementation of class action suits in reparations, although their reasons differ.

Overall, the commenters agree that given the ability to pursue class actions in federal court, there would be no benefit to the public by the adoption of procedures to implement class actions before the Commission. While the parties agree that the Commission has more expertise in administering the Commodity Exchange Act than do federal courts, this advantage is considered insignificant compared to the resources and procedural advantages available in the federal courts.

Some parties point out that the highly individualized, fact-intensive cases in reparations are the type of case which courts have often refused to certify for class actions. One commenter notes that because class action suits settle only liability issues and individual hearings would still be required for each class member, judicial economy would not be furthered. Other participants contend that the procedural and administrative requirements of class action suits would increase both the costs to the Commission and the time necessary for resolution of such cases. The parties consider class actions out of place in the reparation forum because it was designed for quick and inexpensive resolution of disputes whereas class action litigation must be conducted with formality and strict attention to procedural issues and is often lengthy.

3. Disposition

The Commission has carefully considered all the comments received in response to the Class Action Proposal and the issues involved. The Commission finds that it should not implement class action suits in reparations at this time because its resources would be used more effectively elsewhere and because the Commission cannot offer a useful alternative to the federal courts. Further, this result is consistent with the NPR because it appears that class actions would not improve service to futures customers and would result in unnecessary spending by the Commission and litigants. Accordingly, the Commission has decided not to adopt the proposed rules implementing class action suits against registered persons.

B. The Reparation Rules Proposal

1. Introduction

In light of the passage of the Futures Trading Practices Act of 1992 and its experience with the reparation rules since they were last amended in 1984, the Commission reexamined the regulations governing reparation proceedings and found a need for certain corrections. Some references are outdated and need to be deleted or updated. Commission practice has disclosed that certain time limits can be compressed and procedures streamlined. Additionally, the Commission considered raising jurisdictional and fee levels and whether the voluntary decisional procedure should be retained. The Commission's notice of proposed rulemaking set forth the needed corrections and revisions and requested public comment.

2. Comments Received

The Commission received 14 written comments in response to the Reparation Rules Proposal. Commenters included futures industry associations, an investor protection organization, two Commission Administrative Law Judges, a Commission Judgment Officer, a professor of law, attorneys representing both claimants and registrants in reparation cases, and registrants which have participated in reparation actions as respondents. The Commission has reviewed each of these comments and, based upon that review, is adopting the rules as proposed with certain modifications.

The Commission is also modifying its rules to clarify any questions arising from implementation of section 222 of the Futures Trading Practices Act of 1992. That section amended Section 14 of the Commodity Exchange Act to provide for punitive damages in a limited class of reparation cases.

II. Reparation Rules

A. Corrections to Regulations

The current regulations became applicable to matters filed on or after April 23, 1984. Since there are no matters pending before the Commission which date back to April 23, 1984, the date reference is unnecessary and is being deleted.

The definitional section was not in alphabetical order. The Commission believes that re-ordering the definitions alphabetically will make it easier for the user and facilitate adding or deleting definitions in the future. Consequently, the definitional section is re-ordered alphabetically.

The Office of Government Ethics established uniform standards of ethical conduct for officers and employees of the Federal Government (57 FR 35006, Aug. 7, 1992). These were published as new government-wide regulations superseding certain individual agency regulations. Consequently, the reference in § 12.7 to 17 CFR 140.735–3(b)(3) is updated to 5 CFR 2635.101(b).

Additionally, the current regulations refer to the "Chief of the Opinions Section." There is no longer an "Opinions Section." Consequently, references to the "Chief of the Opinions Section" are changed to the "Deputy General Counsel for Opinions" and references to "Opinions Section" have been changed to "Office of the General Counsel."

There were no comments regarding the proposed corrections. Accordingly, the Commission is making the corrections as indicated in its prior notice. Typographical errors also have been corrected.

B. Revision of Rules

1. Response to Complaint

Rule 12.16 affords a respondent 45 days to respond to a reparation complaint and permits the Director of the Office of Proceedings to extend the filing deadline for an additional 15 days. In providing such a lengthy period, the Commission had expected parties to pursue early settlement discussions. Unfortunately, this has not been the case.[3]

In contrast to the 45 day period in the Commission rule, Rule 12(a) of the Federal Rules of Civil Procedure requires that an answer to a complaint be filed within 20 days after service of the summons and complaint. The Commission reviewed the relative generosity of the length of time for filing a response in its rules, and found that adjudicating reparation claims could be expedited. Thus, to further the express purpose of the reparation procedures "to provide a just, speedy and inexpensive determination of the issues" (§ 12.1(a)), the Commission proposed to reduce the time for filing the response to the complaint set forth in § 12.16 to 25 days, and the additional time that the Director of the Office of Proceedings could extend that deadline to ten days. The Commission believed that this would reduce the amount of total time in which to file a response from a maximum of 60 days to about half that time without infringing on the ability of the parties to present their cases. Moreover, this reduction also would shorten the total time for adjudicating claims. The Commission proposed to revise § 12.16 to compress the filing deadlines accordingly.

a. *Comments received.* Only two parties commented on this issue. They disagree as to whether reducing the time for response to a complaint afforded by Rule 12.16 would infringe upon a respondent's ability to defend an action.

b. *Disposition.* The Commission has considered the comments and has determined that since defendants in federal court are required to respond in 20 days, affording respondents in reparations 25 days to respond is not onerous, especially since an extension of ten days is available. Consequently, for the reasons set forth in the Reparation Rules Proposal, and because it should improve service by compressing overall time for adjudicating complaints, the Commission has decided to adopt the time frame proposed.

