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Rules and Regulations

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

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Revision of Delegations of Authority

AGENCY: Office of the Secretary, USDA.
ACTION: Final rule.

SUMMARY: This document amends the delegations of authority from the Secretary of Agriculture and General Officers of the Department to delegate authority to enter into contracts, grants, cooperative agreements, and cost-reimbursable agreements relating to the conduct of agricultural research, extension, or teaching activities.

EFFECTIVE DATE: September 30, 1986.

FOR FURTHER INFORMATION CONTACT: Robert L. Siegler, Deputy Assistant General Counsel, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-6035.

SUPPLEMENTARY INFORMATION: The delegations of authority of the Department of Agriculture are amended to delegate to the Assistant Secretary for Science and Education and to the Administrator, Agricultural Research Service, the Administrator, Cooperative State Research Service, the Administrator, Extension Service, and the Director, National Agricultural Library, authority to enter into contracts, grants, cooperative agreements, and cost-reimbursable agreements, under sections 1472, 1473A, and 1473C of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended by Pub. L. 99-198, December 23, 1985.

The amended section 1472 (7 U.S.C. 3318) authorizes use of contracts, grants, and cooperative agreements to further the research, extension, and teaching programs of the Department and specifically authorizes, notwithstanding the provisions of 31 U.S.C. 6301-6308, use of a cooperative agreement as the legal instrument reflecting a relationship between the Department of Agriculture and a State cooperative institution, State department of agriculture, college, university, other research or educational institution or organization, Federal, or private agency, organization, or individual, or any other party, when the objective of the agreement will serve a mutual interest of the parties to the agreement in agricultural research, extension, or teaching activities, including statistical reporting, and all parties will contribute resources to the accomplishment of those objectives. While the named officials currently are delegated authority to enter into contracts, grants, or cooperative agreements pursuant to 7 U.S.C. 3318, in view of the recent amendment to that section expanding the authority to use cooperative agreements under certain conditions, the expanded authority is hereby delegated by the republication of those delegations.

Section 1473A (7 U.S.C. 3319a) authorizes, notwithstanding any other provisions of law, use of cost-reimbursable agreements with State cooperative institutions without regard to any requirement for competition, for the acquisition of goods or services, including personal services to carry out agricultural research, extension, or teaching activities of mutual interest. Section 1473C (7 U.S.C. 3319c) authorizes the use of cooperative agreements to share the cost of a research project or to allow the use of a Federal facility or service on a cost-sharing or cost reimbursable basis for purposes of developing new technology to further research programs.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required and this rule may be made effective less than 30 days after publication in the **Federal Register**.

Further, since this rule relates to internal management, it is exempt from the provisions of Executive Order 12291. Finally, this action is not a rule as defined by the Regulatory Flexibility Act, and thus, is exempt from the provisions of that Act.

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

Accordingly, Part 2, Subtitle A, Title 7, Code of Federal Regulations is amended as follows:

1. The authority citation for Part 2 continues to read as follows:

Authority: 5 U.S.C. 301 and Reorganization Plan No. 2 of 1953, unless otherwise noted.

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretary for International Affairs and Commodity Programs, the Under Secretary for Small Community and Rural Development, and Assistant Secretaries

2. Section 2.30 is amended by republishing paragraph (a)(40), and by adding new paragraphs (a)(79) and (a)(80) to read as follows:

§ 2.30 Delegations of authority to the Assistant Secretary for Science and Education.

* * * * *

(a) * * *

(40) Enter into contracts, grants, or cooperative agreements to further research, extension, or teaching programs in the food and agricultural sciences (7 U.S.C. 3318).

* * * * *

(79) Enter into cost-reimbursable agreements relating to agricultural research, extension, or teaching activities (7 U.S.C. 3319a).

(80) Enter into cooperative agreements to share the cost of a research project or to allow the use of a Federal facility or service on a cost-sharing or cost reimbursable basis for purposes of developing new technology to further research programs (7 U.S.C. 3319c).

* * * * *

Subpart N—Delegations of Authority by the Assistant Secretary for Science and Education

3. Section 2.106 is amended by republishing paragraph (a)(40), and by adding new paragraphs (a)(46) and (a)(47) to read as follows:

§ 2.106 Administrator, Agricultural Research Service.

(a) * * *

(40) Enter into contracts, grants, or cooperative agreements to further research programs in the food and agricultural sciences (7 U.S.C. 3318).

* * * * *

(46) Enter into cost-reimbursable agreements relating to agricultural research, extension, or teaching activities (7 U.S.C. 3319a).

(47) Enter into cooperative agreements to share the cost of a research project or to allow the use of a Federal facility or service on a cost-sharing or cost reimbursable basis for purposes of developing new technology to further research programs (7 U.S.C. 3319c).

4. Section 2.107 is amended by republishing paragraph (a)(19), and by adding new paragraph (a)(23) to read as follows:

§ 2.107 Administrator, Cooperative State Research Service.

(a) * * *

(19) Enter into contracts, grants, or cooperative agreements to further research programs in the food and agricultural sciences (7 U.S.C. 3318).

* * * * *

(23) Enter into cost-reimbursable agreements relating to agricultural research, extension, or teaching activities (7 U.S.C. 3319a).

5. Section 2.108 is amended by republishing paragraph (a)(20), and by adding new paragraph (a)(24) to read as follows:

§ 2.108 Administrator, Extension Service.

(a) * * *

(20) Enter into contracts, grants, or cooperative agreements to further extension programs in the food and agricultural sciences (7 U.S.C. 3318).

* * * * *

(24) Enter into cost-reimbursable agreements relating to agricultural research, extension, or teaching activities (7 U.S.C. 3319a).

6. Section 2.109 is amended by republishing paragraph (a)(14), and by adding a new paragraph (a)(17) to read as follows:

§ 2.109 Director, National Agricultural Library.

(a) * * *

(14) Enter into contracts, grants, or cooperative agreements to further library and related information programs supporting research, extension, and teaching programs in the food and agricultural sciences (7 U.S.C. 3318).

* * * * *

(17) Enter into cost-reimbursable agreements to further library and related information programs supporting research, extension, and teaching programs in the food and agricultural sciences (7 U.S.C. 3319a).

For Subpart C.

Dated: September 10, 1986.

Richard E. Lyng,

Secretary of Agriculture.

For Subpart N.

Dated: September 10, 1986.

Orville G. Bentley,

Assistant Secretary for Science and Education.

[FR Doc. 86-22348 Filed 9-29-86; 4:56 pm]

BILLING CODE 3410-03-M

Agricultural Marketing Service

7 CFR Part 1137

Milk in the Eastern Colorado Marketing Area; Order Suspending Certain Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This action suspends, for the months of September 1986 through February 1987, the limit on the period of automatic pool plant status for a supply plant which met pool shipping standards during a previous September through February period under the Eastern Colorado order. Suspension of the provisions was requested by a cooperative association representing producers supplying the market. The action is necessary to assure that the milk of producers who regularly have supplied the fluid milk needs of the market will continue to be priced and pooled under the order without requiring unnecessary and uneconomic movements of milk.

EFFECTIVE DATE: October 1, 1986.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-7311.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding.

Notice of Proposed Suspension, Issued August 27, 1986; published September 3, 1986 (51 FR 31340).

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. This action lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and of the order regulating the handling of milk in the Eastern Colorado marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on September 3, 1986 (51 FR 31340) concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views, and arguments thereon. No comments opposing the proposed action were received.

After consideration of all relevant material, including the proposal in the notice and other available information, it is hereby found and determined that for the months of September 1986 through February 1987 the following provisions of the order do not tend to effectuate the declared policy of the Act:

In the second sentence of § 1137.7(b), the words "plant which has qualified as a", and "of March through August".

Statement of Consideration

This action suspends for the months of September 1986 through February 1987 the limit on the period of automatic pool plant status for a supply plant which met pool shipping standards during a previous September through February period.

The suspension was requested by Mid-America Dairymen, Inc., (Mid-Am), a cooperative association of producers supplying the market. The cooperative association indicated that producer receipts on the Eastern Colorado order during the first seven months of 1986 have exceeded those of the same period of 1985 by 10.7 percent, while producer milk used in Class I increased only 1.3 percent. The cooperative attributed the increased milk supply to good weather conditions, ample feed supplies and the conclusion of the Milk Diversion Program. Mid-Am recognized that the Dairy Termination Program will reduce milk supplies, but stated that ample supplies of locally produced milk will still be available to the Eastern Colorado marketing area. Mid-Am estimates that during the period of the suspension up to 75 tanker loads of milk

will have to be moved each month from the Denver area eastward to surplus handling plants in Kansas and Nebraska. At the same time, without the suspension Mid-Am would be required to move 50 percent of the receipts at its supply plants located in Kansas and Nebraska to the Denver area. Without the suspension, the cooperative expects to incur substantial unnecessary costs for the movement of its milk solely for the purpose of pooling the milk of its members currently associated with the Eastern Colorado order. No comments in opposition to the proposed action were received. Mid-Am filed comments that provided additional information in support of the suspension.

Milk production is significantly above year-earlier levels and consequently a greater proportion of the available milk supplies will have to be shipped to manufacturing plants for surplus uses. Favorable weather conditions and ample feed supplies provide strong indications that the current production trends will not abate substantially in spite of the Dairy Termination Program. Significant increases in Class I use are not expected. In view of these circumstances, it is concluded that the provisions limiting the period of automatic pool plant status for a supply plant that met pool shipping standards during a previous September through February period should be suspended for the months of September 1986 through February 1987 to ensure the orderly marketing of milk supplies. The suspension will prevent uneconomic movements of some milk through pool plants merely for the purpose of qualifying it for producer milk status under the order.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area in that without extensive unnecessary and expensive hauling and handling substantial quantities of milk from producers who regularly supply the market otherwise would be excluded from the marketwide pool, thereby causing a disruption in the orderly marketing of milk;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded an opportunity to file written data, views or arguments concerning this suspension. No views in opposition to this action were received.

Therefore, good cause exists for making this order effective upon publication in the **Federal Register.**

List of Subjects in 7 CFR Part 1137

Milk marketing orders, Milk, Dairy products.

It is therefore ordered, That the aforesaid provisions § 1137.7(b) of the Eastern Colorado order are hereby suspended for the months of September 1986 through February 1987, as follows:

PART 1137—MILK IN THE EASTERN COLORADO MARKETING AREA

1. The authority citation for 7 CFR Part 1137 continues to read as follows:

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

§ 1137.7 [Amended]

2. In 7 CFR Part 1137, in the second sentence of § 1137.7(b), the words "plant which has qualified as a," and "of March through August".

Effective Date: Upon publication in the **Federal Register.**

Signed at Washington, DC., on September 25, 1986.

Karen K. Darling,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 86–22166 Filed 9–30–86; 8:45 am]

BILLING CODE 3410–22–M

Farmers Home Administration

7 CFR Part 2003

Functional Organization of the Farmers Home Administration

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration amends its regulations to reflect a reorganization of Divisions and Staffs reporting to the Deputy Administrator, Financial and Administrative Operations. This change will result in a more efficient utilization of Agency personnel resources. This change provides the functional statements for the affected organizational units.

EFFECTIVE DATE: October 1, 1986.

FOR FURTHER INFORMATION CONTACT: Timothy Ryan, Director, Personnel Division, Room 6900 South Building, 14th and Independence Avenue, SW, Washington, DC 20250, Telephone (202) 382–1056.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures established in Departmental Regulation 1512–1 which implements Executive Order 12291 and has been determined to be exempt from those requirements because it involves only internal agency management.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register.**

Some major changes include the elimination of one Assistant Administrator position, abolishment of two Divisions (the Financial and Productivity Analysis Division and the Organization, Management and Training Division), creation of the Financial and Management Analysis Staff reporting to the Deputy Administrator for Management, and creation of the Information Resources Management Division. In addition, several titles are changed.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

This final action has been reviewed in accordance with FmHA Instruction 1940–G, "Environmental Program." FmHA has determined that this final action does not constitute a major Federal action significantly affecting the quality of the human environment, and, in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, and Enviromental Impact Statement is not required.

List of Subjects in 7 CFR Part 2003

Organization and functions (government agencies).

Therefore, Chapter XVIII, Title 7 of the Code of Federal Regulations is amended as follows:

PART 2003—ORGANIZATION

1. The authority citation for Part 2003 is revised to read as follows:

Authority: 7 U.S.C. 1981 and 1989; 42 U.S.C. 1471 and 1480; 5 U.S.C. 301 and 552; 7 CFR 2.23 and 2.70.

Subpart A—Functional Organization of the Farmers Home Administration

2. Exhibit A is amended by revising the text from the heading titled "07 06 Deputy Administrator Financial and Administration Operations" to the end of the exhibit to read as follows:

Exhibit A—U.S. Department of Agriculture, Farmers Home Administration

* * * * *

07 06 Deputy Administrator for Management

Assignment of Functions

1. Responsible to the Administrator or Associate Administrator for the formulation of policy for the Farmers Home Administration (FmHA) in all areas of support services for FmHA's programs.

2. Provides overall supervision and direction to FmHA's staff support activities including administrative planning, accounting, budgeting, personnel, systems development, use of ADP, administrative services, information resources management, organization, financial matters, and management improvement.

3. Directs and supervises subordinate organizational activities consisting of the Assistant Administrator for Automated Information Services; the Assistant Administrator, Finance Office; the Assistant Administrator for Administration; the Budget Staff; and the Financial and Management Analysis Staff.

4. Maintains liaison and working relationship with the Department's Management Council; works with the Assistant Secretary for Administration and associated staff offices, the Office of Budget and Program Analysis (OBPA), the Office of Management and Budget (OMB), the Office of Personnel Management (OPM), General Services Administration (GSA), Treasury, Congressional staffs, and others as necessary to carry out assigned responsibilities.

07 06 00 0001 Financial and Management Analysis Staff

Assignment of Functions

1. Responsible to the Administrator and the Deputy Administrator for Management, for debt management initiatives, cash management initiatives, management analysis, and for management, financial and productivity improvement programs.

2. Develops and manages FmHA's debt collection efforts, including compliance with the Debt Collection Act. Monitors FmHA debt management systems to assess effectiveness and impact. Develops and manages FmHA's program for offsetting the salary of Federal employees who are delinquent on FmHA loans. Initiates pilots or tests of new and innovative methods, techniques, and processes in management.

3. Develops and manages FmHA cash management initiatives. Monitors FmHA cash management systems to assess effectiveness and impact. Initiates pilots or tests of new and innovative methods, techniques, and processes in cash management.

4. Responsible for FmHA's management analysis function. Initiates and performs all types of management improvement, productivity improvement, efficiency, and effectiveness studies and analyses. Serves as an in-house consultant and troubleshooter for management problems and concerns.

5. Responsible for FmHA implementation of OMB Circulars A–76, A–70, and A–129, and for other management, financial, and productivity improvement programs, including Presidential management initiatives.

6. Maintains liaison and working relationship with the USDA Financial Council, the Office of Management Reform, Office of Finance and Management (OFM), OMB, Treasury Department, and other appropriate Federal Agencies and private sector establishments that impact on or have an interest in the assigned program areas.

07 06 00 0002 Budget Staff

Assignment of Functions

1. Responsible to the Administrator and Deputy Administrator for Management, for FmHA's budget, travel, borrowing and interest rate management.

2. Develops plans and procedures for the formulation, presentation and execution of the total FmHA budget; on the basis of financial and budgetary planning, assists the Deputy Administrator and program officials in support of decision-making activities and establishment of policy necessary for efficient and effective management of FmHA programs; recommends reprogramming and policy changes to meet FmHA goals and objectives; recommends budgetary levels, budget strategy and program implementation.

3. Provides leadership and direction for planning, formulation, justification, presentation, execution, control and review of the total FmHA budget effort; responsible for preparation of FmHA budget estimates in order to develop the FmHA budget submission to the Secretary's Office, OMB and Congress; establishes and maintains controls over program and administrative funds to assure compliance with Agency policy, approved apportionments, Congressional interest and applicable laws and regulations.

4. Maintains liaison and working relationship with National program and administrative officials, FmHA State Directors, and other field personnel; participates in State meetings, conferences and other sessions and gives advice and counsel on budget operations and operating levels; serves as FmHA liaison for budget and financial program with Congressional Committees and staff, OMB, the General Accounting Office (GAO), the Secretary's Office, Office of the General Counsel (OGC), Office of Inspector General (OIG), and other USDA agencies, Treasury, Housing and Urban Development (HUD), and other agencies and, as required, news reporters, public and private interest groups and the general public.

5. Responsible for total Agency budget effort from planning and formulation to execution control and review. Reviews and recommends for approval by the Administrator or Deputy Administrator for Management changes in operating levels for personnel, travel, overtime, contracts and other reprogramming of funds.

6. Responsible for travel procedures in FmHA. Develops and recommends travel policies, prepares travel regulations, and reviews and evaluates travel programs of FmHA. Administers the Diners Club travel card program, use of travel agencies, and the employee relocation service.

7. Responsible for revolving fund analysis related to cash forecasting, timing of the sale of notes inventory, Treasury borrowings, outlay planning and analysis, and management of FmHA rates and interest projections.

07 06 01 Assistant Administrator, Finance Office

Assignment of Functions

1. Responsible to the Administrator and the Deputy Administrator for Management, for the development of policies that affect the operation of the accounting system.

2. Responsible for the day-to-day operation of the accounting system, including system maintenance; making all financial reports required by management and for the FmHA budget based on data in the accounting system; maintaining the supplies warehouse and meeting the needs of field offices for equipment and supplies within funds available for that purpose and under general direction of the Administrative Services Division; maintenance of necessary obligation and related funds control; and other duties as required by the Deputy Administrator for Management.

3. Directs and supervises subordinate organizational activity consisting of the Fiscal and Accounting, Operations, and Administrative Support functions of the Finance Office.

4. Maintains liaison and working relationship with the Department data processing manager to provide Automated Data Processing (ADF) support for the accounting operation, and with GAO on audit matters relating to the accounting systems.

5. Prepare Finance Office budget plans as required. Monitors and controls approved budgets including authorized personnel staffing.

6. Responsible for overall Departmental excess personal property coordination functions for disposal of personal property outside the Washington, D.C., area, the object of which is to effect reutilization or disposal of personal property Departmentwide. Maintains liaison with Departmental staff offices and agencies, GSA, and state and local governments.

07 06 03 Assistant Administrator for Administration

Assignment of Functions

1. Responsible to the Administrator and the Deputy Administrator for Management, for developing FmHA personnel, organization, and administrative services policies.

2. Develops procedure for and carries out a personnel program for the FmHA, including recruitment, evaluation, classification, employee relations, position management, training, and grievance appeals; develops a plan for and carries out career development and training activities for the FmHA; maintains personnel management systems; analyzes and reviews organizational relationsips within Farmers Home

Administration and makes recommendations on changes.

3. Establishes and maintains a directives system for FmHA, to cover the clearance, approval and maintenance of formal regulations, administrative notices, and similar procedural announcements for FmHA.

4. Provides for FmHA space analysis and review services, forms management activities, mail management, communications system operations, printing and reproduction requirements, property management, contracting programs and records management.

5. Directs and supervises subordinate organizational activity consisting of the Personnel Division and the Administrative Services Division.

6. Maintains liaison and working relationships with the Departmental Office of Personnel (OP) and OBPA, OPM, GSA, OMB and other agencies in the areas reflected above.

7. Develops a budget for the training program for FmHA within overall budget constraints; provides major input to administrative budget for the FmHA and coordinates that budget with responsibilities of the Finance Office in this area.

07 06 03 0001 Personnel Division

Assignment of Functions

1. Responsible to the Administrator, Deputy Administrator for Management, and Assistant Administrator for Administration, for the development, implementation, and evaluation of plans, policies, and procedures necessary for the efficient and orderly management of the FmHA nationwide personnel management and training programs.

2. Plans, develops, and implements FmHA-wide programs and activities related to: Employment, placement, and merit promotion; organization, position management, and classification; performance management and appraisal, and incentive awards and employee recognition, employee and labor-management relations (including adverse actions, conduct, discipline, grievances, and appeals); employee compensation and benefits; employee safety and health; training and career development. These activities are carried out within the legal mandates of Title 5 and 7 of the United States Code (including such specific legislation as 5 U.S.C. chapter 51 and subchapter III of Chapter 53 (classification), Civil Service Reform Act of 1978, Civil Rights Act of 1964 as amended, Fair Labor Standards Act, 5 U.S.C. Chapter 41 (training), etc.), various Executive Orders, Comptroller General decisions, decisions of the Merit Systems Protection Board (MSPB), the Federal Labor Relations Authority (FLRA), and the Equal Employment Opportunity Commission (EEOC), and OPM, and OP regulations.

3. Serves as the primary source of expert technical advice to FmHA management on personnel management, organization, and training programs and activities. Provides direct operating services involving personnel management and training for employees of the National Office, and those operating services that have not been specifically delegated to State Offices and the Finance Office for employees in the field. Provides technical direction, oversight, and guidance to State Offices and the Finance Office on organization, personnel management, and training programs and activities conducted at the field level. Maintains and administers, directly or oversees at the field level, FmHA and USDA personnel and training information systems (including ADP based systems), procedures, and personnel action processing operations.

4. Monitors and evaluates the effectiveness of organization, personnel management, and training at all levels of the Agency and recommends improvements. Collects and analyzes data, conducts organizational, occupational, and other staff studies on personnel management and training issues, identifies the need for program changes, operations/processing systems and procedures, and develops options and recommendations for management decision.

5. Maintains liaison and working relationship with the Department's Secretarial Offices, OGC, OP; with OPM, FLRA, MSPB, and EEOC; with USDA Agency Personnel Offices, Federal Courts and Congressional Offices, and other Federal Departments and Agencies; with nonprofit and public organizations and educational institutions, and the national leadership of FmHA employee organizations and associations and recognized labor unions representing FmHA employees.

07 06 03 0003 Administrative Services Division

Assignment of Functions

1. Responsible to the Administrator, Deputy Administrator for Management, and Assistant Administrator for Administration, for developing, recommending and executing standards, policies and procedures for operation of the FmHA directives system and the provision of administrative services to the FmHA, including implementation of the Freedom of Information and Privacy Acts.

2. Responsible for review and coordination of all Agency directives issuance and public participation functions including publication of regulations and legal notices in the **Federal Register**; real and personal property, space, procurement, printing, and reproduction control, communications, correspondence and mail management, including control of jacketed correspondence; forms; records retention and disposition; tort claims; word processing service; coordination of National Office review of requests to close or relocate field offices; contracting and grant agreements; and OMB circular A–40 compliance plan of action. Monitors responses to requests for information under the Freedom of Information Act; responds to inquiries received in the National Office, provides counsel and guidance to field offices on problem cases, and reviews and takes action on any proposed denials or appeals.

3. Maintains liaison and working relationship with other USDA agency Administrative Services Divisions and participates in the Department Administrative Services Division Council; works closely with General Services Administration and Office of Management and Budget; provides policy direction and serves as liaison with the Administrative Support Division in the Finance Office.

4. Prepares substantial input to administrative budget plans as required and administers administrative budget within administrative responsibilities.

07 06 04 Assistant Administrator for Automated Information Services

Assignment of Functions

1. Responsible to the Administrator and the Deputy Administrator for Management, for developing, and implementing Information Resources Management (IRM) policies, plans, and systems within the FmHA. Also responsible for identifying and applying ADP technology, other systems technology, and other IRM technologies to support program and administrative activities within FmHA.

2. Responsible for identifying FmHA information needs (both financial and management) and initiating actions to capture and report such information. Provides the policies, procedures, systems and ADP technology necessary to implement new and enhanced systems for the Agency designing, gathering data for and initiating reporting of management information as required by FmHA management officials, Department officials, other executive branch officials, and Congress; determining and managing the ADP software and hardware needed to serve FmHA most effectively at least cost; preparing the FmHA 5-year IRM plan, IRM budget, and IRM policies for FmHA use.

3. Directs and supervises subordinate organizational activity consisting of the Financial Systems Division, the Management Systems Division, the Accounting Systems Planning Division, and the Information Resources Management Division.

4. Maintains liaison and working relationship with FmHA personnel, the Office of Information Resources Management (OIRM), OFM, GAO, OMB, the Congress, and others as necessary to perform the above duties.

07 06 04 0001 Financial Systems Division

Assignment of Functions

1. Responsible to the Administrator, Deputy Administrator for Management, and Assistant Administrator for Automated Information Services, for formulating policies and recommendations for design and development of new ADP system applications projects needed to support program policy implementation for loan making, loan servicing, cash and debt management, and program accounting activities for the FmHA. This responsibility also includes modifications to the existing financial systems in operation at the USDA Kansas City Computer Center based on regulatory changes, changes in law, changes in technology, and changes necessary to improve the effectiveness of FmHA operations.

2. Responsible for execution of ADP system design, development, and testing functions required to implement new program financial systems and modifications to existing program financial systems for the FmHA.

These systems support the regulatory and policy agenda of the Agency in the areas of loan making, loan servicing, cash management and debt management.

3. Responsible for providing the centralized data base administration function for the FmHA, and the technical support necessary to ensure user availability of the FmHA nationwide network of terminals and microprocessors.

4. Maintains liaison and working relationship with OIRM, other USDA Agencies, FmHA program staff, FmHA administrative staff, and FmHA Finance Office as required to accomplish assigned responsibilities.

07 06 04 0002 Management Systems Division

Assignment of Functions

1. Responsible to the Administrator, Deputy Administrator for Management, and Assistant Administrator for Automated Information Services, for the development of policies, methods, procedures, and strategies for ADP support systems for non accounting administrative systems and field office automation.

2. Designs, develops, tests, implements, documents, maintains and supports FmHA-wide management information systems in support of program area and administrative management.

3. Manages the planning, design, development, and implementation of administrative, office automation, and field office systems utilizing contractors and government staff; provides ADP technical and timesharing support to FmHA personnel.

4. Provides long-range ADP planning information on FmHA management information systems, office automation, and field office systems; provides ADP procurement support for equipment and software FmHA-wide.

5. Maintains liaison and working relationships with FmHA personnel, OIRM and other Federal and professional ADP organizations as necessary to perform assigned responsibilities.

07 06 04 0003 Accounting Systems Planning Division

Assignment of Functions

1. Responsible to the Administrator, Deputy Administrator for Management, and Assistant Administrator for Automated Information Services, for planning and functional specifications related to the design and development of new automated accounting system projects. This responsibility also includes modifications to the existing automated accounting systems based on regulatory changes, changes in law, and changes necessary to improve the effectiveness of FmHA regulations.

2. Establishes plans, develops functional specifications for new accounting systems and modifications to existing accounting systems for the FmHA. These systems support the regulatory and policy agenda of the Agency in the areas of loan making and loan servicing.

3. Coordinates the establishment of priorities for implementing proposed accounting systems and enhancements to existing automated systems.

4. Develops and carries out the formulation of alternative development configurations in support of accounting system efforts and directs cost-benefit analysis of several such ADP configurations which could be adopted by the FmHA.

5. Maintains liaison with various program areas, Finance Office managers, other users, OFM, and others as necessary to perform assigned responsibilities.

07 06 04 0004 Information Resources Management Division

Assignment of Functions

1. Responsible to the Administrator, Deputy Administrator for Management, and Assistant Administrator for Automated Information Services, for ensuring that all Departmental IRM regulations, and other Federal IRM related regulations are followed within FmHA.

2. Responsible for the development of policies, FmHA regulations, standards, and guidelines for all IRM activities; coordination and liaison with OIRM, OFM, OMB, GSA, and other Federal organizations as required concerning IRM policies, OMB Circulars, GSA regulations, and other IRM related regulations as necessary to perform assigned responsibilities.

3. Manages the IRM long-range planning process and the IRM budget development for the FmHA, including development of the annual plan for submission to the Department; provides policies, procedures, and coordination of the technical IRM Review Boards; develops and maintains FmHA telecommunications policies.

4. Provides the data administration function, including controlling of reports, inventories, standards, and electronic information holdings reviews. Develops and maintains FmHA reports management policy and procedures. Administers the weekly and monthly production of a variety of Management Information Systems reports.

5. Provides a focal point and coordination for FmHA participation in USDA cooperative processing initiatives and information sharing initiatives. Provides the single point of contact with the Department for all Technical Approval requests, IRM Standards, and IRM Reviews.

6. Provides the liaison function between the National Office and the Finance Office for review and clearance of FmHA regulations, policies, and procedures.

Dated: September 3, 1986.

Dwight O. Calhoun,

Acting Administrator, Farmers Home Administration.

[FR Doc. 86-22221 Filed 9-30-86; 8:45 am]

BILLING CODE 3410-07-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 524, 526, 532, 545, 556, 571, and 584

Gold Bullion Coin Transactions

Dated: September 26, 1986.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board") is amending its regulations pertaining to gold and gold related transactions to promote the sale of American eagle gold coins ("American eagles") to be minted and issued by the United States Treasury ("Treasury"). Specifically, the Board is amending its regulations to permit Federal associations to purchase, sell, and pay interest or dividends in American eagles and to permit the Federal Home Loan Banks ("Banks") to engage in transactions in the coins as a means of serving member institutions. The Board is also amending its regulations to permit, to the extent authorized by applicable law, State-chartered insured institutions to purchase, sell, and pay interest or dividends in American eagles, and service corporations of insured institutions and multiple savings and loan holding companies to purchase and sell American eagles. American eagles will be available to the public beginning October 1, 1986, and the Treasury will apply any profit it makes to reducing the Federal debt.

EFFECTIVE DATE: October 1, 1986.

FOR FURTHER INFORMATION CONTACT: Michael D. Solomon, Attorney, Regulations and Legislation Division, Office of General Counsel, (202) 377-6432, Federal Home Loan Bank Board, 1700 G Street, N.W., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION: On December 17, 1985, the President signed into law the "Gold Bullion Coin Act of 1985," Pub. L. 99-185, 99 Stat. 1177 ("Coin Act"). The new law amends Title 31 of the United States Code by authorizing the minting of gold bullion coins. Four American eagle coins, with face values of $5, $10, $25, and $50, containing from one-tenth to one troy ounce of gold, will be minted and issued by the Treasury, and will be available for sale to the public beginning October 1, 1986. While these coins will be of particular interest to collectors, they will also constitute legal tender worth their face value if offered for payment.

American eagles will be available for purchase directly from the Treasury at a price equal to the market value of the bullion at the time of sale plus a premium for the cost of minting, marketing, and distribution. Bulk sales will be offered at a discount. Any profit earned by the Treasury will be deposited into its general fund and applied directly to reducing the federal debt. The gold used in minting the coins

will come from natural deposits in the United States ("U.S.") or from U.S. gold reserves.

The Board has uniformly prohibited Federal associations, their service corporations, multiple savings and loan holding companies, and the Banks from engaging in any activity or transaction involving gold (including gold coin) or gold related instruments or securities. Consistent with this policy, the Board has declared that, notwithstanding its deference to the authority of state law regarding state-chartered insured institutions and their service corporations, the examinations and supervision staff of the Federal Savings and Loan Insurance Corporation ("FSLIC" or "Corporation") will carefully scrutinize such transactions and activities by all insured institutions and their service corporations and that the Corporation will regulate or prohibit practices it deems unsafe or unsound or otherwise inconsistent with the purposes of Title IV of the National Housing Act, 12 U.S.C. 1724–1730.

The restrictions on gold transactions and activities are designed to prevent unsafe or unsound speculative activity in the highly volatile metals market. The amendments to the regulations serve this purpose by maintaining all of the current restrictions with the one narrowly circumscribed exception of permitting the purchase and sale of American eagles, including payment by insured institutions of interest or dividends in such coins, and all activities reasonably incident thereto. The Board views these activities as safe, sound, and appropriate for limited thrift participation.

The amendments will enable the thrift industry to purchase American eagles at the bulk discount and resell them to the public at a premium to be prescribed by the Treasury, thereby contributing to an attempt to reduce the Federal debt. Thrift participation could also yield a direct profit from the permitted premium, and because other financial institutions are likely to offer the coins, thrift participation would secure for insured institutions both competitive parity and the good will generated by offering the coins for sale to the public.

The rule changes are permissive. Participation in the American eagle gold coin market would be a matter of choice. Under the amendments, Federal associations may purchase, sell, and pay interest or dividends in American eagles pursuant to their authority under section 5(c) of the Home Owners' Loan Act. *See* 12 U.S.C. 1464(c)(2)(A). To the extent permitted by applicable law, service corporations of Federal associations and multiple savings and loan holding companies may engage in American eagle transactions as a preapproved activity. The Board is also amending its policy statement for insured institutions—including State-chartered institutions—and their service corporations to reflect the proposed changes for Federal associations and their service corporations. Finally, under these amendments the Banks may engage in gold coin transactions as a means of serving member institutions. The Board views the Banks as a possible system-wide clearinghouse for bulk discount purchase and subsequent distribution of American eagles to members, subject to agreement between members and their respective Banks.

Pursuant to 12 CFR 508.11 and 508.14, the Board finds that notice and public procedure with respect to these amendments are unnecessary and contrary to the public interest, as is the 30-day delay of the effective date, because the amendments relieve restrictions with respect to trade in American eagles in furtherance of the public interest. Congress and the President have promoted trade in these coins—which will be available October 1, 1986—as a means of reducing the Federal debt, and the Board therefore believes it should act promptly to permit and facilitate thrift participation.

List of Subjects in 12 CFR Parts 524, 526, 532, 545, 556, 571, and 584

Accounting, Bank deposit insurance, Consumer protection, Credit, Electronic funds transfers, Federal home loan banks, Gold, Holding companies, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping requirements, Savings and loan associations, Securities, Surety bonds.

Accordingly, the Board hereby amends Parts 524, 526, and 532, Subchapter B; Parts 545 and 556, Subchapter C; Part 571, Subchapter D; and Part 584, Subchapter F, Chapter V, Title 12, Code of Federal Regulations, as set forth below.

Subchapter B—Federal Home Loan Bank System

PART 524—OPERATIONS OF THE BANKS

1. The authority citation for Part 524 is revised to read as follows:

Authority: Sec. 10, 47 Stat. 731, as amended (12 U.S.C. 1430); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071.

2. Section 524.13 is revised to read as follows:

§ 524.13 Gold and gold-related transactions.

No Bank may engage in any capacity or manner in any transaction or activity involving gold (including gold coin) or gold related instruments or securities, except for purchase and sale of gold coins minted and issued by the United States Treasury pursuant to Pub. L. 99–185, 99 Stat. 1177 (1985), and activities reasonably incident thereto.

§§ 524.1 and 524.7 [Amended]

3. Sections 524.1 and 524.7 are amended by removing the authority citations located at the end of the sections.

PART 526—ADVERTISING OF ACCOUNTS

4. The authority citation for Part 526 continues to read as follows:

Authority: Sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401, 402, 403, 407, 48 Stat. 1255, 1256, 1257, 1260, as amended (12 U.S.C. 1725, 1726, 1730); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071.

5. Paragraph (h) of § 526.2 is revised to read as follows:

§ 526.2 Advertising interest or dividends on savings accounts.

* * * * *

(h) *Gold.* Any statement that any portion of interest or dividends is payable in gold (including gold coin), gold related instruments or securities, or an amount of money determined in any manner related to gold is prohibited: *Provided,* that such statement is permitted with respect to the payment of interest or dividends in gold coins minted and issued by the United States Treasury pursuant to Pub. L. 99–185, 99 Stat. 1177 (1985).

PART 532—BOARD RULINGS

6. The authority citation for Part 532 continues to read as follows:

Authority: Sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071.

§ 532.1 [Amended]

7. Section 532.1 is amended by removing the period at the end of the last sentence and adding the clause ":

Provided, that members may pay interest or dividends in gold coins minted and issued by the United States Treasury pursuant to Pub. L. 99–185, 99 Stat. 1177 (1985)".

Subchapter C—Federal Savings and Loan System

PART 545—OPERATIONS

8. The authority citation for Part 545 continues to read as follows:

Authority: Sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425a); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 402–403, 407, 48 Stat. 1256–1257, 1260, as amended (12 U.S.C. 1725–1726, 1730); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071.

9. Section 545.74 is amended by removing the period at the end of paragraph (c)(5)(viii) and inserting in lieu thereof a semicolon and by adding a new paragraph (c)(5)(ix) to read as follows:

§ 545.74 Service corporations.

* * * * *

(c) * * *

(5) * * *

(ix) Purchase and sale of gold coins minted and issued by the United States Treasury pursuant to Pub. L. 99–185, 99 Stat. 1177 (1985).

* * * * *

10. Section 545.79 is revised to read as follows:

§ 545.79 Gold transactions.

No Federal association shall engage in any transaction or activity, including the payment of interest or dividends, involving gold (including gold coin) or gold related instruments or securities or pay interest or dividends in an amount of money determined in any manner related to gold: *Provided*, that Federal associations may purchase, sell, and pay interest or dividends in gold coins minted and issued by the United States Treasury pursuant to Pub. L. 99–185, 99 Stat. 1177 (1985).

PART 556—STATEMENTS OF POLICY

11. The authority citation for Part 556 continues to read as follows:

Authority: Sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 341, 96 Stat. 1505, as amended (12 U.S.C. 1701j–3); secs. 402–403, 406–407, 48 Stat. 1256–1257, 1259–1260, as amended (12 U.S.C. 1725–1726, 1729–1730); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071.

12. Section 556.7 is revised to read as follows:

§ 556.7 Service corporation involvement with gold or gold related transactions.

Section 545.74 authorizes Federal associations to invest in service corporations engaging in certain preapproved activities and any other activities the Board approves upon application. Because the Board will not approve applications to engage in transactions or activities involving gold (including gold coin) or gold related instruments or securities, Federal associations should not invest or maintain an investment in a service corporation engaging in such transactions or activities except as provided for in § 545.74(c)(5)(ix).

Subchapter D—Federal Savings and Loan Insurance Corporation

PART 571—STATEMENTS OF POLICY

13. The authority citation for Part 571 continues to read as follows:

Authority: Sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 402, 403, 407, 48 Stat. 1256, 1257, 1260, as amended (12 U.S.C. 1725, 1726, 1730); sec. 5A, 47 Stat. 727, as amended by sec. 1, 64 Stat. 256, as amended; sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1464); sec. 409, 94 Stat. 160; Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071.

14. Section 571.10 is revised to read as follows:

§ 571.10 Gold and gold-related transactions.

The authority of state-chartered insured institutions and their service corporations to engage in transactions and activities involving gold (including gold coin) or gold related instruments or securities, including buying, holding, selling, or otherwise dealing with gold or gold related instruments or securities, is primarily a matter of state law. However, the Corporation's supervisory and examining personnel will carefully scrutinize any such transactions and activities by insured institutions or their service corporations. The Corporation will regulate or prohibit any such transaction or activity if it determines that such transaction or activity constitutes an unsafe or unsound practice or is otherwise inconsistent with the purposes of Title IV of the National Housing Act, 12 U.S.C. 1724–30: *Provided*, that to the extent that they have independent legal authority to do so, insured institutions may purchase, sell, and pay interest or dividends in, and their service corporations may purchase and sell, gold coins minted and issued by the United States Treasury pursuant to Pub. L. 99–185, 99 Stat. 1177 (1985), and engage in activities reasonably incident thereto.

Subchapter F—Regulations for Savings and Loan Holding Companies

PART 584—REGULATED ACTIVITIES

15. The authority citation for Part 584 is revised to read as follows:

Authority: Sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425a); secs. 2, 5, 48 Stat. 128, 132, as amended (12 U.S.C. 1462, 1464); secs. 401–403, 405–407, 48 Stat. 1255–1257, 1259–1260, as amended (12 U.S.C. 1724–1726, 1728–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071.

16. Section 584.2–1 is amended by deleting the word "and" after the semicolon in paragraph (b)(9), by deleting the period and inserting in lieu thereof "; and" in paragraph (b)(10), and by adding a new paragraph (b)(11) to read as follows:

§ 584.2 Services and activities of multiple savings and loan holding companies.

* * * * *

(b) * * *

(11) Purchase and sale of gold coins minted and issued by the United States Treasury pursuant to Pub. L. 99–185, 99 Stat. 1177 (1985), and activities reasonably incident thereto.

* * * * *

17. Part 584 is amended by removing the authority citations located at the ends of the applicable sections of the part.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 86–22225 Filed 9–30–86; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86–NM–167–AD; Amdt. 39–5433]

Airworthiness Directives; DeHavilland Aircraft of Canada, Ltd., Model DHC–8 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the **Federal Register** and makes effective as to all known persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of DeHavilland Model DHC–8 series airplanes by individual

telegrams. This AD requires the isolation of the main landing gear actuation hydraulics by complying with a revised flight manual procedure for takeoff, landing, and while on the ground.

DATES: Effective October 20, 1986.

This AD was effective earlier to all recipients of telegraphic AD T86-16-51, dated August 15, 1976. Compliance schedule as prescribed in the body of the AD, unless already accomplished.

ADDRESSES: The applicable service information may be obtained from DeHavilland Aircraft of Canada, Ltd., Garrett Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Mr. C. Kallis or Mr. W. White, Systems Branch, ANE-173, FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791-6427.

SUPPLEMENTARY INFORMATION: On August 18, 1986, the FAA issued telegraphic AD T86-16-51, applicable to DeHavilland Model DHC-8 series airplanes, which requires a revised airplane flight manual (AFM) procedure to isolate the main landing gear actuation hydraulics system during takeoff, landing, and while on the ground. This action was prompted by two incidents in which there was an uncommanded retraction of the right main landing gear (MLG). This situation, if not corrected, could result in extensive damage to the airplane and possible injury to passengers. The revised operating procedure required by this AD is necessary to preclude a hazardous condition, which may result in collapse of the main landing gear during takeoff, landing, or taxiing; operators are required to continue operating under these revised procedures until a certain modification to the landing gear system is incorporated.

The Canadian Air Transport Administration, which is the airworthiness authority for Canada, has also issued a telegraphic airworthiness directive, CF-86-13, on this subject.

Since a situation existed, and still exists, that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The Federal Aviation Administration had determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 29, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 or Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a); 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449; January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

DeHavilland: Applies to DeHavilland Model DHC-8 airplanes, certificated in any category, serial numbers 003, 005, and subsequent. Compliance is required before further flight, unless previously accomplished.

To preclude the uncommanded retraction of the main landing gear, accomplish the following:

A. Insert a copy of this AD in the Airplane Flight Manual (AFM) and advise all flight crew members. For takeoff, landing, and while on the ground, isolate the main landing gear actuation hydraulics by complying with the following revised flight manual procedures:

1. Operating Limitations

(A) Nosewheel steering switch must be selected OFF.

(B) Takeoff or landing in cross winds exceeding 20 knots is not permitted.

Note.—Information presented in Supplement 12 of the Airplane Flight Manual (Operation with Inoperative Nose Wheel Steering) is in error and will be amended in the next AFM revision.

2. Normal Operating Procedures

—Flight Compartment Check—POWER ON.
—(ADD) Landing Gear Selector Lever—DOWN.
Check 3 green lights ON.
All door and gear unlocked lights OUT.
Selector level light OUT.
—Landing Gear Inhibit Switch—INHIBIT.
—Landing Gear Alternate Release Door—OPEN FULLY.
—Landing Gear Alternate Extension Door—OPEN FULLY.
—Hydraulic Pump Handle—INSERT IN HAND PUMP SOCKET AND OPERATE UNTIL HAND PUMP MOVEMENT BECOMES STIFF.
—Hydraulic Pump Handle—STOW.

Pre-taxi Checks

11. (CHANGE) Nosewheel Steering Switch—OFF. Steer the airplane on the ground by means of differential braking and power level adjustment.

After Takeoff

1. (CHANGE) Upon achieving positive rate of climb:

—Landing Gear Alternate Release and Landing Gear Alternate Extentsion Doors—CLOSE FULLY.
—Landing Gear Inhibit Switch—NORM.
—Landing Gear Selector Lever—UP. Check all gear and door lights and gear selector lever light OUT.

Note.—Should Landing Gear Selector Lever be selected UP prior to closing Landing Gear Alternate Release and Landing Gear Alternate Extension Doors, and prior to selecting Landing Gear Inhibit Switch to NORMAL, reselect Landing Gear Selector Lever DOWN and accomplish gear retraction as per revised procedure.

Note.—Landing Gear Alternate Release and Landing Gear Alternate Extension Doors and Landing Gear Inhibit Switch are not within reach of captain when secured in left-hand seat in normal flying position.

Approach

1. (CHANGE) Landing Gear Selector Lever—DOWN.

—Check 3 green lights ON.
—All door and gear unlocked lights OUT.
—Selector lever light OUT.
—Landing Gear Inhibit Switch—INHIBIT.
—Landing Gear Alternate Release Door—OPEN FULLY.
—Landing Gear Alternate Extension—OPEN FULLY.
—Hydraulic Pump Handle—INSERT IN HAND PUMP SOCKET AND OPERATE UNTIL HAND PUMP MOVEMENT BECOMES STIFF.
—Hydraulic Pump Handle—STOW.
—(ADD) Nosewheel Steering Switch—OFF.

Go-Around From Final Approach

5. (CHANGE) Upon achieving positive rate of climb:

—Landing Gear Alternate Release and Landing Gear Alternate Extension Doors—CLOSE FULLY.

—Landing Gear Inhibit Switch—NORMAL.
—Landing Gear Selector Lever—UP. Check all gear and door lights and gear selector lever light OUT.

3. Emergency Operating Procedures

Engine Failure or Fire After V_1

2. (CHANGE) Gear retraction procedure as above for go-round from final approach.

One Engine Inoperative Approach and Landing

1. (CHANGE) Landing Gear:
If No. 1 Engine inoperative:
—Gear extension procedure as above for approach.
If No. 2. Engine inoperative:
—Airspeed—140 KT IAS MAXIMUM.
—Landing Gear Inhibit Switch—INHIBIT.
—Landing Gear Selector Lever—DOWN.
—Landing Gear Alternate Release Door—OPEN FULLY.
—Main Landing Gear Release Handle—PULL FULLY DOWN.
—Landing Gear Alternate Extension Door—OPEN FULLY. Insert pump handle in hand socket and operate until main landing gear locks down (left and right green lights ON, and left door and right door amber lights ON) and handpump movement becomes stiff.
—Nose Gear Alternate Release Handle—PULL FULLY UP. Check nose green light and nose door amber light on. If any of the gear locked down (green) lights fail to illuminate:
—Gear locked down indicator light switch—ON. Check for illumination of appropriate gear down lock alternate light.
—Anti-skid Switch—TEST.
—PTU Manual Switch—PTU MANUAL.

One Engine Inoperative Approach Climb (Overshoot)

3. (CHANGE) Gear retraction procedure as above for go-around from final approach.

4. Performance Data

(A) Takeoff distance required—INCREASE BY TWO PERCENT.
(B) Takeoff run required—INCREASE BY TWO PERCENT.
(C) Accelerate-stop distance required—INCREASE BY TWO PERCENT.

B. No later than November 1, 1986, incorporate DHC Modification 8/0567 in accordance with DHC Service Bulletin 8–32–35, dated July 31, 1986. Remove the copy of this directive from the AFM.

C. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, New York Aircraft Certification Office, FAA, New England Region.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer, may obtain copies upon request to DeHavilland Aircraft of Canada, Ltd., Garrett Boulevard, Downsview, Ontario M3K 1Y5, Canada. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

This amendment becomes effective October 20, 1986, as to all persons, except those persons to whom it was made immediately effective by telegraphic AD T86–16–51, issued August 15, 1986.

Issued in Seattle, Washington, on September 24, 1986.

Joseph W. Harrell,

Acting Director, Northwest Mountain Region.

[FR. Doc. 86–22117 Filed 9–30–86; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 24 and 113

[T.D. 86–178]

Interest Charges on Certain Delinquent Accounts

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to establish interest charges for the late payment of supplemental duty bills (bills for additional duties ascertained upon liquidation or reliquidation), reimbursable services, and miscellaneous bills issued by Customs to organizations outside the U.S. Government, including sureties.

Presently, there is no provision in the Customs Regulations to charge interest for late payments of supplemental duties, reimbursable services, and miscellaneous bills. However, interest charges for late payments of supplemental duties is now mandated by law. Customs and the Treasury Department believe that charging interest on all delinquent accounts will provide an incentive for prompt payment and, if accounts are not paid timely, provide for reimbursement of interest costs resulting from Government borrowing.

EFFECTIVE DATES:

For amendments: October 31, 1986.

For interest charges:

(1) *November 29, 1984:* By statute, for liquidations or reliquidations on or after this date upon which increased or additional duties are due.

(2) *November 1, 1986:* For overdue bills for reimbursable services and miscellaneous amounts, for all actions initially billed on or after October 1, 1986.

(3) *October 30, 1984:* By statute, for all refunds of amounts paid as increased or additional duties which had been determined to be due upon liquidation or reliquidation.

(4) *November 1, 1986:* For refunds of amounts of interest that have been paid by parties-in-interest on overpayments of reimbursable services and miscellaneous amounts.

FOR FURTHER INFORMATION CONTACT: Accounting Aspects: Robert B. Hamilton, Jr., National Finance Center, (317–298–1308); Bond Aspects: William Rosoff, Carriers, Drawback and Bonds Division, (202–566–5856); Legal Aspects: Arthur I. Rettinger, Office of the Chief Counsel, (202–566–2482); U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229.

SUPPLEMENTARY INFORMATION:

Background

In a report from the Comptroller General to Congress dated August 21, 1978, the General Accounting Office recommended that Customs charge interest on all supplemental duty accounts 30 days past due as part of an effort for the U.S. Government to maximize its use of Customs collections to decrease Government borrowings. That report states that in four Customs Regions (Boston, Chicago, Los Angeles, and New York), accounts receivable for supplemental duties averaged $8.5 million each month from April 1976 to March 1977 and that approximately 38 percent of that amount was over 90 days past due.

Present Customs collection policy is to (1) issue a bill which indicates that it is due and payable, (2) pursue collection in accordance with Federal claims collection standards, and (3) inasmuch as a surety is jointly liable, to make a demand on the surety and the principal for payment if the bill remains unpaid. Importers are required to post a bond to cover each Customs entry to guarantee the payment of increased or additional duties and satisfy other Customs requirements. Enactment of Pub. L. 98–573 required Customs to charge interest on delinquent supplemental duty bills, and interest is currently assessed in accordance with the Act.

Currently, there is no provision in the Customs Regulations for collection of an interest charge exceeding the principal amount, regardless of the time period of delinquency or additional administrative costs to the U.S. Government incurred as the result of special collection efforts. Further, it is

necessary to amend the Customs Regulations to address enactment of Pub. L. 98–573, and provide for interest assessment on delinquent reimbursable services and miscellaneous bills. In Fiscal Year 1979, for instance, the percentage of the number of Customs supplemental duty and reimbursable service bills issued during that fiscal year and paid within 30 days was 57 percent. Another 30 percent of these bills were paid within 60 days, and only the remaining 13 percent of the bills were paid more than 60 days after the date of the bill. Customs and the Treasury Department believe that charging interest on delinquent accounts will provide an incentive for prompt payment and, if accounts are not paid timely, provide for reimbursement of interest costs resulting from unnecessary Government borrowing. Customs believes that a majority of those bills which are now paid within 31 and 60 days after the date of billing will be paid within 30 days with the added incentive of interest charges. This means that approximately 13 percent of the bills issued would result in action by Customs to charge interest.

Notice of Proposed Rulemaking

In this regard, on March 10, 1983, Customs published a notice in the **Federal Register** (48 FR 10077), proposing to amend Parts 24 and 113, Customs Regulations (19 CFR Parts 24, 113), to provide that interest charges would apply to late payments of supplemental duty bills (bills for additional duties ascertained upon liquidation or reliquidation), reimbursable services, (such as provided for in §§ 24.16 and 24.17, Customs Regulations (19 CFR 24.16, 24.17)), and miscellaneous bills (bills other than duties, taxes, reimbursable services, liquidated damages, fines, and penalties) issued by Customs to organizations outside the U.S. Government, including sureties.

The notice stated that if payment for an above-mentioned bill was not received by Customs within 25 days after the due date of the bill, interest charges would be assessed upon the delinquent principal amount of the bill, and calculated from the due date of the bill. The applicable interest rate was to appear on the bill. Interest on an overdue bill would have been assessed on the delinquent principal amount by 30-day periods. The full 30-day interest charge would have been assessed for each additional 30-day period or portion thereof that payment is delayed. The rate of interest was to be determined pursuant to the Debt Collection Act of 1982, Pub. L. 97–365. The applicable interest rate would have been available from any Customs regional financial management office after it is published.

The principal (i.e., the importer of record or party-in-interest) and the surety, would have been individually issued bills for interest and evey 30 days thereafter, of the following elements: (i) The amount due, (ii) the accrual of interest charges if payment is not received within 25 days after the due date of the bill (iii) the applicable interest rate, and (iv) the joint and several liability of the principal and the surety.

Commenters had until May 9, 1983, to submit comments. Based upon the 20 comments received in response to the notice and Customs own initiative, changes have been made to the proposal. These changes also reflect T.D. 85–93, published in the **Federal Register** on May 29, 1985 (50 FR 21832), which implemented two provisions of the Trade and Tariff Act of 1984 (Pub. L. 98–573) relating to calculation of interest on overdue accounts and refunds. An analysis of the comments and discussion of the changes follow.

Discussion of Major Comments

Comment: The proposal to collect interest charges on delinquent accounts is not authorized under current law and should be commenced only after specific authorization by Congress. A former Assistant Secretary of the Treasury (Enforcement and Operations) is quoted in the August 21, 1978, Report by the Comptroller General that Customs has not been granted legislative authority to charge interest and that it would not be in the best interests of the Government to assess interest because interest would also have to be paid on refunds from protests, reliquidations, and other actions. Therefore, it is concluded that legislation is required.

It is further stated that the fact that the Government has been awarded interest in court proceedings to collect duties cannot clothe administrative collection of interest with the force of law.

The proposal is one-sided and inequitable in that it provides no mechanism for the payment of interest to an importer on duty refunds. It is proposed that Customs pay interest on all accelerated drawback payments due when refund is not made timely.

Analysis: After this comment was submitted, the President signed the Trade and Tariff Act of 1984 on October 30, 1984. By T.D. 85–93, published in the **Federal Register** on May 29, 1985 (50 FR 21832), Customs implemented two provisions of the Act to provide that interest on applicable overpayments or underpayments of increased or additional Customs duties shall be in accordance with the Internal Revenue Code rate established in 26 U.S.C. 6621 and 6622. This determination covers antidumping and countervailing duty payments as well as increased or additional duties determined to be due on a liquidation or reliquidation. In addition, it was determined that a uniform interest payment system should be established and that refunds pursuant to a court determination and payable under 28 U.S.C. 2644, and interest on overpayments and underpayments of estimated excise taxes determined at liquidation, shall be at the rate(s) prescribed under 26 U.S.C. 6621 and 6622.

Furthermore, section 623(b)(1), Tariff Act of 1930, as amended (19 U.S.C. 1623(b)(1)), clearly gives the Secretary of the Treasury statutory authority to prescribe the conditions of bonds. Section 623(d), Tariff Act of 1930, as amended (19 U.S.C. 1623(d)), provides that no condition in a Customs bond shall be held invalid on the ground that it is not specified in law.

Therefore, not only is this amendment equitable, it is also enacted pursuant to specific legislative authority.

Comment: Relating to bills for supplemental duties, adoption of the final rule will encourage a flood of protests, in large measure not intented to challenge the basis for the liquidated duty increase, but merely to stay the collection of interest. Any attempt by Customs to collect interest after the "25th day following liquidation" would subsequently be cancelled and negated by the filing of protest.

Analysis: It appears the commenters misread the proposal. Customs did not propose to collect interest after the "25th day following liquidation," but 25 days after the "due date" of the bill. However, pursuant to Pub. L. 98–573 and T.D. 85–93, the due date of the bill for supplemental duties, as provided in § 24.3(e), Customs Regulations (19 CFR 24.3(e)), shall be 15 days from the date of liquidation or reliquidation and if not paid within 30 days after this date (the 45th day) shall be considered delinquent and bear interest from the due date (15th day after liquidation or reliquidation).

Comment: The Debt Collection Act of 1982 provides that Customs is not covered by major portions of that law because, except as noted therein, the law does not apply to claims or indebtedness arising under the "tariff laws of the United States." Furthermore, it is suggested the rate of interest on a bill be changed every 3 months while

the bill is delinquent rather than remain the same.

Analysis: The proposal advised that notwithstanding the above exclusion, because the Government also would be recovering similar costs in matters relating to Customs, consideration was being given to the use of the applicable percentage rate of interest based upon the current value of funds to the Treasury, in accordance with the Debt Collection Act.

However, Customs has reconsidered its position and determined not to use the rate of interest under the Debt Collection Act. Rather, it is appropriate that prejudgement interest be calculated at the same rate as provided for in 28 U.S.C. 2644 since it is that amount which Congress determined would compensate an importer for the loss of use of its money during a portion of the period in which the Government has the use of the money. In 28 U.S.C. 2644 it provides that interest shall be at an annual rate established under section 6621 of the Internal Revenue Code of 1954 (as modified by section 6622 (26 U.S.C. 6621 and 6622)). This is the rate which Customs will use. (see *United States v. Harold Goodman*, Slip Op. 83–92, Court No. 81–9–01150).

The notice proposed that the same percentage rate of interest applied to an overdue bill would remain in effect for that bill until complete payment is received. Customs has revised the proposal and determined that the percentage rate of interest will be adjusted based upon the semiannual determinations under section 6621 and be compounded daily in accordance with 26 U.S.C. 6622 for any period of time that such sums of the bill are outstanding.

Comment: Section 580 of the Tariff Act of 1930 (19 U.S.C. 580), imposes "interest", not an "exaction". It is inequitable to impose a greater burden upon the surety than upon the principal. The rule should state whether the 6 percent amount assessed against a surety is in addition to, or is included within, the interest charged, if any, against the principal. Customs is without authority to adopt regulations which are inconsistent with the Congressional scheme limiting interest at a 6 percent rate on unpaid debts which are the subject of collection actions.

Analysis: The Act of March 2, 1799, C. 22, Section 65, 1 Stat. 676 (19 U.S.C. 580), is applicable to suits brought to the Government upon all bonds for the recovery of duties. The importer of record is liable for the principal amount of the debt (duty) and interest which is assessed upon the late payment of that principal amount. A surety bears the same liability. If Customs must sue the debtor under a bond, it is entitled to recover the principal amount of the debt, plus interest assessed for the late payment, plus an additional amount of 6 percent assessed under 19 U.S.C. 580.

We believe 19 U.S.C. 580 is applicable only against delinquents where the Government must pursue collection through judicial action. Such action will be necessary under very limited circumstances. Most cases will not require use of the judicial process.

Comment: Charging interest should be made by regulation with no change in the bond form (no bond rider), or bond forms should be amended upon renewal to incorporate the interest provision.

Analysis: This comment has merit. The substance of the proposed bond rider on interest charges has been incorporated into the final rule relating to the bond structure which was published in the **Federal Register** as T.D. 84–213 on October 19, 1984 (49 FR 41152). Sections 113.62, 113.64 and 113.73, Customs Regulations (19 CFR 113.62, 113.64, 113.73), specify the agreement to pay charges demanded by Customs as a condition for basis importation and entry bonds, respectively. This document makes those same conforming changes to §§ 113.63 and 113.65, Customs Regulations (19 CFR 113.65). Customs has determined the word "charges" appearing in these sections to include interest charges for the late payment of supplemental duty bills (bills for additional duties ascertained upon liquidation or reliquidation), reimbursable services, and miscellaneous bills issued by Customs to organizations outside the U.S. Government, including sureties.

Comment: Customs should obtain from bonding companies their proposed premiums for the new bond provision and publish this information in the **Federal Register** requesting comments.

Analysis: This suggestion cannot be adopted because Customs lacks authority to do so.

Comment: This proposal to charge interest of delinquent bills should be compatible with the Customs proposal relating to the new bond structure project published in the **Federal Register** on March 15, 1983 (see 48 FR 11032).

Analysis: This comment has merit. As noted, the substance of the proposed bond rider on interest charges has been incorporated into the final rule relating to the bond structure which was published in the **Federal Register** as T.D. 84–213 on October 19, 1984 (49 FR 41152).

Comment: The principal on the bond is the primary obligor for the payment of monies due Customs and the surety is secondarily liable.

Analysis: This is incorrect. Customs Bonds make principals and sureties joint obligors. In this regard, see *U.S. v. Gissel*, 353, F. Supp. 768 (S.D. Tex. 1873) (T.D. 73–86); aff'd 493 F. 2d. 27 (5th Cir. 1974); cert. den. 955 Sup. Ct. 332, 419 U.S. 1012.

Comment: The language of the rider to be attached to applicable bonds uses the term "late charge." The appropriate terminology should be "interest."

Analysis: As noted, there is no bond rider. The new bonds provide for interest under the term "late charges".

Comment: By T.D. 82–204 published in the **Federal Register** on November 1, 1982 (47 FR 49355), an annual fee was instituted for reimbursement of costs of Customs supervision of warehouses. If the annual fee is not paid timely, liquidated damages will be assessed. Will interest be charged on the late payment of the annual fee?

Analysis: Provisions governing this fee are contained in §§ 19.2(a) and 19.5, Customs Regulations, rather than §§ 24.16 and 24.17, Customs Regulations, relating to reimbursable and overtime services. Although there is a billing system for the reimbursable services provided in §§ 24.16 and 24.17, there is no billing system for the annual warehouse fee. As no bills are issued to collect annual warehouse fees, no interest will be assessed at this time.

Comment: Interest charges should be assessed upon the late payment of liquidated damages, fines, and penalties. There should be a provision for extending the due date on liquidated damages, fines, or penalties that may be under appeal or further review.

Analysis: Customs does not agree. As stated in the proposal, miscellaneous bills do not include liquidated damages, fines, and penalties.

Comment: Bills for reimbursable services and miscellaneous amounts are due and payable upon receipt in accordance with § 24.3(e), Customs Regulations. Under the Proposed rule, interest would accrue on those bills which are not paid within 25 days after that due date. However, Customs would not know when a bill is due because, under existing procedures, only the debtor will know when the bill is received. It is suggested that Customs either provide a longer initial period before imposing interest (*e.g.*, 45 days) or provide a clear opportunity for the importer to prove that receipt of the bill in question was delayed and that interest is not owed. It also is suggested that the due date be made more specific

by marking that date on the bill and by clearly identifying it.

Analysis: Customs agrees that, as proposed, it would not know when bills for reimbursable services and miscellaneous amounts are received by the debtor. Therefore, Customs has made extensive changes to the proposal. For those bills, if payment is not received by Customs on or before the "late payment date" specified on the bill, interest charges will be assessed upon the delinquent principal amount of the bill. The late payment date is the date 30 calendar days after the "interest computation date." The interest computation date is the date from which interest is calculated and is initially the "bill date" appearing on the bill.

Pursuant to section 210 of the Trade and Tariff Act of 1984, for bills for supplemental duties, (additional duties assessed upon liquidation or reliquidation) the principal amount of the bill shall be due 15 days from the date of liquidation or reliquidation and if not paid within 30 days after this date (the 45th day) shall be considered delinquent and bear interest from the due date (15th day after liquidation or reliquidation).

No interest will be assessed on bills for reimbursable services and miscellaneous amounts if Customs receives payment on or before the late payment date. To ensure processing within 30 days after the interest computation date (so that no interest will be assessed) it is essential that payment is received by Customs on or before the late payment date. No interest will be charged on bills for supplemental duties if Customs receives payment on or before the 45th day after liquidation or reliquidation.

This document amends § 24.3(e) to provide that except for a bill for supplemental duties, a bill for duties, taxes, or other charges is due and payable on the "bill date" appearing on the bill, rather than upon receipt thereof by the debtor.

This change is necessary because, as the commenters observe, Customs does not know exactly when a bill is received by a debtor. Moreover, it is Customs practice to mail a reimbursable service or miscellaneous bill before the "bill date." Therefore, in the usual situation, a party will receive a bill on or before the bill date. Customs notes that a debt for a reimbursable or miscellaneous service is incurred at the time of the action giving rise to such bill (*e.g.*,) when a reimbursable service was performed by a Customs officer).

Comment: Currently, there is no mechanism for Customs to remove bills for supplemental duties off the collection process when a protest is filed. An importer and the surety continue to get "dunned" by Customs. Under the current proposal, the importer would be faced with interest on the increased duty billing. It is suggested that disputed items be placed under a different system. The rule should provide that the automated billing cycle and resulting interest charges are automatically suspended whenever such bills are questioned or disputed.

Analysis: The billing system under development by Customs is designed to take into consideration entries under protest, as well as adjustments that are necessary due to improper billing addresses or other administrative errors. Under the terms of section 210 of Pub. L. 98–573 the bill is due and payable 15 days from the date of liquidation or reliquidation, whether or not a protest has been filed. Accordingly, a party will continue to receive a bill for supplemental duties from Customs even though a protest has been filed. Interest will be assessed if payment is not received by Customs within 30 calendar days after the due date for supplemental duty bills issued on or after November 29, 1984.

Comment: Because of the billing method used by Customs, it is impossible to pay numerous bills within the time frame specified in the new proposal. A bill may be mailed to a different address of the same business entity without the envelope indicating that it contains a bill, or it may be directed to someone other than the person authorizing the service. Bills are not always properly identified as to the services being charged, the person's name authorizing the service, or when or where the service was performed. Bills may be in error. If bills (or substantiating documentation) are not timely received, will the interest charge still be due or be cancelled with proof of untimely receipt? The regulations should provide administrative relief from payment of interest charges if delays resulted, at least partially, due to errors by Customs personnel.

Analysis: The Customs bill is used to collect amounts owed the Government. In the case of bills issued for amounts owed other than for supplemental duties, the party-in-interest is usually aware of the Customs billing schedule and the purpose for issuance of the bill. Bills for amounts owed as a result of the performance of a reimbursable service by a Customs official are issued approximately 2–3 weeks following actual performance. Requests for the service are made specifically by the party-in-interest receiving the service. The billing package of miscellaneous amounts received by the debtor contains the background information explaining the nature of the charge or provides a "Refer Inquiry To" name and address where the basis of the charge may be obtained. We believe that the time periods provided are sufficient for payment of Customs bills.

It is noted that the importer record number data provided by the importer/broker/party-in-interest is the basis for the Customs name and address file. If the legal provisions concerning the due date for entries under protest change, or verified administrative billing errors have occurred, the Customs billing system will be adjusted using an on-line data processing adjustment capability to update the accounts receivable and invoice files accordingly. Customs will make every effort to minimize any unnecessary administrative expense in a businesslike fashion similar to the usual private and banking interest assessment practices. The Customs bill designates a "Send Payment to" address and requests for administrative adjustments due to billing errors may also be sent to this address. Customs officials have the authority to make adjustments to interest amounts when there is a Customs billing error.

Comment: Interest rates should be published in the Customs Bulletin each quarter. Having to call a Customs regional office should not be necessary.

Analysis: The Customs bill will show the current interest rate in effect. In addition, as stated in T.D. 85–93, the current semiannual interest rate may be obtained from the IRS or the Customs National Finance Center, Indianapolis, Indiana, at any time, and Customs will also publish the current interest rate in the Customs Bulletin and **Federal Register** on a semiannual basis for the convenience of the importing public and Customs personnel.

Comment: Simultaneous billing of principal and surety will decrease collection efficiency. Sureties will begin immediate collection action against all importers instead of the truly delinquent debtor. Importers will receive two bills practically simultaneously: One bill from Customs and one bill from the surety. By forcing the surety to expand its collection activities over a substantially larger base, there will be a corresponding loss of collection efficiency.

Analysis: Customs has determined not to bill the principal and surety simultaneously at the time of the initial billing as proposed. However, upon the written request of a surety, Customs will provide a surety a notice containing billing information at the time of the

initial billing to its principal. In addition to such notice, if any sureties will receive notice of the principal amount owed, any interest accuring, and other pertinent information on the monthly "Formal Demand on Surety for Payment of Delinquent Accounts Due" issued to sureties. This monthly notification to sureties will be issued for delinquent bills more than 30 days past due (60 days from bill due date). Surety demand notices will be issued to sureties monthly until the account is paid or otherwise closed.

Comment: It is suggested that no interest be assessed against a surety until Customs has provided a copy of the bond and entry in support of its claim. It is also suggested that the bill include the name and address of the principal, and name and address or code of the customs broker. The regulations should provide for placing the delinquent importer on the sanction list and withdrawing immediate delivery privileges.

Analysis: As previously stated, Customs bonds make principals and sureties joint obligors. In addition, the Customs bond revision, T.D. 84–213, provides for the joint and several liability of the principal and surety for interest charges for specified bills if such bills are not paid timely. Customs will continue to provide copies of entries and bonds as it is determined to be necessary. However, whether or not Customs provides such documents does not affect the liability of a surety on the surety's bond for the amount owed by the principal.

The surety will be notified of the available name and address of the principal on the "Formal Demand on Surety for Payment of Delinquent Amounts Due" and when the bill is issued if the surety desires such notification. Efforts to improve the availability of data elements, including broker's name and address, or code, will be considered during future improvements to existing data processing systems.

Customs will continue to use the importer sanction list as judiciously as possible. However, charging interest is necessary to permit the Government to recover its costs to borrow funds.

Comments: The effective rates of interest under the proposed regulations are unreasonable and to a great extent arbitrary because the interest would be charged for full 30-day periods. It is suggested either that interest be charged only for the time period of late payment, or that interest be calculated and charged in smaller time increments. (e.g., 10 days).

Analysis: Customs disagrees. It has been determined that the charge will only be for those payments already in arrears. In fact, no interest will be charged for the period in which payment is actually made.

Related Court Decision

The U.S. Court of International Trade in *Heraeus-Amersil, Inc., V. United States*, 515 F. Supp. 770 (1981), held that any increased or additional duties determined to be due upon a liquidation or reliquidation are not due and payable at that time, but rather at the time of filing of a court action, or at the expiration of the statute of limitations, if no action is filed. In *United States* v. *Heraeus-Amersil, Inc.*, Appeal No. 81–19 (February 18, 1982), the U.S. Court of Customs and Patent Appeals affirmed this decision. In light of this holding, Customs published a final rule document in the **Federal Register** (T.D. 83–14, 48 FR 1186, January 11, 1983) amending § 24.3(e), Customs Regulations (19 CFR 24.3(e)), to clarify the due date of Customs bills for supplemental duties. However, section 210 of the Trade and Tariff Act of 1984 (Pub. L. 98–573) overturned the decision in *Heraeus-Amersil*. Accordingly, § 24.3(e) is being amended to reflect these changes.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), it is certified that the rule will not have a significant economic impact on a substantial number of small entities. The large majority of delinquent bills outstanding tend to be from large importers, not small importers and other small entities. Indeed, neither small nor large entities are likely to be affected unless they are delinquent in their payments.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in section 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Drafting Information

The principal authors of this document were Charles D. Ressin and Glen E. Vereb, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects

19 CFR Part 24

Customs duties and inspection, Imports, Accounting.

19 CFR Part 113

Customs duties and inspection, Imports, Surety bonds.

Amendments to the Regulations

Parts 24 and 113 Customs Regulations (19 CFR Parts 24, 113), are amended as set forth below.

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. The authority citation for Part 24 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (Gen. Hdnote 11), 1624, 31 U.S.C. 9701;

§ 24.1 also issued under 19 U.S.C. 197, 198, 1648;

§ 24.3 also issued under 19 U.S.C. 1505, 1520;

§ 24.4 also issued under 19 U.S.C. 1623, 26 U.S.C. 5007, 5054, 5061, 7805;

§ 24.11 also issued under 19 U.S.C. 1485(d);

§ 24.12 also issued under 19 U.S.C. 1524, 46 U.S.C. 927;

§ 24.14 also issued under 19 U.S.C. 1;

§ 24.16 also issued under 19 U.S.C. 261, 267, 1450, 1451, 1452, 1623, 46 U.S.C. 2111, 2112;

§ 24.17 also issued under 19 U.S.C. 261, 267, 1450, 1451, 1452, 1456, 1524, 1557, 1562, 46 U.S.C. 2110, 2111, 2112;

§ 24.32 also issued under 19 U.S.C. 5582, 5583;

§ 24.36 also issued under 19 U.S.C. 6423.

2. Part 24 is amended by adding a new § 24.3a after § 24.3 to read as follows:

§ 24.3a Interest charges on certain bills; notice to principal and surety.

(a) *Due date of Customs bills.* Customs bills for Supplemental duties (additional duties assessed upon liquidation or reliquidation), reimbursable services (such as provided for in §§ 24.16 and 24.17), and miscellaneous amounts (bills other than duties, taxes, reimbursable services, liquidated damages, fines, and penalties) shall be due as provided for in § 24.3(e).

(b) *Assessment of interest charges—* (1) *Bills for reimbursable services and miscellaneous amounts.* If payment is not received by Customs on or before the late payment date appearing on the bill, interest charges will be assessed upon the delinquent principal amount of the bill. The late payment date is the date 30 calendar days after the interest computation date. The interest computation date is the date from which interest is calculated and is initially the bill date.

(2) *Bills for supplemental duties.* The due date for increased or additional duties, determined to be due upon a liquidation or reliquidation, is 15 days from the date of such liquidation or reliquidation. If such duties are not paid within 30 days after their due date (the

45th day), they shall be considered delinquent and bear interest from the due date.

(c) *Interest rate and applicability.* (1) The percentage rate of interest to be charged on such bills will be based upon the semiannual rate(s) established under sections 6621 and 6622 of the Internal Revenue Code of 1954 (26 U.S.C. 6621, 6622). The current rate of interest will appear on the Customs bill and may be obtained from the IRS or the Customs National Finance Center, Indianapolis, Indiana. Customs will also publish the current interest rate in the Customs Bulletin and Federal Register on a semiannual basis.

(2) The percentage rate of interest applied to an overdue bill will be adjusted as necessary to reflect any change in the annual rate of interest.

(3) Interest on overdue bills will be assessed on the delinguent principal amount by 30-day periods. No interest charge will be assessed for the 30-day period in which the payment is actually received at the "Send Payment To" location designated on the bill.

(4) In the case of any late payment, the payment received will first be applied to the interest charge on the delinquent principal amount and then to payment of the delinquent principal amount.

(5) The date to be used in crediting the payment is the date on which the payment is received by Customs.

(d) *Notice.*—(1) *Principal.* The principal shall be notified at the time of the initial billing, and every 30 days after the due date until the bill is paid or otherwise closed. The following elements will normally appear on the bill:

(i) Principal amount due;

(ii) Interest computation date;

(iii) Late payment date;

(iv) Accrual of interest charges if payment is not received by the late payment date:

(v) Applicable current interest rate;

(vi) Amount of interest owed;

(vii) Customs office where requests for administrative adjustments due to billing errors may be addressed; and

(viii) Transaction identification (e.g., entry number, reimbursable assignment number.).

(2) *Surety.* (i) Customs will report outstanding bills on a Formal Demand on Surety for Payment of Delinquent Amounts Due, for bills more than 30 days past due (approximately 60 days after bill due date), and every month thereafter until the bill is paid or otherwise closed.

The following elements will normally appear on the report:

(A) Principal amount due;

(B) Interest computation date;

(C) Late payment date;

(D) Accrual of interest charges if payment is not received by the late payment date;

(E) Applicable current interest rate;

(F) Amount of interest owed;

(G) Principal's name and address;

(H) Customs office where requests for administrative adjustments due to billing errors may be addressed; and

(I) Transaction identification (e.g., entry number, reimbursable assignment number).

(ii) Upon the written request of a surety, Customs will provide the surety a notice of containing the billing information at the time of the initial billing to its principal.

3. Section 24.3(e), Customs Regulations (19 CFR 24.3(e)), is revised to read as follows:

§ 24.3 Bills and accounts; receipts.

* * * * *

(e) All other bills for duties, taxes, or other charges are due and payable upon the bill date appearing on the bill. A bill for increased or additional duties determined to be due upon a liquidation or reliquidation is due 15 days from the date of such liquidation or reliquidation.

PART 113—CUSTOMS BONDS

1. The authority citation for Part 113 continues to read as follows:

Authority: 19 U.S.C. 66, 1623, 1624;

Subpart E also issued under 19 U.S.C. 1484, 1551, 1565.

2. Section 113.63(f) is amended by removing the word "and" after paragraph (3), removing the period at the end of paragraph (4), adding "; and" after paragraph (4), and by adding a new paragraph (5) to read as follows:

§ 113.63 Basic custodial bond conditions.

(f) *Reimbursement and Exoneration of the United States* * * *

* * * * *

(5) Pay any charges found to be due Customs arising out of the principal's custodial operation.

3. Section 113.65(a) is amended by removing the word "and" after paragraph (2), removing the comma after the word "claim" and replacing it with a period in paragraph (2), removing the period at the end of paragraph (3), adding the word "and" after paragraph (3), and by adding a new paragraph (4) to read as follows:

§ 113.65 Repayment of eroneous drawback payment bond conditions.

(a) *Agreement Under Exporter's Summary Procedure.* * * *

(4) The principal agrees to pay any changes due Customs as provided by law or regulation.

* * * * *

William von Raab,

Commissioner of Customs.

Approved:

Michael H. Lane,

Acting Assistant Secretary of the Treasury.

September 3, 1986.

[FR Doc. 86-22236 Filed 9-30-86; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; Clindamycin Hydrochloride Capsules

AGENCY: Food and Drug Administration.

ACTION: Final rules.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by the Upjohn Co. providing for safe and effective use of clindamycin hydrochloride capsules in dogs for treatment of osteomyelitis caused by *Staphylococcus aureus*.

EFFECTIVE DATE: October 1, 1986.

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Center for Veterinary Medicine (HFV-114), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3420.

SUPPLEMENTARY INFORMATION: The Upjohn Co., Kalamazoo, MI 49001, filed supplemental NADA 120-161 providing for use of Antirobe® Capsules (clindamycin hydrochloride) in dogs for treatment of osteomyelitis caused by *Staphylococcus aureus* in addition to the current approval for treatment of canine infected wounds and abscesses caused by *S. aureus*. The supplemental NADA is approved and the regulations are amended to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug

Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 520 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

2. Section 520.446 is amended by revising paragraph (c) to read as follows:

§ 520.446 Clindamycin hydrochloride capsules.

* * * * *

(c) *Conditions of use in dogs*—(1) *Amount.* Wound infections and abscesses: 2.5 milligrams per pound of body weight every 12 hours for a maximum of 28 days. Osteomyelitis: 5.0 milligrams per pound of body weight every 12 hours for a minimum of 28 days.

(2) *Indications for use.* For use in dogs for treatment of wound infections, abscesses, and osteomyelitis caused by *Staphylococcus aureus.*

(3) *Limitations.* Wound infections and abscesses: Do not use for more than 4 days if no improvement of acute infection is observed. Osteomyelitis: Do not use for more than 28 consecutive days if no improvement is observed. Because of potential adverse gastrointestinal effects, do not administer to rabbits, hamsters, guinea pigs, and horses. Use with caution in animals receiving neuromuscular blocking agents, as clindamycin may potentiate their action. Prescribe with caution in atopic animals. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: September 23, 1986.

Gerald B. Guest,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 86–22148 Filed 9–30–86; 8:45 am]

BILLING CODE 4160–01–M

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21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; Clindamycin Hydrochloride Liquid

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by The Upjohn Co. providing for use of clindamycin hydrochloride liquid for dogs for treatment of osteomyelitis caused by *Staphylococcus aureus.*

EFFECTIVE DATE: October 1, 1986.

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Center for Veterinary Medicine (HFV–114), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3420.

SUPPLEMENTARY INFORMATION: The Upjohn Co., Kalamazoo, MI 49001, filed a supplement to NADA 135–940 providing for use of Antirobe ® Aquadrops Liquid (clindamycin hydrochloride) in dogs for treatment of osteomyelitis caused by *Staphylococcus aureus.* The supplement is approved and the regulations are amended to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(iii) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 520 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360(i)); 21 CFR 5.10 and 5.83.

2. Section 520.447 is amended by revising paragraph (c) to read as follows:

§ 520.447 Clindamycin hydrochloride liquid.

* * * * *

(c) *Condition of use. Dogs*—(1)(i) *Amount.* 2.5 milligrams per pound of body weight every 12 hours.

(ii) *Indications for use.* For treatment of infected wounds and abscesses caused by *Staphylococcus aureus.*

(iii) *Limitations.* Discontinue use after 3 or 4 days if no improvement of acute infection is observed; do not use for more than 28 consecutive days; use with caution in animals receiving neuromuscular blocking agents as clindamycin may potentiate their action; prescribe with caution in atopic animals; because of potential adverse gastrointestinal effects; do not administer to rabbits, hamsters, guinea pigs, and horses; Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(2)(i) *Amount.* 5 milligrams per pound of body weight every 12 hours.

(ii) *Indications for use.* For treatment of osteomyelitis caused by *Staphylococcus aureus.*

(iii) *Limitations.* Use for a minimum of 28 days; use with caution in animals receiving neuromuscular blocking agents as clindamycin may potentiate their action; prescribe with caution in atopic animals; because of potential adverse gastrointestinal effects, do not administer to rabbits, hamsters, guinea pigs, and horses; Federal law restricts this drug to use by or on the order of a licensed veterinarina.

Dated: September 24, 1986.

Gerald B. Guest,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 86–22149 Filed 9–30–86; 8:45 am]

BILLING CODE 4160–01–M

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Tylosin and Sulfamethazine

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the new animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed for Cadco, Inc., providing for the making of Type A medicated articles containing 20 or 40 grams per pound each of tylosin and sulfamethazine. Type A medicated atricles are for making Type C medicated feeds for use in swine.

EFFECTIVE DATE: October 1, 1986.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1414.

SUPPLEMENTARY INFORMATION: Cadco, Inc., P.O. Box 3599, 10100 Douglas Ave., Des Moines, IA 50322, is the sponsor of a supplement to NADA 99–561 submitted on its behalf by Elanco Products Co. The supplement provides for the manufacture of Type A medicated articles containing 20 or 40 grams per pound each of tylosin (as tylosin phosphate) and sulfamethazine to make Type C medicated feeds for use in swine. The NADA is currently approved for use of such Type A medicated articles containing 5 and 10 grams per pound each of tylosin (as tylosin phosphate) and sulfamethazine. The resulting Type C medicated feeds are for use in maintaining weight gains and feed efficiency in the presence of atrophic rhinitis, lowering the incidence and severity of *Bordetella bronchiseptica* rhinitis, prevention of swine dysentery (vibrionic), and control of swine pneumonias caused by bacterial pathogens (*Pasteurella multocida* and/or *Corynebacterium pyogenes*). The supplement is approved and the regulations are amended to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

§ 558.630 [Amended]

2. Section 558–630 *Tylosin and sulfamethazine* is amended in paragraph (b)(8) by removing "011490" and in paragraph (b)(10) by inserting numerically the number "011490."

Dated: September 25, 1986.

Marvin A. Norcross,

Associate Director for New Animal Drug Evaluation.

[FR Doc. 86–22153 Filed 9–30–86; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 201, 203, and 234

[Docket No. N–86–1640; FR–2274]

Mortgage Insurance; Changes to the Maximum Mortgage Limits for Single Family Residences, Condominiums and Manufactured Homes and Lots

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of revisions to FHA maximum mortgage limits for high-cost areas.

SUMMARY: This Notice is the annual complete listing of areas eligible for "high-cost" mortgage limits under certain of HUD's insuring authorities under the National Housing Act, and each such area's applicable limits. Mortgage limits are adjusted in an area when the Secretary determines that middle- and moderate-income persons have limited housing opportunities because of high prevailing housing sales prices, and notice of the Secretary's determination is published in the **Federal Register.**

EFFECTIVE DATE: October 1, 1986.

FOR FURTHER INFORMATION CONTACT: For single family: John Coonts, Director, Single Family Development Division, Room 9270; telephone (202) 755–6720. For manufactured homes: Christopher Peterson, Director, Office of Title I Insured Loans, Room 9160; telephone (202) 755–6880; 451 Seventh Street SW., Washington, DC 20410. (Telephones are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Background

Tha National Housing Act (NHA) (12 U.S.C. 1701–1749) authorizes HUD to insure mortgages for single family residences (from one- to four-family structures), condominiums, manufactured homes, manufactured home lots, and combination manufactured homes and lots. The NHA, as amended by the Housing and Community Development Amendments of 1981, permits HUD to increase the maximum mortgage limits under most of these programs to reflect regional differences in the cost of housing. In addition, sections 2(b) and 214 of the NHA provide for special high-cost limits for insured mortgages in Alaska, Guam and Hawaii.

On May 22, 1984, the Department published a revised list of areas eligible for "high-cost" mortgage limits, which contained several new features. (See 49 FR 21520). First, there was no separate listing for condominium units, since these limits are now the same as those for other one-family residences. Second, the listing included instructions on how to compute the high-cost limits for combination manufactured homes and lots and individual lots, and specified the special high-cost amounts for manufactured homes, combination manufactured homes and lots and individual lots insured in Alaska, Guam and Hawaii. And, third, changes were made to the list based on a new definition of "metropolitan area".

On November 6, 1985 (50 FR 45993), January 7, 1986 (51 FR 596), January 10, 1986 (51 FR 1249), January 27, 1986 (51 FR 3333), April 29, 1986 (51 FR 15883), and June 11, 1986 (51 FR 21159), the Department published amendments to the "high-cost" mortgage amounts that added additional areas and further

increased the limits of several previously designated high-cost areas.

This Document

In this document, the Department publishes its entire list of high-cost areas with applicable mortgage limits. This document incorporates the updates published on November 6, 1985 (50 FR 45593), January 7, 1986 (51 FR 596), January 10, 1986 (51 FR 1249), January 27, 1986 (51 FR 3333), April 29, 1986 (51 FR 15883), and June 11, 1986 (51 FR 21159).

In addition, it adds to the list the following new high-cost areas, with applicable limits: Grand Forks County, North Dakota; Pinal County, Arizona; Albemarle County/Charlottesville City, Virginia; St Mary's County, Maryland; Columbia County, Georgia; Richmond County, Georgia; and Angelina County, Texas.

These high-cost limits are effective October 1, 1986, and supersede other published amounts in effect, to the extent they are inconsistent with figures appearing in this document.

The listing of high-cost areas appears in two parts. Part I explains high-cost limits for mortgages insured under Title I of the National Housing Act. Part II lists each high-cost area, with applicable limits for single family residences (including condominiums) insured under sections 203(b), 234(c), and 214 of the National Housing Act.

List of Subjects

24 CFR Part 201

Fire prevention, Health facilities, Historic preservation, Home improvement, Loan programs—housing and community development, Manufactured homes, Reporting and recordkeeping requirements.

24 CFR Part 203

Home improvement, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

24 CFR Part 234

Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, the Department publishes the revised dollar limitations as follows:

National Housing Act High-cost Mortgage Limits

I. Title I: Method of Computing Limits

A. *Section 2(b)(1)(D). Combination manufactured home and lot (excluding Alaska, Guam, and Hawaii:* To determine the high-cost limit for a combination manufactured home and lot loan, multiply the dollar amount in the "one family" column of Part II of this list by .80. For example, the first entry, Cumberland County, ME, has a one-family limit of $76,000. The combination home lot loan limit for Cumberland County is $76,000×.80, or $60,800.

B. *Section 2(b)(1)(E). Lot only (excluding Alaska, Guam, and Hawaii):* To determine the high-cost limit for a lot loan, multiply the dollar amount in the "one-family" column of Part II of this list by .20. For example, the first entry, Cumberland County, ME, has a one-family limit of $76,000. The lot loan limit for Cumberland County is $76,000×.20, or $15,200.

C. *Section 2(b)(2). Alaska, Guam, and Hawaii limits:* The maximum dollar limits for Alaska, Guam, and Hawaii may be 140% of the statutory loan limits set out in section 2(b)(1).

Accordingly, the dollar limits for Alaska, Guam and Hawaii are as follows:

1. For manufactured homes: $56,700. ($40,500×140%).

2. For combination manufactured homes and lots: $75,600 ($54,000×140%).

3. For lots only: $18,900. ($13,500×140%).

II. Title II.—Updating of FHA Section 203(b), 234(c) and 214 Area Wide Mortgage Limits

Market area designation and location jurisdictions	Mortgage Limits			
	1-family and condominium unit	2-family	3-family	4-family
Region I (HUD Field Office)				
Bangor Office; Cumberland County	$76,000	$85,500	$104,000	$120,500
Boston Office:				
Bristol County	90,000	101,300	122,650	142,650
Essex County				
Middesex County				
Norfolk County				
Plymouth County				
Suffolk County				
Worcester County				
Barnstable County	87,400	98,400	119,600	138,000
Berkshire County	72,200	81,300	98,800	114,000
Hartford Office:				
Fairfield County	90,000	101,300	122,650	142,650
Hartford County				
Litchfield County				
New Haven County				
Middlesex County	79,800	89,850	109,200	126,000
New London County				
Tolland County				
Other Areas	71,800	80,900	98,300	113,400
Manchester Office:				
Chittenden County	73,050	82,250	99,950	115,350
Hillsborough County	90,000	101,300	122,650	142,650
Rockingham County				
Providence Office				
Providence, RI PMSA:				
Bristol County	81,450	91,750	111,450	128,600
Kent County	70,650	79,550	96,650	111,550
Newport County	85,850	96,700	117,500	135,550

Market area designation and location jurisdictions	Mortgage Limits			
	1-family and condominium unit	2-family	3-family	4-family
Region II (HUD Field Office)				
Caribbean Office:				
San Juan, PR PMSA:				
Barceloneta Municipio	$87,100	$98,100	$119,200	$137,550
Bayamon Municipio				
Canovanas Municipio				
Carolina Municipio				
Catano Municipio				
Corozal Municipio				
Dorado Municipio				
Fajardo Municipio				
Florida Municipio				
Guaynabo Municipio				
Humacao Municipio				
Juncos Municipio				
Las Piedras Municipio				
Loiza Municipio				
Luquillo Municipio				
Manati Municipio				
Naranjito Municipio				
Rio Grande Municipio				
San Juan Municipio				
Toa Alta Municipio				
Toa Baja Municipio				
Trujillo Alto Municipio				
Vega Alta Municipio				
Vega Baja Municipio				
Caguas, PR PMSA:				
Aguas Buenas Municipio	79,400	89,450	108,700	125,400
Caguas Municipio				
Cayey Municipio				
Cidra Municipio				
Gurabo Municipio				
San Lorenzo Municipio				
Mayaguez, PR MSA:				
Anasco Municipio	79,650	89,700	109,000	125,800
Cabo Rojo Municipio				
Homigueros Municipio				
Mayaguez Municipio				
San German Municipio				
Ponce, PR MSA:				
Juana Diaz Municipio	81,700	92,000	111,800	129,000
Ponce Municipio				
New York Office:				
New York, NY PMSA:				
Bronx County	90,000	101,300	122,650	142,650
Kings County				
New York County				
Putnam County				
Queens County				
Richmond County				
Rockland County				
Westchester County				
Nassau-Suffolk, NY PMSA:				
Nassau County	90,000	101,300	122,650	142,650
Suffolk County				
Albany Office:				
Albany County	85,500	96,300	117,000	135,000
Saratoga County				
Schenectady County				
Dutchess County	90,000	101,300	122,650	142,650
Ulster County				
Onondaga County	84,350	95,000	115,400	133,200
Bergen-Passaic, NJ PMSA:				
Bergen County	90,000	101,300	122,650	142,650
Passaic County				
Jersey City, NJ PMSA: Hudson County	90,000	101,300	122,650	142,650
Middlesex-Somerset-Hunterdon, NJ PMSA:				
Hunterdon County	90,000	101,300	122,650	142,650

Market area designation and location jurisdictions	Mortgage Limits			
	1-family and condominium unit	2-family	3-family	4-family
Middlesex County				
Somerset County				
Monmouth-Ocean, NJ PMSA: Monmouth County	$90,000	$101,300	$122,650	$142,650
Newark, NJ PMSA:				
Essex County	90,000	101,300	122,650	142,650
Morris County				
Sussex County				
Union County				
Camden Office:				
Atlantic City, NJ PMSA:				
Atlantic County	89,000	100,000	121,000	141,000
Cape May County				
Monmouth-Ocean, NJ PMSA: Ocean County	90,000	101,300	122,650	142,650
Trenton, NJ MSA: Mercer County	70,650	79,550	96,650	111,550
Wilmington, DE-NJ-MD PMSA: Salem County, NJ	70,200	79,100	96,100	110,900
Philadelphia, PA-NJ PMSA:				
Burlington County, NJ	70,650	79,550	96,650	111,550
Camden County, NJ				
Buffalo Office:				
Monroe County	71,250	80,250	97,500	112,000
Region III (HUD Field Office)				
Philadelphia Office:				
Bucks County, PA	81,150	91,400	111,050	128,150
Chester County	90,000	101,300	122,650	142,650
Delaware County	78,850	88,800	107,900	124,500
Montgomery County	77,450	87,200	105,950	122,250
Washington, DC Office:				
Washington, DC-MD-VA MSA:				
District of Columbia	90,000	101,300	122,650	142,650
Montgomery County, MD				
Prince Georges County, MD				
Alexandria City, VA				
Arlington County, VA				
Fairfax County, VA				
Falls Church City, VA				
Loudon County, VA				
Manassas City, VA				
Manassas Park City, VA				
Prince William County, VA				
Baltimore Office:				
Washington, DC-MD-VA MSA:				
Charles County, MD	90,000	101,300	122,650	142,650
Calvert County, MD				
Frederick County, MD				
Baltimore, MD MSA (part):				
Howard County	90,000	101,300	122,650	142,650
Anne Arundel County				
Baltimore, MD MSA (part):				
Baltimore City, MD	81,400	91,700	111,400	128,550
Baltimore County				
Carroll County				
Harford County				
Queen Anne's County				
Wilmington, DE-NJ-MD PMSA: Cecil County, MD	70,200	79,100	96,100	110,900
Other Areas:				
Worcester County, MD	71,250	80,250	97,500	112,500
St. Mary's County, MD	75,500	85,050	103,350	119,250
Richmond Office:				
Washington, DC-MD-VA MSA: Stafford County, VA	90,000	101,300	122,650	142,650
Richmond-Petersburg, VA MSA:				
Charles City County	72,450	81,550	99,100	114,350

Market area designation and location jurisdictions	Mortgage Limits			
	1-family and condominium unit	2-family	3-family	4-family
Chesterfield County				
Colonial Heights City				
Dinwiddie County				
Goochland County				
Hanover County				
Henrico County				
Hopewell City				
New Kent County				
Petersburg City				
Powhatan County				
Richmond City				
Norfolk-VA Beach-Newport News, VA MSA:				
Chesapeake City	78,500	88,450	107,450	124,000
Gloucester County				
Hampton City				
James City County				
Newport News City				
Norfolk City				
Poquoson City				
Portsmouth City				
Suffolk City				
Virginia Beach City				
Williamsburg City				
York County	90,000	101,300	122,650	142,650
Other Areas:				
Fauquier	77,900	87,700	106,600	123,000
Albemarle County/Charlottesville City	76,650	86,300	104,900	121,050
Wilmington Office:				
Wilmington, DE-NJ-MD PMSA: New Castle County, DE	70,200	79,100	96,100	110,900
Region IV (HUD Field Office)				
Columbia Office:				
Charleston-North Charleston, SC MSA:				
Berkeley County	80,500	90,500	110,000	127,500
Charleston County				
Dorchester County				
Greenville-Spartanburg, SC MSA:				
Greenville County	72,900	82,100	99,700	115,100
Pickens County				
Spartanburg County				
Charlotte-Gastonia-Rock Hill, NC-SC MSA (part): York County, SC	76,000	85,500	104,000	120,500
Greensboro Office;				
Raleigh-Durham, NC MSA:				
Durham County	75,800	85,350	103,700	119,700
Franklin County				
Orange County				
Wake County	88,800	100,000	121,550	140,250
Charlotte-Gastonia-Rock Hill, NC-SC MSA (part):				
Cabarrus County	76,000	85,500	104,000	120,500
Gaston County				
Lincoln County				
Mecklenburg County	85,000	95,750	116,350	134,250
Rowan County	76,000	85,500	104,000	120,500
Union County				
Other Areas: Guilford County	74,550	83,950	102,050	117,750
Atlanta Office:				
Atlanta, GA MSA:				
Barrow County	85,250	96,000	116,650	134,600

Market area designation and location jurisdictions	Mortgage Limits			
	1-family and condominium unit	2-family	3-family	4-family
Butts County				
Cherokee County				
Clayton County				
Cobb County				
Coweta County				
DeKalb County				
Douglas County				
Fayette County				
Forsyth County				
Fulton County				
Gwinnet County				
Henry County				
Newton County				
Paulding County				
Rockdale County				
Spalding County				
Walton County				
Augusta, GA-SC MSA:				
Columbia County, GA	75,900	85,450	103,850	119,850
Richmond County, GA				
Birmingham Office:				
Mobile, AL MSA:				
Baldwin County	75,000	84,000	102,500	118,000
Mobile County				
Montgomery, AL MSA:				
Atauga County	75,000	84,000	102,500	118,000
Elmore County				
Montgomery County				
Birmingham, AL MSA:				
Blount County	69,550	78,300	95,150	109,800
Jefferson County				
St. Clair County				
Shelby County	80,000	90,700	110,200	127,200
Walker County	69,550	78,300	95,150	109,800
Knoxville Office:				
Knoxville, TN MSA:				
Anderson County	74,100	83,450	101,400	117,000
Blount County				
Graninger County				
Knox County				
Jefferson County				
Sevier County				
Union County				
Louisville Office:				
Cincinnati, OH-KY-IN PMSA (Part):				
Boone County, KY	80,750	90,950	110,500	127,500
Campbell County, KY				
Kenton County, KY				
Other Areas:				
Fayette County	85,500	96,300	117,000	135,000
Jefferson County	75,050	84,500	102,700	118,500
Memphis Office:				
Memphis, TN-AR-MS MSA:				
Shelby County, TN	87,750	98,850	120,100	138,600
Tipton County TN				
Nashville Office:				
Nashville, TN MSA:				
Cheatham County	86,700	97,650	118,650	136,950
Davidson County				
Dickson County				
Robertson County				
Rutherford County				
Sumner County				
Williamson County				
Wilson County				
Jackson Office:				
Jackson, MS MSA:				
Hinds County	76,000	85,600	104,000	120,000

Market area designation and location jurisdictions	Mortgage Limits			
	1-family and condominium unit	2-family	3-family	4-family
Madison County				
Rankin County				
Memphis, TN-AR-MS MSA:				
Desoto County, MS	87,750	98,850	120,100	138,600
Other Areas: Lowndes County	70,200	79,100	96,100	110,900
Coral Gables Office:				
Ft. Lauderdale-Hollywood-Pompano Beach, FL PMSA: Broward County	87,400	98,400	119,600	138,000
Miami-Hialeah, FL PMSA: Dade County	81,800	92,100	111,900	129,100
West Palm Beach-Boca Raton-Delray Beach, FL MSA: Palm Beach County	79,700	89,800	109,100	125,900
Ft. Pierce, FL MSA: Martin County	76,000	85,600	104,000	120,000
Other Areas:				
Collier County	76,000	85,600	104,000	120,000
Monroe County	80,750	90,950	110,500	127,500
Tampa Office:				
Sarasota, FL MSA: Sarasota County	76,100	85,700	104,100	120,100
Tampa-St. Petersburg-Clearwater, FL MSA:				
Hernando County	71,500	80,500	97,900	112,900
Hillsborough County				
Pasco County				
Pinellas County				
Jacksonville Office:				
Jacksonville, FL MSA:				
Clay County	72,800	82,000	99,600	114,950
Duval County				
Nassau County				
St. Johns County				
Orlando Office:				
Orlando, FL MSA:				
Orange County	72,800	82,000	99,600	114,950
Osceola County				
Seminole County	78,850	88,800	107,900	124,500
Region V (HUD Field Office)				
Minneapolis-St. Paul Office:				
Minneapolis-St. Paul, MN MSA:				
Anoka County	90,000	101,300	122,650	142,650
Carver County				
Chisago County				
Dakota County				
Hennepin County				
Isanti County				
Ramsey County				
Scott County				
Washington County				
Wright County				
St. Cloud, MN MSA:				
Benton County	68,500	77,000	93,500	108,500
Sherburn County				
Stearns County				
Fargo-Moorhead, ND-MN MSA: Clay County, MN	77,900	87,750	106,600	123,000
Rochester, MN MSA: Olmstead County	78,850	88,800	107,900	124,500
Milwaukee Office:				
Minneapolis-St. Paul, MN MSA: St. Croix County, WI	90,000	101,300	122,650	142,650
Milwaukee, WI PMSA:				
Milwaukee County	77,800	87,600	106,450	122,850
Ozaukee County				
Washington County				
Waukesha County				
Madison, WI MSA: Dane County	70,800	79,750	96,900	111,800
Chicago Office:				
Chicago, IL PMSA:				
Cook County	87,250	99,300	119,400	137,800
DuPage County				
McHenry County				
Lake County, IL PMSA: Lake County	87,250	99,300	119,400	137,800
Joliet, IL PMSA:				
Grundy County	87,250	99,300	119,400	137,800

Market area designation and location jurisdictions	Mortgage Limits			
	1-family and condominium unit	2-family	3-family	4-family
Will County				
Aurora-Elgin, IL PMSA:				
Kane County	87,250	99,300	119,400	137,800
Kendall County				
St. Louis, MO-IL PMSA: Monroe County, IL	85,500	96,300	117,000	135,000
East St. Louis-Belleville, IL PMSA:				
Clinton County	85,500	96,300	117,000	135,000
St. Clair County, IL				
Detroit Office:				
Detroit, MI PMSA:				
Lapeer County	75,300	84,800	103,000	118,900
Livingston County				
Macomb County				
Monroe County				
Oakland County				
St. Clair County				
Wayne County				
Ann Arbor, MI PMSA: Washtenaw County	76,800	86,500	105,100	121,250
Cleveland Office:				
Cleveland, OH PMSA:				
Cuyahoga County	75,400	84,900	103,100	119,000
Geauga County				
Lake County				
Medina County				
Columbus Office:				
Columbus, OH MSA:				
Delaware County	81,100	91,400	111,000	128,100
Fairfield County				
Franklin County				
Licking County				
Madison County				
Pickaway County				
Union County				
Cincinnati Office:				
Cincinnati, OH-KY-IN PMSA (part):				
Clermont County, OH	80,750	90,950	110,500	127,500
Hamilton County, OH				
Warren County, OH				
Hamilton-Middleton, OH PMSA: Butler County	80,750	90,950	110,500	127,500
Indianapolis Office:				
Cincinnati, OH-KY-IN PMSA (part): Dearborn County, IN	80,750	90,950	110,500	127,500
Other Areas:				
Hamilton County	80,750	90,950	110,500	127,500
Hendricks County				
Johnson County				
Marion County				
Region VI (HUD Field Office)				
Dallas Office:				
Dallas, TX PMSA:				
Collin County	90,000	101,300	122,650	142,650
Dallas County				
Denton County				
Ellis County				
Kaufman County				
Rockwall County				
Sherman-Denison, TX MSA: Grayson County	78,000	88,000	106,500	124,000
Fort Worth Office:				
Ft. Worth-Arlington, TX PMSA:				
Johnson County	90,000	101,300	122,650	142,650
Parker County				
Tarrant County				
Houston Office:				
Houston, TX PMSA:				
Brazoria County	90,000	101,300	122,650	142,650
Ft. Bend County				
Harris County				
Liberty County				
Montgomery County				
Waller County				

Market area designation and location jurisdictions	Mortgage Limits			
	1-family and condominium unit	2-family	3-family	4-family
Other Areas:				
Galveston County	90,000	101,300	122,650	142,650
Angelina County	68,400	77,00	93,600	108,000
Lubbock Office:				
Amarillo, TX MSA:				
Potter County	68,500	77,000	93,500	108,500
Randall County				
Lubbock, TX MSA: Lubbock County	70,000	78,500	95,500	110,500
Midland, TX MSA: Midland County	70,000	78,500	95,500	110,500
San Antonio Office:				
Austin, TX MSA:				
Hays County	90,000	101,300	122,650	142,650
Travis County				
Williamson County				
San Antonio, TX MSA:				
Bexar County	82,750	93,250	113,250	130,700
Comal County				
Guadalupe County				
Corpus Christi, TX MSA:				
Nueces County	70,000	78,500	95,500	110,500
San Patricio County				
Little Rock Office:				
Memphis, TN-AR-MS MSA: Crittenden County, AR	87,750	98,850	120,100	138,600
Oklahoma City Office:				
Oklahoma City, OK MSA:				
Canadian County	72,800	82,000	99,600	114,950
Cleveland County				
Logan County				
McClain County				
Oklahoma County				
Pottawatomie County				
New Orleans Office:				
Baton Rouge, LA MSA:				
Ascension Parish	76,000	85,600	104,000	120,000
East Baton Rouge Parish				
Livingston Parish				
West Baton Rouge Parish				
New Orleans, LA MSA:				
Jefferson Parish	76,000	85,600	104,000	120,000
Orleans Parish				
St. Bernard Parish				
St. Charles Parish				
St. John the Baptist Parish				
St. Tammany Parish				
Other Areas: Lafayette Parish	76,000	85,600	104,000	120,000
Shreveport Office:				
Shreveport, LA MSA:				
Bossier Parish	75,500	85,000	103,300	119,200
Caddo Parish				
Albuquerque Office:				
Albuquerque, NM MSA: Bernalillo County	90,000	101,300	122,650	142,650
Other Areas:				
Santa Fe County	90,000	101,300	122,650	142,650
Los Alamos County				
Tulsa Office:				
Tulsa, OK MSA:				
Creek County	82,500	92,900	112,900	130,300
Osage County				
Rogers County				
Tulsa County				
Wagoner County				
Region VII (HUD Field Office)				
Kansas City Office:				
Kansas City, MO PMSA:				
Cass County, MO	81,600	91,900	111,700	128,900

Market area designation and location jurisdictions	Mortgage Limits			
	1-family and condominium unit	2-family	3-family	4-family
Clay County, MO				
Jackson County, MO				
Lafayette County, MO				
Platt County, MO				
Ray County, MO				
Kansas City, KS PMSA:				
Johnson County, KS	81,600	91,900	111,700	128,900
Leavenworth County, KS				
Miami County, KS				
Wyandotte County, KS				
Other Areas: Shawnee County	69,800	78,600	95,550	110,250
St. Louis Office:				
St. Louis, MO-IL PMSA:				
St. Louis City	85,500	96,300	117,000	135,000
Franklin County				
Jefferson County				
St. Charles County				
St. Louis County				
Des Moines Office:				
Des Moines, IA MSA:				
Dallas County	69,300	78,000	94,850	109,450
Polk County				
Warren County				
Omaha, NE-IA MSA (part): Pottawattamie County, IA	78,800	88,750	107,800	124,400
Omaha Office:				
Omaha, NE-IA MSA (part):				
Douglas County, NE	78,800	88,750	107,800	124,400
Sarpy County, NE				
Washington County				
Topeka Office:				
Sedgwick County, KS	76,000	85,500	103,500	120,500
Region VIII (HUD Field Office)				
Denver Office:				
Denver, CO PMSA:				
Adams County	90,000	101,300	122,650	142,650
Arapahoe County				
Denver County				
Douglas County				
Boulder-Longmont, CO PMSA:				
Boulder County	90,000	101,300	122,650	142,650
Jefferson County				
Colorado Springs, CO MSA: El Paso County	85,500	96,300	117,000	135,000
State of Colorado:				
Eagle County	90,000	101,300	122,650	142,650
Elbert County	83,900	94,500	114,850	132,500
Grand County	80,750	90,950	110,500	127,500
Routt County	90,000	101,300	122,650	142,650
Summit County	90,000	101,300	122,650	142,650
Teller County	80,750	90,950	110,500	127,500
Other Areas	71,800	80,900	98,300	113,400
Helena Office:				
State of Montana	75,500	84,000	102,500	118,000
Salt Lake City Office:				
Salt Lake City-Ogden, UT MSA:				
Davis County	80,450	90,600	110,100	127,050
Salt Lake County				
Weber County				
Other Areas: Washington County	75,900	85,450	103,850	119,850
Casper Office:				
State of Wyoming	75,000	84,000	102,500	118,000
Fargo Office:				
Fargo-Moorhead, ND-MN MSA:				
Cass County, ND	77,900	87,750	106,600	123,000
Grand Forks, ND	72,500	81,650	99,250	114,500
Sioux Falls Office:				
Minnehaha County	75,000	84,000	102,500	118,000
Lincoln County				
Pennington County				
Meade County				

Market area designation and location jurisdictions	Mortgage Limits			
	1-family and condominium unit	2-family	3-family	4-family
Region IX (HUD Field Office)				
Los Angles Office:				
Los Angeles Office Metro and Non-Metro Areas:				
Los Angeles County	90,000	101,300	122,650	142,650
San Luis Obispo County				
Santa Barbara County				
Ventura County				
San Francisco Office:				
San Francisco Office Metro and Non-Metro Areas:				
Alameda County	90,000	101,300	122,650	142,650
Contra Costa County				
Del Norte County				
Humboldt County				
Lake County				
Marin County				
Mendocino County				
Monterey County				
Napa County				
San Benito County				
San Francisco County				
San Mateo County				
Santa Clara County				
Santa Cruz County				
Solano County				
Sonoma County				
Fresno Office:				
Fresno Office Metro and Non-Metro Areas:				
Fresno County	90,000	101,300	122,650	142,650
Kern County				
Kings County				
Madera County				
Mariposa County				
Merced County				
Stanislaus County				
Tulare County				
Sacramento Office:				
Sacramento Office Metro and Non-Metro Areas:				
Alpine County	90,000	101,300	122,650	142,650
Amador County				
Butte County				
Calaveras County				
Colusa County				
El Dorado County				
Glenn County				
Lassen County				
Modoc County				
Nevada County				
Placer County				
Plumas County				
Sacramento County				
San Joaquin County				
Shasta County				
Sierra County				
Siskiyou County				
Sutter County				
Tehama County				
Trinity County				
Tuolumne County				
Yolo County				
Yuba County				
San Diego Office:				
San Diego Office Metro and Non-Metro Areas:				
Imperial County	90,000	101,300	122,650	142,650
San Diego County				
Santa Ana Office:				
Metro Areas:				
Orange County	90,000	101,300	122,650	142,650
Riverside County				
San Bernardino County				

Market area designation and location jurisdictions	Mortgage Limits			
	1-family and condominium unit	2-family	3-family	4-family
Non-Metro Areas:				
Inyo County	75,000	84,000	102,500	118,000
Mono County				
Las Vegas Office:				
Las Vegas, NV MSA: Clarke County	90,000	101,300	122,650	142,650
State of Nevada:				
Non-Metro Areas				
Lincoln County	75,000	84,000	102,500	118,000
Nye County (part)				
Reno Office:				
Reno, NV MSA: Washoe County	89,500	101,000	122,000	142,000
State of Nevada Non-Metro Areas:				
Carson City County	75,000	84,000	102,500	118,000
Churchill County				
Douglas County				
Elko County				
Esmeralda County				
Eureka County				
Humbolt County				
Lander County				
Lyon County				
Mineral County				
Nye County (part)				
Pershing County				
Storey County				
White Pine County				
Phoenix Office:				
Phoenix, AZ MSA: Maricopa County	90,000	101,300	122,650	142,650
Other Areas:				
Coconino County	80,750	90,950	110,500	127,500
Pinal County	69,350	78,100	94,900	109,500
Tucson Office:				
Tucson, AZ MSA: Pima County	90,000	101,300	122,650	142,650
Honolulu Office:				
State of Hawaii: Metro and Non-Metro Areas	135,000	151,950	183,950	213,950
Territory of Guam	101,250	114,000	138,000	160,500
Region X (HUD Field Office)				
Seattle Office:				
Seattle, WA PMSA:				
King County	87,750	98,850	120,100	138,600
Snohomish County				
Tacoma, WA PMSA: Pierce County	75,300	84,800	103,050	118,900
Yakima, WA MSA: Yakima County	72,000	81,500	99,000	114,000
Bremerton, WA MSA: Kitsap County	80,200	90,350	109,750	126,650
Portland Office:				
Portland, OR PMSA:				
Clackamas County	86,450	97,350	118,300	136,500
Multnomah County				
Washington County				
Yamhill County				
Vancouver, WA PMSA: Clark County	86,450	97,350	118,300	136,500
All Other Areas	85,200	95,950	116,600	134,550
Anchorage Office:				
State of Alaska: All Areas	135,000	151,950	183,950	213,950
Spokane Office:				
Richland-Kennewick-Pasco, WA MSA:				
Benton County	72,000	81,500	99,000	114,000
Franklin County				
Spokane, WA MSA: Spokane County	72,000	81,500	99,000	114,000
Boise Office:				
Boise City, ID MSA: Ada County	75,000	84,000	102,500	118,000

Dated: September 23, 1986.