2. Discovery

Section 12.30(d) provides that all discovery notices and requests be served within 40 days after the Proceedings Clerk notifies the parties of the commencement of a proceeding. Because the Commission believes that the disposition of proceedings can be expedited by compressing the discovery period, it proposed to amend § 12.30(d) to reduce the time for serving discovery notices and requests to 20 days after notification by the Proceedings Clerk of the commencement of a proceeding.

a. *Comments received.* Only three persons expressed an opinion. One contends that the present rules do not cause significant delays and another points out that extra time is needed when respondents and their attorneys reside in different states and rely on the postal system. The parties point out that defendants, who do not know beforehand that a complaint will be filed, will be disadvantaged if there is too little time to prepare discovery requests. The third commenter argues that the reduction in time is too drastic and would invite an increase in motions for extensions of time and untimely discovery requests. It suggests reducing the time for serving discovery notices and requests to 30 days.

b. *Disposition.* The Commission has reconsidered its proposal to reduce the time for serving discovery requests from 40 days to 20 days after notification by the Proceedings Clerk of the commencement of a proceeding and has decided to amend Rule 12.30(d) to reduce that period to 30 days. The Commission believes that this compromise responds to the needs of the public as expressed in the comments and will reduce the total time to adjudicate a significant number of cases without inviting an increase in the number of motions for extensions of time.

[3] See 41 FR 3994, 3995 (January 27, 1976).

3. The Voluntary Decisional Procedure

At the time it was instituted, the voluntary procedure was seen as meeting the desires of customers for an arbitration style forum. In the Reparation Rules Proposal, the Commission discussed the voluntary procedure at length. It pointed out the advantages of the voluntary procedure and compared it to the arbitration programs of NFA, the exchanges, and other private forums. At the same time, the Commission questioned the continuing need for the voluntary procedure and sought public comment as to its usefulness.

The public was encouraged to focus attention on the general nature of the reparation program as one of the significant antifraud tools and customer protections created by Congress in the Commodity Exchange Act. The Commission also invited comment on whether the elimination of voluntary proceedings as an option in reparations would shift cases away from the public record to private decisionmakers, and if so, what the impact would be on the benefits and costs of these proceedings.

a. *Comments received*. Virtually all of the parties addressed this issue: about half favor retention of the voluntary procedure and half are opposed. Several of the parties who favor elimination of the voluntary procedure also question the continuing need for the entire reparations program.

Those who favor retention of the program are primarily those who use it. A respondent with experience in several voluntary proceedings asserts that proceedings before Judgment Officers compare favorably to private arbitrations. The parties who favor retention of the program contend that the voluntary procedure is vital to preserving the confidence of small investors who harbor doubts about the fairness of industry-sponsored arbitration. Others note that reparation proceedings in general as well as voluntary proceedings are an effective tool for monitoring registrants' behavior and keeping complaints about the industry in the public eye.

Several parties contend that industry sponsored arbitration is fair and at least as efficient as the voluntary procedure. These parties assert that the Commission resources invested in the voluntary procedure could be put to better use without harming customers. They point to statistics which, they argue, show that complainants have as good a chance, if not better, of prevailing before industry arbitration as before the Commission. These parties also suggest that the Commission evaluate the continuing need for the entire reparations program in light of the alternative fora available to customers.

b. *Disposition*. The Commission reviewed all the comments carefully and has decided to retain the voluntary procedure. In the Commission's view retention of the program is consistent with the goals of NPR. Members of the public who use the voluntary procedure appear pleased with it and are not in favor of being forced to rely on the private sector for redress of their complaints. Thus, the goal of customer satisfaction would be furthered by retention of the voluntary procedure.

In addition, the Commission's Mission Statement includes oversight of the commodity futures industry and protection of the public and the markets from price manipulation and fraud. The reparation program and the voluntary procedure specifically address fraud committed upon futures customers. Consequently, retention of the program is important to carry out this mandate. Moreover, industry proceedings are confidential whereas complaints brought before the Commission and its decisions are on the public record. Accordingly, the Commission is able to influence industry behavior and thereby further its mandate to oversee the industry. For all of these reasons, the Commission has determined to retain the voluntary procedure.