Silvio J. DeBartolomeis,

General Deputy Assistant Secretary for Housing—Federal Housing Commission.

[FR Doc. 86-21994 Filed 9-30-86; 8:45 am]

BILLING CODE 4210-27-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 5E3249/R856] (FRL-3086-8)

Pesticide Tolerance for Triforine

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of the fungicide triforine in or on the raw agricultural commodity asparagus. The regulation to establish a maximum permissible level for residues of triforine in or on asparagus was requested in a petition by the Interregional Research Project No. 4 (IR–4).

EFFECTIVE DATE: Effective on October 1, 1986.

ADDRESS: Written objections, identified by the document control number [PP 5E3249/R851], may be submitted to the: Hearing Clerk (A–10), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:
By mail: Jack Housenger, Emergency Response and Minor Use Section (TS–767C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.
Office location and telephone number: Rm. 716B, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–1806).

SUPPLEMENTARY INFORMATION: The EPA issued a proposed rule, published in the **Federal Register** of August 13, 1986 (51 FR 28959), which announced that the Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, P.O. Box 231,Rutgers University, New Brunswick, NJ 08903, submitted pesticide petition 5E3249 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR–4 Project and the Agricultural Experiment Stations of Arizona and California proposing the establishment of a tolerance for residues of the fungicide triforine (*N,N'*-[1,4-piperazinediylbis (2,2,2-trichloroethylidene)]bis(formamide)) in or on the raw agricultural commodity asparagus at 0.01 part per million (ppm). The petitioner proposed further that: (1) The use on asparagus be limited to Arizona and California based on the geographical representation of the residue data submitted, (2) additional residue data will be required to expand the area of usage, and (3) persons seeking geographically broader registration should contact the Agency's Registration Division at the address provided above.

The data submitted and other relevant information have been evaluated and discussed in the proposed rulemaking. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 18, 1986.

Susan H. Wayland,

Acting Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR Part 180 is amended as follows:

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.382 is amended by designating the current paragraph and list of tolerances as paragraph (a) and adding a new paragraph (b) to read as follows:

§ 180.382 Triforine; tolerances for residues.

* * * * *

(b) Tolerances with regional registration are established for residues of the fungicide triforine (*N,N'*-[1,4-piperperazinediylbis (2,2,2-trichloroethylidene)[bis (formamide)) in or on the following raw agricultural commodities:

Commodities	Parts per million
Asparagus	0.01

[FR Doc. 86–21823 Filed 9–30–86; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 180

[PP 6E3451/R853; FRL 3088–7]

Pesticides; Poly-D-Glucosamine; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes an exemption from the requirement for a tolerance for residues of the biochemical plant growth regulatory poly-*D*-glucosamine (hereafter referred to as chitosan). This exemption was requested by the Natural Ag Division of Bentech Laboratories, Inc., of Albany, Oregon. This rule eliminates the need to establish a maximum permissible level for residues of chitosan in or on the raw agricultural commodity wheat.

EFFECTIVE DATE: Effective on September 15, 1986.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M St. SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: By Mail:

Richard F. Mountfort, Product Manager (PM–23), Registration Division (TS–767C), Environmental Protection Agency, 401 M St. SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 237, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–1830).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of September 15, 1986 (51 FR 32684), which announced that Natural Ag. Division of Bentech Laboratories, Inc., had submitted a pesticide petition 6E3451 to the EPA. The petition proposed that an exemption from the requirement for a tolerance be established for residues of the biochemical plant growth regulator chitosan in or on the raw agricultural commodity wheat.

Chitosan is a naturally occurring substance and is produced from chitin extracts of crustacean shells (e.g., crab, shrimp and lobster). The product is intended for use as a seed treatment of wheat seeds to stimulate plant root growth and enhance the strength of wheat stems. Stronger wheat stems prevent lodging (when the plant falls over because weak stems are unable to support it). Wheat plants which lodge are difficult to harvest and therefore may decrease crop yields.

The applicant states that chitosan's mode of activity involves augmenting the function of plant genes by enhancing the immunity system of plants. The chemical is taken up by plant cells where it enters the nucleus and stimulates messenger RNA and enzyme production. In the case of wheat, such enzymes are thought to be responsible for stimulating the plant to produce more lignin in the stems, resulting in stronger stems and decreased lodging.

In support of its request, the applicant noted that chitosan (1) is not toxic to humans and animals; (2) naturally occurs in the environment in large concentrations; (3) has been exempted from regulation by the Food and Drug Administration (FDA) when used as a food or feed additive; and (4) has been approved by the State of Oregon for use in unrestricted amounts as a soil amendment (fertilizer), a use not regulated by EPA under the Federal Insecticide, Fungicide, and Rodenticide Act.

The Agency has evaluated the toxicological data and other materials submitted in support of the proposed exemption from the requirements for a tolerance. They included an acute oral feeding study in mice, an acute oral toxicity study in rats, an acute eye irritation study with rabbits, and other published literature and items discussing the permitted uses and toxicity of chitosan. The results of these studies consistently show that chitosan is not toxic.

The applicant also submitted information from the U.S. Fish and Wildlife Service concerning a study conducted to assess the toxicity of chitosan to fish. The results of this study showed that chitosan is relatively non-toxic to small echo fingerlings.

The applicant also submitted residue information showing that use of the aqueous chitosan solution on wheat seed (0.4 oz./100 lb. of seed) is not expected to result in detectable levels of chitosan in or on food or feed. The applicant stated that he reached this conclusion on the basis of information demonstrating that chitin is the second most abundant organic compound found in the Earth's surface. It is commonly found in insects, fungi, micro-fauna, and plankton. Some fungi are known to produce significant quantities of chitin, some of which (roughly 16 percent) breaks down to chitosan. Studies show that naturally-occurring chitosan is contributed to the soil by live wheat pathogens (fungi), such as *F. Culmorum* and *Fusarium*. According to the applicant, these fungi produce massive amounts of chitosan in the soil. The applicant reported that *F. Culmorum* alone has been shown to contribute at least 24.654 grams of chitosan per acre of top soil. Based on the applicant's recommended application rate (04. oz./100 lb. of seed), 10 micrograms of chitosan would be present per plant, and would add 6.8 grams of chitosan per acre to the soil. (Approximately, 60 lbs. of wheat seed is used to plant one acre.) Compared to the naturally-occurring concentrations of chitosan, it appears that the contribution from treated seed would be insignificant. The applicant also states that most of the chitosan applied to wheat seed does not enter the plant, but instead, remains in the soil and decays with the expended seed. Finally, because naturally-occurring chitosan is so ubiquitous, the applicant asserts that it would be difficult to develop a method which could accurately determine whether any chitosan residue levels in wheat resulted from treated seed or from the naturally-occurring substance.

Scientific literature submitted by the applicant shows that chitosan products are permitted to be used in food as hypocholesterolemic agents, as dietary fiber, in low calorie diets, and as agents to increase the specific loaf volume of bread. Chitosan has also been exempted from regulation by the FDA for use as a livestock feed additive.

Acceptable daily intake (ADI) and mixmum permissible intake (MPI) considerations are not relevant to this exemption. No enforcement actions are anticipated. Therefore, the requirement for an analytical method for enforcement purposes is not applicable to this exemption request. This is the first exemption from the requirement of a tolerance for this biochemical plant growth regulator.

This biochemical plant growth regulator is considered useful for the purpose for which the exemption from the requirement of a tolerance is sought. Based on the data and information considered, the Agency concludes that establishment of the exemption will protect the public health. Therefore, the regulation is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this notice in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objection. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this proposed rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities,

Pesticides and pests, Recordkeeping and reporting requirements.

Dated: September 15, 1986.

Douglas D. Campt,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR Part 180 is amended as follows:

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.1072 is added to read as follows:

§ 180.1072 Poly-D-glucosamine; exemption from the requirement of tolerance.

An exemption from the requirement of a tolerance is established for residues of the biochemical plant growth regulator poly-*D*-glucosamine in or on the raw agricultural commodity wheat.

[FR Doc. 86-22124 Filed 9-30-86; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 405

[BERC-331-FC]

Medicare Program; Determination of Reasonable Charges for Physician and Other Medical Services

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule with comment period.

SUMMARY: This rule revises the Medicare regulations to change the date for updating the reasonable charge levels applicable to physician and other medical services under the Medicare Supplementary Medical Insurance Program (Part B). We also are adding a provision to explain that the annual economic index that would have been used to determine the amount of any increase in physician prevailing charges from July 1, 1984 through September 30, 1985, and that, through the usual manner, would be used to increase the prevailing charges in subsequent years, is permanently relinquished. In addition, we are adding a provision to reflect the difference between prevailing charges for participating and nonparticipating physicians. These changes implement certain provisions of section 2306(a) of the Deficit Reduction Act of 1984 (DRA) (Pub. L. 98-369) and sections 9301 (b) and (d) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) (Pub. L. 99-272), and make other conforming changes.

DATES: This rule is effective October 1, 1986. This rule is being issued in final for reasons explained in the Waiver of Proposed Rulemaking in the Supplementary Information section below. However, we will consider comments that we receive at the appropriate address, as provided below no later than 5:00 p.m. on December 1, 1986.

ADDRESSES: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BERC-331-FC, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC., or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to file code BERC-331-FC. Comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of this document, in Room 309-G of the Department's offices at 200 Independence Ave., SW., Washington, DC., on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202-245-7890).

FOR FURTHER INFORMATION CONTACT: Janet McNair, 301-597-6339.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1842(b)(3) of the Social Security Act (the Act) provides that payment under the Medicare Supplementary Medical Insurance Program (Part B) for physician and other medical services must be based on a reasonable charge. Section 1842(b)(3) also requires that in determining the reasonable charge the Medicare carrier must take into consideration the customary charges for similar services generally made by the physician or supplier furnishing the service, as well as the prevailing charges in the locality for similar services. Before enactment of the Deficit Reduction Act of 1984 (DRA) (Pub. L. 98-369, July 18, 1984), section 1842(b) of the Act provided that the customary and prevailing charge levels that are used to determine the reasonable charge must be updated at the beginning of each 12-month period (referred to in our regulations as a "fee screen year") beginning on July 1. These charge levels were based on charges of physicians and other suppliers during the immediately preceding calendar year.

II. Reasonable Charge Update Changes

Section 2306(b) of the DRA and section 9301(d) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99-272; April 7, 1986) (COBRA) both amend section 1842(b) of the Act to revise the date of which customary and prevailing reasonable charge updates occur and the actual charge year period on which the updates or charges are based. The DRA moved the date of the update from July 1 to October 1, and COBRA moved it from October 1 to January 1. COBRA also delayed the scheduled October 1, 1986 update for lowest charge level (LCL) charges until January 1, 1987.

As a result of the enactment of COBRA, the next update of customary and prevailing charges will occur on January 1, 1987. Any October 1, 1986 updates are eliminated and services furnished during the period October 1, 1986 to December 31, 1986 are subject to reasonable charge screens in effect on September 30, 1986.

Physician Customary and Prevailing Charges

For services furnished on or after January 1, 1987, updated screens will apply. Subsequent updates will also occur on January 1 of each year. Those updates will be based on charges in the 12-month period ending on the immediately preceding June 30. However, consistent with other provisions of section 1842(b) of the Social Security Act, there will be limits on the charges to be recognized for physicians who were nonparticipating physicians (i.e., physicians who have not signed an agreement with us to accept assignment on all Medicare claims) during the applicable charge year. Specifically, in calculating customary charges to be applicable during the 12-month periods beginning January 1, 1987 and January 1, 1988, a portion of any charges made by a nonparticipating physician during the fee freeze will not be recognized to the extent that it exceeds the physician's charge level for a particular service during the quarter ending June 30, 1984. We notified the Medicare carriers in March to inform physicians and suppliers of the new cycle.

As noted earlier, there have been other prevailing and customary charge update cycles before those enacted by the DRA and COBRA. Before section

1842(b) of the Act was revised by the DRA, the Medicare fee screen year was from July 1 to June 30, the customary and prevailing charge screens were based on charges made during the immediately preceding calendar year. With the enactment of the DRA, the new fee screen year became October 1 to September 30 and the screens were based on charges from April 1 to March 31.

As a result of the DRA, the update that under prior law would have occurred in July 1984 did not occur. For physicians, fee levels remained the same as those established in July 1983 because the DRA included a freeze on physician customary and prevailing charges which precluded a 1984 update.

The DRA also provided that the Medicare economic index adjustment to the prevailing charge, which was not implemented during the first 15 months of the freeze on prevailing charge increases, will never be reflected in subsequent adjusted prevailing charges. In other words, the economic index adjustment for the period beginning July 1, 1984 and continuing until September 30, 1985, which was not made because of the freeze, will be forever relinquished in subsequent calculations of adjusted prevailing charges.

The October 1985 physician customary and prevailing charge screen update did not occur due to extension of the DRA physician fee freeze provisions through April 30, 1986 by subsequent legislation (Pub. L. 99–155, enacted November 14, 1985, extended the delay through December 14, 1985; Pub. L. 99–181, enacted December 13, 1985, extended the delay through December 18, 1985; Pub. L. 99–189, enacted December 18, 1985, extended the delay through December 19, 1985; Pub. L. 99–201 enacted December 23, 1985, extended the delay through March 14, 1986; and Pub. L. 99–272 (COBRA) extended the delay through April 30, 1986). COBRA mandated an update for some physicians (depending on their status as "participating" physicians) effective May 1, 1986.

Section 9301(d) of COBRA includes provisions that affect the fee screen years of physicians and suppliers and the dates on which updates occur. A major consequence of this section of COBRA is to move the date on which updates occur from October to January. The statute makes a corresponding change in charge years (i.e., the period on which fee screens are based) to maintain the relationship that a charge year ends six months before the update or the beginning of the fee screen year. Consequently, the charge year is the 12-month period of July 1 through June 30 preceding the January 1 update. The change in the update cycle and charge years on which it is based is applicable to services furnished beginning October 1, 1986 and is the same for determining customary charges and prevailing charges.

COBRA adds another limitation on the prevailing charge. For services furnished on or after January 1, 1987, the prevailing charge of any physician who is nonparticipating at the time of furnishing the service cannot exceed the prevailing charge applicable in the prior year to services furnished by participating physicians. Thus, there is to be a continual differential between the prevailing charges applicable to participating and nonparticipating physicians.

Suppliers Customary and Prevailing Charges

For services furnished on or after January 1, 1987, an updated screen will apply. Subsequent updates will also occur on January 1 of each year. Those updates will be based on charges in the 12-month period ending on the immediately preceding June 30.

As noted earlier, there have been other prevailing and customary charge update cycles before those enacted by the DRA and COBRA. Before section 1842(b) of the Act was revised by the DRA on July 18, 1984, the Medicare fee screen year was from July 1 to June 30; the customary and prevailing charge screens were based on charges made during the immediately preceding calendar year. With the enactment of the DRA, after the July 1984 update occurred, the new fee screen year became October 1 to September 30 and the screens were based on charges from April 1 to March 31.

A new reasonable charge screen, known as the inflation-indexed charge (IIC), was implemented by regulations (42 CFR 405.509) on October 1, 1985 (50 FR 40174). The IIC is defined as the lowest reasonable charge screen (i.e., IIC, customary charge fee screen, prevailing charge fee screen, or lowest charge level fee screen) for a service from the prior fee screen year, adjusted for inflation. For the inflation-indexed charges that went into effect for fiscal year 1986, the adjustment factor was zero. Therefore, for nonphysician services furnished during the period beginning October 1985, payment is limited by whatever constituted the prior fee screen year's lowest charge screen, with no increase (a zero adjustment factor) for inflation. Consequently, use of the customary and prevailing charges update methodology effective October 1985 could not increase payment levels above the prior year's lowest fee screen level.

Also, under our regulations at 42 CFR 405.511(c), for items and services subject to the lowest charge level (LCL) furnished on or before September 30, 1986, an LCL is to be calculated in January and July of each year, and, for items and services furnished on or after October 1, 1986 an LCL is calculated in October of each year. Due to application of the IIC provision, any increase in the LCL as a result of the July 1986 update could not increase the Medicare allowance. Therefore, no July updates occurred.

Under our regulations at 42 CFR 405.509, determining the inflation-indexed charge, the next IIC update occurs "[f]or fee screen years beginning on or after October 1, 1986." Under COBRA, the next such updates will occur on January 1, 1987. Fee screen years are the same for all reasonable charge screens. For example, a change in the fee screen year for customary charges also changes the fee screen year for all other reasonable charge screens including the IIC. (See, for example, 50 FR 33324 and 40168.) Consequently, with the enactment of COBRA, we notified carriers in March, 1986 to inform suppliers whose reasonable charges are subject to the IIC screen that no updates will occur in October 1986 and that the next updates will occur, as with the other screens, on January 1, 1987.

III. New Provisions of the Regulations

A. Update Cycles

The revisions of section 2306(b) of the DRA were made obsolete by section 9301(d) of COBRA. Therefore, for the update cycle, these regulations include only the COBRA provisions.

1. We are revising current regulations at 42 CFR 405.501(c) (relating to determination of reasonable charges) and 405.504(a)(2)(ii)(A) and (B), (a)(3)(i)(B) Example and (a)(3)(ii)(B) (relating to determining prevailing charges) to reflect the statutory changes to show that, beginning with services furnished on or after October 1, 1986, the fee screen year is updated on January 1 and the updates are computed on the basis of charges for services during the prior period July 1 through June 30. These revisions conform to our regulations with changes required by the law as described in this preamble.

2. As part of the Medicare carrier procedures for determining reasonable charges for physician services, our regulations at 42 CFR 405.551 specify how to calculate reasonable charges for physicians who are compensated by or

through a provider or other related organization under a physician compensation agreement. Section 405.551(e) provides that, if a physician ends his compensation agreement and, instead, bills patients on his own, the customary charge is determined on the basis of the former compensation agreement until the carrier has accumulated charge data for at least 3 months of the calendar year preceding the annual reasonable charge update. Since the calendar year is no longer the period for which data are used to compute the prevailing charges, we are making a conforming change in § 405.551(e) to make the time period consistent with the statute; i.e., July 1 through June 30.

These regulations also implement cycle changes for other reasonable charge screens. Those screens are the inflation-indexed charge and the lowest charge level screens. Those screens specifically reference the "fee screen year", which has been changed by COBRA. Thus, these regulations include the inflation-indexed charge and the lowest charge level screens in order to maintain the practice of having all reasonable charge screens on the same cycle.

3. We pay for some Part B services and items at a level that is no higher than the 25th percentile of the charges for a given item or service in the locality. Prior to COBRA, the charges were those incurred during the three-month period of April 1 through June 30 preceding the fee screen year (October through September), this fee screen year period implements section 2306(b) of the DRA. In conforming this section to the COBRA revisions, we are maintaining the relationship between the two time periods, that is, we will continue to base the lowest charge level on claims processed during the second calendar quarter preceding the fee screen year. We are revising the dates in § 405.511 to coincide with revised fee screen years and other dates discussed in detail in this preamble. January LCL updates will be effective January 1, 1987; there will be no October 1986 update.

4. As stated earlier, when we update reasonable charge screens for other than physician services each year, we take into account an inflation-indexed factor. Section 405.509 discusses the inflation adjustment factor in terms of the fee screen year, which is a term based on the statutory cycle for customary and prevailing charges and used consistently throughout our regulations. The regulations provide at § 405.509(b)(1) "[f]or the screen years beginning on or after October 1, 1986". Since the fee screen year has been changed, we are updating the references in § 405.509(a) to conform the fee screen years to those in effect beginning January 1987. We revise all references to fee screen years ending September 30 to December 31, in paragraphs (a) and (b)(1). The change in date of application of the inflation adjustment factor in paragraph (b)(1) by one calendar quarter results in a conforming delay in use of Bureau of Labor Statistics data for the period ending June 30 instead of March 31.

We are also revising § 405.509(b)(2) to conform to the update cycle occurring in January. In current § 405.509(b)(2) the application of the inflation adjustment factor for services, supplies and equipment during fiscal year 1986 is zero. This provision was added on October 1, 1985. (50 FR 40174). Our revision retains use of a zero adjustment factor through December 1986, which is an additional three months; i.e., from October 1, 1986 to January 1, 1987. These changes are a necessary result of the three-month delay for customary and prevailing charge updates mandated by COBRA.

B. Limitations on Prevailing Charges

1. To incorporate in our regulations the requirements of section 2306(a) of DRA, we are adding to § 405.504(a)(3)(ii)(A) a provision to indicate that the prevailing charges for physicians' services furnished during the 15-month period beginning July 1, 1984 may not exceed the prevailing charge for physicians' services in effect for the 12-month period beginning July 1, 1983. These regulations indicate subsequent increases may not reflect the rise in the economic index that would have otherwise been provided for the period beginning July 1, 1984.

2. To incorporate the requirements of section 9301(b)(2) of COBRA, we are revising our regulations to add a new paragraph (a) to § 405.504 to indicate that prevailing charges for nonparticipating physicians will be no higher than those for participating physicians the previous fee screen year. Also, consistent with the definition of "participating physician" in section 1842(h) of the statute, we are defining a nonparticipating physician as one who does not meet that definition. In effect, a "nonparticipating physician" is one who has not entered into an agreement to accept payment on an assignment-related basis for all items and services furnished to individuals enrolled under Part B during a given calendar year (the period for which physicians agree to participate).

IV. Waiver of Notice of Proposed Rulemaking and 30-Day Delay in Effective Date

We have not issued a proposed rule on the provisions in these regulations and we are publishing a final rule less than 30 days before its effective date because the amendments simply conform the Medicare regulations to the revisions to section 1842(b) of the Act made by section 2306 (a) and (b) of the DRA and section 9301 (b) and (d) of COBRA. Thus, we believe the changes would take effect even without the publication of this rule. We in any case find good cause to issue this final rule without prior notice and comment and without a 30-day delay in effective date because additional delay would be both unnecessary and contrary to the public interest. Additional delay is unnecessary because these changes with respect to the customary, prevailing, and LCL charge levels merely conform the regulations to the statute, which is, in any event, effective as provided in COBRA. Section 2306(b)(1) of the DRA and section 9301(d) of COBRA are specific concerning the update periods for customary and prevailing charge levels and the delay in the annual update for LCL charge levels, and leave virtually no discretion for interpretation with respect to those update periods. The IIC update is a necessary result of the COBRA changes in that the rules expressly tie the next IIC update to the fee screen year and the next fee screen year begins January, 1987, by virtue of COBRA. Further delay would be contrary to the public interest in that different update cycles for different screens (or update cycles different from published regulations) would promote confusion and inefficiency among suppliers and carriers.

Finally, in March and April, 1986, carriers gave suppliers and physicians actual written notice that reasonable charge screens (including, for suppliers, the IIC) would not be updated until January, 1987. Thus, we are publishing these amended regulations without proposed rulemaking. We have established a sixty-day comment period effective upon publication of the rule, however, and welcome comments on the rule.

Because the suppliers and physicians received actual notice of the substance of the rule and because the compelling purposes described above would be served by implementing these rules on October 1, 1986, we find good cause to publish this final rule at this time with an effective date of October 1, 1986.

V. Regulatory Impact Statement

Executive Order 12291 and Regulatory Flexibility Act

Executive Order 12291 requires us to prepare and publish a regulatory impact analysis on any major rule. A major rule is defined as any regulation that is likely to: (1) Have an annual effect on the economy of $100 million or more, (2) cause a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions, or (3) result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, consistent with the Regulatory Flexibility Act (RFA) U.S.C. 601 through 612, we prepare and publish a regulatory flexibility analysis for regulations unless the Secretary certifies that the regulations will not have a significant economic impact on a substantial number of small entities. We consider all physicians and suppliers paid under Part B of the program and affected by this rule to be small entities. However, this regulation, in itself, will not have a significant effect on payment to these entities. Therefore, this regulation does not meet the criteria of Executive Order 12291. Also, we have determined, and the Secretary certifies, that this regulation will not have a significant economic impact on a substantial number of small entities.

VI. Paperwork Reduction Act

These changes do not impose paperwork collection requirements. Consequently, they need not be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3801 et seq.).

VII. Response to comments

Because of the large number of pieces of correspondence we normally receive on regulations, we cannot acknowledge or respond to them individually. However, we will consider all comments that are received by the end of the comment period. If changes to these regulations result from consideration of comments, we will publish all timely comments and our response in the preamble to the revised rule.

List of Subjects in 42 CFR Part 405

Administrative practice and procedure, Certification of compliance, Clinics, Contracts (agreements), Cost-based reimbursement, End-stage renal disease (ESRD), Health care, Health facilities, Health maintenance organizations (HMOs), Health professions, Health suppliers, Home health agencies, Hospitals, Inpatients, Kidney diseases, Laboratories, Medicare Nursing homes, Onsite surveys, Outpatient providers, Prospective payment system, Reasonable charges, Reporting and recordkeeping requirements, Rural areas, X-rays.

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

42 CFR Part 405 is amended as follows:

Subpart E—Criteria for Determination of Reasonable Charges; Reimbursement for Services of Hospital Interns, Residents, and Supervising Physicians

1. The authority citation for Subpart E continues to read as follows:

Authority: Secs. 1102, 1814(b), 1832, 1833(a), 1842 (b) and (h), 1861 (b) and (v), 1862(a)(14), 1866(a), 1871, 1881, 1886 and 1887 of the Social Security Act, as amended (42 U.S.C. 1302, 1395f(b), 1395k, 1395l(a), 1395u (b) and (h), 1395x (b) and (iv), 1395y(a)(14), 1395cc(a), 1395hh, 1395rr, 1395ww and 1395xx).

2. Section 405.501 is amended by revising paragraph (c) to read as follows:

§ 405.501 Determination of reasonable charges.

* * * * *

(c) Carriers will determine the reasonable charge on the basis of the criteria specified in § 405.502, and the customary and prevailing charge screens in effect when the service was furnished. (Also see § 405.480 through 405.482 and §§ 405.550 through 405.557, which pertain to the determination of reimbursement for services performed by hospital-based physicians.) However, when services are furnished more than 12 months before the beginning of the fee screen year (January through December 30) in which a request for payment is made, payment is based on the customary and prevailing charge screens in effect for the fee screen year that ends immediately preceding the fee screen year in which the claim or request for payment is made.

3. In § 405.504, the introductory language in paragraphs (a)(2), (a)(2)(ii) and (a)(3)(i) is reprinted for reader comprehension, paragraph (a)(1) is added and paragraphs (a)(2)(ii)(A) and (B), (a)(3)(i)(B) Example, and (a)(3)(ii)(A) and (B) are revised to read as follows:

§ 405.504 Determining prevailing charges.

(a) *Ranges of charges.* (1) In the case of physicians' services furnished beginning January 1, 1987, the prevailing charges for a nonparticipating physician as defined in this paragraph will be no higher than the same level that was set for services furnished during the previous calendar year for a physician who was a participating physician during that year. A nonparticipating physician is a physician who has not entered into an agreement with the Medicare program to accept payment on an assignment-related basis (see §§ 405.1684, 405.1685 and 405.1675) for all items and services furnished to individuals enrolled under Part B of Medicare during a given calendar year.

(2) No charge for Part B medical or other health services may be considered to be reasonable if it exceeds the higher of:

* * * * *

(ii) The prevailing charge that, on the basis of statistical data and methodology acceptable to HCFA, would cover:

(A) 75 percent of the customary charges made for similar services in the same locality during the 12-month period of July 1 through June 30 preceding the fee screen year (January 1 through December 31) in which the service was furnished; or

(B) In the case of services furnished more than 12 months before the beginning of the fee screen year (January 1 through December 31) in which the claim or request for payment is submitted, 75 percent of the customary charges made for similar services in the same locality during the 12 month period of July 1 through June 30 preceding the fee screen year that ends immediately preceding the fee screen year in which the claim or request for payment is submitted.

(3)(i) In the case of physicians' services, each prevailing charge in each locality may not exceed the prevailing charge determined for the fiscal year ending June 30, 1973 (without reference to the adjustments made pursuant to the economic stabilization program then in effect), except on the basis of appropriate economic index data which demonstrate that such higher prevailing charge level is justified by:

* * * * *

(B) * * *

Example. The available data indicate the office-expense and earnings components of the index should be given relative weights of 40 percent and 60 percent, respectively, and it is calculated that the aggregate increase in expenses of practice for a particular July through June period was 112 percent over the expenses of practice for calendar year 1971

and the increase in earnings (less increases in workers' productivity) was 110 percent over the earnings for calendar year 1971. The allowable increase in any prevailing charge that could be recognized during the next fee screen year would be 110.8 percent ((.40×112)+(.60)×110)=110.8) above the prevailing charge recognized for fiscal year 1973.

(ii)(A) If the increase in the prevailing charge in a locality for a particular physician service resulting from an aggregate increase in customary charges for that service does not exceed the index determined under paragraph (a)(3)(i) of this section, the increase is permitted and any portion of the allowable increase not used is carried forward and is a basis for justifying increases in that prevailing charge in the future. However, if the increase in the prevailing charge exceeds the allowable increase, the increase will be reduced to the allowable amount. Further increases will be justified only to the degree that they do not exceed further rises in the economic index. The prevailing charge for physicians' services furnished during the 15-month period beginning July 1, 1984 may not exceed the prevailing charge for physicians' services in effect for the 12-month period beginning July 1, 1983. The increase in prevailing charges for physicians' services for subsequent fee screen years similarly may not reflect the rise in the economic index that would have otherwise been provided for the period beginning July 1, 1984, and must be treated as having fully provided for the rise in the economic index which would have been otherwise taken into account.

(B) Notwithstanding the provisions of paragraphs (a)(3)(i) and (a)(ii)(A) of this section, the prevailing charge in the case of a physician service in a particular locality determined pursuant to paragraphs (a)(2) and (3)(i) of this section for the fiscal year beginning July 1, 1975, and for any subsequent fee screen years, if lower than the prevailing charge for the fiscal year ending June 30, 1975, by reason of the application of economic index data, must be raised to such prevailing charge which was in effect for the fiscal year ending June 30, 1975. (If the amount paid on any claim processed by a carrier after the original reasonable charge update for the fiscal year beginning July 1, 1975, and prior to the adjustments required by the preceding sentence, was at least $1 less than the amount due pursuant to the preceding sentence, the difference between the amount previously paid and the amount due shall be paid within 6 months after December 31, 1975; however, no payment shall be made on any claim where the difference between the amount previously and the amount due shall be paid within 6 months after December 31, 1975; however, no payment shall be made on any claim where the difference between the amount previously paid and the amount due is less that $1.)

* * * * *

4. Section 405.509 is revised to read as follows:

§ 405.509 Determining the inflation-indexed charge.

(a) *Definition.* For purposes of this section, "inflation-indexed charge" means the lowest of the fee screens used to determine reasonable charges (as determined in § 405.503 for the customary charge, § 405.504 for the prevailing charge, this section for the inflation-indexed charge, and § 405.11 for the lowest charge level) for services, supplies, and equipment reimbursed on a reasonable charge basis (excluding physicians' services), that is in effect on December 31 of the previous fee screen year, updated by the inflation adjustment factor, as described in paragraph (b) of this section.

(b) *Application of inflation adjustment factor to determine inflation-indexed charge.* (1) For fee screen years beginning on or after January 1, 1987, the inflation-indexed charge is determined by updating the fee screen used to determine the reasonable charges in effect on December 31 of the previous fee screen year by application of an inflation adjustment factor, that is, the annual change in the level of the consumer price index for all urban consumers, as compiled by the Bureau of Labor Statistics, for the 12-month period ending on June 30 of each year.

(2) For services, supplies, and equipment furnished from October 1, 1985 through December 31, 1986 the inflation adjustment factor is zero.

5. In § 405.511, paragraph (c) is reprinted for the convenience of the reader, and the heading of paragraph (c)(1) and (c)(2) are revised to read as follows:

§ 405.511 Reasonable charges for medical services, supplies and equipment.

* * * * *

(c) *Calculating the lowest charge level.* The lowest charge level at which an item or service is widely and consistently available in a locality is calculated by the carrier in accordance with instructions from HCFA as follows:

(1) *For items or services furnished on or before December 31, 1986.*

* * * * *

(2) *For items or services furnished on or after* January 1, 1987.

(i) A lowest charge level is calculated for each identified item or service in January of each year.

(ii) The lowest charge level for each identified item or service is set at the 25th percentile of the charges (incurred or submitted on claims processed by the carrier) for that item or service, in the locality designated by the carrier for this purpose, during the 3-month period of July 1 through September 30 preceding the fee screen year (January through December 31) for which the item or service was furnished.

6. Section 405.551 is amended by revising paragraph (e) to read as follows:

§ 405.551 Reasonable charges for physician services in providers: General provisions.

* * * * *

(e) *Charge of agreements.* If a physician who has been compensated by or through a provider (or other entity) for physician services to individual patients ends his or her compensation agreement and instead bills all patients, or their insurers, directly for his or her services, the carrier will determine the physician's customary charges on the basis of the former compensation agreement until the carrier has accumulated charge data from at least 3 months of the 12 month period of July 1 through June 30 preceding the January 1 annual reasonable charge update. However, if a physician terminates a direct billing arrangement and enters into a compensation agreement with a provider, the carrier will determine compensation-related customary charges in accordance with paragraph (d) of this section except that during the first year, the total payments made on the basis of the compensation-related charges may not exceed what total payment would have been under the physician's former direct billing practice.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 13.774, Medicare—Supplementary Medical Insurance)

Dated: September 12, 1986.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: September 25, 1986.

Otis R. Bowen,

Secretary.

[FR Doc 86-22161 Filed 9-30-86; 8:45 am]

BILLING CODE 4120-01-M

42 CFR Parts 405 and 412

[BERC-353-CN]

Medicare Program; Changes to the Inpatient Hospital Prospective, Payment System and FY 1987 Rates

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Correction of final rule.

SUMMARY: This document corrects technical errors that appeared in the final rule, published September 3, 1986 (51 FR 31454), that revised the inpatient hospital prospective payment system and set forth the fiscal year 1987 rates for that system.

FOR FURTHER INFORMATION CONTACT: Linda Magno, (301) 594-9343.

SUPPLEMENTARY INFORMATION:

In FR Doc. 86-19661, beginning on page 31454 in the issue of September 3, 1986, make the following corrections:

1. On page 31455, in the third column, in the third line of the fourth full paragraph, the phrase "FY 1985" is corrected to read "FY 1986".

2. On page 31464, in the first column, in the fourteenth line of the first paragraph, the second multiplication sign should be an addition sign. Therefore, the line is corrected to read "(2560 × .8000) + 640 or $2688 per."

3. On page 31471, in the third column, to correct a misalignment of information, the seventh and eighth lines from the top are corrected to read as follows:

(1.00 − .1051 = .8949)
6,000 times .8949 = 5,369

4. On page 31474, in the table that begins near the top of the second column, the regional case-mix index value for Region 6 ("1.1642") is corrected to read "1.1206". In the first full paragraph of the second column, the second sentence is corrected and a third sentence is added to read as follows:

However, because the actual median urban case-mix index values for Region 6 (1.1642) and Region 7 (1.1165) for Federal FY 1985 exceeded the benchmarks that we published in the September 3, 1985 final rule (which at that time applied to discharges in Federal FY 1985), and because we are publishing these standards in this final rule without opportunity for prior public comment, we have used, for these two regions, the lower case-mix index values published September 3, 1985 (50 FR 35676) so as not to disadvantage hospitals in those regions. We note that the actual median urban case-mix index value for Region 8 (1.1904) exceeded the September 3, 1985 benchmark (1.1579); however, we are not incorporating the September 3, 1985 value because the national case-mix index value (1.1275) is lower than either of the Region 8 values and thus no hospitals in that region are disadvantaged.

5. On page 31488, in the second column, the seventeenth line of the last paragraph, a parenthesis is added before the word "as".

§ 412.96 [Corrected]

6. On page 31497, in the second column, in § 412.96(h)(2), the phrase "paragraphs (h)(1) and (h)(2)" in the second and third lines is corrected to read "paragraph (h)(1)".

§ 412.113 [Corrected]

7. On page 31497, in the third column, in § 412.113(d) the word "*center*" in the title is corrected to read "*centers*"; the word "Payments" in the third line is corrected to read "Payment"; the word "are" in the sixth line is corrected to read "as".

8. On page 31500, in the second and third columns, we reiterate that the .405 and .5795 factors in the two formulas and exponents, and the formulas are corrected to read as follows:

$$2 \times \left[\left(1 + \frac{\text{interns and residents}}{\text{beds}}\right)^{.405} - 1\right]$$

$$1.5 \times \left[\left(1 + \frac{\text{interns and residents}}{\text{beds}}\right)^{.5795} - 1\right]$$

9. On page 31512, in the first and second colums, to reflect the correct arrangement of the values in Table 1, we are presenting a revised Table 1 as follows:

TABLE 1.—AVERAGE MEDICARE PAYMENTS PER DAY AND PER ADMISSION

Calender year expense incurred	Medicare payments per day				Medicare payments per admission			
	Nominal Amount	Percent change	Real amount	Percent change in real	Nominal amount	Percent change	Real amount	Percent change in real
1978	$182		$262		$1,964		$2,834	
1979	204	12.5	271	3.3	2,116	7.7	2,807	−1.1
1980	232	13.4	275	1.5	2,459	16.2	2,917	3.9
1981	269	15.8	289	5.2	2,808	14.2	3,028	3.8
1982	314	16.9	314	8.6	3,227	14.9	3,227	6.7
1983	353	12.5	335	6.7	3,497	8.4	3,315	2.8
1984	441	25.0	399	19.2	3,931	12.4	3,551	7.2
1985	514	16.5	447	12.4	4,297	9.3	3,740	5.5
Average rate of growth per year:								
79-83 (Pre-PPS)		14.2		5.1		12.3		3.2
84-85 (Post-PPS)		20.7		15.8		10.9		6.4

Source: HCFA, Office of the Actuary. Data derived from calculations done in preparation of the Trustee's Report.
Notes: 1: Medicare payments include program benefit payments and beneficiary liabilities.
2. The "Real" column represents the payment per day or per admission deflated by HCFA's Hospital Input Price Index to remove the effects of price inflation.

10. On page 31522, in the first column, the table is corrected by moving the State abbreviations for Regions 8 and 9 out of the "Urban" column and to the "Region" column under Regions 8 and 9.

11.On page 31523, in the second column, in the fourth line of the second full paragraph, add the following phrase after the word "deviations":

"beyond the geometric mean length of stay."

12. On page 31524, in the third column, remove the comma at the end of the first line and remove the words "including capital" in the second line. At the end of the third line, move the parenthesis to the beginning of the fourth line so that the fourth line is corrected to read "($13,500×.2561)=$19,914.24".

13. On page 31574, in Table 5, under the ARITHMETIC MEAN LOS, GEOMETRIC MEAN LOS, and OUTLIER THRESHOLD columns the values for DRGS 469 and 470 are corrected to read "0".

14. On page 31576, in the second column, in the revised surgical hierarchy for MDC 3, the DRG numbers for tonsillectomy and/or adenoidectomy procedures are corrected to read as follows: "Tonsillectomy and/or adenoidectomy only (DRGs 59 & 60). Tonsil and adenoid procedures except tonsillectomy and/or adenoidectomy only (DRGs 57 & 58)".

15. On page 31577, in the second column, in the revised surgical hierarchy for MDC 6, several DRG numbers were inadvertently omitted. Add "& DRG 156" to "Stomach, esophageal and duodenal procedures". Add "& DRG 163" to "Hernia procedures". Add "& DRG 171" to other digestive system operating room procedures.

16. On page 31580, in the second column, in the fifth line under the second indented point, codes "6830, 6840, and 6850" are corrected to read "683, 684, and 685".

17. On page 31594, in the second column, in the second paragraph under the first indented point, in the eighth line, the word "proposing" is corrected to read "implementing".

(Secs. 1102, 1122, 1871, and 1886 of the Social Security Act, as amended (42 U.S.C. 1302, 1320a-1, 1395hh, and 1395ww))

(Catalog of Federal Domestic Assistance Programs No. 13.773, Medicare—Hospital Insurance Program)

Dated: September 25, 1986.

Wallace O. Keene,

Acting Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 86-22160 Filed 9-30-86; 8:45 am]

BILLING CODE 4120-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 1820

[Circular No. 2588; AA-140-06-4830-11]

Application Procedures; Amendment of List of Addresses of State Offices

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking amends 43 CFR Part 1820 to reflect the reorganization of the Bureau of Land Management in Alaska into 5 districts. It amends the list of State Office Addresses to remove the references to the Fairbanks District Office and to the separate addresses for Northern and Southern Alaska.

EFFECTIVE DATE: October 1, 1986.

ADDRESS: Any inquiries or suggestions should be sent to: Director (140), Bureau of Land Management, Room 5555 MIB, 1800 C Street, NW, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Eleanor R. Schwartz, (202)-343-8735.

SUPPLEMENTARY INFORMATION: This final rulemaking reflects the administrative action of reorganizing the Bureau of Land Management in Alaska into 5 districts. Because of the Alaska reorganization it removes the reference to the Fairbanks District Office and the division of the State into 2 regions. It makes no other changes in filing requirements that are spelled out in Subpart 1821. Therefore, this amendment is published as a final rulemaking with the effective date shown above.

Within 90 days after the effective date of this rulemaking, the Alaska State Office will publish in the **Federal Register** a notice of the reorganization, setting forth the addresses of the new district offices and their areas of management jurisdiction. Also, as stated at the end of the list of addresses in § 1821.2-1, the new addresses may be obtained from the Alaska State Office or the Washington Office of the Bureau of Land Management.

The Department of the Interior has determined that because this rule is an administrative action, it is not a major rule for purposes of E.O. 12291, and neither an environmental impact analysis nor a regulatory flexibility analysis is required. There are no additional information collection requirements imposed by this final rulemaking.

List of Subjects in 43 CFR Part 1820

Administrative practice and procedures, Alaska, Archives and records, Public lands.

Under the authority of section 2478 of the Revised Statutes (43 U.S.C. 1201), Subpart 1821, Part 1820, Group 1800, Subchapter A, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below.

September 26, 1986.

Steven Griles,

Assistant Secretary of the Interior.

PART 1820—[AMENDED]

Subpart 1821—Execution and Filing of Forms

1. The authority citation for Part 1820 continues to read as follows:

Authority: R.S. 2478; 43 U.S.C. 1201, unless otherwise noted.

§ 1821.2-1 [Amended]

2. The portion of § 1821.2-1(d) beginning with the heading "State Office and Area of Jurisdiction" and ending after the address and jurisdiction of the Wyoming State Office, is amended by removing the paragraph beginning "Fairbanks District Office", footnote 1, and the diagram to which the footnote refers. The paragraph beginning "Alaska State Office" is revised to read as follows:

* * * * *

(d) * * *

Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513—Alaska

* * * * *

[FR Doc. 86-22216 Filed 9-30-86; 8:45 am]

BILLING CODE 4310-JC-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

Organization and Functions; Requests for Copies of Materials Which Are Available, or Made Available, for Public Inspection

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission is acting to administratively amend the regulations pertaining to copying materials which are available, or made available, for public inspection. The revisions update obsolete information, remove language routinely misinterpreted, add appropriate clarifying language where

needed, and provide for cost recovery from the distribution of Commission computer products in compliance with OMB Circular No. A–130.

EFFECTIVE DATE: October 1, 1986.

FOR FURTHER INFORMATION CONTACT: Terry D. Johnson, (202) 634–1535.

SUPPLEMENTARY INFORMATION:

In the matter of amendment of regulations pertaining to requests for copies of materials which are available, or made available, for public inspection.

Order

Adopted: September 23, 1986.
Released: September 26, 1986.
By the Managing Director:

1. Pursuant to authority delegated to him under § 0.231(d) of the Commission's Rules, the Managing Director proposes to make several nonsubstantive editorial amendments to § 0.465 of the Commission's Rules, and to bring the Commission into compliance with certain provisions of OMB Circular No. A–130, Management of Federal Information Resources.

2. Section 0.465(a) is being amended to remove address and pricing information concerning the Commission's duplication contractor from the bottom note and replacing it with a reference to where current information may be obtained.

3. Section 0.465(b) is being revised to provide current information for the Commission's transcription service contractor and to add a new bottom note to reference where current address and pricing information may be obtained.

4. Section 0.465(c)(1) is being redesignated as paragraph (e) and moved to the end of the section.

5. Section 0.465(c)(2) is being redesignated as paragraph (c)(1) and revised to clarify the Commission's policy with respect to permitting the public to use their own photocopying equipment on Commission premises by indicating that prior approval is required.

6. Section 0.465(c)(3) is being redesignated as paragraph (c)(2).

7. Section 0.465(c)(4) is being redesignated as paragraph (c)(3) and amended to indicate that requests from foreign requesters be sent to the General Counsel rather than to the Commission in general.

8. Section 0.465(d)(1) is being revised to clarify the media on which the Commission's data bases are available, the Commission's policy with respect to periodic updates to computer data bases, and to add a bottom note concerning the existence of a new contractor for providing the public with direct electronic access to a portion of the non-government Master Frequency File data base.

9. Section 0.465(d)(3) is being amended to improve the procedures for obtaining copies of computer source programs and associated documentation, and to provide for cost recovery as mandated by Appendix II to OMB Circular No. A–130.

10. Section 0.465(d)(4) is being added to reserve the right to copy and distribute computer source programs and data bases without charge when it serves the interests of the Government and the Commission.

11. Accordingly, it is ordered, that, pursuant to sections 4(i) and 4(j) of the Communications Act of 1934, as amended, 47 CFR Part 0 is amended as specified below, effective upon publication in the **Federal Register.**

List of Subjects in 47 CFR Part 0

Freedom of information, Organization and functions.

Edward J. Minkel,
Managing Director.

PART 0—COMMISSION ORGANIZATION

47 CFR Part 0 is amended as follows:

1. The authority citation for Part 0 continues to read as follows:

Authority: 47 U.S.C. 154, 303, unless otherwise noted. Implement; 5 U.S.C. 552, unless otherwise noted.

2. Section 0.465 is amended by removing the second and fourth sentences of paragraph (a) and revising the note of paragraph (a) and revising paragraph (b) as follows:

§ 0.465 Request for copies of materials which are available, or made available, for public inspection.

(a) * * *

Note.—The name, address, telephone number, and schedule of fees for the current duplication contractor are published annually at the time of contract award or renewal in a Public Notice. This information may be obtained from the Office of Congressional and Public Affairs, Consumer Assistance and Small Business Division, Telephone (202) 632–7000.

(b) The Commission awards a contract to a commercial firm to transcribe Commission proceedings in which a verbatim record is kept and to offer copies of the transcript for sale to the public. Except as authorized by the Commission, the firm is required to retain the capacity to furnish copies of the transcript for a period of 5 years, and may retain that capacity for a longer period, even though another firm is currently transcribing Commission proceedings. Requests for copies of the transcript of the current proceedings should be directed to the current contractor. Requests for transcripts of older proceedings will be forwarded by the Commission to the firm which made the transcript in question; and the names of contracting firms for past years will be furnished upon request.

Note.—The name, address, telephone number, and schedule of fees for the current transcription contractor are published annually at the time of contract award or renewal in a Public Notice. This information may be obtained from the Office of Congressional and Public Affairs, Consumer Assistance and Small Business Division, Telephone (202) 632–7000.

* * * * *

3. Section 0.465 is further amended by redesignating paragraph (c)(1) as (e) and by redesignating (c)(2) as (c)(1) and revising the text as follows:

§ 0.465 Request for copies of materials which are available, or made available, for public inspection.

* * * * *

(c)(1) Contractual arrangements which have been entered into with commercial firms, as described in this section, do not in any way limit the right of the public to inspect Commission records or to extract therefrom whatever information may be desired. Coin-operated copy machines are available for use by the public in various reference rooms for the purpose of duplicating records available at those locations. In addition, any person may make photocopies of Commission records with his or her own equipment at locations where those records may be inspected. Prior approval for such arrangements, which must be obtained from the Operations Support Division, Office of Managing Director, is subject to the availabilty of adequate space and facilities to accommodate the user's equipment.

* * * * *

4. Section 0.465 is further amended by redesignating paragraph (c)(3) and note as (c)(2) and note, by redesignating paragraph (c)(4) as (c)(3) and replacing all occurrences of the word "Commission" with the words "General Counsel", by revising paragraph (d)(1), amending paragraph (d)(3) by revising the first sentence, and by adding paragraph (d)(4) as follows:

§ 0.465 Request for copies of materials which are available, or made available, for public inspection.

* * * * *

(d)(1) Copies of computer maintained data bases produced by the Commission may be obtained from the National

Technical Information Service (NTIS), Department of Commerce, in the form of machine-readable media, e.g., magnetic tapes, microfiche, or diskettes. These materials are not available to the general public directly from the Commission. Data bases produced on magnetic tape and microfiche by the Commission are listed in two catalogs which may be obtained from NTIS. Extracts from these catalogs pertaining to the Commission are available without charge from the Office of Congressional and Public Affairs, Consumer Assistance and Small Business Division. The catalogs describe the data base, state the estimated fee for providing it, and specify ordering information. Periodic updates to computer maintained data bases, as they occur, will not be furnished in machine-readable form.

Note: The Commission awards a contract to provide the public with direct electronic access to a portion of the non-Government Master Frequency File data base released for access and residing on the contractor's computer system. The name, address, telephone number, and schedule of fees for the current contractor are published annually at the time of contract award or renewal in a Public notice. This information may be obtained from the Office of Congressional and Public Affairs, Consumer Assistance and Small Business Division, Telephone (202) 632–7000.

* * * * *

(d)(3) Copies of computer source programs and associated documentation produced by the Commission shall be obtained from the National Technical Information Service (NTIS), Department of Commerce. NTIS will forward each request received to the Commission. If it can be determined that the requested program is available, the Commission will forward the current edition to NTIS for distribution to the requester. Actual charges will be limited to cost of production plus overhead. NTIS will provide an estimate of the total cost for each request. NTIS will not stock Commission source programs and documentation, nor will they maintain a catalog of Commission computer programs that may be available due to the large volume of programs and the frequency with which they are revised. * * *

(d)(4) The Commission reserves the right to distribute copies of its computer source programs and data bases to other entities as it sees fit, and when it serves the regulatory interests of the U.S. Government or the Commission, as determined by the Managing Director.

[FR Doc. 86–22072 Filed 9–30–86; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 64

Application Form for Priorities for Restoration of Leased Intercity Private Line Service

AGENCY: Federal Communication Commission.

ACTION: Final rule.

SUMMARY: This document amends the private line restoration priority rules in Appendix A of Part 64. Reference to a superceded edition of application form FCC 915 is deleted and the Domestic Services Division of the Common Carrier Bureau is specified as the mailing address for submission of applications. The changes are required due to the transfer of the restoration priority function from the Office of Managing Director to the Common Carrier Bureau and by the approval by Office of Management and Budget of the related collection of information requirement and associated FCC form.

EFFECTIVE DATE: October 1, 1986.

FOR FURTHER INFORMATION CONTACT: Herbert J. Neumann, Common Carrier Bureau (202) 634–1806.

SUPPLEMENTARY INFORMATION:

Order

In the matter of amendment of Part 64 of the Commission's Rules 47 CFR Part 64.
Adopted: September 15, 1986.
Released: September 17, 1986.

1. This Order amends the private line restoration priority rules in Part 64 of Title 47 of the CFR. The changes are required due to the transfer of the restoration priority fuction from the Office of Managing Director to the Common Carrier Bureau and by the approval by Office of Management and Budget of the related collection of information requirement and a revised associated FCC Form 915. Applicants will submit the revised Form 915 to the Domestic Facilities Division of the Common Carrier Bureau.

2. The Office of Management and Budget has approved the collection of information requirement contained in this rule. The OMB control number for this collection of information is 3060–0102.

3. Since a general notice of proposed rulemaking is not required, the Regulatory Flexibility Act, Pub. L. 93–354, does not apply.

4. Because this amendment pertains only to agency procedure and practice and places no additional burden on the public, it constitutes a minor amendment to our Rules. Therefore, the notice and comment procedure and the 30 day effective date provision of the Administrative Procedure Act is unnecessary. *See* 5 U.S.C. 553(b)(3)(A).

5. Because this amendment is editorial in nature we find for good cause that the 30 days effective date requirement of the Administrative Procedure Act is inappropriate. *See* 5 U.S.C. 553(d)(3). Therefore, this amendment is effective upon publication in the **Federal Register.**

6. Accordingly, it is Ordered that Part 64 of the Commission's Rules is amended as set forth below, effective upon publication in the **Federal Register.**

List of subjects in 47 CFR Part 64

Civil Defense.
Federal Communications Commission.
Edward J. Minkel,
Managing Director.

Rules Change:

Part 64 of Title 47 of the CFR is amended as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for Part 64 continues to read:

Authority: Sec. 4, 48 Stat. 1066, as amended: 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 201, 218, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 201. 218, unless otherwise noted.

Appendix A [Amended]

2. Part 64, Appendix A, Para. 10 is amended by removing the words "Office of Executive Director, Emergency Communications Division, Rm A201," and inserting, in their place, the words "Common Carrier Bureau, Domestic Facilities Division," and by removing the words "(June 1980 edition)" and by removing the sentence "Use of earlier editions of Form 915 is not authorized."

[FR Doc. 86–22068 Filed 9–30–86; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 80

Reorganization and Revisions of Parts 81 and 83 of the Rules To Provide a New Part 80 Governing the Maritime Radio Services; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects and clarifies the new Part 80 governing the maritime radio services which was published September 2, 1986 (51 FR 31206).

FOR FURTHER INFORMATION CONTACT: Robert E. Mickley, Federal

Communications Commission, Private Radio Bureau, Washington, DC 20554, (202) 632-7175.

SUPPLEMENTARY INFORMATION: On April 25, 1986, the Commission released a Report and Order in PR Docket No. 85-145, FCC 86-141. The corrections and clarifications contained in the following paragraphs are applicable to this proceeding as it was published in the **Federal Register** on September 2, 1986 (51 FR 31206) FR Doc. 86-19723.

1. In the "Summary of Report and Order", page 31206, the date in paragraph 9 is corrected to read "October 2, 1986."

PART 80—[CORRECTED]

2. In Subpart D, page 31235, add a new § 80.156 to read as follows:

§ 80.156 Control by Operator.

The operator on board ships required to have a holder of a commercial operator license or permit on board may, if authorized by the station licensee or master, permit an unlicensed person to modulate the transmitting apparatus for all modes of communication except Morse code radiotelegraphy.

§ 80.207 [Corrected]

3. In paragraph (d) of § 80.207, page 31237, the class of emission "R3D" in footnote [5] below the chart is corrected to read "R3E".

4. In § 80.313, page 31249, add the following sentence to the end of the introductory paragraph and before its table, "Distress and safety NB-DP frequencies are indicated by footnote [2] in § 80.361(b)".

§ 80.355 [Corrected]

5. In § 80.355, page 31252, correct section heading to read, "Distress, urgency, safety, call and reply Morse code". Also, remove paragraph (c)(2) and redesignate existing paragraphs (c)(3) and (c)(4) as paragraphs (c)(2) and (c)(3), respectively.

§ 80.357 [Corrected]

6. In § 80.357, page 31254, correct section heading to read "Morse code working frequencies".

§ 80.373 [Corrected]

7. In paragraph (d)(1) of § 80.373, page 31264, remove the duplicative frequency band "7300-8100" appearing in the second row at the bottom of the table.

§ 80.559 [Corrected]

8. In § 80.559, page 31276, the fifth sentence in paragraph (c) is corrected to read, "These charts are contained in § 90.257 of Part 90 of this chapter".

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86-22224 Filed 9-30-86; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 87

Amendment of the Rules To Reflect Reorganization of the Maritime Rules Into a New Part 80

AGENCY: Federal Communications Commission.

ACTION: Final rule clarification.

SUMMARY: This summary clarifies amendments to Part 87 of the Commission's rules to make a non-substantive change. In the Order, FCC 86-142, 51 FR 31305 (9/2/86), the last sentence of § 87.237 was amended by removing the number "83" and inserting in its place the number "80".

§ 87.237 [Corrected]

The number "83" also appears in the second sentence of § 87.237 and the section should be amended by removing the number "83" and inserting in its place the number "80". This action will update references to the maritime rules and aid the public in using the rules.

EFFECTIVE DATE: October 2, 1986.

FOR FURTHER INFORMATION CONTACT: James A. Shaffer, Private Radio Bureau, (202) 632-7175.

William J. Tricarico,

Secretary.

[FR Doc. 86-22215 Filed 9-30-86; 8:45 am]

BILLING CODE 6712-01-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

48 CFR Parts 725, 737, and 752

[AIDAR Notice 86-4]

Miscellaneous Amendments; AID Acquisition Regulations

AGENCY: Agency for International Development, IDCA.

ACTION: Final rule.

SUMMARY: The AID Acquisition Regulation is being amended to provide rules for nationality of contractor employees under AID-financed construction contracts with U.S. firms; to retitle AIDAR Subpart 737.2 to conform to the title of FAR Subpart 37.2; to amend AID contract clauses concerning per diem to conform to Federal Acquisition Circular (FAC) 84-19; and to amend the contract clause on family planning activities to require contractors who provide family planning services to offer a broad range of methods or services, or information on where such methods or services may be obtained.

EFFECTIVE DATE: October 1, 1986.

FOR FURTHER INFORMATION CONTACT: Mr James M. Kelly, M/SER/PPE, Room 1600I, TTII, Agency for International Development, Washington, D.C. 20523. Telephone (703) 875-1534.

SUPPLEMENTARY INFORMATION: The AIDAR is being amended to:

—Add a special requirement to 725.703 that under AID-financed construction projects where the contract is awarded to a U.S. firm, at least half of the supervisors and any other specified key personnel working at the project site must be U.S. citizens or permanent legal residents of the U.S., unless excepted in writing by the Mission Director.

—Retitle Subpart 737.2—Services of Experts and Consultants as Subpart 737.2—Consulting Services, to conform to the title of FAR Subpart 37.2.

—Revise 752.7002 contract clauses concerning travel to reflect the new government-wide per diem policies established by FAC 84-19. Paragraphs (a) through (c) of 752.7002 are removed; the subject matter of these paragraphs is now sufficiently covered by the new FAR 31.205-46 established by FAC 84-19. Paragraph (d) of 752.7002 is amended to cite the appropriate travel regulation specifically in place of the general citation of the Federal Travel Regulations; paragraph (d) is also redesignated as paragraph (a) of 752.7002. Paragraph (e) of 752.7002 is redesignated as paragraph (b).

—Amend 752.7016 to add a new requirement that funding will be available only for voluntary family planning projects which offer a broad range of family planning methods or services, or information about where such methods or services may be obtained.

This Notice is not considered a significant rule subject to FAR 1.301 or 1.5. This Notice is exempted from the requirements of Executive Order 12291 by OMB Circular 85-7. This Notice will not have an impact on a substantial number of small entities, nor will it require any information collection as contemplated by the Regulatory Flexibility Act and Paperwork Reduction Act, respectively.

List of Subjects in 48 CFR Parts 725, 737, and 752

Government procurement.

For the reasons set out in the Preamble, Chapter 7 of Title 48 of the Code of Federal Regulations is amended as follows:

1. The authority citations in Parts 725, 737, and 752 are unchanged, and continue to read as follows:

Authority: Sec. 621, Pub. L. 87-195, 75 Stat. 445 (22 U.S.C. 2381), as amended; E.O. 12163, Sept. 29, 1979 44 FR 56673, 3 CFR 1979 Comp., p. 435.

PART 725—FOREIGN ACQUISITION

Subpart 725.70—Source, Origin, and Nationality

2. Section 725.703 is revised as follows:

725.703 Contractor employees.

(a) Except as specifically provided in paragraph (b) of this section, there are no nationality restrictions on employees or consultants of either contractors or subcontractors providing services under an AID-financed contract, except that they must be citizens of a Geographic Code 935 country, or non-U.S. citizens lawfully admitted for permanent residence in the U.S.

(b) For AID-financed construction projects where the contract is awarded to a U.S. firm, at least half of the supervisors, and any other specified key personnel, working at the project site must be U.S. citizens or permanent legal residents of the U.S. Exceptions may be authorized by the Mission Director in writing if special circumstances make compliance impractical.

PART 737—SERVICE CONTRACTING

Subpart 737.2—Consulting Services

3. The heading of Subpart 737.2 is revised to read as set forth above.

PART 752—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 752.70—Texts of AID Contract Clauses

752.7002 [Amended]

4. Section 752.7002, Travel and transportation, is amended as follows:

(a) Paragraphs (a), (b), (c), and their respective clauses are removed.

(b) Paragraph (d) *Alternate 73* is amended:

—By being redesignated as paragraph (a) *Alternate 70*;

—By revising the introductory material preceding the contract clause as follows:

"(a) *Alternate 70.* For use in cost-reimbursement contracts performed in whole or in part overseas."

—By changing the contract clause date from "(May 1986)" to "(Aug. 1986)"; and

—By removing all references to "Federal Travel Regulations" appearing in paragraphs (a), (b), and (d) of the contract clause, replacing them with reference to "Standardized Regulations (Government Civilians, Foreign Areas)".

(c) Paragraph (e), *Alternate 74*, is amended by redesignating it as paragraph (b), *Alternate 71*.

752.7016 [Amended]

5. 752.7016, Family Planning and Population Assistance Activities, is amended as follows:

(a) The contract clause date is changed from "(Aug. 1984)" to "(Aug. 1986)"; and

(b) Paragraph (a) of the contract clause is revised to read as follows:

* * * * *

(a) *Voluntary participation.* (1) The Contractor agrees to take any steps necessary to ensure that funds made available under this contract will not be used to coerce any individual to practice methods of family planning inconsistent with such individual's moral, philosophical, or religious beliefs. Further, the Contractor agrees to conduct its activities in a manner which safeguards the rights, health and welfare of all individuals who take part in the program.

(2) Activities which provide family planning services or information to individuals, financed in whole or in part under this contract, shall provide a broad range of family planning methods and services available in the country in which the activity is conducted or shall provide information to such individuals regarding where such methods and services may be obtained.

* * * * *

Dated: September 23, 1986.

John F. Owens,

Procurement Executive.

[FR Doc. 86-22133 Filed 9-30-86; 8:45 am]

BILLING CODE 6116-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 106, 107, 171, 172, 173, 174, 175 and 178

[Docket No. HM-189D, Amdt. Nos. 106-6, 107-15, 171-89, 172-106, 173-197, 174-61, 175-38, and 178-87]

Editorial Corrections and Clarifications

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: The purpose of these amendments to the Hazardous Materials Regulations (HMR) is to correct certain editorial errors, and to make minor regulatory changes which will not impose any new requirements on persons subject to the HMR.

EFFECTIVE DATE: September 30, 1986.

FOR FURTHER INFORMATION CONTACT: Edward T. Mazzullo, Regulations Development Branch, Research and Special Programs Administration, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. Telephone (202) 366-4488.

SUPPLEMENTARY INFORMATION: In its maintenance of the HMR, RSPA performs an annual review of the regulations to detect errors which may be causing confusion to users. Inaccuracies detected in Title 49, Code of Federal Regulations (CFR), Parts 100 through 199, Revised as of November 1, 1985, include incorrect references to other rules and regulations in the CFR, and misstatements of certain regulatory requirements. Also, in response to inquiries which RSPA received concerning the clarity of particular requirements specified in the HMR, changes are made which should reduce uncertainties.

Since these amendments do not impose new requirements, notice and public procedure thereon are unnecessary. For the same reason, these amendments are effective without the customary 30 day delay following publication. This will allow the changes to appear in the next revision of 49 CFR.

The RSPA has determined that this rule, as promulgated, is not a major rule under the terms of Executive Order 12291 or significant under DOT implementing procedures (44 FR 11034). A final regulatory evaluation and environmental assessment was not

prepared as these amendments are not substantive changes to the HMR.

Based on limited information available concerning the size and nature of entities likely to be affected by these amendments, I certify that these amendments will not, as promulgated, have a significant economic impact on a substantial number of small entities.

The following is a section-by-section summary of the amendments:

Appendix A to Part 106. Obsolete language is removed from paragraphs (a) and (b) of the Appendix.

Section 107.105. Obsolete provisions in paragraph (d) are removed.

Appendix A to Subpart B of Part 107. Phone numbers and addresses are updated and two spelling errors are corrected.

Sections 107.303, 107.309, and 107.339. To correct omissions from the final rule issued on November 1, 1985 concerning office and personnel designations, "Office of the Chief Counsel" is added to § 107.303 and 107.339, and is deleted from § 107.309, and "OHMT" is added to § 107.309 and deleted from § 107.339.

Section 171.7. The reference in paragraph (d)(21) to the 1977 edition of the United Nations Recommendations on the Transport of Dangerous Goods is obsolete and is updated to the 1986 edition.

Sections 171.15 and 171.17. The National Response Center phone number is corrected in these two sections.

Section 172.101. The shipping name "Memtetrahydrophthalic anhydride" was removed in Docket HM-166-0, published November 17, 1983. The cross reference "Methyl norbornene dicarboxylic anhydride. *See* memtetrahydro phthalic anhydride" is no longer of use and is deleted from the § 172.101 Table. Also, the symbols "+" and "E" erroneously appear in Column 1 for the entry "Motor vehicle, *etc.* . . . ". *These symbols are deleted.*

Section 172.525. The height of letters for the word "RESIDUE" on the RESIDUE placard was changed from 1 and ½-inches to 1-inch in Docket HM-180, published on June 25, 1986. The graphic depiction of this placard in paragraph (b) is corrected to show lettering for the word "RESIDUE" properly proportioned to a 1-inch size on a full size placard.

Section 173.262. A misspelling of the word "screw-cap" is corrected.

Section 173.266. The reference in subparagraph (f)(1) to "179.3(e)" is corrected to read "179.3(a)".

Section 173.415. Type B packages were inadvertently omitted from paragraph (c) in the final rule issued in HM-169 on March 10, 1983. This error is corrected.

Section 174.750. The reference, in paragraph (b) to the "Energy Research and Development Administration (ERDA)" is obsolete and is changed to "U.S. Department of Energy (DOE)".

Section 175.20. The reference to FAA regulations is obsolete and is corrected to read "See 14 CFR 121.135, 121.401, 121.433a, 135.323, 135.327 and 135.333."

Sections 178.16-19, 178.45-17 and 178.65-14. The references to "Office of Hazardous Materials Regulation" are corrected to read "Office of Hazardous Materials Transportation."

Section 178.338-3. In formula which appears in paragraph (b) is corrected.

List of Subjects

49 CFR Part 106

Hazardous materials transportation, Rulemaking procedures,

49 CFR Part 107

Hazardous materials transportation, Program procedures,

49 CFR Part 171

Hazardous materials transportation, matter incorporated by reference.

49 CFR Part 172

Hazardous materials transportation, Labeling, packaging and containers.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers.

49 CFR Part 174

Hazardous materials transportation, Rail carriers.

49 CFR Part 175

Hazardous materials transportation, Air carriers.

49 CFR Part 178

Hazardous materials transportation, Packaging and containers.

In consideration of the foregoing, 49 CFR Parts 106 through 178 are amended as follows:

PART 106—RULEMAKING PROCEDURES

1. The authority citation for Part 106 is revised to read as follows:

Authority: Sec. 902(h)(1), Pub. L. 85-726, 72 Stat. 784 (49 U.S.C. 1472(h)(1)); sec. 3, Pub. L. 90-481, 82 Stat. 720 (49 U.S.C. 1672); secs. 104, 105, 109, Pub. L. 93-633, 88 Stat. 2157 (49 U.S.C. app. 1803, 1804, 1808); sec. 21(a), Pub. L. 89-670 (49 U.S.C. 1653, 1657(e)); sec. 203, Pub. L. 96-126, 93 Stat. 1004 (49 U.S.C. 2002).

Appendix A—[Amended]

2. In Appendix A to Part 106:

a. The phrase "other than those concerning compliance, enforcement, and preemption matters ," is removed from paragraph (a).

b. The phrase "other than those concerning compliance and enforcement matters," is removed from paragraph (b).

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

3. The authority citation for Part 107 is revised to read as follows:

Authority: 49 U.S.C. 1802, 1803, 1804, 1806, 1808-1811; Pub. L. 89-670 (49 U.S.C. 1653(d), 1655, 1657(e)).

§ 107.105 [Amended]

4. In § 107.105, paragraph (d) is removed.

Appendix A to Subpart B—List of Department of Transportation Officials Through Whom Application or Exemptions Seeking Priority Treatment on the Basis of Existing Emergencies May Be Initiated by Telephone

5. In Appendix A to Subpart B of Part 107, the following changes are made.

a. In the title to the appendix, the word "INITIALED" is changed to "INITIATED".

b. In the title to the second paragraph, the word "OPERATORS" is changed to "OPERATORS".

c. In the second paragraph of the appendix the telephone number "202-426-3333" is changed to "202-863-5100".

6. In Appendix A to Subpart B of Part 107, the paragraphs captioned "MOTOR CARRIERS", "RAIL CARRIERS", and "WATER CARRIERS" are revised to read as follows:

Motor Carriers

Chief, National Standards Division, Bureau of Motor Carrier Safety, Federal Highway Administration, Department of Transportation, Washington, DC 20590. Day 202-366-2989 and Night 202-267-2100.

Rail Carriers

Associate Administrator for Safety, Federal Railroad Administration, Department of Transportation, Washington, DC 20590. Day 202-366-9178 or 366-0488 and Night 202-267-2100.

Water Carriers

Chief, Hazardous Materials Branch, Marine Technical and Hazardous Materials Division, United States Coast Guard, Washington, DC 20593. Day 202-267-1577 and Night 202-267-2100.

§ 107.303 [Amended]

7. In § 107.303, the phrase "and the Office of Chief Counsel" is added after the term "OHMT".

8. In paragraph (a) and (b)(1) of § 107.309, "Office of Chief Counsel" is changed to "OHMT" at each occurrence.

§ 107.339 [Amended]

9. In § 107.339, "OHMT" is changed to "Office of the Chief Counsel".

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

10. The authority citation for Part 171 continues to read as follows:

Authority: 49 U.S.C. 1802, 1803, 1804, 1808; 49 CFR Part 1, unless otherwise noted.

11. § 171.7, paragraph (d)(21) is revised to read as follows:

§ 171.7 Matter incorporated by reference.

* * * * *

(d) * * *

(21) United Nations Recommendations (UN Recommendations) is titled "Recommendations on the Transport of Dangerous Goods", Fourth revised edition (1986).

* * * * *

§ 171.15 [Amended]

12. In paragraph (b) of § 171.15, the toll call number for the Department is changed from "202–426–2675" to "202–267–2675".

§ 171.17 [Amended]

13. In paragraph (a) of § 171.17, the toll call number is changed from "202–426–2675" to "202–267–2675".

PART 172—HAZARDOUS MATERIALS TABLES AND HAZARDOUS MATERIALS COMMUNICATIONS REGULATIONS

14. The authority citation for Part 172 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, 1808; 49 CFR Part 1, unless otherwise noted.

§ 172.101 [Amended]

15. In the § 172.101 Hazardous Materials Table:

a. The entry "Methyl norbornene dicarboxlic anhydride. *See* Memtetrahydro phthalic anhydride" is removed.

b. For the entry "Motor vehicle *etc.* . . ., the symbols "+E" are removed from column 1.

16. In § 172.525, the graphic depiction of the RESIDUE placard is revised to appear as follows:

§ 172.525 Standard requirements for the RESIDUE placard.

* * * * *

(b) * * *



* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

16. The authority citation for Part 173 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, 1806, 1807, 1808; 49 CFR Part 1, unless otherwise noted.

§ 173.262 [Amended]

17. In paragraph (b)(3) of § 173.262, the word "screw-up" is corrected to read "screw-cap"

§ 173.266 [Amended]

18. In paragraph (f)(1) of § 173.266, the reference "179.3(e)" is corrected to read "179.3(a)".

19. In § 173.415, paragraph (c) is revised to read as follows:

§ 173.415 Authorized Type A packages.

* * * * *

(c) Any Type B, B(U) or B(M) packaging pursuant to § 173.416.

* * * * *

PART 174—CARRIAGE BY RAIL

20. The authority citation for Part 174 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, 1808; 49 CFR Part 1, unless otherwise noted.

§ 174.750 [Amended]

21. In paragraph (b) of § 174.750, the agency "Engery Research and Development Administration (ERDA)" is changed to "U.S. Department of Energy (DOE)".

PART 175—CARRIAGE BY AIRCRAFT

22. The authority citation for Part 175 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, 1807, 1808; 49 CFR Part 1, unless otherwise noted.

23. In § 175.20, the last sentence is revised to read as follows:

§ 175.20 Compliance.

* * * (See 14 CFR 121.135, 121.401, 121.433a, 135.323, 135.327 and 135.333.)

PART 178—SHIPPING CONTAINER SPECIFICATIONS

24. The authority citation for Part 178 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, 1806, 1808; 49 CFR Part 1, unless otherwise noted.

§ 178.16–19 [Amended]

25. In paragraph (c)(2) of § 178.16–19, the word "Operation" is changed to "Transportation".

§ 178.45–17 [Amended]

26. In paragraph (e) of § 178.45–17, the word "Transportation" is added after the word "Materials".

§ 178.65–14 [Amended]

27. In paragraph (d) of § 178.65–14, the word "Regulation" is changed to "Transportation".

§ 178.338–3 [Amended]

28. In paragraph (b) of § 178.338–3 following the introductory text, the formula changes from "$S=(T/2)+((T^2/4)+S, 20.5$" to "$S=(T/2)+((T^2/4)+S,^2)^{0.5}$".

Issued in Washington, D.C., on September 26, 1986, under the authority delegated in 49 CFR Part 1, Appendix A.

M. Cynthia Douglass,

Administrator, Research and Special Programs Administration.

[FR Doc. 86–22183 Filed 9–30–86; 8:45 am]

BILLING CODE 4910–60–M

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49 CFR Part 192

[Docket No. PS–90, Amdt. 192–53]

Transportation of Natural and Other Gas by Pipeline; Period for Confirmation or Revision of Maximum Allowable Operating Pressure

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This amendment clarifies a pipeline safety regulation regarding the period for comfirmation or revision of a pipeline's maximum allowable operating pressure (MAOP). Under the present regulation, the MAOP of a pipeline must be confirmed or reduced within 18 months after a population increase near the pipeline results in a more restrictive class location. Some operators have misinterpreted this rule to preclude

confirmation of the pre-existing MAOP at a date beyond the 18-month period if the initial action taken is to reduce the MAOP. The amendment makes it clear that confirmation by pressure testing may occur at any time after the 18-month period, if the initial compliance action was to reduce the MAOP under § 192.611(b).

EFFECTIVE DATE: October 31, 1986.

FOR FURTHER INFORMATION CONTACT: L.M. Furrow, (202) 426–2392. Copies of the amendment and documents related thereto may be obtained from the Dockets Branch, Room 8426, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–3148.

SUPPLEMENTARY INFORMATION: By letter of January 22, 1985, (P–30), The Gas Piping Technology Committee of the American Society of Mechanical Engineers (ASME) petitioned RSPA to clarify the period allowed for confirmation or revision of a pipeline's MAOP following a change in class location.

Whenever an increase in population density causes an increase in a pipeline's designated class location under § 192.5, and the hoop stress corresponding to the pipeline's MAOP is not commensurate with the new class location, the MAOP must be confirmed or revised according to the rules in § 192.611. Paragraph (e) of § 192.611 requires that the confirmation or revision be completed within 18 months of the change in class location.

Section 192.611 permits alternative actions for pipelines that have not previously been pressure tested for at least 8 hours to at least 90 percent of specified minimum yield stength. These alternatives are (1) reduce the pipeline's MAOP (to the level where the corresponding hoop stress does not exceed the stress permitted for new pipelines in that class location (§ 192.611(b)), or (2) pressure test the pipeline and either re-establish the original MAOP or establish a lower MAOP based on that test (§ 192.611(c)).

Because of operating constraints, reductions in market demand or gas supplies, or other economic factors, operators sometimes find it more practical to temporarily reduce a pipeline's MAOP and postpone pressure testing until operating conditions warrant re-instatement of the pre-existing MAOP. However, ASME argued that the 18-month rule of § 192.611(e) thwarts this option because it makes the two alternatives mutually exclusive. In other words, ASME said operators who choose pressure reduction as a temporary measure are precluded from pressure testing after the 18-month period to confirm the pre-existing MAOP. As a result, operators are compelled to test within 18 months to preserve an existing MAOP, even though that pressure level is not necessary for current operations.

Although, RSPA had not interpreted the 18-month rule to block operators who choose one compliance option from later selecting the other, it was concerned that § 192.611(e) may, through misinterpretion, be adversely affecting economical pipeline operations of some operators. Therefore, RSPA proposed in Notice 1 (51 FR 19878; June 3, 1986) to amend § 192.611(e) to make it clear that operators who reduce a pipline's MAOP under § 192.611(b) within the 18-month period may at a later date reinstate the preexisting MAOP by pressure testing under § 192.611(c).

Sixteen gas operators, one trade association and one State agency submitted written comments on the proposed rule. All commenters favored the clarifying rule change.

One commenter, however, thought that the ceiling § 192.553(d) sets on the level to which the MAOP of a pipeline may be increased would nullify the benefits intended by the proposed amendment to § 192.611(e). Section 192.553(d) restricts the increase in MAOP of existing pipelines to the level permitted for newly constructed pipelines of the same material in the same location. This restriction applies whenever a pipeline's MAOP is being increased as part of the uprating process under Subpart K. As indicated by § 192.553(d), itself, and the other provisions of Subpart K, uprating raises the MAOP of a pipeline to a "new" level to which the pipeline was not previously qualified. In contrast, increasing a temporarily reduced MAOP after testing under § 192.611(c) does not uprate the pipeline, because § 192.611(c)(2) does not permit the increase to exceed the previously qualified MAOP in effect at the time the class location change occurred. Therefore, the pressure restriction in § 192.553(d) on uprating does not apply to confirmation or revision of MAOP under § 192.611.

Advisory Committee Reivew

The Technical Pipeline Safety Standards Committee, a 15-member advisory committee established under section 4(b) of the Natural Gas Pipeline Safety Act of 1968, considered the proposed rule at a meeting in Washington, DC on June 10, 1986. The commitee declared the proposed rule to be technically feasible, reasonable, and practicable. A transcript of the Committee's deliberations and a report of its findings are available in the docket for this proceeding.

Classification

This final rule is not a "major" rule under Executive Order 12291, since the rule will have an economic impact on the economy of less than $100 million a year. The rule will result in cost saving to consumers, industry, and government agencies, and no adverse impacts are anticipated. This rule is not "significant" under Department of Transportation procedures (44 FR 11034). The rule will reduce the costs of confirmation or revision programs by allowing a more economical alternative to pressure testing in complying with the current rule. However, this savings is not expected to be large enough to warrant preparation of a Regulatory Evaluation.

Based on the facts available concerning the impact of this rulemaking action, I certify pursuant to section 605 of the Regulatory Flexibility Act that the action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 49 CFR Part 192

Pipeline safety, Maximum allowable operating pressure.

PART 192—[AMENDED]

In view of the above, RSPA amends Part 192 of Title 49 of the Code of Federal Regulations as follows:

1. The authority citation for Part 192 continues to read as set forth below:

Authority: 49 U.S.C. 1672; U.S.C. 1804; 49 CFR 1.53 and Appendix A of Part 1.

2. Section 192.611(e)(2) is revised to read as follows:

§ 192.611 Change in class location: Confirmation or revision of maximum allowable operating pressure.

* * * * *

(e) * * *

(2) Confirmation or revision due to change in class location that occur on or after July 1, 1973, must be completed within 18 months of the change in class location. Pressure reduction under paragraph (b) of this section within the 18-month period does not preclude establishing a maximum allowable operating pressure under paragraph (c) of this section, at a later date.

Issued in Washington, DC, on September 2, 1986.

M. Cynthia Douglass,

Administrator, Research and Special Programs Administration.

[FR Doc 86–22189 Filed 9–30–86; 8:45 am]

BILLING CODE 4910–60–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1008

Technical Amendments; Overcharges by Motor Carriers/Freight Forwarders Engaged in Transportation

AGENCY: Interstate Commerce Commission.

ACTION: Technical amendment.

SUMMARY: In § 1008.2 two United States Code references regarding overcharges by motor carriers or freight forwarders engaged in the transportation of property are out of date. This notice brings those references up to date.

EFFECTIVE DATE: October 1, 1986.

FOR FURTHER INFORMATION CONTACT: Kathleen M. King (202) 275–7428.

SUPPLEMENTARY INFORMATION:

List of Subjects in 49 CFR Part 1008

Claims, Freight forwarders, Investigations, Motor carriers.

Title 49 of the CFR, Part 1008 is amended as follows:

PART 1008—PROCEDURES GOVERNING THE PROCESSING, INVESTIGATION, AND DISPOSITION OF OVERCHARGE, DUPLICATE PAYMENT, OR OVERCOLLECTION CLAIMS

1. The authority citation for Part 1008 is revised to read as follows:

Authority: 49 U.S.C. 10321, 11101, 11705, 11706; 5 U.S.C. 553 and 559.

§ 1008.2 [Amended]

2. In § 1008.2, the words "sections 204a(6) and 406a(6) of the Interstate Commerce Act" in paragraph (b) are revised to read "section 11705(b)(1) of the Interstate Commerce Act."

Noreta R. McGee,

Secretary.

[FR Doc. 86–22217 Filed 9–30–86; 8:45 am]

BILLING CODE 7035-01-M

49 CFR Parts 1011 and 1130

[Ex Parte No. 367]

Tariff Integrity Board

AGENCY: Interstate Commerce Commission.

ACTION: Notice of removal of final rules.

SUMMARY: The Commission is rescinding rules published at 49 CFR 1011.6(h) and 1130.3. The Tariff Integrity Board has not been operational since the decisions adopting the rules were reversed by the United States Court of Appeals for the Eleventh Circuit. The Commission did not appeal the court's decision. As the rules are no longer being used, they are being rescinded at this time to clear the record.

EFFECTIVE DATE: October 1, 1986.

FOR FURTHER INFORMATION CONTACT: Lawrence C. Herzig, (202) 275–7151.

SUPPLEMENTARY INFORMATION: Ex Parte No. 367 was an outgrowth of a management decision by the Commission to discontinue its practice of examining every tariff filing, prior to effectiveness, for defects in publication. Since only the title pages of tariff filings were to be examined, rules were adopted (see 44 FR 58511) which established the Tariff Integrity Board as a forum to act on complaints alleging nonsubstantive publication defects in tariffs that had become effective. The rules provided that Tariff Integrity Board decisions finding a tariff to have been unlawfully established would have a retroactive effect, *i.e.*, the tariff would be considered as never applicable as well as invalid for the future.

In *Southern Motor Carriers Rate Conference* v. *U.S.*, 676 F.2d 1374 (11th Cir. 1982), the United States Court of Appeals for the Eleventh Circuit held that 49 U.S.C. 10762(e) did not authorize the Commission to reject or strike an effective tariff using the Tariff Integrity Board procedures. The court reversed the Commission's decisions in which the Tariff Integrity Board rules were adopted.

The above-cited court decision was not appealed by the Commission and the Tariff Integrity Board rules have not been utilized by the Commission since the decision. In the absence of a functioning Tariff Integrity Board, complaints concerning effective tariffs continue to be handled under the Commission's formal docket procedures. Thus, we are removing the rules to clear the record and to avoid any confusion their continued presence in the Code of Federal Regulations may have. Since removal of the rules will not have any substantive effect and because the rules relate to agency organization, procedure, and practice, notice and public comment are unnecessary under 5 U.S.C. 553(b) and good cause exists for making the removal effective in less than 30 days after publication, under 5 U.S.C. 553(d).

This action will not significantly affect either the quality of the human environment or energy conservation. This action will not have a significant economic impact on a substantial number of small entities.

List of Subjects

49 CFR Part 1011

Administrative practice and procedure; Authority delegation; Organization and functions (government agencies).

49 CFR Part 1130

Administrative practice and procedure.

Decided: September 23, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lomboley.

Noreta R. McGee,

Secretary.

Appendix

Title 49, Parts 1011 and 1130, of the Code of Federal Regulations are amended as follows:

PART 1011—COMMISSION ORGANIZATION; DELEGATIONS OF AUTHORITY

1. The authority citation for Part 1011 continues to read as follows:

Authority: 49 U.S.C. 10301, 10302, 10304, 10305, 10321; 31 U.S.C. 9701; 5 U.S.C. 553.

§ 1011.6 [Amended]

2. 49 CFR 1011.6 is amended by removing paragraph (h) and reserving it for future use.

PART 1130—INFORMAL COMPLAINTS

1. The authority citation for Part 1130 continues to read as follows:

Authority: 49 U.S.C. 10321 and 10707; 5 U.S.C. 553 and 559.

§ 1130.3 [Removed]

2. 49 CFR Part 1130 is amended by removing § 1130.3.

[FR Doc. 86–22218 Filed 9–30–86; 8:45 am]

BILLING CODE 7035-1-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 261 through 266

[Docket No. 60986-6186]

United States Standards for Grades; Voluntary National Seafood Inspection Program; Technical Amendments

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule, technical amendments.

SUMMARY: NOAA issues a final rule making technical amendments to some of the United States standards for Grades provisions of NOAA's regulations governing the Voluntary National Seafood Inspection Program. The amendments correct errors in scientific names and inconsistent tabular entries and make very minor clarifications to textual ambiguities. All corrections and clarifications are consistent with how the Standards have been interprepted by NOAA and the Program's participants and, thus, will have no impact on the operation of the Program.

EFFECTIVE DATE: October 1, 1986.

FOR FURTHER INFORMATION CONTACT: Rita Creitz, National Standards Coordinator, 202–673–5374.

SUPPLEMENTARY INFORMATION: NOAA's regulations governing the Voluntary National Seafood Inspection Program appear at 50 CFR Parts 260 through 266. Part 260 sets forth the procedures applicable to the inspection and certification of establishments and fishery products for human consumption. Parts 261 through 266 set forth standards for determining the United States grades of various fishery products (United States Standards for Grades). The United States Standards for Grades contain long standing errors in scientific names and inconsistent tabular entries and minor textual ambiguities. The corrections and very minor textual clarifications made by this final rule are consistent with how the United States Standards for Grades have been interpreted by NOAA and participants in the Program for many years. Thus, this final rule will have no impact other than providing potential new participants in the Program with an accurate and clear set of the regulations.

Because of this, no useful purpose would be served by providing the public with notice of, and an opportunity for comment upon, this rule, and the Assistant Administrator for Fisheries, pursuant to section 553(b)(B) of the Administrative Procedure Act (APA), has accordingly found, for good cause, that notice and public procedure for this rule is unnecessary.

Because this rule would not change how the regulations have been applied and interpreted for many years both by NOAA and the Program's participants and because of the desirability of making the corrections and clarifications made by this rule effective in time for them to be incorporated in the next annual codification of title 50 of the Code of Federal Regulations, the Assistant Administrator has found that good cause exists for waiving the 30-day delay in effective date otherwise required by section 553(d) of the APA.

Issuance of this rule is in compliance with Executive Order 12291.

The corrections and clarifications made by this rule do not involve collection of information requirements for purposes of the Paperwork Reduction Act.

List of Subjects in 50 CFR Parts 261, 262, 263, 264, 265, and 266

Food grades and standards, Frozen foods, Seafoods.

Dated: September 26, 1986.

Joseph W. Angelovic,

Deputy Assistant Administrator for Science and Technology, National Marine Fisheries Service.

In consideration of the foregoing, Parts 261, 262, 263, 264, 265, and 266 of Title 50 of the Code of Federal Regulations are amended as follows:

1. The authority citation for Parts 261, 262, 263, 264, 265, and 266 continues to read as follows:

Authority: 7 U.S.C. 1621–1630.

PART 261—[AMENDED]

2. Section 261.104 is amended by correctly revising paragraph (e)(3)(iii) to read as follows:

§ 261.104 Determination of grade.

* * * * *

(e) * * *

(3) * * *

(iii) "Excessive—refers to the area affected by discoloration of significant intensity involving 50 percent or more of the total area.

* * * * *

§ 261.105 [Amended]

3. In § 261.105, the reference reading "21 CFR Part 128" is revised to read "21 CFR Part 110".

§ 261.161 [Amended]

4. In § 261.161 Table 1, in the entry reading "7. Evisceration . . .", "Small degree . . .", the "Deduct" column, is amended by revising "10" to read "2".

PART 262—[AMENDED]

§ 262.161 [Amended]

5. In § 262.161, Table 1, in the entry reading "5. Workmanship . . .", the footnote reference"[3]" is added after the word "sawdust"; and the following footnote is added at the end of Table 1:

[3] Sawdust is examined while the steaks are in the frozen state.

§ 262.171 [Amended]

6. In § 262.171(a)(2)(v), the formula is revised to read "Percentage glaze=C−D/Cx100."

§ 262.211 [Amended]

7. In § 262.211, Table 1, in the entry reading "5. Workmanship" "Excessive", the "Deduct" column is amended by revising "5–8" to read "6–8"; in the entry reading "6. Color defects", "(a) . . .", "Moderate", the "Deduct" column, is amended by revising "3–2" to read "3–5".

§ 262.221 [Amended]

8. In § 262.211(g)(6)(iii), the word "would" is removed from the last sentence and "s" is added to the word "include".

PART 263—[AMENDED]

§ 263.104 [Amended]

9. In § 263.104, Table 1, in the entry reading "3. Workmanship . . .", "(a) Cutting . . .", the numbers in parenthesis after the entry "Moderate" are revised to read "(3–4 instances)". In the entry reading "6. Size . . .", the number in parenthesis after "Excessive" is revised to read "(over 2 instances)".

§ 263.166 [Amended]

10. In § 263.166, Table IV, under the "Deduction points" column, in the entry reading "Cutting and trimming", "Moderate defects . . .", the number "45" is revised to read "4".

§ 263.261 [Amended]

11. In § 263.261(b), the table is amended in the entry reading "Character" by revising the "Points" column to read "15".

§ 263.301 [Amended]

12. In § 263.301(b), the species name reading "Pacific ocean perch" is revised to read *"Sebastes alutus"*.

§ 263.312 [Amended]

13. In § 263.312(a) "Sebastodes alutus" is revised to read *"Sebastes alutus"*.

§ 263.314 [Amended]

14. In § 263.314(b), the table heading reading "Table II—Score Deductions for Dehydration Subfactor" is revised to read "Score Deductions for Dehydration". In the entry reading "Excessive . . .", in the 2nd column, "Surface area affected", the number in the "Over" subcolumn reading "5" is revised to read "10" and the number in the "Not over" subcolumn reading "15" is revised to read "100".

PART 264—[AMENDED]

§ 264.111 [Amended]

15. In § 264.111, Table 1, under the "Aspects determining score" column in the entry reading "3 Uniformity of size", the two "±" symbols are removed for clarification.

§ 264.155 [Amended]

16. In § 264.155, Table 1, the following amendments are made to figures in the "Categories" column: In the entry reading "Frozen State:", "Dehydration", "Excessive", "24" is removed from the "Minor" column, and "63" is removed from the "Major" column. In the entry reading "Frozen State", "Uniformity of size", "Moderate", "15" is removed from the "Serious" column. In the entry reading "Thawed State:", "Bones", "Moderate", "208" is removed from the "Minor" column and placed in the "Major" column.

§ 264.221 [Amended]

17. In § 264.221, Table 1, the following amendments are made to figures in the "Deduct" column: In the entry reading "8. Uniformity of weight", "Over 1.2 but not over 1.3", "5" is revised to read "2" and in the entry reading "Over 1.3 but not over 1.4", "2" is revised to read "5".

§ 264.252 [Amended]

18. In § 264.252(a) in the last sentence, "60 percent" is corrected to read "72 percent".

§ 264.271 [Amended]

19. In § 264.271(f)(2)(vii) the formula is revised to read "Percent fish flesh=Weight of fish flesh (vi)x100/Weight of three breaded fish sticks (i)".

§ 264.321 [Amended]

20. In § 264.321, Table 1, the following changes are made to figures in the "Deduct" column: In the entry reading "6. Weight", "Over 1.2 but not over 1.3", "0" is revised to read "2" and in the entry reading "Over 1.3 but not over 1.4", "2" is revised to read "5".

21. In paragraph (f)(2)(ii), the word "stick" is revised to read "portion".

22. In paragraph (f)(2)(vii) the formula is revised to read "Percent fish flesh=Weight of fish flesh (vi)x100/Weight of three raw breaded portions (i)" and in paragraph (g)(2)(ii) the formula is revised to read "Percent fish flesh=Weight of fish flesh [sample unit (i)]x100/Declared net weight of raw breaded portionsx5(ii)".

§ 264.371 [Amended]

23. In § 264.371(f)(2)(v), in the last sentence, "3" is revised to read "(iii)".

24. In paragraph (f)(2)(vii), the formula is corrected to read "% fish flesh=Weight of fish flesh (vi)×100/Weight of three fried fish sticks (i)" and in paragraph (g)(2)(ii), the formula is revised to read "% fish flesh=Weight of fish flesh [sample unit (i)]×100/Declared or actual net weight of five fried fish sticks".

§ 264.421 [Amended]

25. In § 264.421(f)(2)(vii), the formula is revised to read "% fish flesh=Weight of fish flesh (vi)×100/Weight of three fried fish portions (i)" and in paragraph (g)(2)(ii), the formula is revised to read "% fish flesh=Weight of fish flesh (vi)×100/Weight of five fried fish portions (i)".

PART 265—[AMENDED]

§ 265.106 [Amended]

26. In § 265.106, Appendix 3, the fourth word in the introductory text reading "new" is corrected to read "net" and in paragraph (b) and in paragraph (i) under the heading "Procedure", the conversion of temperature from Fahrenheit to Celsius, in parenthesis is revised to read "(26°C±3°C)".

§ 265.171 [Amended]

27. In § 265.171(u)(2)(ii), the formula is revised to read "% shrimp material=[Weight of debreaded sample (20 shrimp)×100/Weight of sample (20 shrimp)]+2" and in paragraph (v)(2)(ii), the formula is revised to read "% shrimp material=Weight of debreaded sample×100/Weight of sample."

§ 265.175 [Amended]

28. In § 265.175, Table 1, in the entry reading "4. Damaged breaded shrimp", "For each 5 percent by count of fraction thereof", the "Ded. allow. Points" column is amended by revising "1" to read "3" and the second entry reading "3" is revised to read "1". In Table 2, in the entry reading "4. Black spot", "Moderate, on average", the "Ded. allow Points" column is amended by adding "6" and the third entry reading "63" is revised to read "3".

PART 266—[AMENDED]

§ 266.121 [Amended]

29. In § 266.121(a), "273.25" is revised to read § 260.61." and in paragraph (b), Table 1, in the entry reading "1. Dehydration", "Small degree: . . .", the "Deduct" column is amended by adding "2" and the second entry reading "24" is revised to read "4".

§ 266.161 [Amended]

30. In § 266.161(b) the table is amended in the entry reading "Uniformity", by revising the "Points" column to read "20".

§ 266.171 [Amended]

31. In § 266.171(a)(2)(v) the formula is revised to read "Percent scallop meat=weight of scallop meat (iv)×100/Weight of frozen fried or breaded scallops(i)".

32. Paragraph (b)(1) is amended in the last sentence by removing the word "in" and inserting the word "with".

[FR Doc. 86-22222 Filed 9-26-86; 4:41 pm]
BILLING CODE 3510-22-M

National Oceanic and Atmospheric Administration (NOAA)

50 CFR Part 681

[Docket No. 60982-6182]

Western Pacific Spiny Lobster Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency interim rule.

SUMMARY: The NOAA issues an emergency interim rule for the conservation and management of the lobster fishery of the Western Pacific Ocean. The rule prohibits all lobster fishing within 20 nautical miles of Laysan Island and within the fishery conservation zone (FCZ) landward of 10 fathoms in the Northwestern Hawaiian Islands (NWHI). The intended effects are to protect spiny lobster in designated refuge areas (refugia) for lobster resources.

EFFECTIVE DATES: In § 681.7, paragraph (b)(1) and in § 681.23, paragraphs (a) and (b) are suspended from September 26, 1986, through December 26, 1986. In § 681.7, new paragraph (b)(7) and in § 681.23, new paragraphs (c) and (d) are added, to be effective from September 26, 1986, through December 26, 1986.

ADDRESS: Send comments to E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731. A copy of the environmental assessment prepared for this rule may be obtained from the Regional Director.

FOR FURTHER INFORMATION CONTACT: Doyle E. Gates, Administrator, Western Pacific Program Office, 2570 Dole Street, Room 106, Honolulu, HI 96822-2396, 808-955-8831.

SUPPLEMENTARY INFORMATION: Under section 305(e)(1) of the Magnuson Fishery Conservation and Management Act (Magnuson Act), the Secretary of Commerce (Secretary), upon finding that an emergency exists involving any

fishery, may promulgate emergency regulations deemed necessary to address that emergency. These regulations may remain in effect for no more than 90 days unless extended in accordance with section 305(e)(3) of the Magnuson Act. The Secretary has determined that an emergency exists with regard to the lobster fishery in designated refuge areas of the Western Pacific region. Therefore, NOAA issues this emergency interim rule to amend the regulations governing the Western Pacific Spiny Lobster Fisheries as deemed necessary to respond to the emergency.

Background

Regulations implementing the Fishery Management Plan for the Spiny Lobster Fisheries of the Western Pacific Region (FMP) appear at 50 CFR Part 681. These regulations at § 681.23(a) prohibit fishing for spiny lobster within 20 nautical miles of Laysan Island. The Western Pacific Fishery Management Council (Council) adopted this closure along with a closure to spiny lobster fishing landward of 10 fathoms in the NWHI at § 681.23(b) to enhance the probability of continued larval recruitment.

In 1983, the reported catch was 218,198 spiny lobsters and 25,610 slipper lobsters. In 1984, the catch was 980,022 spiny lobsters and 284,818 slipper lobsters. In 1985, the catch was 1,430,056 spiny lobsters and 1,189,842 slipper lobsters. Closed areas were defined in the FMP as a measure to aid recruitment. When the Council developed the FMP, Laysan Island and the 10 fathom closure were intended to be refuge areas for lobster recruitment. Thus, the FMP implies that no lobster fishing should occur in the closed areas, and the Council has confirmed this interpretation. To ensure that the Council's intent is effective, fishing for slipper lobster also must be prohibited in these areas.

When the existing regulations were put into place only spiny lobster fishing was prohibited in refuge areas because the only directed lobster fishing was for spiny lobsters. There is now a major directed fishery for slipper lobsters. Allowing fishing for slipper lobsters in the refuges causes two problems. First, some spiny lobster mortality can be expected from this fishing; therefore, the refuge does not provide the complete protection for spiny lobsters that was anticipated when the plan and regulations were adopted. Second, enforcement of the prohibition on spiny lobster fishing is nearly impossible because these regulations are primarily enforced at the dock. If a fisherman were seen fishing in a refuge, it would be impossible to tell if he was fishing for spiny lobsters or for slipper lobsters. This regulation will comply with the Council's original intent to provide a total refuge for spiny lobsters.

On August 8, 1986, the Council, at its 54th meeting in Kailua-Kona, Hawaii, recommended to the Secretary that slipper lobster fishing be prohibited within 20 nautical miles of Laysan Island and within 10 fathoms in the NWHI, consistent with the Council's original intent. The action was recommended by majority vote of the Council under section 305(e)(2)(B) of the Magnuson Act.

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this rule is necessary to respond to an emergency situation and that it is consistent with the Magnuson Act and other applicable law.

The Assistant Administrator also finds good cause (i.e., to protect the reproductive potential of the spiny lobster stocks in the NWHI and prevent possible detrimental effects from fishermen harvesting lobsters in closed areas) that the reasons justifying promulgation of this rule on an emergency basis also make it impracticable and contrary to the public interest to provide notice and a prior opportunity for public comment or to delay for 30 days the effective date of these emergency regulations, under the provisions of sections 553 (b) and (d) of the Administrative Procedure Act.

This emergency rule is exempt from the normal review procedures of Executive Order 12291, as provided in section 8(a)(1) of that order. It is being reported to the Director of the Office of Management and Budget, with an explanation of why it is not possible to follow the regular procedures of that Order.

It is impracticable to defer the effectiveness of this emergency rule to give the Hawaii Department of Planning and Economic Development 90 days to review a determination that the rule is consistent to the maximum extent practicable with Hawaii's approved coastal management program. While different from current State regulations applicable to State waters, this emergency rule has been determined to be consistent to the maximum extent practicable with Hawaii's approved coastal management program, as required by regulations under the Coastal Zone Management Act, 15 CFR 930.32. When the Council amends the FMP to adopt the emergency measure on a permanent basis, a formal consistency determination will be provided in accordance with 15 CFR 930.34(b).

The Director, Southwest Region, NMFS, prepared an environmental assessment for this rule and concluded that no significant impact on the human environment will result from its implementation.

This rule is exempt from the procedures of the Regulatory Flexibility Act, because the rule is issued without opportunity for prior public comment.

This rule does not contain a collection of information requirement and therefore is not subject to the provisions of the Paperwork Reduction Act.

List of Subjects in 50 CFR Part 861

Fisheries, Reporting and recordkeeping requirements.

Dated: September 26, 1986.

Joseph W. Angelovic,

Deputy Assistant Administrator for Science and Technology, National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR Part 681 is amended as follows:

PART 681—WESTERN PACIFIC SPINY LOBSTER FISHERIES

1. The authority citation for Part 681 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 681.7, paragraph (b)(1) is suspended from September 26, 1986, through December 26, 1986. A new paragraph (b)(7) is added, effective from September 26, 1986, through December 26, 1986, to read as follows:

§ 681.7 Prohibitions.

* * * * *

(b)* * *

(7) Fish for, take, or retain lobsters:

(i) By methods other than lobster traps or by land for spiny lobster, as specified in § 681.24, or

(ii) From closed areas for lobsters, as specified in § 681.23.

3. In § 681.23, paragraphs (a) and (b) are suspended from September 26, 1986 through December 26, 1986. New paragraphs (c) and (d) are added, effective from September 26, 1986, through December 26, 1986, to read as follows:

§ 681.23 Closed areas (refugia).

* * * * *

(c) All lobster fishing is prohibited within 20 nautical miles of Laysan Island.

(d) All lobster fishing is prohibited within the FCZ landward of the 10 fathom curves as depicted on National Ocean Survey Charts, Numbers 19022, 19019, and 19016.

[FR Doc. 86-22223 Filed 9-26-86; 4:43 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 51, No. 190
Wednesday, October 1, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 29

Tobacco Inspection; Subpart C—Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rulemaking.

SUMMARY: The Agricultural Marketing Service proposes to amend the Official Standard Grades for Fire-Cured, Burley and Dark Air-Cured Tobacco to more accurately describe tobacco as it presently appears at the marketplace. This proposal would: (1) Reduce the number of size designations in fire-cured and dark air-cured tobacco; (2) and a special factor symbol in the fire-cured types to denote tobacco that is not sufficiently smoked; (3) add grades in burley tobacco to separate tannish-buff color from tan color, to describe fine quality mixed color leaf, and to describe variegated color in mixed groups; (4) delete certain grades determined to be no longer necessary; and (5) modify and add definitions to clarify terminology related to grade determinations of fire-cured tobacco.