4. Filing Fees

Filing fees of $25 for the voluntary decisional procedure, $100 for the summary decisional procedure, and $200 for the formal decisional procedure were set in 1984 (49 FR 6602, February 22, 1984). In the Reparation Rules Proposal, the Commission proposed raising the filing fees for the voluntary decisional procedure to $50, for the summary decisional procedure to $125, and to $250 for the formal decisional procedure and to amend § 12.25 accordingly. Additionally, the Commission proposed to amend § 12.106 to authorize Judgment Officers to assess the cost of the filing fee as part of the damage award in voluntary proceedings.

a. *Comments received*. Only a few parties addressed this proposal. These parties contend that the fees should be raised even higher in order to discourage frivolous claims. One party urges the Commission to adopt fees more commensurate with the cost of administering the reparation program.

b. *Disposition*. The purpose of the reparation program is to provide a service to commodity futures customers and, at the same time, to exercise oversight of the industry. Thus, it is in the Commission's interest to assess fees which reimburse costs to some extent. However, the Commission recognizes that if fees are too high they may discourage customers from seeking redress with the Commission, thereby impeding its important oversight mission. The Commission believes that the proposed fee structure will address its twin goals of service and oversight. Accordingly, the Commission is adopting the fees as proposed.

5. Summary Decisional Procedure

The summary decisional procedure was created by the Commission based upon the belief that parties with smaller claims should be entitled to a less expensive, more expeditious procedure which offers a greater likelihood of an early damage award and recovery. The Reparation Rules Proposal sets forth a brief history of the ceiling for damage claims eligible for summary proceedings. In short, the ceiling was originally $2,500, was raised to $5,000, and is now $10,000.

Upon examination of the workload of the Office of Proceedings, the Commission proposed raising the ceiling from $10,000 to $30,000 in order to increase the efficiency of that office. In its notice, the Commission stated: "Allowing Judgment Officers to hear a greater number of cases will free the Administrative Law Judges to concentrate on enforcement proceedings and cases in which the damages claimed are greater than $30,000. Should the Judgment Officers become overburdened, ALJ's can be assigned cases below $30,000." 58 FR 44623, 44625.

Cases under the summary decisional procedure are usually decided based upon the written submissions of the parties. The current rules allow a Judgment Officer to order a hearing only upon motion of a party. The Commission proposed modifying the rules to authorize Judgment Officers to order oral hearings on their own motion. Hearings are conducted by telephone unless the parties agree to a hearing in Washington, DC.

Currently, the rules require that the parties be given 60 days notice prior to a hearing. The proposed rules require that the Judgment Officers schedule the hearing with consideration for the convenience of the parties and allow for 15 days notice for telephonic hearings and 30 days notice for in-person hearings. The proposed rules also make it clear that failure to appear at telephonic and in-person hearings or to provide correct telephone numbers is subject to sanctions, including possible default or dismissal.

a. *Comments received.* Only the proposal to raise the ceiling from $10,000 to $30,000 inspired comments. Both Administrative Law Judges object. One party even suggests lowering the ceiling to $2,500.

Some parties express the opinion that raising the ceiling will have a significant detrimental impact on the ability of a respondent to adequately defend an action. They argue that parties to a proceeding are entitled to the greatest procedural protection which includes an in-person hearing.

On the other hand, one commenter contends that it is unlikely that there will be any significant negative impact on affected claimants and respondents because the continued availability of an oral hearing will safeguard against any infringement on a fair fact-finding process.

b. *Disposition.* Since there were no objections to the proposal to improve telephonic hearings under the summary decisional procedure by authorizing Judgment Officers to order a telephonic hearing on their own motion, compressing the notice period, and providing for sanctions, these modifications are adopted as proposed. As explained in the Reparation Rules Proposal, the modifications will give the Judgment Officers needed flexibility and accelerate the disposition of proceedings. Because the new rules provide for telephonic hearings upon the initiation of the Judgment Officer, the Commission believes that summary proceedings will provide due process more efficiently than in the past. The Commission anticipates some cost savings from this. Further, telephonic hearings save money for the litigants since no one has to travel to the hearing site. Thus, consistent with NPR, the Judgment Officers are given enhanced powers, customers are better served, and efficiency is promoted.

The parties which oppose raising the ceiling do not address the matter directly. Rather, they generally call into question the adequacy of the procedural protections available in a summary decisional proceeding. The Commission determined that telephonic hearings are consistent with the requirements of fundamental fairness when it instituted this procedure in 1984. See 49 FR 6602, 6614 (February 22, 1984). As the Commission explained in adopting this regulation (*id.*):

* * * The Commission is confident that a Judgment Officer will be able to assess the demeanor of witnesses from listening to their voices. Because the Judgment Officer can be expected to hold doubts about the credibility of any telephone witness whose testimony does not sound genuine, because he has the authority to conduct his own examination of such witnesses to confirm or dispel those doubts, and because telephone assertions can be measured against the documentary evidence of record, the Commission does not believe that the potential for the coaching of witnesses will have any effect on the Judgment Officer's ability to discern the truth.

The Commission recognizes that fundamental fairness requires a process that safeguards the reliability of the fact-finding process. Telephonic hearings include representation by counsel and cross-examination. Frequently the presiding officers clarify the factual record through their examination of witnesses. The Commission's experience has shown that telephonic hearings provide for fair and reliable fact-finding and an adequate and appropriate basis for a credibility determination. *Compare, Sterling* v. *District of Columbia Department of Social Services,* 513 A. 2d 253, 255 (D.C. 1986) ("[W]e believe that telephone hearings are a reasonable means of conserving fiscal and administrative resources."). See also, *Casey* v. *O'Bannon,* 536 F. Supp. 350, 353 (E.D. Pa. 1982) (refusing to enjoin a telephonic hearing program on due process grounds and holding that "hearing officers can effectively judge credibility over the phone by noting voice responses, pauses, levels of irritation and other factors").