DATE: Comments are due on or before October 16, 1986.

ADDRESS: Send comments to the Director, Tobacco Division, Agricultural Marketing Service, United States Department of Agriculture, Room 502 Annex Building, Washington, DC 20250. Comments will be available for public inspection at this location during regular business hours.

FOR FURTHER INFORMATION CONTACT: Director, Tobacco Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, DC 20250, telephone: (202) 447–2567.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Department proposes to amend the regulations governing the Official Standard Grades for Fire-Cured Tobacco, U.S. Types 21–23 and Foreign Type 96, Burley Tobacco, U.S. Type 31 and Foreign Type 93, and Dark Air-Cured Tobacco, U.S. Types 35–37 and Foreign Type 95, pursuant to the authority contained in the Tobacco Inspection Act of 1935, as amended (49 Stat. 731; 7 U.S.C. 511 *et seq.*).

The current standards for dark fire-cured tobacco, Types 21–23 and 96, and dark air-cured tobacco, Types 35–37 and 95, use the standard 4-inch tobacco sizes as a means of stating length in various grades and qualities. These standard sizes are 43, 44, 45, 46 and 47. With present day production and processing methods the accuracy with which tobacco needs to be sized is of less importance than in past marketing seasons. This proposal would reduce the number of standard sizes to three, specifying a range of 8 inches within individual sizes, and redesignate the standard size as "1", "2" and "3".

Marketing experience in fire-cured tobacco, Types 22–23 and 96, has shown that dark-brown and green colors can range from medium to heavy body. This proposal would change the specifications of body from "heavy" to "medium to heavy" in grades B1D, B2D, B3D, B4D, B5D, B3G, B4G, B5G, X1D, X2D, X3D and X3G.

Fire-cured tobacco is cured by the use of open fires from which the smoke and fumes are absorbed by the tobacco. However, a significant amount of fire-cured tobacco has appeared in past marketing seasons with low detectable levels of smoke and fumes. This proposal would add a special factor "semifired (SF)" to describe tobacco that has not received the amount of smoke characteristic of fire-cured tobacco. This would allow an alternative to grading some of such tobacco "No-G" (no grade).

The present fire-cured standards contain only one grade of best quality green nondescript. Heavy bodied green nondescript and thin bodied green nondescript should be separated because current marketing trends indicate that buying interests are placing more significance on body. This proposal would replace grade N1G with two new grades, N1GL and N1GX, to separate green nondescript from the thinner Lug group and green nondescript from the heavier bodied Leaf group.

The official standards for burley tobacco, Types 31 and 93, do not provide for a color shade lighter than tan color in the Leaf or Tip groups. During past marketing seasons, a significant amount of tobacco from the Leaf group has appeared at the marketplace that is lighter than tan color. This condition is a result of changes in fertilization programs and other production practices. This proposal would add a new combination color symbol and definition to describe tannish-buff (FL) color. Grades B2FL, B3FL and B4FL would be added to describe this color produced in the Leaf (B) group.

The highest quality of mixed color leaf in the current burley standards is B3M. During recent seasons a substantial amount of mixed color leaf which exceeded third quality has been marketed. This proposal would add Grade B2M in the Leaf (B) group to recognize this marketing change.

Grades M1F and M2F in burley tobacco, Types 31 and 93, would be deleted. In recent years tobacco characteristic of these grades has appeared in insufficient volume to justify retention of these grades.

Over the past several years a few crops of mixed variegated leaf have been sold on burley markets; however, the volume was not sufficient to justify mixed variegated grades. Currently, all burley tobacco imported into the United States is inspected. These inspections have revealed the need for variegated mixed grades in order to accurately describe imported burley tobacco from various countries around the world. Accordingly, this proposal would add new Grades M4K and M5K to describe such tobacco.

These proposed rules have been reviewed under USDA procedures established to implement Executive Order 12291 and Departmental Regulation 1512–1 and have been determined to be "nonmajor" because they do not meet any of the criteria established for major rules under the Executive Order. Initial review of the regulations contained in 7 CFR Part 29 for need, currentness, clarity and effectiveness has been completed.

Additionally, in conformance with the provisions of Pub. L. 96–354, the Regulatory Flexibility Act, full consideration has been given to the potential economic impact upon small business of this proposed rule. The Administrator, Agricultural Marketing Service, has determined that these actions will not have a significant

economic impact on a substantial number of small entities.

The purpose of the Official Standard Grades is to accurately describe tobacco as it presently appears in the marketplace, in terms of the characteristics which are significant in current marketing practice. This proposed rule would adjust the Official Standard Grades to reflect current conditions and practices relevant to the marketing of tobacco. The proposed changes would impose no additional burdens on persons affected by the regulations.

It is hereby found and determined that it is impractical, unnecessary and contrary to the public interest to provide a 30-day comment period on this proposal. A shorter comment period is necessary to provide sufficient lead time to train inspection personnel on the revisions in the grade standards and to allow the Commodity Credit Corporation to establish and announce price supports by grade prior to the opening of the 1986 marketing season. Therefore, a 15-day comment period will be provided on this proposal.

All persons who desire to submit written data, views or arguments for consideration in connection with this proposal may file them with the Director, Tobacco Division, Agricultural Marketing Service, Room 502 Annex Building, U.S. Department of Agriculture, Washington, DC 20250 not later than October 16, 1986.

List of Subjects in 7 CFR Part 29

Administrative practices and procedures, Tobacco.

Part 29—Tobacco Inspection

It is proposed that the regulations at 7 CFR Part 29, Subpart C, be amended as follows:

1. The authority citation for §§ 29.2251 to 29.2481 is revised to read as follows:

Authority: Section 29.2251 to 29.2481, issued under 7 U.S.C. 511m and 511r.

§§ 29.2295 through 29.2316 [Redesignated]

2. Current §§ 29.2295 through 29.2316 are redesignated as §§ 29.2296 through 29.2317, respectively.

3. A new § 29.2295 is added to read as follows:

§ 29.2295 Semifired (SF).

Tobacco that is partially or lightly smoked or has not received the amount of smoke that is characteristic of fire-cured tobacco.

4. § 29.2371 is revised to read as follows:

§ 29.2371 Standard sizes.[1]

Inches:	Size
12 to 20	1
20 to 28	2
Over 28	3

5. § 29.2404 is revised to read as follows:

§ 29.2404 Rule 13.

Length shall be stated in connection with each grade of the A,B and C groups and may be stated in connection with the grades of other groups. The standard tobacco sizes shall be used.

6. § 29.2405 is revised to read as follows:

§ 29.2405 Rule 14.

The standard tobacco size 2 shall be used to designate X group tobacco of M or G color when such tobacco is 20 inches or over in length.

7. A new § 29.2414 is added immediately after § 29.2413 to read as follows:

§ 29.2414 Rule 23.

Tobacco that is semifired but which otherwise meets the specifications of a grade shall be treated as a subgrade by placing the special factor "SF" after the grademark. This factor does not apply to tobacco designated "No-G".

§ 29.2461 [Amended]

8. The table in § 29.2461 is amended by revising the heading "321 Grades of lugs" to read "21 Grades of lugs".

9. § 29.2461 is further amended by revising the sentence beginning "Special factors" to read as follows:

Special factors "U", "W" and "SF" may be applied to all grades.

10. § 29.2461 is further amended by revising the heading and text of the chart 'U.S. Standard sizes applicable" to read as follows:

Standard sizes applicable	
A1, A2	2, 3
B1	2, 3
B2	1, 2, 3
B3, B4, B5	1, 2, 3
C1	2, 3
C2, C3, C4, C5	1, 2, 3
X3, X4, X5, M and G [1]	2

[1] No size is applied to these grades if tobacco is under size 2.

11. The authority citation for §§ 29.2501 to 29.2696 is revised to read as follows:

Authority: Sections 29.2501 to 29.2696 issued under 7 U.S.C. 511m and 511r.

[1] The application of sizes is governed by the major portion of the lot or package.

§ 29.2547 through 29.2570 [Redesignated]

12. Current §§ 29.2547 through 29.2570 are redesignated as §§ 29.2548 through 29.2571, respectively.

13. A new § 29.2547 is added to read as follows:

§ 29.2547 Semifired (SF).

Tobacco that is partially or lightly smoked or has not received the amount of smoke that is characteristic of fire-cured tobacco.

14. § 29.2606 is revised to read as follows:

§ 29.2606 Standard sizes [1].

Inches:	Size
12 to 20	1
20 to 28	2
Over 28	3

§ 29.2629 [Amended]

15. § 29.2629 is amended to remove the words "4-inch series of" from the last sentence.

16. A new § 29.2640 is added immediately after § 29.2639 to read as follows:

§ 29.2640 Rule 24.

Tobacco that is semifired but which otherwise meets the specifications of a grade shall be treated as a subgrade by placing the special factor "SF" after the grademark. This factor does not apply to tobacco designated "No-G".

§ 29.2662 [Amended]

17. The table in § 29.2662 is amended in the text under the headings "B1D-Choice Dark-brown Heavy Leaf", "B2D-Fine Dark-brown Heavy Leaf", "B3D-Good Dark-brown Heavy Leaf", "B4D-Fair Dark-brown Heavy Leaf", "B5D-Low Dark-brown Heavy Leaf", B3G-Good Green Heavy Leaf", "B4G-Fair Green Heavy Leaf", and "B5G-Low Green Heavy Leaf" to remove the word "Heavy' and add in the place thereof the words "Medium to heavy body".

§ 29.2664 [Amended]

18. § 29.2664 is amended in the text under the headings "X1D-Choice Dark-brown Lugs", "X2D-Fine Dark-brown Lugs", "X3D-Good Dark-brown Lugs', and "X3G-Good Green Lugs to remove the word "Heavy" and add in the place thereof the words "Medium to heavy body".

[1] The application of sizes is governed by the major portion of the lot or package.

§ 29.2665 [Amended]

19. § 29.2665 is amended to remove the grade "N1G-First Quality Crude Green Nondescript".

20. § 29.2665 is further amended to add two new grades following the grade "N1D-First Quality Dark Colored Nondescript" to read as follows:

N1GL-First Quality Crude Green Nondescript from the B Group 60 percent crude leaves or injury tolerance.

N1GX-First Quality Crude Green Nondescript from the X Group 60 percent crude leaves or injury tolerance.

§ 29.2686 [Amended]

21. § 29.2686 is amended by revising the heading and text of the chart "4 Grades of Nondescript" to read as follows:

5 GRADES OF NONDESCRIPT

N1L	N1D	N1GL	N1GX	N2

22. § 29.2686 is further amended by revising the sentence beginning "Special factors" to read as follows:

Special factors "U", "W", "S" and "SF" may be applied to all grades.

23. § 29.2686 is further amended by revising the chart "Standard Sizes Applicable" to read as follows:

A1, A2, A3	2, 3
B1, B2	1, 2, 3
B3, B4, B5	1, 2, 3
C1, C2	1, 2, 3
C3, C4, C5	1, 2, 3

24. The authority citation for §§ 29.3001 to 29.3182 is revised to read as follows:

Authority: Sections 29.3001 to 29.3182 issued under 7 U.S.C. 511m and 511r.

25. § 29.3013 is revised to read as follows:

§ 29.3013 Combination color symbols.

As applied to Burley, combination color symbols are as follows:

FL—tannish buff, FR—tannish red, VF—greenish tan, VR—greenish red, GF—tannish tan, and GR—green red. (See Rules 17 and 18.)

§§ 29.3067—29.3077 [Redesignated.]

26. Current §§ 29.3067 through 29.3077 are redesignated as §§ 29.3068 through 29.3078, respectively.

27. A new § 29.3067 is added to read as follows:

§ 29.3067 Tannish-buff (FL).

A light red-yellow shaded toward buff.

28. § 29.3118 is revised to read as follows:

§ 29.3118 Rule 15.

Any lot of tabacco containing over 20 percent of variegated leaves shall be described as "variegated" and designated by the color symbol "K".

29. Section 29.3153 is amended to add three new grades following the grade "B5F—Low Tan Leaf", and by adding one new grade following "B5K—Low Variegated Leaf" to read as follows:

29.3153 Leaf (B Group).

* * * * *

Grades	Grade names and specifications
* * * * *	
B5F	
* * * * *	

B2FL—Good Tannish-buff Leaf
Medium body, ripe, open, even, clear finish, strong color intensity, spready, 20" or over in length, 90 percent uniform, and 5 percent injury tolerance.

B3FL—Good Tannish-bull Leaf
Medium body, mature to ripe, firm to open, wavy to even, moderate finish and color intensity, narrow to normal width, 18" or over in length, 85 percent uniform, and 15 percent injury tolerance.

B4FL—Fair Tannish-buff Leaf
Medium body, mature firm, wavy dull finish, weak color intensity, narrow, 16" or over in length, 80 percent uniform, and 20 percent injury tolerance.

* * * * *

B5K
B2M—Fine Mixed Color Leaf
Fleshy to medium body, ripe, open, even, moderate finish and color intensity, 20" or over in length, 90 percent uniformity, and 10 percent injury tolerance.

§ 29.3155 [Amended]

30. § 29.3155 is amended to remove the grades "M1F—Choice Light Mixed" and M2F—Fine light Mixed".

31. § 29.3155 is further amended to add two new grades following the grade "M5FR—Low Dark Mixed" to read as follows:

§ 29.3155 Mixed (M Group).

* * * * *

Grades	Grade names and specifications
* * * * *	

M4K—Fair Variegated Mixed
General quality of X4, C4, B4, T4, fleshy to thin body, mature, under 20 percent greenish, and 20 percent injury tolerance.

M5K—Low Variegated Mixed
General quality of X5, C5, B5, T5, fleshy to thin body, underripe to mature, under 20 percent greenish, and 30 percent injury tolerance.

§ 29.3181 [Amended]

32. § 29.3181 is amended by revising the heading and text of the chart "35 Grades of Leaf" to read as follows:

§ 29.3181 Summary of Standard Grades.

* * * * *

39 GRADES OF LEAF

B1F	B3FR	B3K	B3VR
B2F	B4FR	B4K	B4VR
B3F	B5FR	B5K	B5VR
B4F	B1R	B2M	B3GF
B5F	B2R	B3M	B4GF
B2FL	B3R	B4M	B5GF
B3FL	B4R	B5M	B3GR
B4FL	B5R	B3VF	B4GR
B1FR	B4D	B4VF	B5GR
B2FR	B5D	B5VF	

* * * * *

33. § 29.3181 is further amended by revising the chart "8 Grades of Mixed Group" to read as follows:

8 GRADES OF MIXED GROUP

M3F	M5F	M4FR	M4K
M4F	M3FR	M5FR	M5K

34. § 29.3181 is further amended by revising the chart "7 Grades of Nondescript" to read as follows:

7 GRADES OF NONDESCRIPT

N1L	N1R	N2L	N2G
N1F	N1G	N2R	

§ 29.3182 [Amended]

35. § 29.3182 is amended under the heading "Colors" by adding "FL—Tannish red" following "F—Tan".

36. The authority citation for §§ 29.3501 to 29.3686 is revised to read as follows:

Authority: Sections 29.3501 to 29.3686 issued under 7 U.S.C. 511m and 511r.

37. § 29.3529 is revised to read as follows:

§ 29.3529 Length.

The linear measurement of cured tobacco leaves from the butt of the midrib to the extreme tip. (See Standard Tobacco Sizes, § 29.3591.)

38. § 29.3545 is revised to read as follows:

§ 29.3545 Size.

The length of tobacco leaves. Size does not apply to tobacco in strip form. (See Standard Tobacco Sizes § 29.3591.)

39. § 29.3591 is revised to read as follows:

§ 29.3591 Standard Tobacco Sizes.[1]

Inches:	Size
12 to 20	1
20 to 28	2
Over 28	3

40. § 29.3614 is revised to read as follows:

§ 29.3614 Rule 13.

Length shall be stated in connection with each grade of the A, B, and C groups, except strip grades, and may be stated in connection with grades of other groups. For this purpose, the standard tobacco sizes shall be used. (See Applicable Standard Sizes, § 29.3681.)

41. § 29.3681 is revised to read as follows:

§ 29.3681 Applicable standard sizes.

Types 35, 36, 37 and 95

A1, A2, A3	2, 3
B1, B2, B3, B4, B5	1, 2, 3
C1, C2, C3, C4, C5	1, 2, 3

Dated: September 26, 1986.

James C. Handley,

Administrator, Agricultural Marketing Service.

[FR Doc. 86-22270 Filed 9-30-86; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 1036

[Docket Nos. A0-179-A49 and A0-179-A49-R01]

Milk in the Eastern Ohio-Western Pennsylvania Marketing Area; Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreement and To Order

Correction

In FR Doc. 86-21043 beginning on page 33273 in the issue of Friday, September 19, 1986, make the following correction:

On page 33274, in the first column, in the sixth line, insert a period after "milk order" and insert the following before "increased": "These increases became effective May 1, 1986. At that time, the Class I differential for the Eastern Ohio-Western Pennsylvania milk order".

BILLING CODE 1505-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86-NM-172-AD]

Airworthiness Directive; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require the inspection for cracking and repair or replacement, as necessary, of the pylon midspar attach fitting horizontal clevis on certain Boeing Model 747 airplanes. This action is prompted by reports of cracks and corrosion in fastener holes of the attach fitting that, if not corrected, could result in possible separation of the pylon and engine from the wing.

DATES: Comments must be received on or before November 21, 1986.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (ATTN: AMN-103), Attention: Airworthiness Rules Docket No. 86-NM-172-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The service bulletin specified in this proposal may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. It may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Owen E. Schrader, Airframe Branch, ANM-120S; telephone (206) 431-2923. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 86-NM-172-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

There have been several reports of cracking of the pylon midspar attach fitting horizontal clevis legs on Boeing Model 747 airplanes. On one airplane with approximately 34,000 flight hours and 8,200 landings, both legs of the horizontal clevis of the pylon inboard midspar fitting were fractured through at the aft-most two fastener holes. It has been determined that this cracking was the result of fatigue initiation at fastener holes, due to roughness of the hole finish and/or corrosion in the hole. Such cracking can lead to failure of associated structure, which could lead to separation of the pylon and engine from the airplane.

The FAA has reviewed and approved Boeing Service Bulletin 747-54-2118, dated July 25, 1986, which provides procedures to inspect for cracking of the pylon midspar attach fittings, and repair or replacement, as necessary.

Since this situation is likely to exist or develop on other airplanes of the same type design, this proposed AD would require repetitive inspection for cracking of the pylon midspar attach fitting horizontal clevis of certain Boeing Model 747 airplanes in accordance with the Boeing service bulletin previously mentioned. If cracking of pylon midspar attach fitting structure is found, it must be repaired before further flight.

[1] The application of sizes is governed by the major portion of the lot or package.

It is estimated that 160 airplanes of U.S. registry would be affected by this AD, that it would take approximately 656 manhours per airplane to accomplish the required actions, and that the average labor costs would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $4,198,400 for the initial inspection cycle.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Boeing Model 747 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 747 series airplanes listed in Boeing Service Bulletin 747-54-2118, dated July 25, 1986, certificated in any category.

To detect cracking of engine pylon midspar attach fittings, accomplish the following, unless already accomplished:

A. Within 5,000 flight hours after the effective date of this AD or prior to the accumulation of 20,000 flight hours, whichever occurs later, unless accomplished within the last 5,000 flight hours, and at intervals thereafter not to exceed 10,000 flight hours, perform an ultrasonic inspection for cracks initiating at the aft-most two fastener holes in both pylon midspar fittings on the inboard nacelle pylons on airplanes listed in Groups 1 through 5, and on the outboard nacelle pylons on airplanes listed in Group 1, in accordance with Boeing Service Bulletin 747-54-2118, dated July 25, 1986, or later FAA-approved revisions.

B. If cracking is found, repair prior to further flight in accordance with Boeing Service Bulletin 747-54-2118, dated July 25, 1986, or later FAA-approved revisions.

C. Terminating action for the requirements of this AD is rework or replacement of the pylon midspar fitting in accordance with Boeing Service Bulletin 747-54-2118, dated July 25, 1986, or later FAA-approved revisions.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certfication Office, FAA, Northwest Mountain Region.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

Note: Compliance with this AD does not terminate the inspection requirements of the Supplemental Structural Inspection Document (SSID) Airworthiness Directive AD 84-21-02 (Amdt. 39-4936; 49 FR 44890), if applicable.

All persons affected by this proposal who have not already received the appropriate service document from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124-2207. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on September 24, 1986.

Joseph W. Harrell,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-22120 Filed 9-30-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 86-NM-179-AD]

Airworthiness Directives; Garrett Turbine Engine Company Model GTCP331 Series Auxiliary Power Units

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to amend an existing airworthiness directive (AD), applicable to Garrett Model GTCP331-2001 and -200.AC Auxiliary Power Units (APU) installed on Boeing Model 757 and Boeing Model 767 series airplanes, which requires modification of the APU cooling fan containment housing. This amendment is necessary to extend the applicability of the AD to all U.S.-registered airplanes equipped with the Garrett GTCP331 series APU's. This action is prompted by the recent U.S. registration of other make/model airplanes equipped with the Garrett GTCP series APU.

DATES: Comments must be received no later than November 21, 1986.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration (FAA), Northwest Mountain Region, Office of the Regional Counsel (ATTN: ANM-103), Attention: Airworthiness Rules Docket No. 86-NM-179-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Garrett Turbine Engine Company, P.O. Box 5217, Phoenix, Arizona 85010. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Western Aircraft Certification Office, 15000 Aviation Boulevard, Hawthorne, California.

FOR FURTHER INFORMATION CONTACT: Mr. Bill Moring, Aerospace Engineer, Propulsion Section, ANM-174W, FAA Northwest Mountain Region, Western Aircraft Certification Office, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009-2007; telephone (213) 297-1382.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking on the proposed rule. The proposal contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA Northwest Mountain Region, Office of the Regional Counsel (ATTN: ANM-103), Attention: Airworthiness Rules Docket No. 86-NM-179-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

This notice proposes to amend AD 85-14-02, Amendment 39-5091 (50 FR 27933; July 9, 1985), which requires modification of the fan assembly containment housing on Garrett GTCP331-200A or -200AC APU's installed on Boeing Models 757 and 767 series airplanes. The AD was prompted by thirteen reports of failure of the APU cooling fan, two of which were uncontained. This condition, if not corrected, could result in a potential fire hazard.

It was noted in AD 85-14-02 that, if operators of other models of airplanes equipped with the Garrett Model GTCP331 series APU sought registration in the United States, an amendment to the AD would be considered to expand the AD's applicability to include all such APU installations. Airbus Industrie Models A310 and A300-600 airplanes have subsequently been certificated and registered in the U.S.; these airplanes are equipped with the GTCP331 series APU.

Since the potential for failure of the cooling fan is likely to exist or develop on auxiliary power units of the same type design, this amendment is being proposed which would expand the applicability of AD 85-14-02 to include all Garrett GTCP331 APU's installed on any airplane type certificated and registered in the U.S. This action would preclude the potential that the old APU configuration might be used in service on any U.S.-registered airplanes.

It is estimated that 12 additional airplanes of U.S. registry will be affected by this AD. It will require approximately 0.5 manhour per airplane to accomplish the required modification, at an average labor charge of $40 per hour. Modification parts will be furnished by the manufacturer at no charge. Based on these figures, the cost impact of this proposed AD on U.S. operators for 12 additional airplanes affected by this AD is estimated to be $240.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because of the minimal cost of compliance per airplane ($20). A copy of a draft regulatory evaluation prepared for this section is contained in the Regulatory Docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulation as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By amending Airworthiness Directive AD 85-14-02, Amendment 39-5091 (50 FR 27933; July 9, 1985), by revising the applicability statement and paragraph A. to read as follows:

"**Garrett Turbine Engine Company (GTEC) (formerly the AiResearch Manufacturing Company of Airzona):** Applies to all GTEC Models GTCP331 series Auxiliary Power Units (APU) with fan assembly, Garrett Part Number 3862160-3 or -4 installed. Compliance is required as indicated, unless already accomplished.

To prevent an uncontained APU cooling fan failure, accomplish the following:

A. Upon removal of the cooling fan assembly, Garrett Part No. 3862160-3 or -4 from an affected GTCP331 series Auxiliary Power Unit (APU) for any reason; or within 1,000 airplane hours time-in-service after August 15, 1985, or prior to September 15, 1985, whichever comes first, for the Boeing Model 757 and 767 series airplane; and within 1,000 airplane hours time-in-service after the effective date of this AD, for all other airplanes with GTCP331 series APU installed; incorporate the new fan assembly with the improved fan containment housing as specified in Section 2.A, "Accomplishment Instructions," of GTEC Service Bulletin GTCP331-49-5546, dated August 9, 1984, or equivalent approved by the Manager, Western Aircraft Certification Office, FAA, Northwest Mountain Region."

All persons affected by this proposal who have not already received these documents from the manufacturer may obtain copies upon request to the Garrett Turbine Engine Company, Post Office Box 5217, Phoenix, Arizona 85010. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 15000 Aviation Boulevard, Hawthorne, California.

Issued in Seattle, Washington, on September 24, 1986.

Joseph W. Harrell,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-22121 Filed 9-30-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 86-NM-190-AD]

Airworthiness Directives; Lockheed-California Company Model L-1011 Series Airplanes Equipped With Carbon Fibre Cowls

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD) that would require modification of the left rear fan cowl door support stowage mechanism on all Lockheed Model L-1011 series airplanes equipped with carbon fibre cowls. This proposed AD is prompted by nine reports of engine throttle control mechanism jamming caused by an unrestrained left rear fan cowl door support that fell among the throttle mechanism linkages. The throttle control jamming could result in loss of engine control.

DATES: Comments must be received on or before November 21, 1986.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 86-NM-190-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained upon request to Rolls-Royce PLC, P.O. Box 31, Derby DE2 8BJ, England, Attention: Technical Publications Department. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Roy A. McKinnon, Aerospace Engineer, Propulsion Branch, ANM-140L, FAA, Northwest Mountain Region,

Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 514–6327.

Comments Invited

Intersted persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communication received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposal contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM–103) Attention: Airworthiness Rules Docket No. 86–NM–190–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

Nine incidents have been reported of the engine throttle control jamming on Lockheed Model L–1011 series airplanes and Boeing Model 747 series airplanes powered by Rolls-Royce RB211–524 engines, due to interference from an unstowed left rear fan cowl door support. On both types of airplanes, the support is a telescopic strut, which is attached at one end to the fan cowl door through a swivel joint, and, in a stowed position, it is secured at the other end in a housing by a pip-pin type mechanism. It is possible to close the fan cowl door with the strut in the unstowed position on multiple engines on the same airplane. The strut, if not stowed and secured properly, may fall on the engine throttle control cables and jam the cables, thereby restricting the crew's ability to manipulate the throttles.

Most Lockheed L–1011 series airplanes are equipped with metal cowls, but a few are equipped with carbon fibre (composite) cowls. Jamming of the throttle controls could occur on either types of cowls, due to the conditions described above.

To prevent incidents of jamming of the throttle controls on metal cowls, Rolls-Royce issued Service Bulletin (S/B) RB211–71–7254, Revision 1, on December 7, 1984, recommending modification to improve the stowage mechanism design. The improved design incorporates a baulking (restraining) bracket for the strut, which prevents the strut from falling on the throttle control cables, in the event the strut was not stowed properly and the fan cowl door was closed. The FAA issued AD 86–07–03 on March 26, 1986 (51 FR 11301; April 2, 1986), to require the above changes on Lockheed L–1011 airplanes equipped with metal cowls, in accordance with the Rolls-Royce service bulletin.

Since issuance of AD 86–07–03, Rolls-Royce has issued Service Bulletin RB211–71–8220, dated May 23, 1986, which describes similar modifications for Lockheed Model L–1011 airplanes equipped with the carbon fiber (composite) cowls.

Since this condition is likely to exist or develop on other airplanes of the same type design, the FAA is proposing an airworthiness directive (AD) which would require modifications in accordance with the above Rolls-Royce service bulletin.

Approximately 7 U.S. registered Model L–1011 series airplanes would be affected by this AD. It is estimated that it would take 6 manhours per nacelle to accomplish the required actions, and that the average labor cost would be $40 per manhour. Cost of parts for each engine modified is estimated to be $320. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,680 per airplane, or $11,760 for the affected U.S. fleet.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Execuitve Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Model L–1011 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Lockheed-California Company: Applies to Lockheed Model L–1011 series airplanes equipped with carbon fibre cowls, certificated in any category. Compliance is required within 12 months after the effective date of this AD, unless already accomplished.

To prevent loss of throttle control caused by an unstowed left rear fan cowl door support on carbon fibre cowls, accomplish the following:

A. Modify the fan cowl support strut stowage mechanism in accordance with Rolls-Royce Service Bulletin RB211–71–8220, dated May 23, 1986, or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

B. Alternate means of compliance which provides an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modification required by this AD.

All persons affected by this proposal who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Rolls-Royce PLC, P.O. Box 31, Derby DE2 8BJ, England, Attention: Technical Publications Department. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

Issued in Seattle, Washington, on September 24, 1986.

Joseph W. Harrell,

Acting Director, Northwest Mountain Region.

[FR Doc. 86–22122 Filed 9–30–86; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 86-NM-196-AD]

Airworthiness Directives; Avions Marcel Dassault-Breguet Aviation (AMD-BA) Mystere Falcon 200 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD), applicable to AMD-BA Mystere Falcon 200 series airplanes, which would require replacement of the fuel system booster crossfeed valve actuator on the fuel distributor block with a sealed actuator. This proposal is prompted by reports of malfunctions of the fuel system booster crossfeed valve actuator in flight. This condition, if not corrected, could cause fuel starvation if it becomes necessary to supply fuel from a single fuel feed line.

DATES: Comments must be received no later than November 21, 1986.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 86-NM-196-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Avions Marcel Dassault-Breguet Aviation (AMD/BA), 40 FJC, Teterboro Airport, Teterboro, New Jersey 07608. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, ANM-113; telephone (206) 431-2909. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 86-NM-196-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The Direction Générale de L'Aviation Civile (DGAC) has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of an unsafe condition which may exist on certain AMD-BA Mystere Falcon 200 airplanes. Accumulation of water in the fuel system booster crossfeed valve actuator has resulted in several malfunctions of this actuator in flight. Malfunctions of the fuel system booster crossfeed valve actuator have been caused by freezing of the moving parts in the actuator or lack of electrical continuity as a result of corrosion. AMD-BA issued Service Bulletin No. AMD-BA-F200-64, dated March 3, 1986, which describes replacement of actuator AVIAC Part Number (P/N) 2778-1 (ZENITH P/N D97C00-215) with a sealed actuator, AVIAC P/N 2773 (ZENITH P/N D97C00-202). The DGAC issued an airworthiness directive on March 5, 1986, making AMD-BA Service Bulletin No. AMD-BA-F200-64 mandatory.

This airplane model is manufactured in France and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require replacement of the fuel system booster crossfeed valve actuator in accordance with the service bulletin previously mentioned.

It is estimated that 18 airplanes of U.S. registry would be affected by this AD, that it would take approximately 4 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The cost of parts is estimated to be $500 per airplane. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $11,880.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibiiity Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because of the minimal cost of compliance per airplane ($660). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Avions Marcel Dissault-Breguet Aviation (AMD-BA): Applies to Model Mystere Falcon 200 series airplanes, certificated in any category. Compliance is required within 60 days after the effective date of this AD, unless previously accomplished. To prevent malfunction of the fuel system crossfeed valve actuator, accomplish the following:

A. Install a fuel system booster crossfeed valve actuator, AVIAC P/N 2778-1 (ZENITH P/N D97C00-215), in accordance with AMD-BA Service Bulletin No. AMD-BA F200-64, dated March 3, 1986.

B. Install a placard on the fuel distributor block in accordance with AMD-BA Service Bulletin No. AMD-BA F200-64, dated March 3, 1986.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of modifications required by this AD.

All persons affected by this proposed directive who have not already received the appropriate service document from the manufacturer may obtain copies upon request to Avions Marcel Dassault-Breguet Aviation, 40 JFC, Teterboro Airport, Teterboro, New Jersey 07608. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on September 24, 1986.

Joseph W. Harrell,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-22119 Filed 9-30-86; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-23643; File No. S7-18-86]

Concept Release on Takeovers and Contests for Corporate Control

AGENCY: Securities and Exchange Commission.

ACTION: Extension of comment period.

SUMMARY: The Securities and Exchange Commission is extending the period for public comment on three topics relating to takeovers and contests for corporate control.

DATE: Comments should be received on or before December 1, 1986.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comment letters should refer to File No. S7-18-86. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Joseph G. Connolly, Jr., or Gregory E. Struxness, (202) 272-3097, Office of Tender Offers, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is extending the period for public comment on three topics relating to takeovers and contests for corporate control: (1) Whether the Williams Act should apply whenever a person acquires a substantial percentage of a target company's securities during or shortly after a tender offer; (2) whether there should be a governmental response to the proliferation of "poison pill" plans; and (3) whether the Commission should adopt a self-governance exemption to its "all holders" rule, as well as to other provisions of its tender offer rules. The concept release [1] requesting comment on these three topics was first published on August 5, 1986.[2] The comment period was originally scheduled to expire on September 30, 1986. The Commission is extending the comment period until December 1, 1986 because it believes that these issues are of great importance and wishes to assure that all interested persons have adequate time to prepare considered responses to the questions that the Commission has raised.

By the Commission.

Jonathan G. Katz,

Secretary.

September 24, 1986.

[FR Doc. 86-22201 Filed 9-30-86; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 331

[Docket No. 85N-0049]

Antacid Drug Products for Over-the-Counter Human Use; Proposed Amendment of Antacid Monograph; Extension of Comment Period

AGENCY: Food and Drug Administration.

ACTION: Notice of proposed rulemaking; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to October 29, 1986, the comment period for the notice of proposed rulemaking to amend the labeling requirements for over-the-counter (OTC) antacid drug products in § 331.30(d) (21 CFR 331.30(d)) by adding a drug interaction precaution regarding prescription drug interactions. This action responds to a request to extend the comment period for an additional 30 days to allow more time for interested persons to address important issues proposed by the agency and to allow greater participation by those affected by this rulemaking.

DATE: Written comments by October 29, 1986.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drugs and Biologics (HFN-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 30, 1986 (51 FR 27342), FDA issued a notice of proposed rulemaking to amend the labeling requirements for OTC antacid drug products in § 331.30(d) (21 CFR 331.30(d)) by adding a drug interaction precaution regarding prescription drug interactions. Interested persons were given until September 29, 1986, to comment on the notice of proposed rulemaking.

In response to the proposal, The Proprietary Association requested a 30-day extension of the comment period in order to allow adequate time for the association to address important issues proposed by the agency concerning OTC antacid drug products. The Proprietary Association stated that the rulemaking is of significant interest to the OTC drug industry and that extending the comment period will allow greater participation by all those who will be affected by the proposal.

FDA has carefully considered the request. The agency believes that greater participation by those affected by the proposal is in the public interest, and may be of assistance in amending the labeling requirements for OTC antacid drug products. Thus, the agency considers a general extension of the comment period for 30 days to be appropriate.

Interested persons may, on or before October 29, 1986, submit to the Dockets Management Branch (address above) written comments concerning the notice of proposed rulemaking. Three copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 25, 1986.

John M. Taylor,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86-22210 Filed 9-26-86; 3:13 pm]

BILLING CODE 4160-01-M

[1] Release No. 34-23486 (July 31, 1986).

[2] 51 FR 28096 (August 5, 1986).

21 CFR Part 358

[Docket No. 82N-0214]

Dandruff, Seborrheic Dermatitis, and Psoriasis Drug Products for Over-the-Counter Human Use; Tentative Final Monograph; Extension of Comment Period

AGENCY: Food and Drug Administration.

ACTION: Notice of proposed rulemaking; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to October 29, 1986, the comment period for the notice of proposed rulemaking to establish conditions under which over-the-counter (OTC) dandruff, seborrheic dermatitis, and psoriasis drug products are generally recognized as safe and effective and not misbranded. This action responds to a request to extend the comment period for an additional 30 days to allow more time for interested persons to address important issues proposed by the agency and to allow greater participation by those affected by this rulemaking.

DATE: Written comments by October 29, 1986.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drugs and Biologics (HFN-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION: In the Federal Register of July 30, 1986 (51 FR 27346), FDA issued a notice of proposed rulemaking to establish conditions under which OTC dandruff, seborrheic dermatitis, and psoriasis drug products are generally recognized as safe and effective and not misbranded. This notice of proposed rulemaking, which was based on the agency's evaluation of the recommendations of the Advisory Review Panel on OTC Miscellaneous External Drug Products and public comments on those recommendations, is part of the ongoing review of OTC drug products conducted by the agency. Interested persons were given until September 29, 1986, to comment on the notice of proposed rulemaking.

In response to the proposal, The Proprietary Association requested a 30-day extension of the comment period in order to allow adequate time for the association to address important issues proposed by the agency concerning OTC dandruff, seborrheic dermatitis, and psoriasis drug products. The Proprietary Association stated that the rulemaking is of significant interest to the OTC drug industry and that extending the comment period will allow greater participation by all those who will be affected by the proposal.

FDA has carefully considered the request. The agency believes that greater participation by those affected by the proposal is in the public interest, and may be of assistance in establishing the conditions under which OTC dandruff, seborrheic dermatitis, and psoriasis drug products are generally recognized as safe and effective and not misbranded. Thus, the agency considers a general extension of the comment period for 30 days to be appropriate.

Interested persons may, on or before October 29, 1986, submit to the Dockets Management Branch (address above) written comments concerning the notice of proposed rulemaking. Three copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 25, 1986.

John M. Taylor,

Acting Associated Commissioner for Regulatory Affairs.

[FR Doc. 86-22211 Filed 9-26-86; 3:13 pm]

BILLING CODE 4160-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. H-041]

Occupational Exposure to 1, 3-Butadiene

AGENCY: Occupational Safety and Health Administration [OSHA], Labor.

ACTION: Advance notice of proposed rulemaking (ANPR).

SUMMARY: This notice announces the initiation of action by OSHA with respect to reducing worker exposures to 1, 3-butadiene (BD) under section 6(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655(b)). This regulatory action follows: (a) The release of scientific studies indicating that BD caused cancer through inhalation in two animal species, and (b) OSHA's acceptance of the Environmental Protection Agency's (EPA's) referral of the chemical under the authority of section 9(a) of the Toxic Substances Control Act (TSCA) (50 FR 41393).

This notice summarizes information currently available to OSHA concerning production and use of BD, health effects, estimates of employees exposure and risk assessments. This notice invites interested parties to submit data, views, and comments regarding all issues involved in OSHA's development of a revised standard for BD, including the appropriate scope of coverage.

DATE: Comments in response to this Advance Notice should be submitted by December 30, 1986.

ADDRESS: Comments should be submitted in quadruplicate to the Docket Officer, Occupational Safety and Health Administration, Docket No. H-041, Room N-3670, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: James F. Foster, Occupational Safety and Health Administration, U.S. Department of Labor, Office of Information, Room N-3641, Washington, DC 20210, Telephone (202) 523-8151.

SUPPLEMENTARY INFORMATION:

I. Background

1. Chemical and Physical Characteristics

The chemical 1, 3-Butadiene (Chemical Abstracts Service Registry Number 106-99-0) is a colorless, noncorrosive, flammable gas at standard ambient temperature and pressure with a mild aromatic odor. It has a molecular weight of 54.1, boiling point of −4.7 °C at 760 mm Hq, a Lower Explosive Limit of 2%, and an Upper Explosive Limit of 11.5%. It is highly reactive, dimerizes to 4-vinylcychlohexane, and polymerizes easily. Because of its low odor threshold, high flammability and explosiveness, BD has been handled with extreme care in industry.

BD is a major commodity product of the petrochemical industry. Total U.S. production of BD in 1985 was 2.5 billion pounds. About 70% is used in production of styrene-butadiene rubber and polybutadiene rubber for the tire industry. Other uses include copolymer latexes for carpet backing and paper coating, as well as resins and polymers for pipes and automobile and appliance parts. It is also used as an intermediate in the production of such chemicals as fungicides. In "1, 3-Butadiene Use and Substitutes Analysis" (Ex. 17-15), EPA identified 140 major, minor and potential uses of butadiene in the chemical industry.

2. History of the Standard

The present OSHA standard for BD requires employers to assure that employee exposure does not exceed 1,000 parts per million parts of air (ppm) determined as an 8-hour time-weighted average (TWA) (29 CFR 1910.1000, Table Z–1). This standard was adopted by OSHA in 1971 pursuant to section 6(a) of the OSH Act, 29 U.S.C. 655. The source of this standard was the Threshold Limit Value (TLV) for BD developed in 1968 by the American Conference of Governmental Industrial Hygienists (ACGIH). This TLV was developed to prevent irritation and narcosis.

In 1983, the National Toxicology Program (NTP) released the results of an animal study indicating that BD causes cancer in rodents (Ex. 20). Based on the strength of the results of this animal study, ACGIH in 1983 classified BD as an animal carcinogen and in 1984 recommended a new TLV of 10 ppm (Ex. 2–4). On the same basis, the National Institute for Occupational Safety and Health (NIOSH) published, on February 9, 1984, a Current Intelligence Bulletin recommending that BD be regarded as a potential occupational carcinogen, teratogen and a possible reproductive hazard (Ex. 23–17). On January 5, 1984, OSHA published a Request for Information (49 FR 844) and EPA published a notice announcing the initiation of a 180 day review under the authority of section 4(f) of TSCA (49 FR 845). Comments were to be submitted to OSHA by March 5, 1984. On April 4, 1984, OSHA extended the comment period until further notice (40 FR 13389).

Petitions for an Emergency Temporary Standard (ETS) of 1 ppm or less for workers' exposure to BD (Ex. 6–4) were submitted to OSHA on January 23, 1984, by the United Rubber, Cork, Linoleum and Plastic Workers of America (URW), the Oil, Chemical and Atomic Workers (OCAW), the International Chemical Workers Union (ICWU), and American Federation of Labor and Congress of Industrial Organizations (AFL–CIO). OSHA, on March 7, 1984, denied the petitions on the ground that the Agency was still in the process of evaluating the health data to determine whether regulatory action was appropriate.

On May 15, 1984, EPA published an Advance Notice of Proposed Rulemaking (ANPR) (49 FR 20524). Information received in response to this ANPR was used by EPA in developing risk assessments. Subsequently, EPA identified BD as a probable human carcinogen (Group B2), and concluded that current exposures during the manufacturing of BD and its processing into polymers presented an unreasonable risk of injury to human health (Ex. 17–4). Additionally, EPA determined that the risks associated with exposure to BD may be reduced to a sufficient extent by action taken under the OSH Act. Following these findings, EPA, in accordance with section 9(a) of TSCA, on October 10, 1985, referred BD to OSHA to give this Agency an opportunity to regulate the chemical under the OSH Act. EPA requested OSHA to determine whether the risks described in the EPA report may be prevented or reduced to a sufficient extent by action taken under the OSH Act. If such a determination is made, then OSHA was requested to issue an order declaring whether the manufacture and use described in the report present the risk therein described. EPA requested OSHA to respond within 180 days, by April 8, 1986 (50 FR 41393).

On December 27, 1985, OSHA published a notice (50 FR 52952) soliciting public comments on EPA's referral report. Based on all the available information, OSHA published a notice (50 FR 12526) on April 11, 1986, responding to the EPA referral report by making a preliminary determination that a revised OSHA standard limiting occupational exposure to BD could prevent or reduce the risk of exposure to a sufficient extent and that such risk has been accurately described by EPA in the report. Since then OSHA has received three comments (International Institute of Synthetic Rugger Producers (IISRP), Ex 26–1; ICWU, Ex. 26–2; and Texaco Inc., Ex. 17–33), including a new mortality study of butadiene workers at Port Neches, Texas. OSHA is currently analyzing these comments.

With this ANPR, OSHA is initiating action within the meaning of section 9(a) of TSCA.

II. Health Effects

In assessing the potential health hazards to workers exposed to this chemical, OSHA evaluated the non-carcinogenic health effects, the carcinogenic effects demonstrated in two animal studies, the results of six epidemiological studies and the mutagenic effects. The summary of OSHA's preliminary evaluation is presented below.

1. Non-carcinogenic Adverse Health Effects

At low concentrations, BD vapor may cause slight irritation of the skin and eyes. It may cause blurring of vision, nausea, and quickening of pulse. At concentrations higher than 8,000 ppm, BD induces narcosis, or unconsciousness (Ex. 2–5). In addition, animal studies indicate that BD may be associated with diseases of the kidneys. Rats exposed to 1000 and 8000 ppm of BD showed elevated rates of death over controls due to kidney failure (Ex. 2–31).

2. Carcinogenic Effects

A. Animal Studies

BD was found to be a cancer causing agent in two animal species. Two independent chronic inhalation studies sponsored by NTP and the IISRP were made available in 1983 (Exs. 23–1; 2–31). Preliminary data from a subsequent study by the Chemical Industry Institute of Toxicology (CIIT) (Ex. 22–7) also show BD to be carcinogenic.

In the NTP study (Ex. 23–1), groups of 50 B6C3F1 mice of each sex were exposed to O ppm, 625 ppm and 1250 ppm of BD for six hours a day, five days a week. The study was terminated at 60 weeks and 61 weeks for the male and female mice, respectively. The carcinogenicity of BD in male and female B6C3F1 mice was demonstrated by a statistically significant increase of tumor incidences as well as early induction of hemangiosarcomas of the heart and malignant lymphomas. Among the other increased incidences of tumors were alveolar/bronchiolar adenomas and carcinomas, and papillomas of the stomach in both males and females; and acinar cell carcinomas of the mammary gland, granulosa cell tumors of the ovary, and hepatocellular adenomas/carcinomas in females. Additionally, BD was associated with non-neoplastic lesions in the respiratory epithelium, liver necrosis, and testicular or ovarian atrophy.

In the IISRP study (Ex. 2–31), groups of 100 Sprague-Dawley rats of each sex were exposed to BD at concentrations of 0 ppm, 1,000 ppm, and 8,000 ppm for 6 hours per day, 5 days per week. The study was terminated at 105 weeks and 111 weeks for the female and male rats, respectively. In females, significantly increased incidences of mammary gland tumors, Zymbal gland carcinomas, follicular cell tumors of the thyroid, and uterine stromal carcinomas were observed. In males, increased incidences of Leydig cell tumors and pancreatic exocrine tumors were observed.

Carcinogenic effects of BD have also been confirmed in a subsequent study conducted by CIIT, using B6C3F1 mice exposed through inhalation to 1250 ppm of BD for 6 hours per day (Ex. 22–7). Although this study was not designed to quantify tumor incidences, preliminary data have confirmed murine thymic lymphoma as the primary cause of death

following chronic exposure to BD in male B6C3F1 mice.

The NTP and IISRP studies were reviewed by EPA's scientists and the NTP's Board of Scientific Counselors. They determined that the data are valid and concluded the BD is a potent carcinogen in B6C3F1 mice as shown in the NTP study and a weak carcinogen in Sprague-Dawley rats as shown in the IISRP study.

NTP and Chemical Manufacturers Association (CMA) (Exs. 17–23; 17–25) expressed concerns regarding the conclusiveness of the reported carcinogenicity findings in the NTP study (Ex. 23–1), due to deviations from Good Laboratory Practices (GLP) and inconsistencies in the study protocol. Since OSHA is primarily relying on the NTP study in assessing the cancer hazard posed to BD workers. OSHA analyzed the audit reports and evaluated suspected deviations from the GLP standards and their impact (if any) on the validity of data. The summary of OSHA's preliminary analysis is as follows:

In considering the major issues, the Agency has preliminary determined that first, at the time of the audits, Individual Animal Data Records (IADR's) were available in the archive files and thus could have been used to verify the statistical analyses and computer test results given in the technical report.

Moreover, OSHA believes that the increased tumor incidences were so overwhelming, that any reasonable statistical analysis would indicate a highly significant effect.

Secondly, OSHA has determined that the flow rate calculation used by NTP is a scientifically acceptable method of computation. The concentration of BD to which the animals were exposed was adequately measured for each exposure period and documented in the archives. There is no evidence that the effective flow rate resulted in long build-up or decay time.

Third, the Agency is satisfied that the 100% slide/block match for the high dose and control animals conducted by the NTP yields a reliable measure of the validity of the study.

Fourth, OSHA's preliminary findings are in agreement with the conclusion of NTP's Board of Scientific Counselors' Technical Reports Review Subcommittee regarding deviations from acceptable protocol, such as data collection of animal body weights and occasional non-removal of food prior to exposure. The Board concluded that the "less than perfect" study conduct had no significant impact on the final study results and conclusions.

Fifth, OSHA found no evidence that the minor genetic variations among the mice influenced the study findings. Both the treated animals and the controls were randomly selected from the same shipment. Evidence of carcinogenicity was weighed almost entirely on comparisons with concurrent controls, and because of the early termination of the study, historical controls could not have been used.

Sixth, with regard to the traumatic deaths of a small number of animals, the Agency has preliminarily determined that this has little or no effect on the incidence of tumor induction.

Seventh, the possibility of some animal mix-up does not invalidate the study results. The unique tumors (e.g. hemangiosarcomas of the heart) occurred only in the BD study and not in the other two studies performed in the same laboratory at that time (i.e. ethylene oxide and 1,2-epoxybutane experiments). If animal mix-up occurred, those unique tumors would have been detected in the other studies as well. Furthermore, since only a very few animals were involved, discounting those animals would not have a significant impact on the final interpretation of the study.

Finally, the loss of a few ear tags and the possibility of mix-ups between exposed and control animals, using the worst-case scenario, would most likely result in an underestimate rather than an overestimate of magnitude of risk.

For these reasons, the criticisms, while they point out instances of less than acceptable laboratory practices, can not be used to invalidate the final results of the study.

OSHA's review indicates that the NTP study (Ex. 23–1) was not published until after NTP conducted a detailed evaluation of the discrepancies indicated in its audit report (Ex. 17–23). The NTP Board of Scientific Counselors concluded that "no data discrepancies were found that influenced the final interpretatons of these experiments" (Ex. 23–1). In response to the specific audit performed by CMA (Ex. 17–25), on December 17, 1985, NTP reaffirmed its previous conclusion (Ex. 22–3). Furthermore, an independent review by EPA of the NTP study concluded that the NTP study is valid (Ex. 17–26). OSHA's preliminary evaluation of the study and the audit reports has lead OSHA to agree with the NTP's and EPA's conclusions.

Furthermore, OSHA has determined that the magnitude of the carcinogenicity evidence in the NTP animal study, almost 100% of the exposed animals developed tumors, warrants requlatory action. OSHA realizes the importance of Good Laboratory Practices in studies that form the basis for Agency regulations, but even though Good Laboratory Practices were not precisely followed in this NTP study, the Agency does not believe the study is critically flawed. The carcinogenicity evidence, especially the rare tumors, such as hemangiosarcomas of the heart, cannot be disregarded.

B. Epidemiologic Studies

Six epidemiologic studies were reviewed by EPA to assess the human carcinogenicity of BD (Ex. 17–27). Four studies are of rubber workers (Exs. 23–3; 23–4; 23–5; 23–6), and two studies are of styrene-butadiene workers (Exs. 2–26; 2–27). Four studies reported increases in mortality from cancer of the lymphopoietic system and three studies reported increases in mortality from leukemia. Two studies indicated significantly elevated mortality from stomach neoplasms. The different findings between studies may be due to confounding exposures. It is worth mentioning that these types of tumors were observed in the NTP study (Ex. 23–1).

Although these studies do show elevated cancer mortality, it is difficult to correlate these findings with BD exposure. Since the epidemologic studies do not separate the contribution of BD exposure from the contributions of other occupational exposures, and because they lack historical exposure data, EPA concluded that the studies wer inadequate, and neither the existence nor the absence of a link between BD and human cancer could be established. OSHA's preliminary conclusion is consistent with that reached by EPA.

3. Metabolism and Mutagenicity

The secondary evidence supporting the potential carcinogenicity of BD in humans comes from studies of absorption, distribution, metabolism, and short-term assays (Ex. 17–21). These studies show that BD is readily absorbed by animals and humans via inhalation and that in animals it is distributed to many organs and tissues.

There is evidence from metabolic studies that BD is converted to reactive epoxide metabolites (3,4-epoxybutene and 1,2; 3,4-diepoxybutane) which are DNA alkylators and are direct-acting mutagens, agents that cause a permanent transmissible change in a gene. This has been demonstrated in both *in vitro* and *in vivo* test systems. The mutagenicity of BD is observed in *Salmonella typhimurium* only in the

presence of a liver S9 metabolic activation system. This evidence suggests that BD is a promutagen in bacteria, in that its mutagenicity depends on metabolic activation. Neither whole-animal mutagenicity nor information on the metabolism of BD in humans has been reported.

No information was found on the potential carcinogenicity of chemical compounds considered to be a structurally analogous to BD (Ex. 17–29).

III. The Assessment of Risk

EPA conducted two risk assessments: one by the Office of Toxic Substances (OTS) (Ex. 17–5); and the other by the Carcinogen Assessment Group (CAG) (Ex. 17–21). OTS estimated that workers exposed to BD in both the monomer and polymer industries face lifetime individual risks ranging from 1:100,000 to 1:1. These estimates represent 95% upper confidence limits and are dependent on the level of exposure. The upper-limits of estimated risks for daily, year-round exposures at 10, 1, and 0.1 ppm are 10^{-1}, 10^{-2}, and 10^{-3}, respectively. EPA further estimated that there are 22 to 80 and 148 to 838 extra lifetime cancer cases expected in the monomer and polymer industries, respectively (Ex. 17–3). These ranges of extra lifetime cancer cases depend on worker's exposure levels and represent an upper limit of risk.

According to EPA's "Proposed Guidelines for Carcinogen Risk Assessment," CAG classified BD as a "probable human carcinogen, Group B2," on the basis of sufficient evidence from studies in two species of rodents, and inadequate epidemiologic data. A 95% upper-limit unit cancer risk of 6.4 $x10^{-1}$ $(ppm)^{-1}$ was estimated for BD from the geometric mean of pooled male and pooled female significant tumor responses from the NTP mice study.