As the Commission said in 1984 (49 FR 6602, 6614 *supra*):

* * * [T]he Commission believes that its Judgment Officers will possess the ability to comprehend the often complex factual contexts of commodity-related disputes, to recognize critical issues of fact and law in the proceeding, to evaluate oral testimony and to conduct oral examination, and to render a well-considered initial decision in the proceeding. Accordingly, the Commission believes that there is no basis for precluding Judgment Officers from exercising any functions performed by Administrative Law Judges.

Since the Judgment Officers have demonstrated their competence to decide cases from the time the summary procedure was instituted, neither the Commission nor the parties should be deprived of the savings in both cost and time which will inure to their benefit by raising the ceiling from $10,000 to $30,000.

Accordingly, in order to increase the efficiency of the Office of Proceedings, the Commission is raising the ceiling from $10,000 to $30,000.

C. Clarification

Section 222 of the Futures Trading Practices Act of 1992 amended Section 14 of the Commodity Exchange Act to provide for punitive damages in reparation cases. Section 14 of the Commodity Exchange Act, as amended, provides that any person complaining of any violation of any provision of this Act or any rule, regulation, or order issued pursuant to this Act by any person who is registered under this Act may, at any time within two years after the cause of action accrues, apply to the Commission for an order awarding—(A) actual damages proximately caused by such violation. If an award of actual damages is made against a floor broker in connection with the execution of a customer order, and the futures commission merchant which selected the floor broker for the execution of the customer order is held to be responsible under section 2(a)(1) for the floor broker's violation, such futures commission merchant may be required to satisfy such award; and (B) in the case of any action arising from a willful and intentional violation in the execution of an order on the floor of a contract market, punitive or exemplary damages equal to no more than two times the amount of such actual damages. If an award of punitive or exemplary damages is made against a floor broker in connection with the execution of a customer order, and the futures commission merchant which selected the floor broker for the execution of the customer order is held to be responsible under section 2(a)(1) for the floor broker's violation, such futures commission merchant may be required to satisfy such award if the floor broker fails to do so, except that such requirement shall apply to the futures commission merchant only if it willfully and intentionally selected the floor broker with the intent to assist or facilitate the floor broker's violation.

On its face, this statutory provision appears to be self-executing. However, some questions have arisen regarding its implementation. Consequently, the Commission has determined that it should clarify its regulations in order to notify the public as to how it intends to administer this provision.[4]

The first question is whether punitive damages will affect the type of proceeding accorded under the regulations. For example, in a case with claimed actual damages of $20,000 and claimed punitive damages of $40,000,

[4] In this connection, the Commission wishes to make clear that it does not view this provision as requiring actual execution of an order before punitive damages may be awarded.

which level of proceeding would be instituted? The Commission has determined that the governing factor in all cases should be total damages claimed; therefore, in the example above, the case would be assigned to the formal decisional procedure. Sections 12.2, 12.13, 12.18, 12.25, 12.204, 12.210, and 12.314 have been revised accordingly.

Second, in order to put a claimant on notice as to the prerequisites for such an award, and assure that respondents have requisite notice to defend claims for punitive damages, the Commission has revised sections 12.2 and 12.13. As a prerequisite to an award of punitive damages, a complainant must claim actual and punitive damages, prove actual damages, and demonstrate that punitive damages are appropriate. Claimants will thus be on notice as to the requirements; respondents will have requisite notice to defend claims for punitive damages.

The Administrative Procedure Act, 5 U.S.C. 553(b) requires in most instances that a notice of proposed rulemaking be published in the **Federal Register** and that opportunity for comment be provided when an agency promulgates new regulations or changes to existing regulations. Section 553(b) sets forth an exception, however, for rules of agency organization, procedure, or practice. The Commission has determined that these revisions to its reparation rules to clarify its interpretation of the punitive damage provision of the Act constitute rules of agency practice or procedure and, accordingly, that notice and comment procedures are not required.

III. Related Matters

Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.* (1988), requires that agencies, in adopting rules, consider the impact of those rules on small businesses. The Commission has previously determined that part 12 reparation rules are not subject to the provisions of RFA because they relate solely to agency organization, procedure, and practice.[5] Nevertheless, because they do not impose regulatory obligations on commodity professionals and small commodity firms, and because the corrections and amendments will expedite and improve the reparation procedures, the Commission does not expect the rule to have a significant economic impact on a substantial number of small business entities.

Accordingly, pursuant to Rule 3(a) of the RFA (5 U.S.C. 605(b)), the Acting Chairman, on behalf of the Commission, certifies that this rule will not have a significant economic impact on a substantial number of small entities. The Commission received no comments concerning its determination in this regard.

[5] 49 FR 6602, 6621 (February 22, 1984).

List of Subjects in 17 CFR Part 12

Administrative practice and procedure, Commodity exchanges, Commodity futures, Reparations

PART 12—RULES RELATING TO REPARATIONS

Part 12 of chapter I of title 17 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 12 is revised to read as follows:

Authority: 7 U.S.C. 4a(j), 12(a)(5), and 18.

§ 12.1 [Corrected]

2. In the first sentence of § 12.1(c) the comma after "complaints" is removed; the comma after "thereto" is removed and a period is added in its place. The rest of the paragraph is removed.

3. Section 12.2 is revised to read as follows:

§ 12.2 Definitions.

For purposes of this part:

Act means the Commodity Exchange Act, as amended, 7 U.S.C. 1, *et seq.*;

Administrative Law Judge means an administrative law judge appointed pursuant to the provisions of 5 U.S.C. 3105;

Commission means the Commodity Futures Trading Commission;

Commission decisional employee means an employee or employees of the Commission who are or may reasonably be expected to be involved in the decisionmaking process in any proceeding, including, but not limited to: A Judgment Officer; members of the personal staffs of the Commissioners, but not the Commissioners themselves; members of the staffs of the Administrative Law Judges, but not an Administrative Law Judge; members of the staffs of the Judgment Officers; members of the Office of the General Counsel; members of the staff of the Office of Proceedings; and other Commission employees who may be assigned to hear or to participate in the decision of a particular matter.

Complainant means a person who, individually or jointly with others, has applied to the Commission for a reparation award pursuant to section 14(a) of the Act, but shall not include a cross claimant or any other type of third party claimant. The term "complainant" under these rules applies equally to two or more persons who have applied jointly for a reparation award;

Complaint means any document which constitutes an application for a reparation award pursuant to section 14(a) of the Act, regardless of whether it is denominated as such;

Counterclaim means an application for a reparation award by a respondent against a complainant which satisfies the requirements of § 12.19. A counterclaim does not mean a cross claim or other type of third party claim;

Director of the Office of Proceedings means an employee of the Commission who serves as the administrative head of that Office, with responsibility and authority to assure that these part 12 Reparation Rules are administered in a manner which will effectuate the purposes of section 14(b) of the Act. The Director is authorized to convene meetings of all personnel in the Office of Proceedings, including Administrative Law Judges and their personally assigned law clerks. The Director shall have the authority to delegate his duties to administer §§ 12.15, 12.24, 12.26 and 12.27, and, shall have the authority to assign and, if necessary, reassign the duties of, and set reasonable standards for performance for, all personnel in the Office, including the Judgment Officers, but not including Administrative Law Judges and their personally assigned law clerks;

Ex parte communication means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, but does not include:

(1) A discussion, after consent has been obtained from all of the named parties, between a party and a Judgment Officer or Administrative Law Judge, or the staffs of the foregoing, pertaining solely to the possibility of settling the case without the need for a decision;

(2) Requests for status reports, including questions relating to service of the complaint, and the registration status of any persons, on any matter or proceeding covered by these rules; or

(3) Requests made to the Office of Proceedings or the Office of the General Counsel for interpretation of these rules.

Formal decisional procedure means, where the amount of total damages claimed exceeds $30,000, exclusive of interest and costs, a procedure elected by the complainant or a respondent where the parties may be granted an oral hearing. A formal decisional proceeding is governed by subpart E;

Hearing means that part of a proceeding which involves the submission of proof, either by oral presentation or written submission;

Interested person means any party, and includes any person or agency permitted limited participation or to state views in a reparation proceeding, or other person who might be adversely affected or aggrieved by the outcome of a proceeding (including the officers, agents, employees, associates, affiliates, attorneys, accountants or other representatives of such persons), and any other person having a direct or indirect pecuniary or other interest in the outcome of a proceeding;

Judgment Officer means an employee of the Commission who is authorized to conduct the proceeding and render a decision in a summary decisional proceeding or a voluntary decisional proceeding. In appropriate circumstances, the functions of a Judgment Officer may be performed by an Administrative Law Judge;

Office of the General Counsel refers to the members of the Commission's staff who provide assistance to the Commission in its direct review of any proceeding conducted pursuant to these rules;

Office of Proceedings means that Office within the Commission comprised of the Administrative Law Judges, Judgment Officers, the Director of that Office, the Proceedings Clerk, and members of the staffs of the foregoing, which administers these part 12 Reparation Rules, other than the rules authorizing direct review by the Commission;

Order means the whole or any part of a final procedural or substantive disposition of a reparation proceeding by the Commission, an Administrative Law Judge, a Judgment Officer, or the Proceedings Clerk;

Party means a complainant, respondent or any other person or agency named or admitted as a party in a reparation matter;

Person means any individual, association, partnership, corporation or trust;

Pleading means the complaint, the answer to the complaint, any supplement or amendment thereto, and any reply to the foregoing;

Proceeding means a case in which the pleadings have been forwarded and in which a procedure has been commenced pursuant to § 12.26;

Proceedings Clerk means that member of the Commission's staff in the Office of Proceedings who shall maintain the Commission's reparation docket, assign reparation cases to an appropriate decisionmaking official, and act as custodian of the records of proceedings;