OSHA is currently conducting an independent risk assessment. Although this risk assessment has yet to be completed, OSHA believes the evidence from preliminary evaluation of data is sufficient to characterize BD as a probable human carcinogen. The two animal studies clearly showed the positive carcinogenic effects of BD (Exs. 2–31, 23–1). BD has been shown to cause mutations in several prokaryotic and eukaryotic cell assay systems (Ex. 17–21). Six epidemiologic studies (Exs. 23–3, 4,5,6;2–26,27) demonstrated elevated cancer mortality in some occupational groups in the rubber industry. Although these studies can not identify BD as the causal agent for the observed increases in mortality due to cancer, they do not show that BD is not a human carcinogen.

OSHA believes that the magnitude of risk shown in EPA's risk assessments suggests that exposures at OSHA's current PEL pose a risk to workers and that the risk may be significant. OSHA's record reflects agreement that reduction of the current PEL is needed (Dow Chemical, Ex. 22–4; CMA, Ex. 22–7; Amoco Corp., Ex. 24–1; OCAW and UAW, Ex. 24–3) ICWU, Ex. 26–2; and IISRP, Exs. 24–4, 26–1). OCAW, UAW (Ex. 24–3) and ICWU (Ex. 26–2) have proposed a standard of 1 ppm or less. They believe that 1 ppm if feasible and would reduce the cancer risk significantly. On the other hand, IISRP (Ex. 26–1) has proposed that the current PEL for BD should be lowered only to 10 ppm.

IV. Occupational Exposures and Control Measures

EPA estimates that the exposed populations in the monomer and polymer industries are 480–740 and 4800–7500 workers, respectively (Ex. 17–3). OSHA emphasizes that, especially for the polymer industry, these figures are only estimates. EPA is currently gathering additional exposure information on the polymer and end use industrial sectors which will permit OSHA to develop a more accurate exposure profile.

With regard to prevailing exposure levels, CMA's survey of fourteen monomer producers indicated that 91% of workers were exposed to less than 10 ppm (Ex. 3–21). IISRP obtained exposure data from eight North American polymer plants during the period from 1978 to 1984. Almost 95% of the samples were less than 10 ppm, although 1 out of 1,672 samples (0.06%) was in the 500 to 1,000 ppm range (Ex. 3–21).

OSHA's preliminary evaluation of available information indicates that exposures can be controlled by instituting engineering controls, improving work practices or requiring employees to use personal protective equipment wherever engineering controls fail to reduce the exposure to the desired level. The use of engineering controls; such as dual mechanical seals to prevent BD leaks from pumps and compressors, closed loop sampling techniques, and basic industrial ventilation designs would contribute significantly to the reduction of exposure levels in the workplace. The use of work practice controls such as establishing regular schedules for leak testing of packing glands and seals, decontaminating equipment before work is performed, purging sampling containers to outside atmosphere, and testing confined areas before entering or performing work would further reduce worker exposures. Using personal protective equipment such as respirators where necessary, and substituting the chemical if feasible could also further decrease worker exposures.

V. Technological Feasibility and Economic Analysis

EPA prepared a Regulatory Impact Analysis that assessed the cost of installing engineering equipment to control BD exposures and concluded that "the imposition of engineering controls should not materially effect the market for butadiene" (Ex. 17–30). Several companies have also submitted cost data (Exs. 22–1; 24–41).

EPA estimated that it will cost $118,000 to $320,000 per plant for control technology to achieve a 1 ppm exposure level (Ex. 17–30). Three IISRP North American Member companies have estimated that the preliminary costs for control technology to achieve a 10 ppm exposure level ranges from $0.5 million to $6.5 million per plant (Exs. 24–4, 26–1). Based on their experience with vinyl chloride, Goodyear Tire and Rubber Company determined that it costs $5.5 million for control technology in their four plants (Ex. 22–1). They indicated that they can not now determine what exposure levels will be achieved after instituting engineering controls.

OSHA's preliminary evaluation of the available information suggests that it would be technologically and economically feasible to implement engineering controls and other protective measures which may be necessary in order to reduce the current PEL. OSHA intends to develop a more detailed assessment prior to publishing a proposed standard.

Request for Comments

OSHA solicits information and comments relevant to the effects and controls of BD exposure. Interested parties are invited to express opinions as to what provisions, including those which set the permissible exposure limit(s), should be included in a revised BD standard. OSHA is specifically interested in methods, costs, and effectiveness of control strategies that have already been employed to reduce exposure to BD. The questions below will provide specific guidance on OSHA's request for information. Please provide the rationale that supports your submissions.

Information on BD that has already been submitted to EPA (Docket Nos. OPTS–91002, 62034, 48502) is part of the OSHA record (Docket No. H–041) and should not be resubmitted. Comments and data previously submitted to OSHA

remain part of this record and likewise need not be resubmitted.

Comments should be sent in quadruplicate to the Docket Officer, at the address noted above, where they will be available for inspection and copying. The data received will be carefully reviewed by OSHA for use in the preparation of a proposed standard for BD.

A. Health Effects

(1) What studies should OSHA consider to assess potential health risks, especially the carcinogenic, teratogenic and mutagenic effects of BD?

(a) Are they any data, such as medical records or unpublished studies not now in the record, that should be included in OSHA's decision making?

(b) In light of the mammary and ovarian cancers in the animal studies, are there any human data that show incidence of such tumors?

(c) In the epidemiologic literature, increased mortality due to diabetes mellitus has been observed in rubber workers with possible exposure to BD. None of the studies, however, can identify BD as the etiologic agent, and the focus of these studies is on cancer mortality. Are there any studies which specifically examine the relationship of BD exposure to diabetes mellitus and its related complications?

(2) What dermal absorption studies are available and what is the extent of potential adverse health effects resulting from such dermal exposure?

(3) Are there studies or other evidence indicating the combined effects of inhalation and dermal exposures?

(4) How should OSHA estimate the significance of risk at the current exposure level of 1,000 ppm PEL for BD? Specifically:

(a) What mathematical models are most appropriate to quantify the risk of cancer or other adverse health effects from exposure to BD?

(b) Which studies should be used for a quantitative risk assessment of BD?

(c) Which tumor incidences in which animal species, by which route(s) of administration and at which dose level(s), should be selected for use?

(d) How should dose levels in experimental animal studies be converted to equivalent dose for occupationally exposed persons and how should the dose levels be expressed?

(e) Should corrections be made for species-to-species extrapolation and for combined routes of exposure (i.e. dermal and inhalation)? How?

(f) Are there data available to indicate a "dose-response" effect for BD exposure? (i.e., are any health effects of BD dependent on the time period over which exposure occurs rather than solely on the total dose received?)

(5) What, if any, are the non-carcinogenic effects of BD on the endocrine system?

B. Permissible Exposure Levels

(1) Should a revised standard for BD include an 8-hour time weighted average, ceiling level, an action level or a combination of limits?

(2) What permissible exposure levels should be proposed and what support, in the health evidence, is available for these numbers?

(3) What data support the feasibility for measuring the new permissible levels (including accuracy and precision of collection and analytical procedures)?

(4) What data support the technological feasibility of achieving the new permissible level for the various job categories?

(5) Is an action level appropriate for some or all job categories in BD industry? What impact should an action level have on employee health?

(6) What are appropriate action levels in the various job categories? Which regulatory provisions should be modified or eliminated when exposures are under the action level?

(7) What cost savings are expected from incorporation of an action level provision?

C. Production and Control Systems

(1) What current production processes and their associated engineering controls are utilized?

(2) Are there data indicating the efficiency of the currently employed control techniques?

(3) Is there any industrial sector or industrial operation within a certain sector that can demonstrate the infeasibility of employing engineering methods for controlling workers' exposure at levels lower than the current limits?

(4) What are the potential modifications in process or production technologies that are available or can be implemented for reducing workers' exposures?

(5) What level of exposure reduction can be expected from employing specific process modifications or installing specific engineering controls?

D. Substitution Availability

(1) Are there substitutes for BD and what are their limitations?

(2) For any available substitute are there studies available documenting potential adverse health effects?

(3) Are there unique situations or industrial operations or uses where substitutes are determined to be either unavailable or infeasible to use for controlling workers exposures?

(4) Are there industrial uses where substitutes can replace only a part of BD in a mixture?

(5) What is the extent and the impact of such partial substitution?

(6) How efficient are substitutes as compared to BD in specific industrial uses?

(7) Are there non-chemical substitutes for uses that now employ BD?

E. Protective Equipment and Respirators

(1) What types of respirators are currently being supplied by employers for protection against BD?

(2) What other types of protective equipment, such as gloves and aprons, are currently being supplied by employers?

(3) What is the durability or resistivity of this protective equipment?

(4) Under what conditions (e.g. exposure level, type of operation, duration of exposure) do employers presently provide protective equipment and respirators to their exposed employees?

F. Workers Exposure and Monitoring

(1) What are ther job categories in which workers are potentially exposed to BD? For each job category, please provide a brief description of the operation.

(2) How many workers are exposed or have the potential for exposure to BD in each job category?

(3) What are the frequency, duration and levels of exposures to BD at each job category? Please include the analytical method and type of samples used for determining exposure levels.

(4) What engineering controls and types of protective equipment are available or in use for each job category?

(5) What methods are currently available to measure BD in the workplace? Please provide details on the accuracy and precision of the sampling method, the range and limits of detection, method of validation of sampling and analysis and chemical interference.

G. Workers Training

(1) Describe the training workers currently receive for the purpose of reducing the risk associated with BD exposure (e.g. length of course, topics covered, frequency, and availability of audio visual aids, and written operating instructions).

(2) Is there any evidence documenting the effectiveness of the training being

received by the employee (e.g. decreased absenteeism, decreased medical/insurance costs, a decrease in accident rates/severity, and increase in productivity)?

(3) What are the basic elements considered in developing or revising the training given to workers in the BD industry?

H. Medical Surveillance

(1) What illness or conditions attributable to BD have been observed?

(2) What elements are appropriate for inclusion in medical and clinical examinations performed to identify overexposed workers and/or to indicate the status of workers' health?

(3) Do employers currently provide specific tests or procedures as part of medical surveillance for BD-exposed employees? What is the basis for selecting or choosing these tests or procedures? At what frequency are these tests performed?

(4) What are the exposure levels encountered byworkers (including their job categories and/or job classifications) who are covered by medical surveillance programs?

(5) What evidence is available indicating risk reduction due to implementation of medical surveillance programs?

I. Control Measures and Benefits

(1) What are the costs of implementing engineering controls or modifications to production and process equipment (either currently in place or planned to be installed for reducing workers' exposures)? How much reduction in employee exposure can be achieved by each particular control measure? What are the service life and maintenance costs for this equipment?

(2) What is the cost of the personal protective equipment currently in use or projected for further use? Which employees or job descriptions would be required to wear what type of equipment? (Please indicate the type of protective equipment as well as process descriptions).

(3) What is the cost of the currently employed and/or projected medical surveillance program?

(4) What is the cost of the currently instituted and/or projected training program?

(5) What is the cost of the currently employed and/or projected personnel exposure monitoring and sampling analyses?

(6) What values can be determined for benefits or reduced BD exposure, such as projected reductions in medical treatment, insurance premiums, and workers compensation payments, decreased absenteeism and employment turnover, and increased productivity?

J. Environmental Effects

The National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *et seq.*). The Council on Environmental Quality (CEQ) regulations (49 CFR Part 1500, 43 FR 55978, November 29, 1978), and the Department of Labor (DOL) NEPA Compliance Regulations (29 CFR Part 11); (45 FR 51187 *et seq.*, August 1, 1980) require that Federal agencies give appropriate consideration to environmental issues and impacts of proposed actions significantly affecting the quality of the human environment. OSHA is currently collecting written information and data on possible invironmental impacts that may occur outside of the workplace as a direct or indirect result of promulgation of a revised standard for occupational exposure to BD. Such information should include any negative or positive environmental effects that could be expected to result from a revised regulation. Specifically, OSHA requests comments and information on the following:

(1) How might a revised regulation for BD exposure affect the environment?

(2) What is the potential direct or indirect impact on water and air pollution, energy usage, solid waste disposal and land use?

(3) How would BD substitutes (if available) alter the ambient air quality, water quality, solid waste disposal and land use?

K. Impact on Small Business Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), agencies are required to assess the impact of proposed and final rules on small entities. In that regard, OSHA solicits the following information:

(1) How many and what kind of small businesses or other small entities would be affected by revising the standard for BD?

(2) Could difficulties be encountered by small business entities when attempting to comply with specific provisions of a BD regulation covering such areas as exposure monitoring, exposure limits, methods of compliance, medical surveillance, respirators, protective clothing, hygiene facilities, recordkeeping, housekeeping information and training and labels and signs?

(3) Could such provisions be modified for small business entities which would assure equivalent protection of the health of their employees?

L. Duplication/Overlapping/Conflicting Rules

(1) Are there other federal regulations which may duplicate, overlap or conflict with an OSHA regulation concerning BD?

(2) Are there critical federal programs (defense, energy,) which may be impacted by an OSHA regulation concerning BD?

M. Financial and Economic Profile

(1) What are the total annual volumes and dollar values (for the last 5 years or relevant business cycle) of production, shipments, inventories, imports and exports of BD? Are these expected to increase or decrease in future years?

(2) What are the total annual investments of companies engaged in BD production, distribution and use (for the last 5 years) categorized as replacement, expansion, modernization and health and safety protection programs?

(3) For the last 5 years, what are total assets, stockholders' equity, net worth, depreciation charges, debt-equity ratios and rate of return on assets and equity?

(4) For each BD facility, what was the date it began operation and how much longer it is expected to remain in operation?

(5) How would the balance of trade in this or related products be affected by a more stringent U.S. occupational regulation or health standard for BD?

(6) What were the total annual employment and labor turnover rates for the industry for at least the last 5 years?

(7) Are there any unique characteristics of this industry (e.g., rental of capital equipment, unique employee skills) that could affect the ability to achieve compliance with a BD standard?

(8) What is the degree of market concentration in the industry including the role of small business and approximate number of firms?

(9) What is the geographic distribution of the industry and its customers?

(10) What were the total annual volume and dollar value of BD product output, shipments and inventories for at least 5 years? How much BD is manufactured by companies for their own use as a raw material or product?

(11) What are the availability, price and service ability of substitutes for products containing BD?

(12) Assuming no change in regulation, what are the projected trends in the use to BD?

(13) If the market price of BD were to increase by 5%

a. Would the production of BD increase or decrease?

b. Would the consumption of BD increase or decrease?

(14) How profitable are the production processes which either produce or consume BD? What are the most profitable processes in production?

(15) What is the gross annual consumption of BD? What is the approximate annual consumption of BD per plant?

(16) Does the company purchase BD from one of several suppliers of the product, and where are these suppliers located geographically with respect to the facility that uses or processes it?

(17) For products in which BD is used, what portion of the cost could be accounted for by the use of BD?

(18) As a firm using BD, what other chemicals covered by OSHA standards are currently used in the plant? How would engineering controls or process modification for BD affect exposure to these other chemicals.

References

The studies and other information listed in the notice by exhibit number are the primary sources upon which this notice has been based. A complete set of references is available for examination and copying at the OSHA Docket Office, Room N-3672, U.S. Department of Labor, 200 Constitution Avenues NW., Washington, DC.

Public Participation

Interested persons are invited to submit comments on these and other pertinent issues related to the development of a revised standard for occupational exposure to BD by December 30, 1986. Comments should be sent in quadruplicate to the Docket Officer, at the address noted above where they will be available for inspection and copying. The information received will be carefully reviewed by OSHA for use in preparation of a Notice of Proposed Rulemaking for BD.

Statutory Authority

This Advance Notice of Proposed Rulemaking was prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue, NW. Washington, DC 20210. It is issued pursuant to section 6(b) of the Occupational Safety and Health Act (84 Stat. 1593; 29 U.S.C. 655).

List of Subjects in 29 CFR Part 1910

Occupational safety and health.

Signed at Washington, DC, this 23rd day of September 1986.

John A. Pendergrass,

Assistant Secretary of Labor.

[FR Doc. 86-21871 Filed 9-30-86; 8:45 am]

BILLING CODE 4510-26-M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

Shenandoah National Park

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The National Park Service proposes to modify the fishing regulations in Shenandoah National Park. The proposed rule changes would: (1) Close to public fishing all streams except those designated in Shenandoah's Fishery Management Plan as having sufficient year-round flow of water and populations of native brook trout to sustain both the expected fishing pressure and natural population pressures (drought, flood, etc.); (2) Add the North Fork of the Moormans River to Shenandoah's fish-for-fun program; and (3) Allow the removal of non-native game fishes from designated trout streams in Shenandoah National Park consistent with applicable state fishing regulations. The park's active stream monitoring program has identified preservation concerns. The proposed changes to the regulations address these concerns and will correct problems identified with the current regulations. With these proposed changes in place, the park will be able to better manage the fishery resources. The effects of the proposed rules are expected to be minimal. This rulemaking will not alter to any degree the number of angler days presently occurring.

DATES: Written comments will be accepted through October 31, 1986.

ADDRESS: Comments should be addressed to: Mr. Gerald W. Tays, Acting Superintendent, Shenandoah National Park, Route 4, Box 292, Luray, VA 22835.

FOR FURTHER INFORMATION CONTACT: David A. Haskell, Resource Management Specialist, Shenandoah National Park, Rt. 4, Box 292, Luray, Va. 22835, Telephone 703-999-2243, ext. 404.

SUPPLEMENTARY INFORMATION:

Background

The present Shenandoah National Park fishing regulations are codified at 36 CFR 7.15(a) and have been in effect since 1965. They permit only trout fishing in all waters of the park and limit the fish-for-fun program to the Rapidan and Staunton Rivers.

Since 1982, the National Park Service (NPS) has been engaged in the sampling of all streams having a trout population. Forty-five streams were identified and sampled. Prior to 1982 only sporadic monitoring of the trout streams had been conducted by the U.S. Fish and Wildlife Service (USFWS) and the Virginia Commission of Game and Inland Fisheries (VCGIF). Qualitative data such as relative abundance, age class distribution, and growth rates have been analyzed.

The findings of this analysis are that most of the park's larger streams are highly productive and are capable of sustaining a limited native brook trout harvest; however, some of the smaller or less productive streams are severely influenced by natural pressures (drought, floods, natural predators) and do not consistently produce sufficient excess native brook trout to allow harvest by angling. The few fish present in these marginal streams are needed to maintain the ecological balance of the aquatic ecosystems. Natural predators such as mink, raccoons, watersnakes, and kingfishers are dependent on these fish for their survival. Fishing of these streams could, during years of low native brook trout production, cause an unacceptable disruption of ecosystem dynamics, and could contribute to the total loss of a stream's native brook trout population during extreme conditions.

The goal of Shenandoah National Park's fishery management program is two-fold: (1) To preserve and perpetuate the native brook trout as an integral component of the park's aquatic ecosystems; and (2) To provide quality angling experiences. Therefore, it is proposed that angling be permitted only on those streams which consistently sustain adequate native brook trout populations. The park's current fish-for-fun program is one way to provide a quality angling experience while serving to protect the native brook trout population from excessive harvest. Fish returned to the stream are available to be caught by other anglers, thus enhancing overall angling success.

The park's two fish-for-fun streams (Rapidan and Staunton Rivers) were established in 1968. Since that time, the popularity of these streams as quality native brook trout fishing waters has greatly increased. These two streams are utilized heavily on a daily basis during the spring and early summer. The popularity of angling for its sport and recreational experience has continued to

grow to the point that an additional fish-for-fun stream is desirable to accommodate public demand. This will disperse anglers over more miles of stream, reduce the handling of trout, reduce soil compaction along stream banks, and lessen other ecological impacts.

Eastern brook trout is the only species of trout native to Shenandoah waters. The exotic brown trout and rainbow trout have been found in park streams during recent years. These exotic species of trout are being found in increasing numbers and may be threatening the existence of the native brook trout in parts of certian streams. In other eastern national parks, such as the Great Smoky Mountains National Park, these exotic species of trout have successfully replaced the native brook trout in many streams in spite of all efforts to control their spread. Of special concern is the spread of these exotic trout species in Shenandoah's fish-for-fun streams.

In other cases, exotic species of warm water game fishes are found in the boundary sections of some park streams. Smallmouth bass and sunfish are the most common species found. Although these species pose little threat to native brook trout populations, they do interact with other species of native fishes, resulting in a disruption of the natural stream ecosystem. Current regulations prohibit the harvest of these exotic warm water fishes. It is the policy of the National Park Service to protect native flora and fauna from encroachment by exotic species and to eradicate exotic species which pose any possible threat to native species or park ecosystem balances.

The proposed rules would correct the problems identified with the present regulations by:

(1) Permitting fishing only on those streams listed in the current Fishery Management Plan that have been determined to be able to sustain the expected fishing pressure without jeopardizing the native brook trout populations or causing unacceptable disruption to their aquatic ecosystems.

(2) Increasing the number of fish-for-fun streams from two to three.

(3) Allowing the harvest of all species of fish listed by Virginia regulations as game fishes from all streams designated as park trout streams, except those designated as fish-for-fun streams.

(4) Allowing the harvest of game fishes other than trout in the park's fish-for-fun streams.

Section-by-Section Analysis

As currently codified in Title 36 of the Code of Federal Regulations, § 2.3 contains general fishing regulations that apply to all units of the National Park System. Section 7.15(a) contains specific requirements intended to protect and regulate the fishery use at Shenandoah National Park.

This proposed rulemaking completely revises 36 CFR 7.15(a) as follows:

Section 7.15(a)(1) Open Waters

The park's stream monitoring program has determined that a number of streams are capable of sustaining an adequate population of native brook trout which could be exposed to angling without their being jeopardized. These streams are identified in the Fishery Management Plan and will be open for fishing. Streams not listed in the Plan as trout streams are closed to fishing.

Section 7.15(a)(2) Applicability

All streams within Shenandoah National Park, except those which form part of the park boundary, are covered by this proposed rulemaking. To avoid confusion on those streams that constitute the boundary where one set of regulations could apply on one bank, and a different set of regulations apply on the other bank, the NPS is proposing that only the State of Virginia regulations apply on both.

Section 7.15(a)(3) Season

This regulation is similar in content to the existing § 7.15(a)(3), except that the closing date is established as October 15.

Section 7.15(a)(4) License

This regulation authorizes only those persons having a valid State of Virginia fishing license in their possession to fish in the streams of Shenandoah National Park. Anglers are required to conform to State license requirements as they move in and out of the park.

Section 7.15(a)(5) Size Limit

This regulation establishes the minimum size of trout that can be taken. Removal of fish below the established minimum would place a considerable stress on the population by removing the breeding stock. This paragraph sets no size limit on other species of game fishes.

Section 7.15(a)(6) Creel Limits

This regulation establishes the maximum number of trout permitted in one's possession at any time as five. Removal in excess of this number is the greatest threat to the population. This paragraph establishes the State of Virginia's creel limit on other species of game fishes, thus making it easier for anglers to comply and allowing for more consistent enforcement.

Section 7.15(a)(7) Lures: Bait

This is a rewording of the existing § 7.15(a)(6) which identifies permitted bait. This paragraph reaffirms that the only acceptable lure is artificial in nature with a single hook. The disturbance of adjacent stream banks looking for bait is not an acceptable practice. The use of natural bait may also introduce exotic species into the aquatic ecosytem.

Section 7.15(a)(8) Fish-for-Fun

This regulation establishes that the fish-for-fun streams will be listed in the Fishery Management Plan. Listing in the plan provides more flexibility than going through a lengthy rulemaking process if more were to be added or deleted. The specific fish-for-fun regulations listed here are similar in content to the existing § 7.15(a)(1).

Section 7.15(a)(9)

This regulation declares that violations of any of the various subparagraphs of this paragraph are prohibited.

Public Participation

The policy of the National Park Service is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding this proposed rule to the address noted at the beginning of this rulemaking.

Drafting Information

The primary authors of these regulations are Larry Hakel, Chief Park Ranger, and David Haskell, Resource Management Specialist, both of Shenandoah National Park.

Paperwork Reduction Act

This rulemaking does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Compliance With Other Laws

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 (February 19, 1981), 46 FR 13193, and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The economic effects of this rulemaking are local in nature and negligible in scope. The National

Park Service has determined that this rulemaking will not have a significant effect on the quality of the human environment, health and safety because it is not expected to:

(a) Increase public angling to the extent of adversely affecting the aquatic ecosystem;

(b) Introduce noncompatible uses which might compromise the nature and characteristics of the area, or cause physical damage to it;

(c) Conflict with adjacent ownerships or land uses; or

(d) Cause a nuisance to adjacent owners or occupants.

Based on this determination, this proposed rulemaking is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Department regulations in 516 DM 6, (49 FR 21438). As such, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared.

List of Subjects in 36 CFR Part 7

National parks; Reporting and recordkeeping requirements.

In consideration of the foregoing, it is proposed to amend 36 CFR Chapter I as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority citation continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 462(k).

2. By revising paragraph (a) of § 7.15 to read as follows:

§ 7.15 Shenandoah National Park.

(a) *Fishing*—(1) *Open waters.* All streams are closed to fishing except those designated by the superintendent as trout streams.

(2) *Applicability.* The provisions of paragraphs (a)(3) through (7) and (a)(9) of this section apply to all designated trout streams except fish-for-fun streams and portions of streams that form the park boundary line. Fishing in fish-for-fun streams is subject to the provisions of paragraphs (a)(4), (8) and (9) of this section and fishing in portions of streams that form the park boundary is governed solely by applicable State law.

(3) *Season.* The opening date of the trout season and the hours during which trout fishing is allowed are those established by applicable State law. Trout season closes October 15 except for designated fish-for-fun streams.

(4) *License.* Fishing license requirements imposed by applicable State law apply to persons fishing in park waters.

(5) *Size limit.* Trout eight (8) inches or longer may be retained. Trout under eight (8) inches in length shall be immediately and carefully returned to the water. There is no size limit on other species of game fishes.

(6) *Creel limits.* No person may retain more than five (5) trout per day nor have more than five (5) trout in possession. Creel limits on other species of game fishes are those established by applicable State law.

(7) *Lures; bait.* Fishing is restricted to an artificial fly or lure having a single hook.

(8) *Fish-for-fun.* Trout streams managed in the fish-for-fun program are designated by the superintendent. These streams are open to trout fishing all year. Fishing is governed by applicable State law except as follows:

(i) Fishing is restricted to an artificial fly or lure having a single barbless hook;

(ii) No trout of any size may be retained. All trout caught shall be handled carefully and returned immediately to the water; and

(iii) All other species of game fishes may be kept. The season and creel limit for species other than trout are governed by applicable State law.

(9) The following are prohibited:

(i) Violating a fishing closure, designation, use or activity restriction or condition or limit established in this paragraph; or

(ii) Violating a provision of applicable State law.

* * * * *

Dated: September 10, 1986.

P. Daniel Smith,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86-22212 Filed 9-30-86; 8:45 am]

BILLING CODE 4310-7-M

Notices

Federal Register
Vol. 51, No. 190
Wednesday, October 1, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Determination of the Market Stabilization Price for Sugar for Fiscal Year 1987

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: This notice sets forth the market stabilization price for sugar for the period October 1, 1986–September 30, 1987 as 21.78 cents per pound, raw value.

EFFECTIVE DATE: October 1, 1986.

FOR FURTHER INFORMATION CONTACT: John Nuttall, Chief, Sugar Group, Horticultural and Tropical Products Division, Foreign Agricultural Service, Room 6603, South Building, Department of Agriculture, Washington, DC 20250, Telephone: (202) 447–2916.

SUPPLEMENTARY INFORMATION: The market stabilization price is used to determine bond requirements and maximum liabilities under certain programs authorized by Presidential Proclamation No. 5002 of November 30, 1982 (47 FR 54269). The calculation of the market stabilization price is provided for in 7 CFR 6.300–6.302 and is the sum of (1) the price support level of the applicable fiscal year, expressed in cents per pound of raw cane sugar; (2) adjusted average transportation costs; (3) interest costs, if applicable; and (4) 0.2 cent per pound. The adjusted average transportation costs are the weighted average costs of handling and transporting domestically produced raw cane sugar from Hawaii to Gulf and Atlantic Coast ports, as determined by the Secretary. Interest costs are the amount of interest, as determined and estimated by the Secretary, that would be required to be paid by a recipient of a price support loan for raw cane sugar upon repayment of the loan at full maturity. Interest costs shall only be applicable where, as under the current sugar price support program, a price support loan recipient is not required to pay interest upon forfeiture of the loan collateral.

The Secretary of Agriculture has announced that the applicable loan rate under the price support program for sugar, expressed in cents per pound for raw cane sugar, will be 18.00 cents per pound for loans disbursed during the period October 1, 1986–September 30, 1987.

Accordingly, after appropriate review, it has been determined that the market stabilization price for fiscal year 1987 shall be 21.87 cents per pound. This consists of the 18.00 cents per pound loan rate; adjusted average transportation costs of 2.93 cents per pound; an interest cost of .65 cent per pound; and 0.2 cent per pound. The transportation factor represents data for the most recent year for which complete data are available, 1985, projected forward to 1986 by applying a projected increase in the Produce Price index for finished goods over this time. The interest factor is based on an estimated average interest of 7.25 percent over the year, and a six month loan maturity period.

Notice is hereby given that, in conformity with the provisions of 7 CFR 6.300(a), the market stabilization price for sugar for fiscal year 1987 has been determined to be 21.78 cents per pound.

Signed at Washington, D.C. on September 26, 1986.

Peter Myers,

Acting Secretary of Agriculture.

[FR Doc. 86–22244 Filed 9–26–86; 5:02 pm]

BILLING CODE 3410-10-M

Commodity Credit Corporation

1986 Crop Sugar Beets and Sugarcane Price Support Loan Rates

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of determination.

SUMMARY: This notice announces the national price support loan rates established by the Secretary of Agriculture with respect to the 1986 crop of domestically grown sugar beets and sugarcane. The national (weighted average) loan rate for raw cane sugar will be 18 cents per pound. The national (weighted average) loan rate for refined beet sugar will be 21.09 cents per pounds. Both of these rates will be further adjusted to reflect the processing location of the sugar offered as collateral for a price support loan (i.e., location differentials) and the quality of the sugar beets or sugarcane. This notice also sets forth the minimum price support levels to be paid sugarcane and sugar beet producers.

EFFECTIVE DATE: October 1,1986.

FOR FURTHER INFORMATION CONTACT: Lynda Flament, Loan Branch, Cotton, Grain and Rice Price Support Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20013. Phone: (202) 477–4229. Copies of the Regulatory Impact Analysis are available from Thomas W. Fink, Cotton, Grain and Rice Price Support Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20013.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with the provisions of Department Regulation 1512–1 and Executive Order 12291 and has been classified as "major" since this action may have an annual effect on the economy of $100 million or more.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice of determination since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

An Environmental Evaluation with respect to the price support loan program has been completed. It has been determined this action will not adversely affect environmental factors such as wildlife habitat, water quality, air quality, land use, and appearance. Accordingly, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

The title and number of the Federal Assistance Program to which this notice applies are: Title—Commodity Loans and Purchases, Number 10.051, as found in the Catalog of Federal Domestic Assistance.

This notice set forth determinations with respect to the following issues which are briefly described:

1. Loan Rates

Section 201(j) of the Agricultural Act of 1949, as amended by the Food Security Act of 1985, provides that the Secretary of Agriculture is required to support the price of the 1986 through 1990 crops of sugar beets and sugarcane through nonrecourse loans. Section 201(j) further provides that the Secretary shall support the price of domestically grown sugarcane at such level as the Secretary determines appropriate, but not less than 18 cents per pound, raw value, and the price of domestically grown sugar beets at such level as the Secretary determines is fair and reasonable in relation to the loan level for sugarcane.

2. Location Differentials

The application of location differentials to loan rates in common to most price support programs administered by CCC. The loan rates for sugar processed in specific regions will be based upon the transportation costs associated with moving sugar to the markets that are normal for those regions.

3. Minimum Price Support Levels

The minimum price support levels are the minimum amounts that must be paid to producers by a processor participating in the price support loan program. The minimum price support levels are set forth by regions. These support levels would be applicable for purposes of setting contracts between individual processors and producers for the crop of sugar beets and sugarcane harvested during the 1986 crop period.

4. Determination of Average Quality

The minimum price support levels may be adjusted for sugarcane or sugar beets of non-average quality. Accordingly, "average quality" needs to be defined.

5. Cost Reduction Options

Section 1009(a) of the Food Security Act of 1985 provides that whenever the Secretary determines that an action authorized by that section will reduce the total of the direct and indirect costs to the Federal Government of a commodity program administered by the Secretary without adversely affecting income to small and medium sized producers participating in such program, the Secretary shall take certain action with respect to that commodity program. For the purposes of the sugar price support program, these actions include: (1) The commercial purchases of commodities by the Secretary; and (2) the settlement of nonrecourse loans at an amount less than the total of the principal loan amount and accumulated interest, but not less than the principal amount, if such action will result in: (A) Receipt of a portion rather than none of the accumulated interest, (B) avoidance of default of the loan, or (C) elimination of storage, handling and carrying charges on the forfeited loan collateral.

These determinations are required to be made in accordance with the provisions of section 201(j) of the Agricultural Act of 1949 and section 1009 of the Food Security Act of 1985. Section 1017(b) of the Food Security Act of 1985 provides that the Secretary shall determine the rate of loans and price support levels for any of the 1986 through 1990 crops of commodities covered under the Agricultural Act of 1949 without regard to the requirements for notice and public participation in rulemaking prescribed in section 553 of Title 5, United States Code, or in any directive of the Secretary.

Determination

1. Loan Rates

The national (weighted average) loan rates for the 1986 crop shall be 21.09 cents per pound for refined beet sugar and 18 cents per pound for cane sugar, raw value, including the cane sugar, raw value, contained in refined cane sugar, sugarcane syrup, and edible molasses. This is the minimum statutory loan rate for cane sugar. It has been determined that the loan rate established for sugar beets is fair and reasonable in relation to the loan level for sugarcane. The loan rates for the 1987 through 1990 crops of sugar beets and sugarcane will be set forth in subsequent notices published in the **Federal Register**. In the case of refined or specialty sugar made from raw cane sugar, the rate shall be the appropriate regional rate applied to the quantity of the refined or specialty sugar converted to an equivalent quantity of cane sugar, raw value.

In the previous sugar price support loan program the sugar beet loan rate was established based on the relationship between the weighted average net returns for beet sugar and the weighted average New York spot price for raw sugar. Under the methodology, the loan rate for refined beet sugar was calculated by multiplying the raw cane sugar loan rate by a determined factor and then adding the fixed marketing expenses which are incurred by beet processors regardless of the disposition of the sugar. The factor referred to in the formula is determined by comparing the weighted average net returns for beet sugar (i.e., gross returns less all marketing expenses) to the weighted average New York spot price (#12 contract) for raw cane sugar for a specified number of years. In determining the loan rates for the 1985 crop, the weighted average New York spot prices for the years 1975 through 1983 were used. In 1985 the New York spot price was discontinued. Because the New York spot price is no longer available, a new method of determining the loan rate is required. In addition, because of changes in grower/processor contracts, the New York spot price no longer accurately reflected the processor's basis for paying sugarcane growers for sugarcane.

The 1986 loan rate for refined beet sugar will reflect the value of the sugar based on the relationship between the weighted average of grower returns for sugar beets and the weighted average of grower returns for sugarcane, expressed on a cents per pound basis for refined beet sugar and raw cane sugar, for the immediately preceding 10-year period. After adjustment to reflect the proper price relationship, the estimated 1986 sugar beet crop fixed marketing costs (which are incurred by beet processors regardless of the disposition of the sugar) are added to make up the basic loan rate for refined beet sugar. The relationship between grower returns for sugar beets and sugarcane for the period 1975 through 1984 (1.12 to 1.00) was used to determine the loan rate of 21.09 cents per pound for refined beet sugar under the 1986 crop loan program.

2. Location Differentials

The loan rates determined for both raw cane sugar and refined beet sugar have been adjusted to reflect the processing location of the sugar offered as collateral for a price support loan. These adjustments (i.e., location differentials have been calculated in the same manner as they have been in previous years. The loan rates for sugar processed in specific regions have been based upon the transportation costs associated with moving that sugar to the markets that are normal for those regions.

The processing regions and applicable 1986 crop regional loan rates for refined beet sugar shall be as listed below:

Region number and description	Cents per pound
1. Michigan and Ohio	$.2205
2. Minnesota and the eastern half of N. Dakota	.2111

—Continued

Region number and description	Cents per pound
3. Northeastern quarter of Colorado; Nebraska; and the southeastern quarter of Wyoming	2054
4. Texas	2130
5. Montana and the northwestern quarter of Wyoming and western half of N. Dakota	2054
6. That part of Idaho east of the eastern boundary of Owyhee County and of such boundary extended northward	2058
7. That part of Idaho west of the eastern boundary of Owyhee County and of such boundary extended northward; Oregon	2058
8. California	2120

Note: Fixed marketing expenses are considered in computation to insure equality with support prices for sugarcane.

The processing regions and applicable 1986 regional crop loan rates for cane sugar, raw value, shall be as listed below except that, for such sugar processed in Hawaii or Puerto Rico but placed under loan on the mainland of the United States, the applicable loan rate shall be 18 cents per pound:

Region	Cents per pound
Florida	$.1812
Louisiana	.1866
Texas	.1810
Hawaii	.1752
Puerto Rico	.1820

Note: Molasses is a by-product of sugar processing. It is not included in the calculation of the sugar loan rate.

3. Minimum Price Support Levels

Based on the established regional loan rates, the minimum price support levels for sugar beets and sugarcane of average quality are as follows:

For sugar beets harvested between July 1, 1986, and June 30, 1987:

Region (same as in previous beet sugar table)	Support price per Net Ton
1	$29.57 [1]
2	27.10 [2]
3	29.49
4	31.89
5	29.65
6	30.44
7	30.44
8	31.22

[1] If (1) the sugar extracted by a processor from the 1986 crop yields, on the average, less than 240.44 pounds per net ton of sugar beets delivered and accepted by the processor, or (2) the processor's net return on by-products per net ton of sugar beets delivered and accepted by the processor averages less than $7.18 per net ton, then the required minimum price support rate per ton of sugar beets will be adjusted. The adjusted rate will be determined by: (a) Multiplying $.2017 (the loan rate per pound less 4.3%, and less $.0093 considered as fixed marketing expenses) by the average pounds and hundredths of pounds of sugar extracted per ton, (b) adding thereto the net return to the processor on by-products per net ton of sugar beets delivered and accepted, and (c) multiplying the results by 53.1 percent.

[2] If (1) the sugar extracted by a processor from the 1986 crop yields, on the average, less than 231.55 pounds per net ton of sugar beets delivered and accepted by the processor, or (2) the processor's net return on by-products per net ton of sugar beets delivered and accepted by the processor averages less than $6.42 net ton, then the required minimum price support rate per ton of sugar beets will be adjusted. The adjusted rate will be determined by: (a) Multiplying $.1927 (the loan rate per pound less 4.3%, and less $.0093 considered as fixed marketing expenses) by the average pounds and hundredths of pounds of sugar extracted per ton, (b) adding thereto the net return to the processor on by products per net ton of sugar beets delivered and accepted, and (c) multiplying the result by 53.1 percent.

For sugarcane harvested between July 1, 1986, and June 30, 1987, in Florida $24.07 per net ton.

For sugarcane harvested between July 1, 1986, and June 30, 1987 in Louisiana $22.60 per net ton. However, for sugarcane for which settlement is determined on the basis of a core sample, the minimum amount to be paid per gross ton of sugarcane shall be the amount determined by multiplying the total amount of sugar recovered per gross ton (commercial recoverable sugar) of sugarcane delivered to the processor times 10.716 cents per pound, plus 94 cents per gross ton of sugarcane for molasses.

For sugarcane harvested between July 1, 1986, and June 30, 1987, in Texas: The minimum amount to be paid per gross ton of sugarcane shall be the amount determined by multiplying the total amount of sugar recovered per gross ton (commercial recoverable sugar) of sugarcane delivered to the processor times 10.392 cents per pound, plus $1.17 per gross ton of sugarcane for molasses.

For sugarcane harvested in Hawaii: The amount determined according to the standard marketing contract for the calendar year in which the sugarcane was harvested between growers and processors of sugarcane and the cooperatively-owned refinery of raw cane sugar that markets refined and raw cane sugar on behalf of its members and non-member patrons: *Provided,* however, that non-members of this cooperative shall be treated no less favorably than the members of the cooperative under the terms of the standard marketing contract.

For sugarcane harvested in Puerto Rico: That price determined according to the provisions of Puerto Rico Law No. 426, also known as the Puerto Rico Sugar Law, and the rules issued under the law by the Sugar Board of Puerto Rico for the calendar year in which the sugarcane has harvested.

These minimum price support levels reflect the 4.3 percent reduction in loan proceeds disbursed to processors for the 1986 crop as a result of the President's fiscal year 1986 sequestration order under the Balanced Budget and Emergency Deficit Control Act of 1985 (the BBEDCA) (popularly known as the "Gramm-Rudman-Hollings Act"), Title II of Pub. L. 99–177. Section 401(c)(1) of the Agricultural Act of 1949 (7 U.S.C. 1421(c)(1)) requires the Secretary of Agriculture, to the extent practicable, to obtain adequate assurances from processors that the maximum benefits of the price support program are received by producers. In the case of the 1986 crop, the maximum benefits of the program reflect the effects of the BBEDCA. In determining the minimum price support levels, the reduction under the BBEDCA was factored into part of the formula used to translate the loan rate into the minimum price support level, but those elements not affected by the BBEDCA, such as fixed marketing expenses in the case of sugar beets and the value of molasses in the case of sugarcane, were not adjusted.

The prices indicated above must be adjusted for sugar beets or sugarcane of nonaverage quality if the producer and processor have agreed upon a method for such adjustment in the terms and conditions of their marketing contract.

4. Average Quality Sugar Beets and Sugarcane

For 1986 crop sugar beets, "average quality" means sugar beets containing 15.64 percent sucrose. For 1987 through 1990 crop sugar beets the average quality will be set forth in subsequent notices published in the **Federal Register.**

For 1986 crop sugarcane "average quality" means: (1) For Florida, sugarcane containing 14.11 percent sucrose in normal juice; (2) for Louisiana, sugarcane containing 13.15 percent sucrose in normal juice of 81.23 percent purity for sugarcane not sampled by a core sampler. For 1987 through 1990 crop sugarcane the "average quality" will be set forth in subsequent notices published in the **Federal Register.**

5. Cost Reduction Options

The decision not to implement any cost reduction options as outlined in the Supplementary Information has been made.

The Secretary reserves the right to initiate at a later date any action not previously included but authorized by section 1009 of the Food Security Act of 1985.

Signed at Washington, DC on September 26, 1986.

Peter Myers,

Acting Secretary of Agriculture

[FR Doc. 86–22245 Filed 9–26–86; 5:02 pm]

BILLING CODE 3410-05-M

Federal Grain Inspection Service

Designation Renewal of the Cairo Agency (IL)

AGENCY: Federal Grain Inspection Service (FGIS), USDA.

ACTION: Notice.

SUMMARY: This notice announces the designation renewal of Cairo Grain Inspection Agency, Inc. (Cairo) as an official agency responsible for providing official services under the U.S. Grain Standards Act, as Amended (Act).

EFFECTIVE DATE: November 1, 1986.

ADDRESS: James R. Conrad, Chief, Review Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 1647 South Building, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

FGIS announced that Cairo's designation terminates on October 31, 1986, and requested applications for official agency designation to provide official services within a specified geographic area in the May 1, 1986, **Federal Register** (51 FR 16182). Applications were to be postmarked by June 2, 1986. Cairo was the only applicant for designation in its geographic area and applied for designation renewal in the area currently assigned to that agency.

FGIS announced the applicant name and requested comments on the same in the July 1, 1986, **Federal Register** (51 FR 23801). Comments were to be postmarked by August 15, 1986. One favorable comment was received regarding Cairo's designation renewal.

FGIS evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act, and in accordance with section 7(f)(1)(B), determined that Cairo is able to provide official services in the geographic area for which FGIS is renewing its designation. Effective November 1, 1986, and terminating October 31, 1989, Cairo will 1 provide official inspection services in its entire specified geographic area, previously described in the May 1 **Federal Register.**

A specified service point, for the purpose of this notice, is a city, town, or other location specified by an agency for the performance of official inspection or Class X or Class Y weighing services and where the agency and one or more of its inspectors or weighers is located. In addition to the specified service points within the assigned geographic area, an agency will provide official services not requiring an inspector or weigher to all locations within its geographic area.

Interested persons may receive a listing of an agency's specified service points by contacting either the Review Branch, Compliance Division, at the address listed above or by contacting the agency at the following address: Cairo Grain Inspection Agency, Inc., 4007 Sycamore Street, Cairo, IL 62914.

(Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*))

Dated: September 17, 1986.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 86–22087 Filed 9–30–86; 8:45 am]

BILLING CODE 3410-EN-M

Request for Comments on Designation Applicant in the Geographic Area Currently Assigned to the Farwell Agency (TX)

AGENCY: Federal Grain Inspection Service (FGIS), USDA.

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicant for official agency designation in the geographic area currently assigned to Farwell Grain Inspection Company (Farwell).

DATE: Comments to be postmarked on or before November 17, 1986.

ADDRESS: Comments must be submitted, in writing, to Lewis Lebakken, Jr., Information Resources Staff, Resources Management Division, Federal Grain Inspection Service, U.S. Department of Agriculture, Room 1661 South Building, 1400 Independence Avenue SW., Washington, DC 20250. All comments received will be made available for public inspection at the above address during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., telephone (202) 382–1738.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

FGIS requested applications for official agency designation to provide official service within a specified geographic area in the August 1, 1986, **Federal Register** (51 FR 27573). Applications were to be postmarked by September 2, 1986. Farwell was the only applicant for designation in its geographic area and applied for designation renewal in the area currently assigned to that agency.

This notice provides interested persons the opportunity to present their comments concerning the designation applicant. All comments must be submitted to the Information Resources Staff, Resources Management Division, at the address listed above.

Comments and other available information will be considered in making a final decision. Notice of the final decision will be published in the **Federal Register,** and the applicant will be informed of the decision in writing.

(Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*))

Dated: September 17, 1986.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 86–22088 Filed 9–30–86; 8:45 am]

BILLING CODE 3410-EN-M

Request for Designation Applicants To Provide Official Services in the Geographic Area Currently Assigned to the Alton (IL), Grand Forks (ND), and McCrea (IA) Agencies

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice.

SUMMARY: Pursuant to the provisions of the U.S. Grain Standards Act, as Amended (Act), official agency designations shall termirate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act. This notice announces that the designation of three agencies will terminate, in accordance with the Act, and requests applications from parties, including the agencies currently designated, interested in being designated as the official agency to provide official services in the geographic area currently assigned to each specified agency. The official agencies are Alton Grain Inspection Department, Grand Forks Grain Inspection Department, and John R. McCrea Agency.

DATE: Applications to be postmarked on or before October 31, 1986.

ADDRESS: Applications must be submitted to James R. Conrad, Chief, Review Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 1647 South Building, Washington, DC 20250. All applications received will be made available for public inspection at the

above address during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447-8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act specifies that the Administrator of FGIS is authorized, upon application by any qualified agency or person, to designate such agency or person to provide official services after a determination is made that the applicant is better able than any other applicant to provide official services in an assigned geographic area.

Alton Grain Inspection Department (Alton), 145 West Broadway, Alton, IL 62002; Grand Forks Grain Inspection Department (Grand Forks), 1823 State Mill Road, P.O. Box 639, Grand Forks, ND 58201; and John R. McCrea Agency (McCrea), P.O. Box 166, Clinton, IA 52732, were each designated under the Act as an official agency to provide inspection functions on April 1, 1984.

Each official agency's designation terminates on March 30, 1987. Section 7(g)(1) of the Act states that official agencies' designations shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act.

The geographic area presently assigned to Alton in the State of Illinois pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation, is as follows: Calhoun, Jersey, and Madison (West of State Route 4 and North of Interstate 70 and 270) Counties.

The geographic area presently assigned to Grand Forks in the State of North Dakota pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation, is as follows:

Bounded on the North by the North Dakota State line;

Bounded on the East by the North Dakota State line south to State Route 200;

Bounded on the South by State Route 200 west-northwest to the western Traill County line; the western Traill County line; the southern Grand Forks and Nelson County lines; the southern Eddy County line west to U.S. Route 281; U.S. Route 281 north to State Route 15; State Route 15 west to U.S. Route 52; U.S. Route 52 northeast to State Route 3; and

Bounded on the West by State Route 3 north to State Route 60; State Route 60 west-northwest to State Route 5; State Route 5 west to State Route 14; State Route 14 north to the North Dakota State line.

Exceptions to the described geographic area are the following locations situated inside Grand Fork's area which have been and will continue to be serviced by the following official agencies:

1. Grain Inspection, Inc., to service the following points: Farmers Coop Elevator, Fessenden; Farmers Union Elevator, and Manfred Grain, Manfred; all in Wells County.

2. Minot Grain Inspection, Inc., to service the following points: Farmers Elevator Company, Bottineau, Bottineau County; Farmers Feed & Grain, and Farmers Union, Harvey, Wells County; and Farmers Union, Rugby, Pierce County.

The geographic area presently assigned to McCrea in the States of Illinois and Iowa pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation, is as follows: Carroll and Whiteside Counties, Illinois; and Clinton and Jackson Counties, Iowa.

Interested parties, including Alton, Grand Forks, and McCrea, are hereby given opportunity to apply for official agency designation to provide the official services in each geographic area, as specified above, under the provisions of section 7(f) of the Act and § 800.196(d) of the regulations issued thereunder. Designation in each specified geographic area is for the period beginning April 1, 1987, and ending March 31, 1990. Parties wishing to apply for designation should contact the Review Branch, Compliance Division, at the address listed above, for forms and information.

Applications and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area.

Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: September 17, 1986.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 86-22089 Filed 9-30-86; 8:45 am]

BILLING CODE 3410-EN-M

Advisory Committee Meeting

Pursuant to the provisions of section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), a notice is hereby given of the following committee meeting:

Name: Federal Grain Inspection Service Advisory Committee.

Date: October 30, 1986.

Place: Sheraton Kansas City Airport Hotel, 7301 NW Tiffany Springs Road, Kansas City, Missouri 64153.

Time: 8:30 a.m.

Purpose: To provide advice to the Administrator of the Federal Grain Inspection Service on the efficient and economical implementation of the U.S. Grain Standards Act of 1976, in order to assure the normal movement of grain in an orderly and timely manner.

The agenda includes: (1) Grain quality issues, such as wheat classification, soybean damage interpretation, and insect related matters; (2) financial matters, (3) miscellaneous subjects, and (4) dedication and tour of the Federal Grain Inspection Service Technical Center, 10383 North Executive Hills Boulevard, Kansas City, Missouri 64153.

The meeting will be open to the public. Public participation will be limited to written statements unless otherwise requested by the Committee Chairman. Persons, other than members, who wish to address the Committee at the meeting or submit written statements before or at the meeting should contact David R. Galliart, Acting Administrator, FGIS, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 382-0219.

Dated: September 26, 1986.

D.R. Galliart,

Acting Administrator.

[FR Doc. 86-22164 Filed 9-30-86; 8:45 am]

BILLING CODE 3410-EN-M

Invitation to Serve on Federal Grain Inspection Service Advisory Committee

Section 20 of the United States Grain Standards Act (Act), as amended, directed the Secretary of Agriculture to establish an advisory committee to provide advice to the Administrator of the Federal Grain Inspection Service with respect to the efficient and economical implementation of the Act. The Federal Grain Inspection Service Advisory Committee (Advisory Committee) was established by the Secretary on September 29, 1981. The Advisory Committee consists of 12 members appointed by the Secretary, representing the interests of all segments of the grain industry, and is governed by the provisions of the Federal Advisory Committee Act. Members of the Advisory Committee serve without compensation except that members, while away from their homes or regular places of business in the

performance of service, are reimbursed for travel expenses, including per diem in lieu of subsistence, as authorized under section 5703 of Title 5, United States Code.

Alternate members of the Advisory Committee are needed to serve on behalf of members when they are temporarily unable to serve. In such situations, alternate members are subject to the same rules as are members. Persons interested in serving on this Advisory Committee as alternates, or wishing to submit names of individuals to be considered for appointment on the Advisory Committee as alternates, should contact, in writing, David R. Galliart, Acting Administrator, FGIS, U.S. Department of Agriculture, Washington, DC 20250, not later than October 31, 1986, and furnish the following information: Name, home address, employer, occupation and title, statement of reason for nomination, and major source of income.

The final selection of alternate committee members will be made by the Secretary.

Dated: September 26, 1986.

D.R. Galliart,

Acting Administrator.

[FR Doc. 86-22165 Filed 9-30-86; 8:45 am]

BILLING CODE 3410-EN-M

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the certificate should be issued.

DATE: Comments should be submitted not later than October 21, 1986.

FOR FURTHER INFORMATION CONTACT: James V. Lacy, Director, Office of Export Trading Company Affairs, International Trade Administration, 202-377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (Pub. L. 97-290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A certificate of review protects its holder and the members identified in it from private treble damage actions and from civil and criminal liability under Federal and state antitrust laws for the export conduct specified in the certificate and carried out during its effective period in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a certificate should be issued. An original and five (5) copies should be submitted not later than October 21, 1986 to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 86-00008."

Applicant: Streamline Shippers Association, Inc., 970 East 3rd Street, Los Angeles, California 90013.

Application #: 86-00008.

Date Deemed Submitted: September 15, 1986.

Members (in addition to applicant): None.

Summary of the Application

Streamline Shippers Association, Inc. ("SSA") seeks certification for the following export-related activities:

A. Export Trade

Products

All products.

Services

Consulting; and market research and analysis.

Export Trade Facilitation Services (As They Relate to the Export of Products)

Overseas freight transportation; inland freight transportation to a U.S. export terminal, port, or gateway; packing and crating; leasing of transportation equipment and facilities; terminal or port storage; wharfage and handling; forwarder services; insurance; warehousing; foreign exchange; financing and financial services; export sale and trade documentation and services; overseas distribution; commissions; marketing; advertising; communication and processing of foreign orders; accounting; clerical services; consultation; customs services; feasibility studies; investment services; legal services; management services; and translation services.