Punitive damages means damages awarded (no more than two times the amount of actual damages) in the case of any action arising from a willful and intentional violation in the execution of an order on the floor of a contract market. An order does not have to be actually executed to render a violation subject to punitive damages. As a prerequisite to an award of punitive damages, a complainant must claim actual and punitive damages, prove actual damages, and demonstrate that punitive damages are appropriate;

Registrant means any person who—

(1) Was registered under the Act at the time of the alleged violation;

(2) Is subject to reparation proceedings by virtue of section 4m of the Commodity Exchange Act, regardless of whether such person was ever registered under the Act; or

(3) Is otherwise subject to reparation proceedings under the Act;

Reparation award means the amount of monetary damages a party may be ordered to pay;

Respondent means any person or persons against whom a complainant seeks a reparation award pursuant to section 14(a) of the Act;

Summary decisional procedure means, where the amount of total damages claimed does not exceed $30,000, exclusive of interest and costs, a procedure elected by the complainant or the respondent wherein an oral hearing need not be held and proof in support of each party's case may be supplied in the form and manner prescribed by § 12.208. A summary decisional proceeding is governed by subpart D;

Voluntary decisional procedure means, regardless of the amount of damages claimed, a procedure which the complainant and the respondent have chosen voluntarily to submit their claims and counterclaims, allowable under these rules, for an expeditious resolution by a Judgment Officer. By electing the voluntary decisional procedure, parties agree that a decision issued by a Judgment Officer shall be without accompanying findings of fact and shall be final without right of Commission review or judicial review. A voluntary decisional proceeding is governed by subpart C of these rules.

§ 12.6 [Corrected]

4. In § 12.6(b) the word "the" is added between "expiration of" and "time".

§ 12.7 [Corrected]

5. In § 12.7(b) introductory text, the phrase "communication prohibited by paragraph (b)" is revised to read "communication prohibited by paragraph (a)".

6. In § 12.7(c)(3) the reference to "17 CFR 140.735–3(b)(3)." is revised to read "5 CFR 2635.101(b).".

§ 12.10 [Corrected]

7. In § 12.10(a)(1) add "a" between "course of" and "proceeding".

8. In § 12.10(a)(3) the phrase "Chief of the Opinions Section" is revised to read "Deputy General Counsel for Opinions".

§ 12.13 [Corrected and Amended]

9. In § 12.13(a) the phrase "(as defined in § 12.2(y))" is revised to read "(as defined in § 12.2)".

10. § 12.13(b)(1)(v) and (viii) are revised to read as follows:

§ 12.13 Complaint; election of procedure.

* * * * *

(b) * * *

(1) * * *

(v) The amount of damages the complainant claims to have suffered and the method by which those damages have been computed, the amount of punitive damages (no more than two times the amount of such actual damages) the complainant claims, if any, and how complainant plans to demonstrate that punitive damages are appropriate;

* * * * *

(viii) An election of a decisional procedure pursuant to subpart C, D, or E. (A procedure pursuant to subpart D may be elected only if the total amount of damages claimed, exclusive of interest and costs, does not exceed $30,000. A procedure pursuant to subpart E may be elected only if the total amount claimed as damages, exclusive of interest and costs, exceeds $30,000); and

* * * * *

11. In § 12.13(b)(2) the phrase "believes that" is revised to read "believes the".

12. § 12.16 is revised to read as follows:

§ 12.16 Response to complaint.

Within 25 days after the complaint has been served by the Office of Proceedings on the registrant, or within such additional time (not to exceed 10 days absent extraordinary circumstances) as the Director of the Office of Proceedings, or his/her delegee may grant, for good cause shown, each registrant shall either—

(a) Satisfy the complaint in accordance with § 12.17 of these rules; or

(b) Answer the complaint in the manner prescribed by § 12.18 of these rules.

13. § 12.18(a)(7) is revised to read as follows:

§ 12.18 Answer; election of procedure.

* * * * *

(a) * * *

(7) An election of an alternative decisional procedure pursuant to subparts C, D, or E of these rules. (A proceeding pursuant to subpart D may be elected only if the amount of actual damages claimed in the complaint or as counterclaims, exclusive of interest, costs, and punitive damages, does not exceed $30,000. A procedure pursuant to subpart E may be elected only if the amount of actual damages claimed in the complaint or as counterclaims, exclusive of interest, costs, and punitive damages exceeds $30,000;

* * * * *

§ 12.25 [Amended]

14. In § 12.25(a)(1) "$25.00;" is revised to read "$50.00;".

15. In § 12.25(a)(2) "$10,000," is revised to read "$30,000," and "$100.00." is revised to read "$125.00.".

16. In § 12.25(a)(3) "$10,000," is revised to read "$30,000," and "$200.00." is revised to read "$250.00."

17. In § 12.25(b)(1) "$10,000" is revised to read "$30,000".

18. In § 12.25(b)(2) "$10,000" is revised to read "$30,000", and "$175.00." is revised to read "$200.00.".

19. In § 12.25(c) "$175.00" is revised to read "$200.00".

§ 12.26 [Amended]

20. In § 12.26(a) "within 60 days thereafter." is revised to read "within 50 days thereafter.".

21. In § 12.26(b) "$10,000," is revised to read "$30,000,", and "within 60 days thereafter." is revised to read "within 50 days thereafter.".

22. In § 12.26(c) "$10,000," is revised to read "$30,000", "within 60 days thereafter." is revised to read "within 50 days thereafter.", and the words "forward the pleadings and materials of record to a Proceedings Officer for discovery purposes, and" are removed.

§ 12.30 [Amended]

23. In § 12.30(d) the phrase "within forty (40) days (and all discovery shall be completed within sixty (60) days" is revised to read "within 30 days (and all discovery shall be completed within 50 days)" and the last sentence is removed.

§ 12.106 [Amended]

24. In § 12.106(c) the phrase "(other than costs assessed as a sanction for abuse of discovery)" is revised to read "(other than the filing fee and costs assessed as a sanction for abuse of discovery)".

25. Section 12.201(g) is revised to read as follows:

§ 12.201 Functions and responsibilities of the Judgment Officer.

* * * * *

(g) If an oral hearing is ordered, to preside at the hearing, which shall include the authority to receive relevant evidence, to administer oaths and affirmations, to examine witnesses, and to rule on offers of proof;

* * * * *

§ 12.204 [Amended]

26. In § 12.204(a) "$10,000" is revised to read "$30,000".

27. In § 12.204(b) "$10,000" is revised to read "$30,000".

28. Section 12.208(b) is revised to read as follows:

§ 12.208 Submissions of proof.

* * * * *

(b) *Oral testimony and examination.* The Judgment Officer may order an oral hearing for the presentation of testimony and examination of the parties and their witnesses when appropriate and necessary for the resolution of factual issues, upon motion by either a party or the Judgment Officer. An oral hearing held under this section will be convened by conference telephone call as provided in § 12.209(b), except that an in-person hearing may be held in Washington, D.C., under the circumstances set forth in § 12.209(c).

29. § 12.209 is revised to read as follows:

§ 12.209 Oral testimony.

(a) *Generally.* When the Judgment Officer determines that an oral hearing is necessary and appropriate, such oral hearing will be held either by telephone or in person in Washington, D.C., as set forth below. The Judgment Officer, in his or her discretion with consideration for the convenience of the parties and their witnesses, will determine the time and date of such hearing. During an oral hearing, in his or her discretion, the Judgment Officer may regulate appropriately the course and sequence of testimony and examination of the parties and their witnesses and limit the issues.

(b) *Telephonic hearings.* When a Judgment Officer has determined to hold an oral hearing by telephone, an order to that effect will be issued at least 15 days prior to the hearing notifying the parties of the date and time of the hearing. The order will direct the parties to confirm, at least 48 hours in advance of the hearing, that the correct telephone numbers for the parties and their witnesses are on file with the Office of Proceedings, and warn that failure to provide correct telephone numbers may be deemed waiver of that party's right to participate in the hearing, to present evidence, or to cross-examine other witnesses. If a party is unavailable by telephone at the appointed time, any other party in attendance may present testimony, and the Judgment Officer also may impose any appropriate sanction listed in § 12.35. All telephonic hearings will be recorded electronically but will be transcribed only upon direction of the Judgment Officer (if necessary) or in the event of Commission review. The parties may secure a copy of the recording of the hearing from the Proceedings Clerk upon written request and payment of the cost of the recording.

(c) *Washington, D.C. hearings.* In exceptional circumstances and when an in-person hearing is determined to be necessary in resolving the issues, the Judgment Officer may order an in-person hearing in Washington, D.C. upon written request by a party and the agreement of at least one opposing party. The Judgment Officer will issue notice of the time, date, and location of an in-person hearing to the parties at least 30 days in advance of the hearing. Except as otherwise provided herein, an in-person hearing will be held and recorded in the manner prescribed in § 12.312(c) through (f) of these rules. A party not agreeing to appear at the hearing in Washington, D.C., may be ordered to participate by telephone. Any party not appearing in person or by telephone will be deemed to have waived the right to participate in the hearing, to present evidence, or to cross-examine other witnesses; further, that party may be subject to such action under § 12.35 as the Judgment Officer may find appropriate. The Judgment Officer may order any party who requests or agrees to appear at a hearing in Washington, D.C. and fails to appear without good cause, to pay any reasonable costs unnecessarily incurred by parties appearing at such a hearing.

(d) *Compulsory process.* An application for a subpoena requiring a non-party to participate in a telephonic hearing or to appear at an in-person hearing in Washington, D.C., may be made in writing to the Judgment Officer without notice to the other parties. The standards for issuance or denial of an application for a subpoena, the service and travel fee requirements, and the method for enforcing such subpoenas are set forth at § 12.313 of these rules.

§ 12.210 [Corrected and Amended]

30. In § 12.210(a) the phrase "pay reparation award" is revised to read "pay a reparation award".

31. In § 12.210(b)(4) "respondent's violations, which" is revised to read "respondent's violations, the amount of punitive damages, if any, for which respondent is liable to complainant, which" and "$10,000," is revised to read "$30,000," both times that it appears.