B. Export Markets

Worldwide.

C. Export Trade Activities and Methods of Operation

SSA seeks certification to: 1. As an association of shippers, consolidate and distribute freight of its association members engaged in Export Trade for the purposes of securing the benefits of carload, truckload, containerload or other volume rates for its members' freight destined for export from the United States;

2. Procure and provide Services and Export Trade Facilitation Services, including, but not limited to, obtaining and arranging for the services of exclusive distributors, sales representatives, brokers or marketing agents in the Exports Markets. SSA may enter into exclusive agreements with export intermediaries in the Export Markets whereby:

a. SSA agrees to obtain Export Trade Facilitation Services only through the export intermediary(ies) in particular Export Markets, and/or

b. The export intermediary(ies) agrees not to provide Export Trade Facilitation Services to SSA's competitors.

3. Negotiate charges and other terms and enter into contracts which provide for Export Trade Facilitation Services including, but not limited to, the chartering and space chartering of vessels, the entering into of service contracts with ocean common carriers, the negotiation and utilization of through intermodal rates with common and contract carriers for inland freight transportation for export shipments to a U.S. export terminal, port, or gateway; and the combination and consolidation of container and less than containerload shipments into full containerized shipments in order to obtain volume rate discounts and satisfy service contract terms and conditions. SSA may conduct this activity (a) on behalf of its association members; and/or (b) jointly with and/or on behalf of other shippers' associations, non-vessel operating common carriers, and other shippers.

4. Meet and discuss ideas, methods and information with members concerning Export Trade; including trade opportunities, selling strategies, sales, projected demands and business growth, customary terms of sale, and legal agreements for conducting business in the Export Markets; and expenses of exporting to specific points in the Export Markets.

5. Prescribe conditions on membership in, and withdrawal and expulsion from, SSA.

Dated: September 25, 1986.

James V. Lacy,

Director, Office of Export Trading, Company Affairs.

[FR Doc. 86-22200 Filed 9-30-86; 8:45 am]

BILLING CODE 3510-DR-M

[C-401-602]

Initiation of Countervailing Duty Investigations; Certain Stainless Steel Hollow Products From Sweden

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating countervailing duty investigations to determine whether manufacturers, producers and exporters in Sweden of certain stainless steel hollow products, as described in the "Scope of Investigations" section below, receive benefits which constitute subsidies within the meaning of the countervailing duty law. We are notifying the U.S. International Trade Commission (ITC) of these actions so that it may determine whether imports of the subject merchandise materially injure, or threaten material injury to, a U.S. industry. If our investigations proceed normally, we will make our preliminary determinations on or before December 1, 1986.

EFFECTIVE DATE: October 1, 1986.

FOR FURTHER INFORMATION CONTACT: Vincent P. Kane or Barbara E. Tillman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-5414 or 377-2438.

SUPPLEMENTARY INFORMATION:

Petition

On September 5, 1986, we received a petition in proper form from the Specialty Tubing Group and its individual members on behalf of the U.S. industry producing certain stainless steel hollow products (SSHP). The Specialty Tubing Group consists of six manufacturers in the United States of SSHP. On September 9, 1986, the scope of the articles subject to the petition was restricted to those with steel containing at least 11.5 percent chromium, by weight.

In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that manufacturers, producers and exporters in Sweden of SSHP receive, directly or indirectly, benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act).

Since Sweden is a "country under the Agreement" within the meaning of section 701(b) of the Act, Title VII of the Act applies to these investigations, and the ITC is required to determine whether imports of the subject merchandise from Sweden materially injure, or threaten material injury to, a U.S. industry.

Initiation of Investigations

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of countervailing duty investigations and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined this petition and we have found that it meets these requirements. Therefore, we are initiating countervailing duty investigations to determine whether manufacturers, producers and exporters in Sweden of SSHP as described in the "Scope of Investigations" section of this notice, receive benefits which constitute subsidies. If our investigations proceed normally, we will make our preliminary determinations on or before December 1, 1986.

Scope of Investigations

The products covered by these investigations are certain stainless steel hollow products including pipes, tubes, hollow bars and blanks therefor of circular cross-section containing at least 11.5 percent chromium by weight, as provided for in items 610.3701, 610.3727, 610.3731, 610.3732, 610.3741, 610.3742, 610.5130, 610.5201, 610.5202, 610.5229, 610.5230, and 610.5231 of the *Tariff Schedules of the United States, Annotated.*

Allegations of Subsidies

The petitioners allege that manufacturers, producers and exporters in Sweden of SSHP receive benefits which constitute subsidies. We are initiating on the following programs alleged in the petition.

• The 1977 Restructuring Program for the Specialty Steel Industry which petitioners allege provided various forms of assistance including the following:

—Loans and loan guarantees on terms inconsistent with commercial considerations, and

—Grants for inventory.

The 1984 Restructuring Program for the Specialty Steel Industry which petitioners allege provided various forms of assistance include the following:

—Loans on terms inconsistent with commercial considerations including convertible loans, conditional loans, and interest-free loans,

—Loan guarantees on terms inconsistent with commercial considerations,

—Debt forgiveness, and

—Interest holidays.

We are also initiating an investigation on the following programs which were not alleged by petitioner but which were found to confer a subsidy in the *Final Affirmative Countervailing Duty Determinations: Certain Carbon Steel Products from Sweden* (50 FR 33375):

• Regional development incentives including the following:

—Loans and grants from the government for location in a development area,

—Freight relief,

—Investment projects,

—Health care facilities, and

—Building and construction assistance.

• Employment Promotion Grants.

• Research and Development Grants.

We are not initiating on the following program alleged in the petition:

• Energy Saving Grant to SKF Steel. Petitioners allege that the government of Sweden provided an energy saving grant to SKF Steel (a company not known by the Department or alleged by the petitioners to be affiliated with the SSHP industry) to develop a new process for sponge iron production which has no known connection with the manufacture or production of products under investigation.

Notification of ITC

Section 702(d) of the Act requires us to notify the ITC of these actions, and to provide it with the informaion we used to arrive at these determinations. We will notify the ITC and make available to it all non-privileged and non-proprietary information relating to these investigations. We will allow the ITC access to all privileged and proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determinations by ITC

The ITC will determine by October 20, 1986, whether there is a reasonable indication that imports of SSHP from Sweden materially injure, or threaten material injury to, a U.S. industry. If its determinations are negative, these investigations will terminate; otherwise, these investigations will continue according to the statutory procedures. This notice is published pursuant to section 702[c](2) of the Act.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

September 25, 1986.

[FR Doc. 86-22229 Filed 9-30-86; 8:45 am]

BILLING CODE 3510-DS-M

Masters, Mates and Pilots MATES Program; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Eductional, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket Number: 82-00194. Applicant: Masters, Mates and Pilots MATES Program, 5700 Hammonds Ferry Road, Linthicum Heights, MD 21090. Instrument: Radar Navigational Aid Apparatus. Manufacturer: Vereinigte Flugtechnische Werke-Fokker GmbH (VFW), West Germany. Intended use: See notice at 47 FR 25396.

Comments: None received.

Decision: Application denied. An instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The Department of Commerce denied this application on April 25, 1983 (48 FR 17633), on the ground that the article possessed no scientific value for the purposes for which it was intended to be used. The applicant appealed.

On March 5, 1984, the United States Court of Appeals for the Federal Circuit (CAFC), 727 F2d 748 (1984), reversed and remanded our decision. The CAFC directed us to "perform a proper scientific equivalency evaluation in order to determine whether simulators can be imported duty-free."

The Educational, Scientific and Cultural Materials Importation Act of 1966 (the Act) requires the Department of Commerce to determine "whether an instrument or apparatus of equivalent scientific value for the purposes for which the article is intended to be used is being manufactured in the United States" (19 U.S.C. 1202, Headnote 851.60). We took the following into account in conducting our evaluation on remand. The applicant alleges five features of the foreign article pertinent to its intended purposes:

(1) 360° field of view;

(2) A continuous, seamless presentation;

(3) A high degree of resolution (one degree of arc);

(4) A full color day night presentation; and

(5) A reasonable operations staff level and low operating cost.

We note the following in regard to the five alleged pertinent features:

(1) 360° field of view.

There is no evidence that the foreign article met the specification as presented by the applicant. The foreign article does not meet the applicant's original specification dated September 17, 1978 for a 310° field of view, as confirmed in the communication dated April 28, 1981 by the foreign manufacturer. The domestic manufacturer (ATS), however, offered a wide angle, full 360° field of view.

(2) A continuous, seamless presentation. A visual scene free of seams and flicker was offered by domestic manufacturers at time of order.

(3) A high degree of resolution (one degree of arc). The applicant specified "more that 20,000 discrete lines on the horizon circle" which is equivalent to about one minute of arc which equals 21 600 lines on the horizon circle. This corresponds to resolving a navigational aide (CAN) at 2800 yards. The capability was offered by domestic manufacturers at time of order.

(5) A reasonable operations staff level and low operating cost. The specification is not pertinent within the meaning of 15 CFR 301.2(n) since this is a matter of cost.

On December 5, 1984 we contacted and subsequently forwarded the application to the Department of Transportation's National Maritime Research Center (NMRC) for its expert reviewed and comments. In its memorandum dated August 5, 1985, NMRC advised that the features claimed pertinent by the applicant were all within the state-of-the-art capability of domestic manufacturers at the time of order of the foreign article. Domestic suppliers could have provided the nocturnal navigation simulators in satisfaction of the applicant's requirements for the intended use. Based on the information contained in the record the applicant has not justified duty-free entry as required by former 15 CFR 301.6 (the regulations were amended, after original submission of this application, on July 28, 1982; 47 FR 32517). The applicant has not shown that the domestic manufacturers, Advanced Technology System (ATS), Sperry Division of Sperry Corporation or Ship Analytics, if they had been given the opportunity to respond to the applicant's specifications dated September 19, 1978, could not have provided an apparatus satisfying the applicant's requirements. The applicant merely enclosed with its application promotional materials describing some of the capabilities of the domestic manufacturers; such materials do not constitute a corporate response to a request for bid. The applicant, in the denial without prejudice to resubmission (DWOP) (Docket Number 81-244), was given the opportunity to provide additional information and further to justify the claim for duty waiver along the lines of scientific equivalency. The applicant did not do this. The applicant simply expanded the purposes to include possible studies at some unspecified future date. The applicant was advised in the (DWOP) that the regulations [15 CFR 301.5] did not permit the introduction of new purposed or intended uses in a resubmission. As a matter of procedure, the applicant's resubmitted application failed to comply with former 15 CFR 301.8 (1980), which controls for purposes of this case.

We note that the applicant's contact with domestic firms took place more than three years before the foreign article was ordered. (The records show that Sperry's latest proposal to the applicant occurred almost four years before purchase.) Based on the advice of the National Bureau of Standards and the Maritime Administration and on the domestic firm's established record in simulation technology, we conclude that the domestic firms would have been able to supply equivalent systems had they been formally requested to bid. The dated correspondence between the applicant and potential domestic suppliers does not evidence the inability to supply an equivalent custom-made system.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-22228 Filed 9-30-86; 8:45 am]

BILLING CODE 3510-DS-M

National Technical Information Service

Government-Owned Inventions; Availability for Licensing

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

Technical and licensing information on specific inventions may be obtained by writing to:

Office of Federal Patent Licensing, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151.

Please cite the number and title of inventions of interest.

Douglas J. Campion,

Patent Licensing Specialist, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

Department of Agriculture

SN 6-626,960 (4,600,781)
2-Formyl-2-Halomalonates and Compound Derived Therefrom
SN 6-681,394 (4,600,581)
Synthetic Pheromones for the Spined Soldier Bug, Podisus Maculiventris
SN 6-827,142
Impact Detection Apparatus
SN 6-858,809
End Plug for Bee Shipping Tubes
SN 6-860,360
Reactions Between Immiscible Fluids
SN 6-882,103
Lipolytic Splitting of Fats and Oils
SN 6-882,104
Control of Lesser Mealworm
SN 6-886,502
Novel Phytotoxic and Plant Growth Regulating Oligopeptide
SN 6-889,070
Process for Dyeing Smooth-Dry Cellulosic Fabric

Department of Commerce

SN 6-598,602 (4,601,055)
Image Processor

Department of Health and Human Services

SN 6-729,206 (4,601,903)
Vaccine Against Neisseria Meningitidis Group B Serotype-2 Invasive Disease
SN 6-863,981
Automatic Orientation and Interactive Addressing of Display
SN 6-865,055
Use of Trimetrexate as Antiparasitic Agent
SN 6-865,403
Computer Software Which Plots DNA Sequences
SN 6-867,013
Electrochemical Sample Probe for Use in Fast-Atom Bombardment Mass Spectrometry
SN 6-869,714
Method for Detecting Melanin-Containing Matter
SN 6-869,741
Combined Spatial and Frequency Compound Ultrasonic Imaging System
SN 6-876,701
New Tertrazolium Reagents and Assays Using the Reagents
SN 6-894,251
Systematic Method for Matching Existing Radiographic Projections with Radiographs to be Produced From a Specified Region of Interest in Cancellous Bone
SN 6-903,879
Process and Apparatus for the Preparation of Multiple Gradients

Department of the Interior

SN 6-690,810 (4,601,207)
Measuring Mine Roof Bolt Strains

Department of the Army

SN 6-887,142
Method of Increasing the Useful Life of Rechargeable Lithium Batteries
SN 6-887,413
Millimeter Wave Microstrip Circulator Utilizing Hexagonal Ferrites
SN 6-892,015
Highly Decoupled Cosited Antennas
SN 6-893,837
Laser-Induced Chemical Vapor Deposition of Germanium and Doped-Germanium Films
SN 6-895,015
Cathode Including a Non Fluorinated Linear Chain Polymer as the Binder, Method of Making the Cathode, and Lithium Electrochemical Cell Containing the Cathode
SN 6-896,788
Aircraft Collision Warning System

Tennessee Valley Authority

SN 6-717,059 (4,588,498)
Single Float Step Phosphate Ore Beneficiation
SN 6-769,058 (4,589,904)
Granulation of Crystalline By-Product Ammonium Sulfate

[FR Doc. 86-22132 Filed 9-30-86; 8:45 am]
BILLING CODE 3510-04-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Apparel Products Produced or Manufactured in Mauritius

September 26, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on October 1, 1986. For further information contact Pamela Smith, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of June 3 and 4, 1985, between the Governments of the United States and Mauritius establishes a twelve-month period of restraint for cotton, wool and man-made fiber apparel products in Categories 338/339, 340 and 638/639, and in Categories 345, 438, 445, 446, 645 and 646, as a group, during the agreement period beginning on October 1, 1986 and extending through September 30, 1987. In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs, in accordance with the terms of the bilateral agreement, to prohibit entry into the United States for consumption and withdrawal from warehouse for consumption of textile products in the foregoing categories, produced or manufactured in Mauritius and exported during the specified twelve-month period, in excess of the designated limits.

A description of the cotton, wool and man-made fiber textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the

bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

September 26, 1986.

Committee for the Implementation of Textile Agreements

September 26, 1986.

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of June 3 and 4, 1985, between the Governments of the United States and Mauritius; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on October 1, 1986, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber knitwear apparel products in Categories 338/339, 340 and 638/639, and in Categories 345, 438, 445, 446, 645 and 646, as a group, produced or manufactured in Mauritius and exported during the twelve-month period which begins on October 1, 1986 and extends through September 30, 1987, in excess of the following restraint levels:

Category	12-mo. restraint level [1]
338/339	212,000 dozen.
340	224,720 dozen.
638/639	243,800 dozen.
345, 438, 445, 446, 645 and 646, as a group.	117,312 dozen.

[1] The limits have not been adjusted to reflect any imports exported after Sept. 30, 1986.

In carrying out this directive, textile products in the foregoing categories which have been exported to the United States during the restraint period immediately previous to that established in this directive, shall, to the extent of any unfilled balances, be charged against the limits established for such goods during that period. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the limits set forth in this letter.

The limits set forth above are subject to adjustment in the future according to the provisions of the bilateral agreement of June 3 and 4, 1985, between the Governments of the United States and Mauritius, which provide, in part, that the limits may be exceeded by not more than 10 percent for carryover and carryforward and the limits for Categories 338/339 and 638/639 may be exceeded by not more than 7 percent swing, provided that an equal amount in equivalent square yards is deducted from one or more specific limits during the same agreement year. Any appropriate adjustments under the provisions of the agreement, referred to above, will be made to you by letter.

A description of the cotton, wool and man-made fiber textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-22230 Filed 9-26-86; 4:34 pm]

BILLING CODE 3510-DR-M

Establishing Import Limits for Certain Man-Made Fiber Textile Products Produced or Manufactured in the People's Republic of China

Correction

In FR Doc. 86-21748 beginning on page 34116 in the issue of Thursday, September 25, 1986, make the following correction: On Page 34117, in the table that appears in the first column, the twelve-month restrain level for category 638 should read "422,702 dozen".

BILLING CODE 1505-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Retirement Board of Actuaries; Meeting

AGENCY: Department of Defense Retirement Board of Actuaries.

ACTION: Notice of meeting.

SUMMARY: A meeting of the Board has been scheduled to execute the provisions of Chapter 95, title 10, United States Code. Persons desiring to attend the DoD Retirement Board of Actuaries meeting must notify Ms. Dorothy Hemby at 696-6336 by October 16, 1986. Notice of this meeting is required under the Federal Advisory Committee Act.

DATE: October 17, 1986, 9:00 a.m. to Noon.

ADDRESS: Room 3E752, the Pentagon.

FOR FURTHER INFORMATION CONTACT: Toni Hustead, Executive Secretary, DoD, Office of the Actuary, 4th Floor, 1600 Wilson Boulevard, Arlington, Virginia 22209-2593, (202) 696-5869.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

September 29, 1986.

[FR Doc. 86-22169 Filed 9-30-86; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) title of statement of the need for and the uses to be made of the Information Collected; and Form Number, if applicable; (3) abstract statement of the need for and the uses to be made of the information collected; (4) type of Respondent; (5) an estimate of the number of responses; (6) an estimate of the total number of hours needed to provide the information; (7) to whom comments regarding the information collection are to be forwarded; (8) the point of contact from whom a copy of the information proposal may be obtained.

New

Justification For Personnel Security Clearance; DIS Form 180

The Defense Invistigative Service (DIS) uses the Justification Form to determine if contractor employees have a bona fide need to have access to classified information and to ensure investigative resources are not wasted. The form is completed in its entirety by contractors at their official duty stations for each employee requiring a security clearance. The contractor justifies the employee's need for a specific level of clearance and indicates the frequency of access to classified information required by the employee.

Contractor facilities.

Responses 346,000.

Burden Hours 69,200.

ADDRESS: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3225, New Excutive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, 1215 Jefferson

Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone number (202) 746–0933.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Mr. Richard H. Anderson, Chief, Industrial Security Clearances and International Programs Division, Room 5333, 1900 Half St., SW., Washington, DC 20324–1700, telephone (202) 475–0906.

September 29, 1986.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 86–22172 Filed 9–30–86; 8:45 am]

BILLING CODE 3810–01–M

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) title of Information Collections and Form Number, if applicable; (3) abstract statement of the need for and the uses to be made of the information collected; (4) type of Respondent; (5) an estimate of the number of responses; (6) an estimate of the total number of hours needed to provided the information; (7) to whom comments regarding the information collection are to be forwarded; and (8) the point of contact from whom a copy of the information proposal may be obtained.

Extension

Request for CHAMPUS Benefits Under the Basic Program, CHAMPUS Form 190, Request for CHAMPUS Benefits Under the Program for the Handicapped, CHAMPUS Form 190A.

The Request for Health Benefits Under the Program for the Handicapped and Basic Program is an official application for CHAMPUS benefits. It is used to ensure that CHAMPUS benefits are being provided only to those persons entitled to CHAMPUS benefits. The form requests pertinent sponsor/beneficiary information necessary for issuing authorization for payment.

Individuals or households, businesses or other for-profit, non profit institutions and small businesses or organizations.

Responses: 10,000.

Burden Hours: 5,000.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503, and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, Suit 1204, 1215 Jefferson Davis Highway, Arlington, VA 22202–4302, telephone (202) 746–0933.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Ms. Jane Bomgardner, OCHAMPUS, Aurora, Colorado 80045–6900, telephone (303) 361–3509.

September 29, 1986.

Linda Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 86–22173 Filed 9–30–86; 8:45 am]

BILLING CODE 3810–01–M

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) title of Information Collections and Form Number, if applicable; (3) abstract statement of the need for and the uses to be made of the information collected; (4) type of Respondent; (5) an estimate of the number of responses; (6) an estimate of the total number of hours needed to provide the information; (7) to whom comments regarding the information collection are to be forwarded; and (8) the point of contact from whom a copy of the information proposal may be obtained.

Extension

Diagnostic Evaluation, Program for the Handicapped—CHAMPUS Form 141.

The Diagnostic Evaluation, Program for the Handicapped Form is used to provide medical information for periodic reviews on benefits provided to physically handicapped or mentally retarded OCHAMPUS beneficiaries. The form is used to determine whether services/supplies provided under the Program for the Handicapped are cost-effective and efficient.

Individuals or households, businesses or other for-profit, non profit institutions and small businesses or organizations.

Responses: 840.

Burden Hours: 840.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503, and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, Suite 1204, 1215 Jefferson Davis Highway, Arlington, VA 22202–4302, telephone (202) 746–0933.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Ms. Jane Bomgardner, OCHAMPUS, Aurora, Colorado 80045–6900, telephone (303) 361–3509.

Linda Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

September 29, 1986.

[FR Doc. 86–22174 Filed 9–30–86; 8:45 am]

BILLING CODE 3810–01–M

Department of the Air Force

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Public information collection requirement submitted to OMB for review.

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) title of Information Collection and Form Number, if applicable; (3) abstract statement of the need for and the uses to be made of the information collected; (4) type of Respondent; (5) an estimate of the number of responses; (6) an estimate of the total number of hours needed to provide the information; (7) to whom comments regarding the information collection are to be forwarded; and (8) the point of contact from whom a copy of the information proposal may be obtained.

Revision of a Currently Approved Collection

Chaplain Candidate Training Record (ARPC Form 0–5) and U.S. Air Force Reserve Chaplain Candidate Inquiry (ARPC Form 0–285).

The Chaplain Candidate Training Record is used to identify chaplain candidates, to schedule tours of active duty training, and to readily identify trained candidates awaiting appointment. The U.S. Air Force Reserve Chaplain Candidate Inquiry form is used to record information required to properly respond to inquiries

about eligibility for Air Force chaplain programs.

Individuals
Responses 150
Burden hours 50

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington Virginia 22202–4302, telephone number (202) 746–0933.

SUPPLEMENTAL INFORMATION: A copy of the information collection proposal may be obtained from Major James T. Oldham, HQ ARPC/HCR, Denver, CO 80280, telephone (303) 370–4901.

September 29, 1986.

Linda Lawson,

Alterate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 86–22176 Filed 9–30–86; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) title of Information Collection and Form Number if applicable; (3) abstract statement of the need for and the uses to be made of the information collected; (4) type of Respondent; (5) an estimate of the number of responses; (6) an estimate of the total number of hours needed to provide the information; (7) to whom comments regarding the information collection are to be forwarded; and (8) the point of contact from whom a copy of the information proposal may be obtained.

Extension

Recreation Research-Use Survey

Recreation use figures are needed to supplement research efforts directed toward evaluation and increasing cost efficiency of planning, design and management of Corps projects and to report visitation to Congress as required by Pub. L. 92–347.

Responses: 25,000.
Burden Hours: 2,750.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3325, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DOD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone number (202) 746–0933.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Ms. Angela Petrarca, DAIM–ADI, Room 1C638, The Pentagon, Washington, DC 20310–0700, telephone (202) 694–0754.

Linda Lawson,

Alternate OSD, Federal Register Liaison Officer, Department of Defense.

September 29, 1986.

[FR Doc. 86–22170 Filed 9–30–86; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) title of Information Collection and Form Number if applicable; (3) abstract statement of the need for and the uses to be made of the information collected; (4) type of Respondent; (5) an estimate of the number of responses; (6) an estimate of the total number of hours needed to provide the information; (7) to whom comments regarding the information collection are to be forwarded; and (8) the point of contact from whom a copy of the information proposal may be obtained.

Extension

Application for Retired Pay Benefits, DD Form 108

Information collected on DD Form 108 enables the Armed Forces to process requests for Retired Pay Benefits of reserve members and is also used to verify service record data.

Individual reserve members
Responses: 11,547
Burden Hours: 1,924

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DOD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone number (202) 746–0933.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Ms. Angela Petrarca, DAIM-ADI, Room 1C638, The Pentagon, Washington, DC 20310–0700, telephone (202) 694–0754

Linda Lawson,

Alternate OSD, Federal Register Liaison Officer, Department of Defense.

September 29, 1986.

[FR Doc. 86–22171 Filed 9–30–86; 8:45 am]

BILLING CODE 3810-01-M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB)
Date of Meeting: 23 October 1986
Times of Meeting: 1200–1700 hours
Places: Los Alamos National Laboratory, Los Alamos, NM
Agenda: The Army Science Board Ad Hoc Subgroup on Chemical/Biological Warfare Intelligence will visit the Los Alamos National Laboratory to be briefed on the stand-off and remote detection of chemical agents. In-depth briefings will be presented by each directorate covering their work program. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 86–22182 Filed 9–30–86; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration

(GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection.

ADDRESS: Send comments to Franklin S. Reeder, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein, Office of Federal Acquisition and Regulatory Policy (202) 523–5168 or Mr. Owen Green, Defense Acquisition Regulatory Council, (703) 697–7268.

SUPPLEMENTARY INFORMATION:

a. Purpose

Contracting officers terminate contracts, for default or convenience, only when it is in the best interest of the Government to do so. After receipt of the notice of termination, contractors are required to terminate subcontracts, advise the contracting officer of any special circumstances, submit any requests for an equitable adjustment, submit a settlement proposal, and take other action as directed. Records regarding the terminated contract must be maintained for 3 years.

The information submitted or retained in connection with contract terminations is used to reach an equitable settlement with firms and to protect the interests of the Government and the terminated contractor.

b. Annual reporting burden

The annual reporting burden is estimated as follows: Respondents, 2,920; responses per respondent 1; total annual responses, 2,920; hours per response, 3; total reporting hours, 8,760; and total recordkeeping hours, 2,920.

Obtaining copies of proposals: Requesters may obtain copies from the FAR Secretariat (VRS), Room 4041, GSA Building, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–0028, Termination Requirements.

Dated: September 22, 1986.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 86–22155 Filed 9–30–86; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Cameron County Resort Community, TX; Environmental Impact Statement

To prepare a Draft Environmental Statement (DEIS) for Department of the Army Permit Application Number 17714, concerning activities in or affecting navigable waters of the United States and the discharge of dredged or fill material into waters of the United States associated with ". . . a master-planned international destination resort community. . ."

AGENCY: U.S. Army Corps of Engineers, DOD, Galveston District.

ACTION: Notice of intent to prepare a DEIS.

SUMMARY: 1. The proposed action to be addressed in the DEIS is development of a master planned resort community in Cameron County, Texas. The development would include marinas, residential sites, retail space, offices, commercial and convention space, golf courses, open space, schools, utility sites, and other amenities.

2. Alternatives to be considered inthe DEIS and available to the Corps of Engineers include issuing the permit, denying the permit, or issuing the permit with conditions. Alternatives available to the applicant will also be considered.

3. *Coordination.* A. Public involvement on this permit application began with issuance of the public notice dated 10 July 1986. A Public Hearing on this permit application was held on August 28, 1986 in Brownsville, Texas. Additional scoping meetings will be conducted and participation from Federal, State, and local agencies and organizations will be invited.

b. Environmental concerns initially identified in the permitting process to be analyzed include: Wetlands, cultural resources, endangered species, flood hazards, flood plain values, water and sediments quality, circulation, freshwater supplies, aesthetics, land use, estuarine resources and others.

c. Coordination will continue with various Federal, State, and local agencies and the interested public during preparation and review of the DEIS.

d. Other environmental consultation and review will be conducted in accordance with the National Environmental Policy Act and other applicable laws and regulations concerning endangered species, cultural resources and others.

4. Scoping meetings will be conducted during October and November 1986 to gather additional information and refine the scope to gather additional information and refine the scope of studies necessary for preparation of the DEIS. Agencies and interest groups will be contacted regarding their participation in these meetings.

5. The DEIS is scheduled to be available to the public in the fall of 1987.

ADDRESS: Questions about the proposed action and DEIS can be answered by Mr. C.R. Harbaugh, Chief, Environmental Resources Branch, Galveston District, Corps of Engineers, P.O. Box 1229, Galveston, Texas 77553–1229, (409) 766–3044.

Dated: September 23, 1986.

Gordon M. Clarke,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 86–22190 Filed 9–30–86; 8:45 am]

BILLING CODE 3710–GK–M

Department of the Navy

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Public information collection requirement submitted to OMB for review.

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) title of Information Collection and Form Number if applicable; (3) abstract statement of the need for and the uses to be made of the information collected; (4) type of respondent; (5) an estimate of the number of responses; (6) an estimate of the total number of hours needed to provide the information; (7) to whom comments regarding the information collection are to be forwarded; (8) the point of contact from whom a copy of the information proposal may be obtained.

Extension

Manufacturing Lead Time Production Solicitations

The collection of information is required to determine the domestic industrial base's ability to support Naval Sea System's Command shipbuilding, conversion and repair programs. The information collected is used by NAVSEA and substantially improves NAVSEA's decision making process regarding present and future shipbuilding, conversion and repair programs.

Businesses
Responses 1960
Burden hours 1,960

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DOD Clearance Officer, WHS/DIOR, 1215 Jefferson-Davis Highway, Suite 1204, Arlington, VA 22202–4302, telephone (202) 746–0933.

FOR FURTHER INFORMATION CONTACT: A copy of the information collection proposal may be obtained from Mr. Albert P. Mieskolainen, NAVSEA Shipbuilding Support Office, Philadelphia Naval Shipyard, Philadelphia, PA 19112–5087, telephone (215) 897–3161.

September 29, 1986.

Linda Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 86–22175 Filed 9–30–86; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

National Advisory Council on Women's Educational Programs; Meeting

AGENCY: National Advisory Council on Women's Educational Programs.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of the National Advisory Council on Women's Educational Programs and its Executive; Federal Policies, Practices and Programs; WEEA and Civil Rights Committees. The agenda will include committee reports, budget report, Council goals and objectives and discussion of 1986 annual report and WEEA program. This notice also describes the function of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATE: October 16, 1986: 10:00 a.m. to close of business (Committee Meetings)
October 17, 1986: 8:30 a.m. to close of business (Full Council Meeting)

ADDRESS: All meetings will be held in the State Room of the Governor's House, Holiday Inn, 17th St. at Rhode Island Ave., NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Patricia Weber, Deputy Director, National Advisory Council on Women's Educational Programs, 2000 "L" Street, NW., Suite 568, Washington, DC 20036, (202) 634–6105.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Women's Educational Programs is established pursuant to Pub. L. 95–561. The Council is mandated to (a) advise the Secretary on matters relating to equal education opportunities for women and policy matters relating to the administration of the Women's Educational Equity Act of 1978; (b) make recommendations to the Secretary with respect to the allocation of any funds pursuant to the Act, including criteria developed to insure an appropriate geographical distribution of approved programs and projects throughout the Nation; (c) make recommendations to the Secretary with respect to the establishment of program priorities; (d) make such reports as the Council determines appropriate to the President and Congress on the activities of the Council; and (e) disseminate information concerning the activities of the Council.

The Executive Committee will meet on Thursday, October 16, 1986 from 4:00 p.m. until close of business. The agenda will include discussion of the budget, annual report and Council agenda.

The meetings of the Federal Policies, Practices and Programs; Civil Rights; and WEEA Program Committees will take place on Thursday, October 16, 1986 from 10:00 a.m. to noon when they will recess for lunch and then re-convene at 1:30 p.m. until close of business. The agenda will include general discussion.

The full Council will meet October 17, 1986, beginning at 8:30 a.m. until close of business. The agenda will include committee reports, budget report, council goals and objectives and discussion of 1986 annual report and WEEA program. These discussions will touch upon matters that would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. Such matters are protected by exemptions (2) and (6) of section 552b(c) of Title 5 U.S.C.

Records will be kept of the proceedings and will be available for public inspection at the office of the National Advisory Council on Women's Educational Programs, 2000 L Street, NW., Suite 568, Washington, DC 20036.

Signed at Washington, DC on September 24, 1986.

Sally A. Todd,

Executive Director.

[FR Doc. 86–22188 Filed 9–30–86; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Determination To Establish Basic Energy Sciences Advisory Committee

Pursuant to the Federal Advisory Committee Act, Puc. L. No. 92–463, I hereby certify that the establishment of the Basic Energy Sciences Advisory Committee is necessary and in the public interest in connection with the performance of duties imposed on the Department of Energy by law. This determination follows consultation with the Committee Management Secretariate of the General Services Administration pursuant to 41 CFR Subpart 101–6.10.

The purpose of the committee is to provide advice on a continuing basis to the Secretary of Energy, through the Director of Energy Research, on the Basic Energy Sciences program, including:

a. Periodic reviews of elements of the program and recommendations based theron;

b. Advice of long-range plans, priorities, and strategies to address more effectively the basic energy sciences issues of departmental policies and programs;

c. Advice on recommended appropriate levels of funding to develop those strategies and to help maintain appropriate balance between competing elements of the BES program;

d. Advice on any issues relating to the BES program, as requested by the Secretary or the Director of Energy Research.

Further information concerning this committee may be obtained from Gloria Decker (202–252–8990).

Issued in Washington, DC, on September 25, 1986.

Charles R. Tierney,

Advisory Committee Management Officer.

[FR Doc. 85–22156 Filed 9–30–86; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER86–695–000, et al.]

Arizona Public Service Company, et al.; Electric Rate and Corporate Regulation Filings, September 25, 1986.

Take notice that the following filings have been made with the Commission:

1. Arizona Public Service Co.

[Docket No. ER86–695–000]

Take notice that on September 2, 1986, Arizona Public Service Company (APS)

tendered for filing an Economy Energy Interchange Agreement between APS and the City of Colton, California (Colton), executed August 13, 1986.

APS requests that this Agreement become effective 60 days from the date of filing with FERC.

Copies of this filing were served upon Colton and the Arizona Corporation Commission.

Comment date: October 8, 1986, in accordance with Standard Paragraph E at the end of this notice.

2. Idaho Power Company

[Docket No. ER86-712-000]

Take notice that on September 18, 1986, the Idaho Power Company tendered for filing in compliance with the Federal Energy Regulatory Commission's Order of October 7, 1978, a summary of sales made under the Company's 1st Revised FERC Electric Tariff, Volume No. 1 (Supersedes Original Volume No. 1) during July 1986, along with cost justification for the rate charged. This filing includes the following supplements:

Utah Power and Light Co.; Supplement No. 56.

Sierra Pacific Power Co.; Supplement No. 53.

Comment date: October 6, 1986, in accordance with Standard Paragraph E at the end of this notice.

New England Power Co.

[Docket No. ER86-711-000]

Take notice that on September 19, 1986, New England Power Company (NEP) tendered for filing as an initial rate schedule an agreement between NEP and Connecticut Light and Power Company (CL&P) and Western Massachusetts Electric Company (WMECO) that provides for the sale and/or exchange of surplus energy from time to time. NEP requests an effective date of November 15, 1983 for the agreement and requests waiver of this Commission's Regulations for prior notice to allow that effective date in accordance with the terms of the agreement.

NEP states that the agreement thus far has produced revenues aggregating $501,500.

NEP states that copies of the filing were served upon CL&P, WMECO and the Massachusetts Department of Public Utilities.

Comment date: October 6, 1986, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are of file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-22191 Filed 9-30-86; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 9511-001, et al.]

C and O Hydro Associates, et al.; Surrender of Preliminary Permits, September 26, 1986.

Take notice that the following preliminary permits have been surrendered effective as described in Standard Paragraph I at the end of this notice.

1. C and O Hydro Associates

[Project No. 9511-001]

Take notice that C & O Hydro Associates, Permittee for the Georgetown Project No 9511, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 9511 was issued on March 27, 1986, and would have expired on February 28, 1989. The project would have been located on the C & O Canal in Washington, DC.

The Permittees filed the request on September 18, 1986.

2. Messrs. Ernest R. Field and Robert A. Bernhard

[Project No. 8571-004]

Take notice that Messrs, Ernest R. Field and Robert A. Bernhard Permittees for the C.M. Harden Dam Project No. 8571 have requested that the preliminary permit be terminated. The preliminary permit for Project No. 8571 was issued on Feburary 24, 1986, and would have expired on January 31, 1989. The project would have been located on the Big Raccoon Creek, in Parke County, Indiana.

The Permittees filed the request on September 9, 1986.

3. Messrs. Ernest R. Field and Robert A. Bernhard

[Project No. 9077-003]

Take notice that Messrs, Ernest R. Field and Robert A. Bernhard Permittees for the Salamonie Dam Project No. 9077 have requested that the preliminary permit be terminated. The preliminary permit for Project No. 9077 was issued on October 2, 1985, and would have expired on September 30, 1988. The project would have been located on the Salamonie River, in Wabash County, Indiana.

The Permittees filed the request on September 9, 1986.

Standard Paragraph

I. The preliminary permit shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007 in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-22192 Filed 9-30-86; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 8569-004, et al.]

Messrs. Ernest R. Field and Robert A. Bernhard, et al.; Surrender of Preliminary Permits, September 25, 1986

Take notice that the following preliminary permits have been surrendered effective as described in Standard Paragraph I at the end of this notice.

1. Messrs. Ernest R. Field and Robert A. Bernhard

[Project No. 8569-004]

Take notice that Messrs. Ernest R. Field and Robert A. Bernhard, Permittees for the Huntington Dam Project No. 8569, have requested that the preliminary permit be terminated. The preliminary permit for Project No. 8569 was issued on February 18, 1986, and would have expired on January 31, 1989. The project would have been located on the Wabash River, in Huntington County, Indiana.

The Permittees filed the request on September 9, 1986.

2. Messrs. Ernest R. Field and Robert A. Bernhard

[Project No. 8570-003]

Take notice that Messrs. Ernest R. Field and Robert A. Bernhard Permittees for the Patoka Dam Project No. 8570 have requested that the preliminary permit be terminated. The preliminary permit for Project No. 8570 was issued on February 18, 1986, and would have expired on January 31, 1989. The project would have been located on the Patoka River, in Dubois County, Indiana.

The Permittees filed the request on September 9, 1986.

3. Messrs. Ernest R. Field and Robert A. Bernhard

[Project No. 9076-002]

Take notice that Messrs. Ernest R. Field and Robert A. Bernhard Permittees for the Monroe Dam Project No. 9076 have requested that the preliminary permit be terminated. The preliminary permit for Project No. 9076 was issued on September 20, 1985, and would have expired on August 31, 1988. The project would have been located on the Salt Creek, in Monroe County, Indiana.

The Permittee filed the request on September 9, 1986.

Standard Paragraph

I. The preliminary permit shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007 in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-22193 Filed 9-30-86; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 4114-001]

Long Lake Energy Corp., Availability of Environmental Assessment and Finding of No Significant Impact

September 26, 1986.

In accordance with the National Environmental Policy Act of 1969, the Office of Hydropower Licensing, Federal Energy Regulatory Commission (Commission), has reviewed the applications for major and minor licenses (or exemptions) listed below and has assessed the environmental impacts of the proposed developments.

LICENSES

Project No.	Project name	State	Water body	Nearest town or country	Applicant
4114-001	Lower Saranac.	NY	Saranac River.	Plattsburgh and Schuyler Falls	Long Lake Energy Corporation.

Environmental assessments (EA's) were prepared for the above proposed projects. Based on independent analyses of the above actions as set forth in the EA's, the Commission's staff concludes that these projects would not have significant effects on the quality of the human environment. Therefore, environmental impact statements for these projects will not be prepared. Copies of the EA's are available for review in the Commission's Division of Public Information, Room 1000, 825 North Capitol Street NE., Washington, DC 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-22194 Filed 9-30-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA86-31-000]

Carrah S. Steadman; Petition for Adjustment

Issued: September 25, 1986.

On August 26, 1986, Mrs. Carrah S. Steadman filed with the Federal Energy Regulatory Commission a petition for adjustment pursuant to section 502(c) of the Natural Gas Policy Act of 1978 (NGPA)[1] and Subpart K of the Commission's Rules of Practice and Procedure.[2] Mrs. Steadman seeks waiver of an obligation under Commission Order Nos. 399, 399-A, and 399-B [3] requiring payment of Btu adjustment refunds by first sellers of natural gas.

Mrs. Steadman has been billed by Mich La Oil and Gas Exploration Inc. as an interest owner for an amount of $1,153.76 as her share of a Btu refund obligation. From Commission records, the pipeline purchaser of the gas involved appears to have been Tennessee Gas Pipeline Company. Mrs. Steadman seeks relief on the ground that payment of the refund amount would cause her financial hardship.

[1] 15 U.S.C. 3412(c) (1982).

[2] 18 CFR Part 382, Subpart K (1986).

[3] 49 FR 37735 (September 26, 1984), FERC Stats. and Regs. [Regulations Preambles 1982-1985] ¶30,597; 49 FR 46353 (November 26, 1984), FERC Stats. and Regs. [Regulations Preambles 1982-1985] ¶30,612; and 50 FR 30141 (July 24, 1985), FERC Stats. and Regs. [Regulations Preambles 1982-1985] ¶30,651.

The procedures applicable to the conduct of this adjustment proceeding are found in Subpart K of the Commission's Rules of Practice and Procedure. Any person desiring to participate in this adjustiment proceeding must file a motion to intervene in accordance with the provisions of such Subpart K. All motions to intervene must be filed within 15 days after publication of this notice in the **Federal Register.**

Kenneth F. Plumb,

Secretary.

[FR Doc. 22195 Filed 9-30-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP86-721-000, et al.]

Colorado Interstate Gas Co., et al.; Natural Gas Certificate Filings

September 26, 1986.

Take notice that the following filings have been made with the Commission:

1. Colorado Interstate Gas Company

[Docket No. CP86-721-000]

Take notice that on September 12, 1986, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP86-721-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to partially abandon a transportation service for the direct sale of gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

CIG requests authorization for the partial abandonment of its transportation service for four non-jurisdictional direct sale customers by reducing the maximum volumes transported to reflect reduced sales entitlements as indicated below:

Customer	Former entitlement (Mcf)		Current entitlement (Mcf)	
	Daily	Annual	Daily	Annual
City of Trinidad, CO	1,100	401,000	10	2,000
CF&I Steel Corp	35,000	9,500,000	25,000	5,500,000
Ideal Basic Industries, Inc	1,200	120,000	600	60,000
Western Sugar Co	2,500	250,000	65	23,725

It is stated that the reduced entitlements have been agreed on by CIG and its four customers as a result of

reduced gas usage. It is further stated that revised sales agreements showing the reduced entitlements have been filed with the Commission pursuant to § 155.1 of the Commission's Regulations.

Comment date: October 17, 1986, in accordance with Standard Paragraph F at the end of this notice.

2. Columbia Gulf Transmission Co.; Natural Gas Pipeline Co. of America

[Docket No. CP74-204-014]

Take notice that on September 11, 1986, Columbia Gulf Transmission Company P.O. Box 683, Houston, Texas and Natural Gas Pipeline Company of America 701 East 22nd Street, P.O. Box 1208, Lombard, Illinois 60148 (Petitioners), filed in Docket No. CP74-204-014, a joint petition to amend the order of March 3, 1977,[1] as amended, issuing a certificate of public convenience and necessity pursuant to section 7(c) of the Natural Gas Act so as to authorize the exchange of natural gas, as authorized in this docket, on a thermally equivalent basis, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that Petitioners are presently authorized in the instant docket to exchange, on a gas-for-gas basis, up to 85,000 [2] Mcf of natural gas per day at certain points offshore Louisiana, pursuant to a gas exchange agreement dated October 12, 1973, as amended.

It is further stated that pursuant to an amendment dated October 1, 1984, to the gas exchange agreement, Petitioners agreed to exchange the gas as authorized in the instant docket on a thermally equivalent basis rather that on an Mcf-for-Mcf basis.

Comment date: October 17, 1986, in accordance with Standard Paragraph F at the end of this notice.

3. Midwestern Gas Transmission Co.

[Docket No. CP86-709-000]

Take notice that on September 4, 1985, Midwestern Gas Transmission Company (Midwestern), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP86-709-000 an application pursuant to section 7(b) of the Natural Gas Act for authorization to abandon a certain gas storage service and all related and appurtenant facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Midwestern states that it currently provides storage service to Northern Indiana Public Service Company (NIPSO) pursuant to a gas service contract dated August 28, 1967. To provide this service, it is stated, Midwestern uses its Nevins and Elbridge Storage Fields, located in Edgar County, Illinois.

Midwestern states that by letter dated May 8, 1986, NIPSCO gave notice to Midwestern that it elected to cease receiving this storage service and terminate the contract effective November 1, 1987.

By its application, Midwestern requests Commission approval to abandon the storage service presently provided to NIPSCO in the Nevins and Elbridge Fields and all related and appurtenant facilities.

Comment date: October 17, 1986, in accordance with Standard Paragraph F at the end of this notice.

4. Natural Gas Pipeline Co.

[Docket No. CP73-219-009]

Take notice on September 16, 1986, Natural Gas Pipeline Company of America (NGPL), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP73-219-009, a petition to amend the order issued May 6, 1974, in Docket No. CP73-219, as amended, pursuant to section 7(c) of the Natural Gas Act so as to authorize a reduction in the total reserved daily capacity transported for Trunkline Gas Company (Trunkline) from Stingray Pipeline Company, (Stingray) (Holly Beach delivery point) and the U-T Offshore System (UTOS delivery point), a reduction in the reserved daily capacity for Trunkline from the UTOS delivery point, and the delivery of certain volumes of gas to Trunkline on a best efforts basis, at its sole option, at Montgomery County, Texas (Montgomery redelivery point), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

It is stated that by order issued May 6, 1974, as amended, NGPL was authorized to transport up to 660,000 Mcf of natural gas per day (Mcfd) for Trunkline. It is also stated that NGPL received the gas from Trunkline at either the interconnection between Stingray and NGPL's Gulf Coast main line at Holly Beach, Cameron Parish, Louisiana, or at the interconnecting of UTOS and NGPL near Johnson Bayou, Cameron Parish, Louisiana. It is alleged that the amount of gas delivered by Trunkline to the Holly Beach delivery point was limited to 460,000 Mcfd with the remaining 200,000 Mcfd to be delivered at the UTOS delivery point. It is further stated that NGPL redelivered equivalent quantities of gas to Trunkline at either the Lakeside, Cameron Parish, Louisiana, or the Montgomery, Montgomery County, Texas, redelivery points.

By further amendment of the above-mentioned order, it is stated that on December 26, 1985, in Docket No. CP73-219-007,NGPL was authorized to reduce the amount of gas it delivers for Trunkline from 660,000 Mcfd to 560,000 Mcfd, to limit the quantity of gas received at the Holly Beach delivery point to 405,000 Mcfd and the quantity of gas received at the UTOS delivery point to 155,000 Mcfd, and to provide interruptible overrun service for Trunkline if requested.

NGPL requests further amendment of the May 6, 1974, order so as to again reduce the amount of gas NGPL delivers for Trunkline at the UTOS delivery point from 155,000 to 135,000 Mcfd effective November 1, 1986. NGPL states that the maximum quantity of 405,000 Mcfd delivered at the Holly Beach delivery point will remain unchanged and the maximum quantity delivered at the UTOS delivery point will not be in excess of 135,000 Mcfd. NGPL also requests authorization to deliver to Trunkline, at Trunkline's sole option, on a best efforts basis, the lesser of 100,000 Mcfd or the amount of gas received by NGPL at the UTOS delivery point, at the Montgomery redelivery point, at no added charge. NGPL also states that the proposed reduction in the amount of gas delivered for Trunkline will result in a corresponding reduction in the currently effective charge paid by NGPL by Trunkline.

Comment date: October 17, 1986, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

5. Northern Utilities, Inc.

[Docket No. CP86-712-000]

Take notice that on September 8, 1986, Northern Utilities, Inc. (Norther), P.O. Box 2800, Casper, Wyoming 82602, filed in Docket No. CP86-712-000 an application pursuant to section 7 of the Natural Gas Act and § 284.224 of the Commission's Regulations for a blanket certificate of public convenience and necessity authorizing the sale and transportation of natural gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

[1] This proceeding was commenced before by FPC. By joint regulation of October 1, 1977 (10 CFR 1000.0), it was transferred to the Commission.

[2] Petitioners are conditionally authorized to exchange an additional 30,000 Mcf per day when production from certain fields exceeds 75,000 Mdf per day.

Applicant agrees to comply with the conditions as set forth in § 284.224(e) of the Commission's Regulations.

Comment date: October 17, 1986, in accordance with Standard Paragraph F at the end of this notice.

6. Trailblazer Pipeline Co.

[Docket No. CP86-720-000]

Take notice that on September 12, 1986, Trailblazer Pipeline Company (Applicant), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP86-720-000 an application pursuant to section 7 of the Natural Gas Act and § 284.221 of the Commission's Regulations for: (1) A blanket certificate of public convenience and necessity that would authorize Applicant to transport natural gas on behalf of others pursuant to Order No. 436; (2) permission and approval to abandon such services; (3) request for waiver of certain provisions of § 284.7 of the Regulations; and (4) approval of tariff sheets, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant requests that the Commission waive certain provisions of § 284.7 of its Regulations, to the extent necessary to enable Applicant to continue its existing firm service rate design. Applicant explains that it is a project-financed pipeline which only transports gas for others.

Applicant alleges that its lenders require Applicant to continue to charge its firm shippers a demand charge adequate to recover operating expenses and debt service. Applicant alleges that it cannot comply with certain provisions of § 284.7 without being in default of its loan agreement.

Applicant proposes to provide interruptible transportation service under Rate Schedule ITS. The maximum rate to be charged for interruptible transportation under Rate Schedule ITS will be based on a 100 percent load factor rate, currently 66.60¢ per Mcf. Any collection of the demand portion of the ITS maximum rate will be credited to firm shipers in proportion to contract demand. Applicant is proposing a minimum rate of one cent per Mcf.

Applicant will offer self-implementing firm transportation service pursuant to the terms and conditions of its proposed FTS Rate Schedule. The proposed reservation charge is currently $10.42 per Mcf, and a maximum commodity rate of 32.34¢ per Mcf, and a minimum rate of 1.00¢ per Mcf.

Both Rate Schedules ITS' maximum rate and FTS' reservation charge contain an interest expense tracker.

Comment date: October 17, 1986, in accordance with Standard Paragraph F at the end of this notice.

7. United Gas Pipe Line Co.

[Docket No. CP86-714-000]

Take notice that on September 8, 1986, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77001 (Applicant), filed in Docket No. CP86-714-000, an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing transportation necessary to implement a direct interruptible sale of natural gas to Texas Electric Cooperatives, Inc.—Treating Diivsion (Texas Electric), all as more fully set forth in the application which is one file with the Commission and open to public inspection.

United states that it is authorized under Docket No. CP63-50 to render direct service to Texas Electric of up to 350 Mcf of natural gas per day on a firm service basis. United requests Commission authorization to convert the currently authorized firm service to interruptible service at the same volumetric level. United states that Texas Electrict has consented to the proposed change.

It is claimed that the amounts of gas would be used by Texas Electric as boiler fuel in the operation of its pole creosoting plant.

It is stated that the rate to be paid for the interruptible service would be pursuant to United's Rate Schedule IRS No. 86-51.

Comment date: October 17, 1986, in accordance with Standard Paragraph F at the end of this notice.

8. United Gas Pipeline Co.

[Docket No. CP86-722-000]

Take notice that on September 15, 1986, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77001 filed a Prior Notice Requesting authorization to construct and operate a sales tap located on United's Latex-Ft. Worth 18-inch diameter mainline located in Dallas County, Texas, pursuant to Blanket Certificate Prior Notice Procedure [18 CFR Part 157 Subpart F, § 157.205(b) and 157.211(b)].

United states that the sales tap will enable United to supply an estimated daily average of 1 Mcf of natural gas per day for resale to the residence of L.J. King. United asserts that it will initially deliver and install the sales tap to supply Entex Inc. (Entex), for resale to L. J. King. It is stated that Entex will reimburse United for all costs resulting from the tap installation. United avers that the service will be provided under United's Rate Schedule DG-N. United further states it will construct and operate the proposed sales tap in compliance with 18 CFR Part 157, Subpart F, Appendices I and II, and that it has sufficient capacity to render the proposed service without deteriment or disadvantage to its other existing customers.

Comment date: November 10, 1986, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraph

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's procedural rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the

Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-22231 Filed 9-30-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP86-163-000 and TA87-1-44-000, 001]

Commercial Pipeline Co., Inc., Proposed Changes in Ferc Gas Tariff

September 26, 1986.

Take notice that Commercial Pipeline Company, Inc., (Commercial) on September 22, 1986, tendered for filing Fiftieth Revised Sheet No. 3A to its FERC Gas Tariff, First Revised Volume No. 1, to be effective October 23, 1986. The proposed changes would increase revenues from jurisdictional sales and service by $36,072 based on the 12-month period ending June 30, 1986, as adjusted, exclusive of the cost of gas sold.

Commercial states that the principal reasons for its proposed rate change are: (1) An increased operation and maintenance costs upon its transmission system; (2) the need to increase revenues to provide for an adequate rate of return; and (3) the requirement that Commercial comply with § 154.38 (d)(4)(vi)(a) of the Commission's regulations. Commercial has also included purchased gas costs adjustments to be effective October 23, 1986.

Copies of this filing were served upon Commercial's jurisdictional customers as well as the Kansas Corporation Commission and the Missouri Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's rules of practice and procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before October 3, 1986. Protests will be considered by the Commission in determing the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-22233 Filed 9-30-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA87-1-43-000 and 001

Northwest Central Pipeline Corp.; Proposed Changes in FERC Gas Tariff

September 26, 1986.