§ 12.314 [Amended]

32. In § 12.314(b)(4) "violations, and the amount," is revised to read "violations, the amount of punitive damages if warranted, and the amount,"

§ 12.315 [Amended]

33. In the heading of § 12.315 "$10,000." is revised to read "$30,000.".

34. In § 12.315 "$10,000," is revised to read "$30,000," both times that it appears.

§ 12.404 [Corrected]

35. In § 12.404 the phrase "of proceeding on appeal of review before" is revised to read "of proceedings on appeal before".

§ 12.408 [Corrected]

36. The heading of § 12.408 is revised to read "Delegation of authority to the Deputy General Counsel for Opinions."

37. In the first sentence of § 12.408 revise the phrase "Chief of the Opinions Section" to read "Deputy General Counsel for Opinions".

38. In § 12.408(b) revise the phrase "Chief of the Opinions Section" to read "Deputy General Counsel for Opinions".

Issued by Order of the Commission.

Dated: February 23, 1994.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–4574 Filed 2–28–94; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 450

[Docket No. 89N–0440]

Antibiotic Drugs; New Tests and Specifications for Doxorubicin Hydrochloride and Its Dosage Forms

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the antibiotic drug regulations by revising the accepted standards for doxorubicin hydrochloride bulk and its dosage forms to reflect advances in analytic chemistry and improvements in the manufacturing technology of this antibiotic drug. These actions are being taken at the request of a manufacturer and will provide better quality control of this product.

DATES: Effective March 1, 1994; written comments, notice of participation, and request for a hearing by March 31, 1994; data, information, and analyses to justify a hearing by May 2, 1994.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Peter A. Dionne, Center for Drug Evaluation and Research (HFD–520), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–0335.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of May 3, 1990 (55 FR 18617), FDA proposed to amend the antibiotic drug regulations for doxorubicin hydrochloride bulk and its dosage forms to reflect the significant improvement in the extraction and chromatographic separation methods since the original promulgation of regulations for doxorubicin hydrochloride in 1976. This improvement in manufacturing technology and analytical testing methodology has resulted in the production of highly purified drug substances and finished dosage forms.

Specifically, FDA proposed to amend the regulations for doxorubicin hydrochloride bulk to: (1) Revise the doxorubicin hydrochloride content limits from 900 to 1,100 micrograms per milligram (µg/mg) on the anhydrous basis to 970 to 1,020 µg/mg on the anhydrous and solvent-free basis; (2) revise the high-pressure liquid chromatography (HPLC) test currently specified for determining the content of doxorubicin hydrochloride; (3) revise the pH range limits from a range of 3.8 to 6.5 to a range of 4.0 to 5.5; (4) add a total solvent residue test with an upper limit of not more than 2.5 percent; (5) add a chromatographic purity test with a total impurity specification of not more than 3.0 percent; (6) delete the microbiological agar diffusion assay for determining microbiological activity; and (7) revise the solution used for the disposition of waste material from synthetic detergent to dilute sodium hypochlorite.

FDA also proposed to amend the regulations for doxorubicin hydrochloride for injection to: (1) Revise the HPLC test currently specified for determining the content of doxorubicin hydrochloride; (2) revise the pH range limits from a range of 3.8 to 6.5 to a range of 4.5 to 6.5; (3) add a provision to the product description permitting the product to contain methylparaben; (4) replace the pyrogen test with the U.S. Pharmacopeia (U.S.P.) Bacterial Endotoxin Test with an upper limit of not more than 2.2 U.S.P. endotoxin units/mg of doxorubicin hydrochloride; (5) delete the microbiological activity specification for the doxorubicin hydrochloride used in making the product; (6) delete the depressor substances test for the product and add the depressor substances specification for the doxorubicin hydrochloride used in making the product; and (7) revise the solution used for the disposition of waste material from synthetic detergent to dilute sodium hypochlorite.

FDA also proposed to the amend the regulation for doxorubicin hydrochloride injection to: (1) Revise the HPLC test currently specified for determining the content of doxorubicin hydrochloride; (2) replace the pyrogen test with the U.S.P. Bacterial Endotoxin Test with an upper limit of not more than 2.2 U.S.P. endotoxin units/mg of doxorubicin hydrochloride; (3) delete the microbiological activity specification for the doxorubicin hydrochloride used in making the product; and (4) revise the solution used for the disposition of waste material from synthetic detergent to dilute sodium hypochlorite.

Interested persons were given until July 2, 1990, to submit written comments on this proposal and until June 4, 1990, to submit requests for an informal conference. One comment was received from the manufacturer requesting the proposed changes. This comment involved the description of the preparation of the resolution test solution and the system suitability requirements for the new HPLC method. The manufacturer requested that the preparation method in U.S.P. XXII, supp. I, be used and that the system suitability requirements be those in U.S.P. XXII, supp. I.

FDA believes that both the method in the proposal and the U.S.P. method of preparation for the resolution test solution give satisfactory production of doxorubicinone and, therefore, will present both methods in this final rule. FDA believes that the term "asymmetry factor" is the correct one because measurements are being made on both sides of the HPLC peak and not just the