Take notice that Northwest Central Pipeline Corporation (Northwest Central) on September 22, 1986, tendered for filing Eighth Revised Sheet Nos. 6, 7, and 8 to its FERC Gas Tariff, Original Volume No. 1. Northwest Central states that pursuant to the Purchased Gas Adjustment in Article 21 and the Incremental Pricing Provisions in Article 24 of its FERC Gas Tariff, it proposes to increase its rates effective October 23, 1986, to reflect:

(1) A 13.00¢ per Mcf increase in the Cumulative Adjustment due to an increase in Northwest Central's projected gas purchase costs.

(2) A 24.09¢ per Mcf increase in the Surcharge Adjustment (to a negative 3.08¢ per Mcf from a negative 27.98¢ per Mcf) to Amortize the Deferred Purchased Gas Cost subaccount balance.

(3) A .13¢ Mcf decrease in the Advance Payment Rate Adjustment (to a negative 1.59¢ per Mcf from a negative 1.46¢ per Mcf) in compliance with the Stipulation and Agreement in Docket No. RP82-114-000, *et al.*

Northwest Central states that it is also filing herewith Original Sheet Nos. 83a and 83b to its FERC Gas Tariff, Original Volume No. 1. These tariff sheets propose to the addition of § 21.7 of the General Terms and Conditions of its FERC Gas Tariff. Original Volume No. 1. If approved, these tariff provisions will permit Northwest Central to file at any time to adjust its Current Effective Rates prior to the filing of its next regular semi-annual Purchase Gas Adjustment (PGA). The purpose for such interim adjustments would be to recognize the cost effect of a change in Northwest Central's weighted average cost of gas from the level utilized in the immediately preceding PGA filing.

Such interim adjustments shall be limited to the cost impact of known and measurable changes in gas costs and may reflect either an increase or decrease in Northwest Central's Current Effective Rates. Northwest Central would be precluded from adjusting its Current Effective Rates, pursuant to the new § 21.7, above the level established in its immediately preceding PGA filing.

Northwest Central will file such interim adjustments with the FERC at least one day (twenty-four hours) prior to the proposed effective date. Northwest Central requests waiver of the notice requirements established by the Commission's regulations. However, Northwest Central will serve copies of each interim adjustment on its jurisdictional customers and interested state commissions. Further, Northwest Central's proposed tariff sheets require it to demonstrate that its actions are appropriate and that it is entitled to recover the under-recovered purchased gas costs which may result from Northwest Central's election to adjust its rates pursuant to this new § 21.7. Northwest Central's demonstration of appropriateness will be limited to amounts in excess of three percent (3%) of the jurisdictional portion of the Actual Cost of Purchased Gas during the Surcharge Adjustment Period that Northwest Central elected to adjust its Current Effective Rates pursuant to the proposed tariff sheets.

The proposed effective date of the above tariff sheets is October 23, 1986.

Northwest Central states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before October 3, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-22234 Filed 9-30-86; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 3239-002; Project Nos. 6373-000 and 6374-000]

Puget Sound Power and Light Co.; McMaster and Schroder; Order Modifying and Approving of Settlement Agreement

Issued September 17, 1986.

Before Commissioners: Anthony G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C. M. Naeve.

On May 27, 1982, McMaster & Schroder (MS) filed with the Commission, pursuant to a permit issued it on December 31, 1980,[1] applications for license for the Lower Rocky Creek Water Power Project No. 6373 and for the Upper Rocky Creek Water Power Project No. 6374. On June 1, 1982, the Puget Sound Power and Light Company (Puget) filed with the Commission, pursuant to a permet issued it in the same order issuing MS its permit, an application for a license for the Sandy Creek Project No. 3239. All three applications were subsequently accepted for processing by the Commission, and public notice was issued for each. Project Nos. 6373 and 6374 would be mutually exclusive with Project No. 3239. On June 25, 1986, MS and Puget jointly filed an offer of settlement to resolve the conflict created by their competing applications. We are in this order approving that settlement agreement with certain modifications.

Background

The project described in MS' permit application would have been located on Sulphur and Rocky Creeks in Whatcom County, Washington. The project described in Puget's permit application would have been located on Sandy, Rocky, Sulphur and Dillard Creeks in the same county. Since it appeared that both projects could coexist through the apportionment of flows from the upper portions of Rocky and Sulphur Creeks between the two projects or by allowing one project or the other to use all of the available flow from these portions of these two creeks, we issued separate permits to each to study the feasibility of developing and operating their respective projects. However, because we saw that there was a possibility that the permittees might submit license applications for projects the could not coexist, we provided in our order issuing the permits that, were this to occur, we would accord to MS, the first to file an application for a permit, permit priority over any application filed by Puget. In an effort to avoid any such conflict, however, we specifically directed the two permittees to "coordinate [their] studies to ensure the optimum development of the water resources of the region in the public interest."[2]

Despite our request for coordination, MS and Puget filed applications for projects that could not coexist.[3] However, soon thereafter the applicants requested our leave for time to reach an agreement between themselves whereby they could develop the region's water resources in a mutually satisfactory way. The settlement agreement before us is the result of their efforts.

Under the terms of the settlement agreement: (1) MS withdraws its applications for Project Nos. 6373 and 6374; (2) Puget amends its application for Project No. 3239 (renamed the Koma Kulshan Project) to add MS as a co-applicant; (3) the application for Project No. 3239 is amended to change the configuration of the proposed project in accordance with the data submitted with the settlement agreement;[4] and (4) the Commission would immediately issue a license to the joint applicants for Project No. 3239, as amended.

Copies of the settlement agreement (along with the amended license application for Project No. 3239) were served on all parties in these proceedings, and 20 days were provided for the filing of comments, all as required by the Commission's regulations governing offers of settlement.[5] Comments in opposition to the proposed settlement have been filed by the United States Fish and Wildlife Service (USFWS) and the Washington State Department of Fisheries (WDF). Comments have also been filed by the Office of the Secretary of the Interior. No hearing has been set in this proceeding.

USFWS and WDF object to the settlement agreement, contending that the use of the settlement agreement process in this situation would circumvent the agencies' ability to effectively comment on the new proposal. They each list several areas, including instream flows, erosion and sedimentation control and cumulative impacts, concerning which they believe there are unresolved issues which need to be addressed. MS and Puget filed a joint response to the agencies' comments, stating that they had consulted with the agencies in formulating their revised project and that the Commission should approve the settlement agreement and instruct the Commission's Office of Hydropower Licensing (OHL) to proceed to complete the processing of the Koma Kulshan Project, during which time all remaining environmental issues can be resolved.

Discussion

Under § 4.35 of our regulations,[6] when an applicant amends its filed development application in order to materially change its proposed plans of development, we treat it as a material amendment, assign it a new filing date, and reissue public notice of the application. This regulation is intended to preclude applicants from gaining an unfair competitive advantage by making material amendments to their applications after they were filed with the Commission or from wasting the Commission's limited resources by filing applications that are not fully developed.

It is clear that the changes proposed by MS and Puget to Project No. 3239 would constitute a material amendment under § 4.35. However, the changes proposed by the parties in this case are partly the result of our issuance of separate permits to each party to study projects that carried the potential to be in conflict. Therefore, we believe that equity requires us to waive § 4.35 to the extent applicable here, and we will so provide.

We have reviewed the provisions of the settlement agreement and believe they are fair, reasonable, in the public interest, and would adequately resolve the conflict created by by the issuance of the potentially conflicting preliminary permits. We do agree with USFWS and WDF, however, that approval of that portion of the settlement agreement requiring immediate issuance of a license would unduly restrict the agencies' ability to effectively comment on the new proposal.[7] In addition, this provision of the settlement agreement presupposes that we have completed all work on the new proposal and have

[1] 13 FERC ¶ 61,288 (1980). MS was issued a permit for Project No. 3018. Its license applications were assigned new project numbers because MS filed two separate license applications.

[2] 13 FERC at 61,625.

[3] As originally proposed, Project No. 3239 would have diverted waters from Rocky, Sulphur, and Dillard Creeks and released them into Dillard Creek. This would have conflicted with Project Nos. 6373 and 6374, both of which would have been situated downstream of Project No. 3239 and which would have diverted waters from Rocky and Sulphur Creeks and released them into Rocky Creek, because it would have reduced the waters from Rocky and Sulphur Creeks available for use by both projects.

[4] The Koma Kulshan Project (Project No. 3239, as amended) would divert waters from Rocky and Sulphur Creeks and release it into Dillard Creek.

[5] *See* 18 CFR 385.602 (1986).

[6] 18 CFR ¶ 4.35 (1986).

[7] If §.4.35 of our regulations was applied to the new proposal, public notice of the application would be reissued, and the agencies would have approximately 60 days to comment on it.

concluded that issuance of a license for it fulfills statutory requirements and would be in the public interest. This has not occurred. Finally, immediate issuance of the license would prohibit any public comment on the proposal. Accordingly, we will not approve that portion of the settlement agreement requiring the immediate issuance of a license.[8] Instead, we will instruct the Commission's Secretary to issue public notice of the new proposal providing interested entities with 30 days in which to submit comments on the proposal,[9] [10] and instruct OHL to expeditiously process the application. We believe this procedure will provide USFWS, WDF, other agencies, and the public with adequate time to comment on the proposal without unduly delaying action on Koma Kulshan Project, and is equitable in light of the unique circumstances of this case.

In light of the above, we are approving the settlement agreement with the modification described herein.

The Commission order: (A) The Settlement Agreement filed jointly by McMaster and Schroder and the Puget Sound Power & Light Company on June 25, 1986, in the above-captioned proceeding is approved, except for that portion of the Settlement Agreement requiring immediate issuance of a license for Project No. 3239, as amended, and the terms and conditions of it are incorporated by reference in this order, with the same force and effect as if set forth fully in this Ordering Paragraph (A).

(B) To the extent they are applicable, the provisions of § 4.35 of the Commission's regulations, 18 CFR 4.35 (1986), are waived with regard to the filing made on June 25, 1986, in these proceedings.

(C) The license applications for Project No. 6373 and 6374 filed by McMaster and Schroder are deemed withdrawn effective on the date of this order.

(D) The Commission's approval of the Settlement Agreement shall not constitute approval of, or precedent regarding, any principle or issue in this proceeding.

(E) The Commission Secretary shall promptly issue a public notice as described herein.

(F) The Commission's Office of Hydropower Licensing shall expeditiously process the amended application for Project No. 3239.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-22235 Filed 9-30-86; 8:45 am]

BILLING CODE 6717-01-M

[8] MS' and Puget's response to the comments stated that they would be willing to have the settlement agreement modified so tht OHL would be instructed to proceed with processing of the application.

[9] Although WDF and USFWS only had 20 days to comment on the settlement proposal, they and the public had and opportunity to fully comment on the three original license applications, and the agencies wer consulted on the amendments to Project No 3239. Also, approximately 60 days have passed since the expirationof the 20-day settlement agreement comment period.

[10] Since we are waiving the provision of § 4.35 to the extent applicable here, the original acceptance date of Project No. 3239 remains unchanged. Therefore, the public notice issued by the Secretary willbe for the purpose of comment only; no competing applications may be filed.

[Docket Nos. CP86-731-000, et al.]

Southern Natural Gas Co., et al., Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Southern Natural Gas Company

[Docket No. CP86-731-000]

September 25, 1986.

Take notice that on September 18, 1986, Southern Natural Gas Company (Applicant), P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP86-731-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authority to construct and operate eight sales taps under the certificate issued in Docket No. CP82-406-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Applicant proposes to construct and operate eight sales taps for delivery of natural gas to Mississippi Valley Gas Company (MVG), an existing customer, on Applicant's 6-inch North Meridian line in Winston County, Mississippi. Applicant states that the taps would be designated as Tap Nos. 7362, 7368, 7369, 7370, 7374, 7376, 7377, and 7382, and would be located at or near Mile Posts 6.3, 6.4, 8.3, 8.4, 9.4, 9.7, 10.4, and 11.4, respectively, on the North Meridian line. Applicant estimates the cost of each proposed tap to be $707, for which MVG has agreed to reimburse applicant. It is stated that the taps would enable MVG to sell gas to certain residential customers who currently are not being supplied with natural gas.

Applicant explains that MVG would be entitled to take a maximum quantity of 80 Mcf of gas per year at each tap. Applicant avers that the gas would be sold at the Commodity Charge specified in Applicant's OCD-1 Rate Schedule, which is currently $2.93724 per Mcf.

Comment date: November 10, 1986, in accordance with Standard Paragraph G at the end of this notice.

2. Texas Gas Transmission Corp.

[Docket No. CP86-706-000]

Septembe 22, 1986.

Take notice that on September 8, 1986, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP86-716-000, an application pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) to increase the capacity of an existing delivery point to Arkansas Louisiana Gas Company (ARKLA) and the Associated Natural Gas Company (Associated) by removing the existing 4-inch meter run and installing an 8-inch meter run under the authorization issued to it in Docket No. CP82-407-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that the expanded delivery point, to be located on Texas Gas' 26-inch Main Line System near the Mississippi-Tennessee state line in Desoto County, Mississippi, will have a capacity of approximately 2.430 billion Btu equivalent of gas per hour in order for Texas Gas to alleviate measurement difficulties encountered at the delivery point, the West Memphis Station, on certain peak days.

Texas Gas also states that no consent from any customer would be needed in order to abandon the existing facilities, since no service would be abandoned, but would be continued to those customers through the new 8-inch meter station.

It is asserted that the expanded delivery point would not result in an increase in ARKLA's or Associated's Contract Demand or Quantity Entitlement. Furthermore, service to ARKLA and Associated through the expanded delivery point would be accomplished without detriment to Texas Gas' other customers. It is claimed that the increase in amounts of natural gas, if any, delivered by Texas Gas through the expanded delivery point proposed herein would be so minimal that it would have virtually no effect on Texas Gas' peak day and annual deliveries.

Comment date: November 6, 1986, in accordance with Standard Paragraph G at the end of this notice.

3. United Gas Pipe Line Co.

[Docket No. CP86-724-000]

September 23, 1986.

Take notice that on September 16, 1986, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP86-724-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for permission to abandon certain sales services under the blanket authorization issued in Docket No. CP82-430-000, pursuant to section 7 of the National Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United requests authority to abandon certain industrial sales services as follows:

Customer name	Contract expiration date
Allied Paper Incorporated	1/1/83
Aluminum Company of America	1/1/87
Armstrong World Industries, Inc	1/1/87
Billeaud Sugar Refinery	2/1/77
Boise Southern Company	1/1/87
Candies, Dugas, Dugas and Stidham	1/1/87
Brookhollow Wood Preserving Company (formerly Escambia Treating Company)	1/1/87
The Estate of Carleton D. Speed, Jr.	1/1/87
Columbia Sugar Company	2/1/87
Columbian Chemicals Company	1/1/87
Cooper Industries, Inc./Crouse—Hinds Company	1/1/87
Courtaulds North America Inc	12/1/82
Damson Oil Corporaiion	1/1/87
East Texas Salt Water Disposal Company	1/1/87
	1/1/87
	2/1/75
Equitable Petroleum Corporation	1/1/87
Estherwood Irrigation Company	1/1/87
Exxon Pipeline Company	1/1/87
Fernwood Industries	1/1/87
Georgia-Pacific Corporation	1/1/87
	1/1/85
Gonzales Products Company, Inc	1/1/87
Grant Chemical Division	1/1/87
Gulf Power Company	1/1/87
Town of Homer, Louisiana	1/1/87
Iberia Sugar Cooperative, Inc	1/1/87
International Salt Company	1/1/87
Kentwood Brick and Tile Manufacturing Company, Inc	1/1/87
Kleinpeter Farms Dairy, Inc	1/1/87
Kleinpeter Farms Dehydration Company	1/1/87
Lufkin Industries, Inc	1/1/87
McMurrey Pipe Line Company	2/1/75
Mobile Paperboard Corporation	1/1/87
Morton Thiokol, Inc	1/1/87
C-E Natco Formerly National Tank Company	1/1/87
Osborn Heirs Company	1/1/87
St. James Sugar Cooperative, Inc	1/1/87
St. Mary Parish Consolidated Gravity	1/1/87
Scott Paper Company	1/1/87
Scurlock Oil Company	1/1/87
South Mississippi Electric Power Association	1/1/87
Standard Products Company, Inc	1/1/87
Stone Container Corporation	9/6/86
B. F. Trappey's Sons, Inc	1/1/87
Triad Oil and Gas Company	1/1/87
R. W. Tyson Producing Company, Inc	1/1/87
Vicksburg Chemical Division/Cedar Chemical Corp. (formerly VERTAC)	1/1/87
Warren Petroleum Company A Division of Gulf Oil Corporation	1/1/87
Zapata Haynie Corporation	1/1/87

United States that the sales contracts have expired or will expire in the near future and that the proposed abandonments have been agreed to by the affected industrial customers. United further states that its facilities will remain in place in anticipation of future service.

Comment date: November 7, 1986, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraph

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's procedural rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-22232 Filed 9-30-86; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

Correction

In the issue of Friday, September 26, 1986, a correction to FR Doc. 86-21138 appeared in the first column on page 34246. In the third line of the correction, "September 13, 1986" should read "September 18, 1986".

BILLING CODE 1505-01-M

Western Area Power Administration

Extension of Time for Submitting Applications for Power From the Navajo Generating Station

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of an extension of time for submitting applications for power from the Navajo Generating Station.

SUMMARY: The Bouler City Area Office of the Western Area Power Administration (Western) published a "Request for Application for Power from the Navajo Generating Station" in the **Federal Register** (51 FR 30116) on August 22, 1986. Interested parties were invited to submit additional applications for power from the Navajo generating station by September 22, 1986. Subsequently several interested parties have requested that, due to administrative difficulties in preparing the applications, additional time be allowed for submittal. Consequently, it has been determined by Western that additional time should be allowed.

DATE: Applications for Navajo power, as presented in the **Federal Register** (51 FR 30116) on August 22, 1986, will be accepted until October 24, 1986. Applications postmarked after that date will not be accepted.

ADDRESS: Applications should be submitted to: Mr. Thomas A. Hine, Area Manager, Boulder City Area Office, Western Area Power Administration, P.O. Box 200, Boulder City NV 89005.

Issued in Golden, Colorado, September 19, 1986.

William H. Clagett,

Administrator.

[FR Doc. 86-22157 Filed 9-30-86; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[PF-466 (FRL-3087-1)]

Pesticide Tolerance Petitions, Rhone-Ponlenc, Inc., et al.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces filing of petitions proposing tolerances and/or regulations for residues of certain chemicals in or on a certain agricultural commodities.

ADDRESSES: By mail, submit comments identified by the document control number [PF-466] and the petition number, attention Product Manager (PM) named in each petition, at the following address:

Information Services Section (TS-757C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to:

Information Services Section (TS-747C), Rm. 211, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be

disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. Written comments filed in response to this notice will be available for public inspection in the Information Services Section office at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (TS-767C), Attn: (PM named in each petition), Environmental Protection Agency, Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460.

In person, contact the PM named in each petition at the following office location/telephone number:

Product manager	Office location/telephone numnber	Address
Henry M. Jacoby, PM-21	Rm. 227, CM #2, 703-557-1900	EPA, 1921 Jefferson Davis Hwy, Arlington, VA 22202
William H. Miller, PM-16	Rm. 211, CM #32, 703-557-2600	EPA, 1921 Jefferson Davis Hwy, Arlington, VA 22202.

SUPPLEMENTARY INFORMATION: EPA received pesticide (PP) and feed additive (FAP) petitions as follows, proposing the establishment of tolerances or regulations for residues of certain pesticide chemicals in or on certain raw agricultural and/or animal feed commodities.

1. *PP 6F3443.* Rhone-Poulenc, Inc., P.O. Box 125, Blackhorse Lane, Monmouth, NJ 08852. Proposes amending 40 CFR 180.399 by establishing a tolerance for the combined residues of the fungicide iprodione [3=(3,5=dichlorophen yl)=*N*=(methylethyl)=2,4-dioxo-1-imidazolidinecarboximide], its isomer [3=(1-methylethyl)=*N*=(3,5-dichlorophenyl)=2,4-dioxo=1=imidazolidinecarboximide], and its metabolite [3=(3,5-dichlorophenyl)=2,4=dioxo=1=imidazolidinecarboximide] expressed as iprodione equivalents in or on rice at 10.0 parts per million (ppm) and rice straw at 20.0 ppm. The proposed analytical method for determining residues is gas chromatography with an Ni^{63} electron capture detector. (PM-21).

2. *FAP 6H5507.* Rhone-Poulence, Inc. Proposes amending 21 CFR 561.263 by establishing a regulation to permit the combined residues of the fungicide iprodione in or on the animal feed commodity rice hulls at 50.0 ppm. (PM-21).

3. *PP 6F3446.* Ciba-Geigy Corp., P.O. Box 18300, Greensboro, NC 27419. Proposes amending 40 CFR 180.404 by establishing a tolerance for the combined residues of the insecticide profenofos [*O*=(4=bromo=2=chlorophenyl)=O=ethyl=*S*=propyl phosphorothioate] and its metabolites converted to 4=bromo=2=chlorophen yl >and calculated as profenofos in or on the agricultural commodity soybeans at 1.0 ppm. The proposed analytical method for determining residues is a gas chromatographic procedure equipped with a Dohrman microcoulometric detector in the chloride-specific mode. (PM-16).

4. *FAP 6H5508.* Ciba-Geigy Corp. Proposes amending 21 CFR 561.53 by establishing a regulation to permit the combined residues of profenofos in or on the animal feed commodities soybean hulls and soybean meal at 2.0 ppm. (PM-16).

Authority: 21 U.S.C. 346a and 348.

Dated: September 19, 1986.

James W. Akerman,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 86-21822 Filed 9-30-86; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3088-9]

Chesapeake Bay Executive Council; Open Meeting

The Chesapeake Bay Executive Council established in accordance with the Chesapeake Bay Agreement of December 1983, will be held from 10:00 a.m. to 4:00 p.m. on October 16, 1986, at the EPA, Chesapeake Bay Liaison Office, 410 Severn Avenue, Annapolis, Maryland. This notice is published pursuant to section 10 (a) (2) of Pub. L. 92-463, "The Federal Advisory Committee Act."

The agenda of the quarterly council meeting will include, but is not limited to:

10:00 Call to Order

1. Minutes from the July 17th meeting—Seif
2. Changes to the Agenda—Seif
3. Executive Council Governance Issues—Seif
4. Report from the Citizens Advisory Committee—Coder
5. Report requested by the Executive Council—Morris
   - Chlorine Discharges and Control Programs in the Chesapeake Bay Basin
   - Great Lakes Agreement—can CBP adapt some of its approaches?—Wise
   - Communications Strategy—Seif
   - Mathematical Model—evaluation of the project model costs—Morris

Noon—Lunch break

1:00—Reconvene Meeting

6. Distribution of Implementation Funds—Seif
7. New Business—Seif
8. Information Items—Seif

Living Resources Workshop and Phase II update

Adjourn

Comments from the public will be welcomed at the end of the meeting as time permits. Questions about the meeting may be directed to Ms. Patricia Bonner, U.S. EPA, Chesapeake Bay Liaison Office, Annapolis The telephone number is: Area 301/266-6873.

Charles S. Spooner,

Director, Chesapeake Bay Liaison Office.

[FR Doc. 86-22127 Filed 9-30-86; 8:45 am]

BILLING CODE 6560-50-M

[OPP-30000/47A; (FRL-3088-4)]

Intent To Cancel Registrations of Denial of Applications for Registration of Pesticide Products Containing Diazinon; Conclusion of Special Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Final Determination and Intent to Cancel.

SUMMARY: On January 6, 1986, EPA initiated a Special Review of all pesticide products that contain the active ingredient diazinon and that are registered for use on golf courses and sod farms. On the same date EPA also issued the Preliminary Determination proposing to cancel registrations and deny applications for use of diazinon products on these two sites. The initiation of the Special Review and the proposed cancellation action were based on the Agency's determination that the use of diazinon on golf courses and sod farms would result in unreasonable adverse effects on non-target birds. A **Federal Register** Notice was published concerning these actions on January 15, 1986 (51 FR 1842).

This Notice concludes the Special Review and announces EPA's final decision to cancel registrations and

deny applications of all pesticide products containing diazinon that are registered for use on golf courses and sod farms.

DATES: A request for a hearing by a registrant or applicant must be received by October 31, 1986, or 30 days from receipt by mail of this Notice, whichever is the later applicable deadline. A request for a hearing from any other adversely affected person must be received by October 31, 1986.

ADDRESS: Requests for a hearing must be submitted to: Hearing Clerk (A–110), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

By mail: Ingrid M. Sunzenauer, Special Review Branch, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 1010, Crystal Mall Building #2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–7400).

SUPPLEMENTARY INFORMATION: This Notice is organized into six units. Unit I is the Introduction. It provides the background information concerning this cancellation action. Units II and III summarize the avian hazard and the benefits associated with the use of diazinon on golf courses and sod farms. Unit IV contains the comments of the Scientific Advisory Panel, the Secretary of Agriculture, and other public comments and EPA's response to those comments. Unit V describes the Agency's final determination, and the regulatory actions required by this Notice. Unit VI describes the procedures which will be followed in implementing the regulatory actions EPA is announcing in this Notice.

I. Introduction

A. Notice of Special Review and Preliminary Notice of Intent To Cancel

On January 15, 1986, a **Federal Register** Notice (51 FR 1842) was published concerning the Special Review of all pesticide products that contain the active ingredient diazinon and that are registered for use on golf courses and sod farms. The Notice announced (1) the initiation of the Special Review on these two sites, (2) the Preliminary Determination proposing to cancel registrations and deny applications for diazinon products used on these two sites, and (3) the availability of the Support Document. The Support Document (Ref. 17) contained the background information which supported the Agency's actions. This information included an assessment of the hazard to birds, the benefits of use on golf courses and sod farms, and a discussion of several regulatory options to reduce the hazard to birds. The Agency concluded that diazinon must be cancelled on these two sites to prevent unreasonable adverse effects on birds.

The Agency was also concerned about the avian and human hazards of diazinon and its major alternatives. A comparative avian hazard assessment indicated that the major alternatives are not likely to be of greater hazard to birds than diazinon.

The Agency also reviewed information concerning the potential human toxicity of diazinon and its alternatives. Based on the available data, the alternatives did not appear to pose a greater human health hazard than diazinon.

B. Legal Background

In order to obtain a registration for a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, an applicant for registration must demonstrate that the pesticide satisfies the statutory standard for registration, section 3(c)(5) of FIFRA. That standard requires, among other things, that the pesticide perform its intended function without causing "unreasonable adverse effects on the environment." The term "unreasonable adverse effects on the environment" is defined under FIFRA section 2(bb) as "any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide." This standard requires a finding that the benefits of the use of the pesticide exceed the risks of use, when the pesticide is used in compliance with the terms and conditions of registration or in accordance with widespread and commonly recognized practice.

The burden of proving that a pesticide satisfies the standard for registration rests on the proponents of registration and continues as long as the registration remains in effect. Under section 6 of FIFRA, the Administrator may cancel the registration of a pesticide or require modification of the terms and conditions of registration whenever it is determined that the pesticide appears to cause unreasonable adverse effects on the environment.

In determining whether the use of a pesticide poses risks which are greater than the benefits of use, EPA considers both possible changes to the terms and conditions of registration which can reduce risks, as well as the impacts of such modifications on the benefits of use. If EPA determines that such changes reduce risks to the level where the benefits outweigh the risks, it may require such changes be made in the terms and conditions of registration.

Alternatively, EPA may determine that no change in the terms and conditions of a registration will adequately ensure that use of the pesticide will not pose unreasonable adverse effects. In that event, the Administrator may issue a Notice of Intent to Cancel the registration or may hold a hearing to determine whether it should be cancelled under FIFRA section 6(b). In determining whether to issue such a Notice, the Administrator must take into account the impact of the action on production and prices of agricultural commodities, retail food prices, and otherwise on the agricultural economy. At least 60 days before formally issuing such a Notice, he must inform the Secretary of Agriculture in writing of the substance of the proposed actions and supply the Secretary with an analysis of the expected impact on the agricultural economy. At the same time, under FIFRA section 25(d), the Administrator is required to submit the proposal to the Scientific Advisory Panel for comment as to the impact on health and the environment of the action proposed in the cancellation notice. EPA is also required by law, where appropriate, to consult with the U.S. Department of the Interior's Office of Endangered Species to see if the proposed action may affect an endangered species.

EPA also informs the public of its proposals to issue cancellation notices so that registrants and other interested persons can also comment or provide relevant information before any final Notice of Intent to Cancel is issued. Registrants and other interested persons are invited to review the data upon which the proposal is based and to submit data and information to address whether EPA's initial determination of risk was in error. In addition to evidence relating to risk, comments may include evidence as to whether any economic, social, and environmental benefits of use of the pesticide outweigh the risks of use.

If, after reviewing the comments received, EPA decides to issue a Notice of Intent to Cancel, any adversely affected person may request a hearing to challenge the action. In the hearing, any party opposing cancellation would have an opportunity to present evidence to show that the registrations of the pesticide should be permitted to continue. Other interested parties could intervene to present evidence in favor of

cancellation. At the end of the hearing EPA would decide on the basis of the evidence presented whether or not to cancel or restrict the registration of pesticide products. If no hearing is requested, each registration would be cancelled by operation of law 30 days after receipt by the registrant or publication in the **Federal Register** of the Final Notice, whichever occurs later.

II. Summary of the Avian Hazard

In this unit the Agency provides a summary of the avian hazard associated with the use of diazinon on golf courses and sod farms. This includes information discussed in the Support Document, as well as information reviewed after the Notice of Special Review and Preliminary Notice of Intent to Cancel was issued.

A. Summary of the Avian Hazard Assessment in the Support Document

In the Support Document the Agency evaluated acute toxicity studies which indicated that diazinon is very highly toxic to birds. The laboratory measurements of toxicity which the Agency used to evaluate the acute hazard were the median lethal concentration ($_{50}$) and the median lethal dose ($_{50}$) which kill 50 percent of the test organisms.

To evaluate the acute hazard, the Agency estimated residue levels on grass and seed to determine if the levels would exceed the $_{50}$ for grazing and seed-eating birds. The Agency also estimated the dose of diazinon that waterfowl or seed-eating birds would consume from residues on grass and seed to determine if the values would exceed the $_{50}$. Both residue level and dose estimates exceeded the toxicity measures for certain species.

The Agency also evaluated the bird kills which had been reported to the Agency. Approximately 60 bird kills were reported in which diazinon was either confirmed or implicated as the primary cause. These kills involved 23 species of birds, including migratory and non-migratory waterfowl, songbirds, shore birds, wading birds, and others. Twenty of these kills occurred on golf courses and 20 kills on other grassy sites such as lawns, recreational areas, and parks. These incidents occurred during all months of the year and were documented throughout the country.

The Agency's concern for acute hazard to avian wildlife included a concern for impact on populations of species at risk. The Agency reviewed information which indicated that diazinon caused a reduction of a local population of Atlantic Brant Geese. On May 7, 1984, Diazinon AG500 was applied according to label directions to a golf course in New York. Approximately 700 Atlantic Brant Geese died. Carcass analysis revealed acute diazinon poisoning. The New York population of Atlantic Brant was estimated to be 2,500 in 1984. The Agency determined that this reduction was an impact of concern.

The Agency was also concerned about the effect of diazinon on endangered species. In October 1985, the Agency requested a formal consultation with the Office of Endangered Species, U.S. Department of the Interior. Results of this consultation had not been received when the Agency issued its preliminary determination. Details concerning the consultation are discussed in the Unit II.B below.

B. New Information Concerning the Avian Hazard

1. Endangered Species

In accordance with section 7 of the Endangered Species Act of 1973, the Agency requested a formal biological consultation of the Office of Endangered Species (OES), U.S. Department of the Interior in October 1985. The consultation concerned the registration of products that contain diazinon and that are registered for use on golf courses and sod farms.

OES responded on January 17, 1986 (Ref. 12), that certain endangered species could be seriously affected by the use of diazinon on these two sites. Two categories of impacts were presented. Category one was that diazinon "is likely to jeopardize," and category two was that diazinon "may affect, but will not jeopardize." The following two species are likely to be jeopardized by use of diazinon on certain golf courses and sod farms: (1) Hawaiian Goose *(Branta sandvicensis)* and (2) Mohave Tui Chub *(Gila bicolor mohavenis)*. The following species may be affected, but will not be jeopardized: (1) Brown Pelican *(Pelecanus occidentalis)*, (2) Alabama Beach Mouse *(Peromyscus polionotus ammobates)*, (3) San Francisco Garter Snake *(Thamnophis sirtalis tetrataenia)*, (4) Oregon Silverspot Butterfly *(Speyeria zerene hippolyta)*, and (5) June Sucker *(Chasmistes liorus)*.

It is the responsibility of the Agency to ensure that the use of diazinon is not likely to jeopardize the continued existence of any endangered species and to take steps to preserve and promote the recovery of endangered species. The cancellation of diazinon on golf courses and sod farms will ensure that diazinon does not jeopardize the listed species on the golf courses and sod farms identified by OES.

2. Residue Data

In the Support Document the Agency estimated diazinon residue levels on grass and seed. Reliable data on actual residues were not available at that time. During the public comment period, however, Ciba-Geigy Corporation submitted data (Ref. 2) concerning diazinon grass residues and effects of diazinon on Canada Geese penned on treated turf.

Diazinon was mixed with 35 gallons of water per acre and applied to grass at 2, 4, and 6 pounds active ingredient per acre (lb ai/A). Application was followed by irrigation with 0.25 inch of water. Thirty-five gallons are less water than recommended on the labels and would thus represent a worst case scenario. Canada Geese were then held in pens on the treated grass.

The Agency reviewed this study, found a portion of the residue data acceptable and conducted a statistical analysis of these data (Ref. 14). These data were not generated according to EPA's guidelines. For example, applications were not made according to label directions. However, some conclusions can validly be drawn.

In the study most of the samples of grass residues appeared to have been collected from the plots after the Canada Geese were released into them. The statistical analysis considers only those samples taken before the Geese were released into the plots. Interpretation of residues after the Geese had been grazing on the plots would not be reliable because the effect from the presence of the Geese is not known.

Using analysis of variance and t-tests, the Agency calculated the residues expected to result from application of 1 lb ai/A, followed immediately by irrigation with 0.25 inch of water. The 95 percent upper confidence limit, which represents the statistically significant highest expected residue in 95 percent of applications, is 53 parts per million (ppm).

If 1 lb ai/A results in 53 ppm, then 4 lb ai/A would be expected to result in 4 times 53 ppm or 212 ppm. Considering the residue of 212 ppm in combination with factors concerning avian ecology, behavior and physiology, the Agency concluded that birds foraging on treated turf would be exposed to lethal residues within a very short time. The Agency concluded that rate reduction to 4 lb ai/A would not adequately reduce diazinon residues.

Ciba-Geigy, however, did not conduct a statistical analysis and provided only a mathematical summary of the data. The company concluded that with an application of 4 lb ai/A followed by 0.25 inch of water, residues were reduced and posed less of a hazard to birds. The Agency agrees that the residues are lower at 4 lb ai/A than at the present application rates for the major turf pests, but considers the residues still to be high enough to cause the death of foraging waterfowl.

The Ciba-Geigy data further indicate that irrigation, following application of diazinon, does not adequately reduce diazinon residues. Even if irrigation or rain could reduce residues on grass and seed, the Agency is still concerned about the formation of pools of contaminated water. If the water is not immediately absorbed by the soil, puddles with high concentrations of diazinon may form. As a result the birds may still be exposed to high diazinon residues.

3. Additional Bird Kill Reports

After the **Federal Register** Notice was published, the Agency received reports (Ref. 16) of 26 bird kills not mentioned in the Support Document. These reports included seven in California, eight in Washington, two in Connecticut, and nine in Canada.

The bird kills reported from California were all associated with use of diazinon in a State-administered program of Japanese beetle eradication. Experienced pesticide applicators applied diazinon, which was watered in immediately after application. Diazinon was applied to grassy areas such as lawns and pastures in suburban areas of Sacramento, California. State personnel warned residents to keep domestic fowl and pets away from treated areas. In some cases State employees assisted residents in building cages to keep domestic birds from wandering on to the treated grass and being exposed to diazinon for at least 24 hours following application. Despite these precautions domestic ducks and geese moved onto treated grass and were killed in two cases. In four additional cases wild birds, including magpies and robins, were killed. The California Bureau of Animal Health confirmed that diazinon caused all of these kills.

In another reported incident chickens were killed. The Bureau of Animal Health reported that the probable cause of the deaths was diazinon.

The State of Washington reported four separate incidents in which diazinon was either confirmed or strongly implicated as the cause or contributing factor of bird mortalities. The Washington State Department of Agriculture investigated one incident, and the U.S. Fish and Wildlife Service investigated the other three incidents.

The State of Washington also reported four other incidents of bird kills. These kills were attributed to diazinon, but not formally investigated. These cases were reported to the Agency because the State of Washington judged the reports to have been submitted by one or nore credible sources.

All of the incidents reported by Washington involved grassy sites, including a golf course. In some cases label directions were followed, and in some cases the applications were made by certified pesticide applicators. Ducks, geese, and songbirds were involved.

The two bird kills in the State of Connecticut included residue analysis confirming diazinon as the cause of mortality. Brown-headed Cowbirds were killed on a baseball field and on a home yard. A commercial pest control company made the diazinon application to the home lawn.

Canada reported nine bird kills. These kills occurred in the province of British Columbia, which has waterfowl known to winter in grassy areas. One bird kill occurred on a home lawn and another in a park. Three other incidents were reported in which Canada Geese were killed from grazing on orchard grass in areas where diazinon had been applied to fruit trees. In four additional cases geese and ducks were diagnosed as killed by diazinon, but the site for each incident is still being investigated. British Columbia is the only Canadian province which has a toll-free number to report bird kills.

C. Conclusions Concerning the Avian Hazard

Based on the hazard assessment described in the Support Document and on the new information, the Agency concludes that the weight of the evidence demonstrates that substantial numbers of birds are exposed to lethal diazinon residues. This hazard is widespread and continuous throughout the country and throughout the year.

III. Summary of the Benefit Analysis

In this unit the Agency provides a summary of the benefits associated with the use of diazinon on golf courses and sod farms. This includes information discussed in the Support Document, as well as information reviewed after the Notice of Special Review and Preliminary Notice of Intent to Cancel was issued.

A. Summary of the Benefits Analysis in the Support Document

The benefits of diazinon on golf courses and sod farms were assessed in terms of the economic impacts which would result if diazinon were cancelled and users forced to use alternatives. The alternatives were chosen on the basis of cost and market availability. Because of the lack of data, the Agency assumed that diazinon and its alternatives were equally efficacious.

Agency estimates indicated that at least 512,000 and 60,000 pounds active ingredient of diazinon are used on golf courses and sod farms, respectively. The estimated impact of cancellation would be a cost increase of $937,200 for golf courses and $300,000 for sod farms. The Agency anticipated that these cost increases would not cause a severe impact when compared to the maintenance cost of $1,900,000,000 for golf courses or average impact of $0.07 per golfer and the gross revenue of $210,000,000 on sod farms.

B. New Information Concerning the Benefits

The Agency reviewed efficacy data from the Insecticide and Acaricide Tests (Refs. 11, 21, 22, 23, and 24) and from Ciba-Geigy Corporation (Refs. 1 and 2). Based on the Insecticide and Acaricide tests, the Agency determined that the major alternatives do not appear to be less efficacious than diazinon (Ref. 15), as indicated in the following table. The principal pests are in groups in which formulations and application rates for particular tests are comparable.

Insecticide	Tests in which diazinon performed		
	Better	Not signifi-cantly different	Worse
Bendiocarb	2	24	4
Carbaryl	1	9	0
Chlorpyrifos	18	57	1
Isofenphos	3	125	6
Trichlorfon	1	33	1

Ciba-Geigy submitted data comparing the efficacy of diazinon for application rates from 4 to 6 lb ai/A. The Agency evaluated these data and concluded that diazinon was as effective at 4 lb ai/A as 6 lb ai/A for certain pests (Ref. 15). The Agency has found, however, that lowering the application rate of diazinon from 6 lb ai/A to 4 lb ai/A does not adequately reduce the risk to avian species. The Agency discussed this regulatory option further in Unit IV.E of the Support Document and Unit IV.C of this Notice.

C. Conclusions Concerning the Benefits

The impact of cancellation estimated in the Support Document did not change as a result of the new information. As a result of the new data, the Agency concludes that the major alternatives do not appear to be less efficacious than diazinon.

IV. Comments of the Scientific Advisory Panel, the Secretary of Agriculture, and the Public

The Agency transmitted the Support Document to the United States Department of Agriculture (USDA) and the Scientific Advisory Panel (SAP) for review and requested comment. The Agency also submitted additional information (Ref. 19) to the SAP. Unit IV.A and B contain the SAP and USDA comments and the Agency's response. The Agency also received public comments in response to the public comment period for the **Federal Register** Notice. These comments along with the Agency's response are summarized in Unit IV.C.

Copies of all comments, minutes of meetings with and correspondence among various interested parties, and unpublished documents referenced in this Special Review are contained in a docket maintained for this Special Review, as provided in EPA's Special Review regulations under 40 CFR Part 154, published in the **Federal Register** of November 27, 1985 (50 FR 49003).

The docket is available for public inspection from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays in: Rm. 236, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

The Agency notes that portions of the docket are considered Confidential Business Information and are not available for public inspection.

A. Comments of the Scientific Advisory Panel

EPA presented its proposed decision to the SAP in a public meeting held on May 21, 1986. On May 22 the Panel responded to EPA. The Panel's comments are reproduced in their entirety.

Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)—Scientific Advisory Panel

A Set of Scientific Issues Being Considered by the Agency in Connection With the Special Review of Diazinon

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel (SAP) has completed review of the data base supporting the Environmental Protection Agency's (EPA) preliminary determination proposing to cancel registrations and deny applications for diazinon products used on golf courses and sod farms. The review was conducted in an open meeting held in Washington, DC, on May 21, 1986. All Panel members were present for the review. In addition, Dr. Elwood Hill of the Patuxent Wildlife Research Center of the U.S. Fish and Wildlife Service served as an *ad hoc* member of the Panel.

Public notice of the meeting was published in the **Federal Register** on Friday, April 25, 1986.

Oral statements were received from staff of the EPA and from numerous members of the public and industry. The complete listing of the presenters is as follows: Dr. Darrell D. Sumner, Ciba-Geigy Corporation; Dr. Jeffrey Foran, National Wildlife Federation; Dr. Ward Stone, Department of Environmental Conservation for the State of New York; Mr. Gerald L. Faubel, Golf Course Superintendents Association of America; Mr. Chuck Pace, National Audubon Society; Ms. Diane Baxter, National Coalition Against the Misuse of Pesticides; and Dr. Norman W. Hummel, Jr., Department of Floriculture and Ornamental Horticulture at Cornell University.

In consideration of all matters brought out during the meeting and careful review of all documents presented by the Agency, the Panel unanimously submits the following report:

Report of SAP Recommendations

Diazinon

The Agency requested the Panel to focus its attention upon a set of issues relating to the pesticide diazinon. There follows a list of the issues and the Panel's response to the questions.

Panel response.—The Panel supports the Agency's preliminary determination to cancel diazinon uses on golf courses and sod farms to prevent unreasonable risks to avian populations. The strongest evidence in support of this action is the documentation of diazinon-caused bird kills at a number of sites over a number of years. But the Agency's position also is supported generally by a weight-of-evidence built upon laboratory toxicity studies, exposure analyses, and an understanding of avian physiology, behavior, and ecology.

Moreover, the Panel shares the Agency's concerns regarding risk of adverse impacts to birds that might be caused by other uses of diazinon such as home lawns, parks, etc. Thus, the current data call-in regarding risks of such uses is appropriate.

The Panel's responses to the Agency's specific questions are as follows.

1. The Agency specifically requests any comments that the Panel may wish to make with regard to the Agency's exposure analysis which considers measured residue data and avian foraging ecology, and the Agency's conclusion that use of diazinon on golf courses and sod farms at rates as low as 1 lb ai/A will result in lethal exposure to foraging birds.

Panel response.—The EPA was correct in intent to use both actual residues and avian foraging ecology to arrive at the conclusion that diazinon as presently applied will kill wild birds, but the data presented are not adequate to justify the conclusion that 1 lb ai/A is sufficient to kill. None of the data presented was adequate to permit such an extrapolation. However, 1 lb ai/A may be lethal to some birds simply because of the circumstances of the application, the attractiveness of the habitat to foraging birds, the ease of resultant exposure, and the acute sensitivity of birds to diazinon poisoning.

2. The Agency specifically requests any comments that the Panel may wish to make with regard to the Agency's preliminary decision that the number and size of bird kills attributed to diazinon demonstrate unacceptable risk to birds.

Panel response.—The Panel agreed. The true test has already been met in the historical demonstration of the problem through the array of avian die-offs under quite diverse sets of circumstances. Because of the diversity of circumstances and the vague factors contributing to the reported cases, it is reasonable to suggest that similar factors will kill some birds. It is likely that many similar instances have gone undetected. Thus, the risk is obvious and unacceptable if any value is placed on the resource. Further experimentation would certainly enhance our scientific understanding of factors that contribute to such kills, but the Panel does not believe that the kills can be eliminated simply by attempting to control the methods used for application. The attractiveness of the habitat and the sensitivity of birds to diazinon will continue to contribute to bird mortality.

It remains to be demonstrated whether alternative pesticides will be any less hazardous than diazinon. The EPA and registrants of such chemicals should be aware of the potential hazard associated with the use of alternative pesticides and initiate investigations to insure their safe use.

3. The Agency specifically requests any comments that the Panel may wish to make with regard to the Agency's analysis that the following regulatory options do not provide effective mitigation of unacceptable risk to birds:

(a) Continue registration without changes.

(b) Proposed label precautionary statement changes.

(c) Reduce application rate.

(d) Limit application to certain months.

(e) Limit application geographically.

(f) Require irrigation after application.

(g) Restrict use to certified pesticide applicators.

(h) Require more data prior to a regulatory decision.

(i) User education program.

Panel response.—Regarding other options proposed by the registrant and considered by the Agency for reducing risks (e.g., reducing application rates to 4 lb ai/A, restricting use to certified applicators), the Panel believes that such actions would reduce risks in some regions of the country and under some conditions. But the Panel concurs with the Agency's rejection of these alternatives, since there has not been sufficient evidence presented that would assure significant reduction of risks to avian populations. The burden of proof for support of these alternatives over that of cancellation should rest with the registrant, and, in the view of

the Panel, insufficient evidence was presented to support a determination of environmental safety should these options be adopted. If the registrant is able to present scientific evidence, based on laboratory and field studies, to indicate that these alternatives for reducing risk would be effective, the registrant could apply for reregistration.

For the Chairman.

Certified as an accurate report of Findings.

Stephen L. Johnson,

Executive Secretary, FIFRA Scientific Advisory Panel.

Date: May 25, 1986.

The SAP's comments generally supported the Agency's conclusions concerning the avian hazard from diazinon application to golf courses and sod farms. The SAP made two points which were not in complete agreement with the Agency's conclusions.

First, the Panel commented that the available data were not adequate to permit extrapolation to 1 lb ai/A. However, the Panel did conclude that 1 lb ai/A may be lethal to birds because of the nature of the use sites and the acute sensitivity of some birds.

The Agency agrees that in some circumstances birds may be killed from application of 1 lb ai/A of diazinon.

Second, the Panel responded that the Agency did not adequately demonstrate the alternative pesticides to be less hazardous than diazinon.

The Agency responds that on the basis of laboratory testing, the alternatives appear to be almost as toxic to birds as diazinon. Residue estimates, however, indicated that the major alternatives are not likely to be of greater hazard. In addition bird kills associated with the use of the alternatives generally have not been reported. As a result the Agency still concludes that the alternatives are not likely to pose a greater hazard to birds than diazinon.

The Agency would also like to note that it is in the process of reevaluating its position concerning a Data Call-In Notice on home lawns, parks, and other sites through the reregistration process.

B. USDA's Comments

USDA's comments on the inititation of the Special Review of diazinon on golf courses and sod farms and the proposed cancellation are printed in full below:

Mr. Steven Schatzow, Director,
Office of Pesticide Programs, U.S. Environmental Protection Agency, (TS-766C), 401 M Street SW., Washington, DC 20460

Dear Mr. Schatzow: This is the U.S. Department of Agriculture's response to your letter of January 7, 1986 forwarding for comment the Agency's Position Document 1/2/3 for diazinon.

Our detailed comments are attached as an integral part of this letter. We therefore anticipate that they will also appear in the **Federal Register** together with the Agency's response.

As you will see from our comments, we believe that a cancellation of these two uses is premature at least and may be inappropriate. The attached information and perhaps additional research data should provide for the continued use of this valuable chemical.

We appreciate the agreement with Mr. P. Lapsley of your staff regarding our taking additional time to prepare our comments on this important issue.

Charles L. Smith,

Coordinator, Pesticides & Pesticide Assessment.

USDA Staff Comments on the EPA PD 1/2/3 for Diazinon

I. The large kill of Atlantic Brant Geese which gives the strongest support to a proposed Special Review by EPA may be the result of unusual circumstances.

A. A very strong argument is presented for cancellation of diazinon uses on golf courses and sod farms by using the large kill incident of Atlantic Brant geese. It is not pointed out, however, that the applicator responsible for that incident was later charged with a violation and forfeited a fine.

B. We have heard that several other insecticides were used at the sites where diazinon treatments were "confirmed or implicated" as the cause of bird kills. While EPA alludes to the presence of other insecticides, they do not attempt to identify them.

C. We also note that while it is common knowledge that golf course operators find the presence of large bird populations undesirable, the possibility of any deliberate misuse with the intent to reduce bird populations is not given consideration by the Agency. If misuse is occurring, the problem should be solved by enforcement, not cancellation.

D. The Executive Summary of PD 1/2/3 states on page (i) that "reduction of a local population of Atlantic Brant Geese" occurred as a result of applying Diazinon AG 500 according to label directions. We would suggest that improper application could have been a factor even if the applicator adhered to label directions. Proper use of irrigation as a means of washing down insecticide following application is largely discretionary and should.be more clearly defined in label directions and educational programs. The practiced judgement of the applicator is critical in determining the quantity of water that should be applied, and explicit directions are mandatory.

II. Many years of successful use are weighty evidence that diazinon, when properly applied, is not a significant threat to birds.

A. One of the largest product uses of diazinon by itself or in combination with other insecticides has been as a seed-treatment. The seed for many thousands of acres of corn, peas, beans, sorghum, and soybeans have been treated prior to planting. Many of these treated seeds are consumed by seed foraging birds that successfully extract the planted seeds from the row or find them exposed on the soil surface. These seeds are a significant part of the diet of certain bird species during planting, and yet diazinon by itself and without extenuating factors has not been associated in bird kills. It would seem illogical that such kills would not be observed as these plantings are made nationwide. It must be concluded that barring misuse, or the unusual circumstance, diazinon is not a significant threat to birds.

B. Diazinon is a broad spectrum crop insecticide that has been used safely on alfalfa and clover with many years of experience. These forage crops are universally recognized as natural feeding and nesting sites for migratory birds and waterfowl. It is significant that there is no notation of any bird kills associated with these sites or with diazinon-treated forage grasses. Because these are highly visible pesticide use sites (especially in the Western flyways), it would logically follow that incidences of bird kills would be observed if they occurred. Additionally, these crop acreages are abundantly greater than those represented by golf courses and sod farms. We are not aware of possible EPA concern with rates, residues, timing, or toxicities on these sites. We therefore suggest that the proper application of diazinon on a crop does not by itself represent a hazard to birds.

C. We would point out that the Agency's concern that birds commonly confuse the diazinon granular formulations with grit is not valid. Diazinon granular formulations have numerous years of successful use as both soil-incorporated and surface applications on virtually all commercial and homeowner crop sites where broad spectrum pesticides are used and where birds commonly forage. Yet, diazinon has not been singled out as a pesticide that has contributed to bird kills from those aggregate uses.

III. Toxicological data, as well as associated information on the environmental fate of diazinon should be generated to more clearly define the potential hazards of use.

A. The PD states that irrigation practices are not relevant in bird kills and also states that while grass residues can be high and a source of toxicity without irrigation, excessive irrigation might result in surface puddling where birds may gather or drink and thus obtain lethal doses of insecticide. Additional research is needed on diazinon levels in water impoundments resulting from irrigation or precipitation. These impoundments or "traps" are commonplace on golf courses and are important habitats for waterfowl as well as drinking sites for other bird species. These data would be helpful in determining if acceptable application practices were followed with regard to uniformity of application, runoff, drift, or excessive application sites.

B. Further data are necessary regarding the presence of pesticide residues in bird tissues of dead birds. Allegations that several insecticides were used at sites where diazinon has been proposed as the causative

agent in bird kills warrants further toxicological inquiry.

C. On page II–4 (last paragraph), it is indicated that there is lack of residue data on grasses. However, residue data should be available since diazinon is registered for use on pasture grass at similar label dosage rates and has a tolerance on those grasses of up to 60 ppm on fresh grass.

IV. The arbitrary indictment of sod farms as a hazardous use site may be capricious.

A. EPA concedes that no bird kills are attributed to diazinon application on sod farms. Still, they are included as a site for cancellation on the basis that sod farms are similar to golf courses. We would point out that sod farms are not necessarily similar to golf courses by nature of their prevalent subsoils, routine irrigation practices, or physical attributes of terrain. In fact, sod farms are noted for their common practice of overirrigation and obvious residual surface water (even after moderate rainfall). Yet, it is worth noting that bird kills have not been documented as being associated with these sites. These sites are commonly visible from public roads and highways and kills would surely have been reported.

V. There are outstanding benefits associated with properly administered pest control using diazinon.

A. The ARS Handbook No. 584, "Guidelines for the Control of Insect and Mite Pests of Food, Fibers, Feeds, Ornamentals, Livestock, and Households" lists 15 pests of lawn and turf areas which are not grazed. These would include turf farms and golf courses. Of these 15 pests, there are 14 for which diazinon is recommended for their control including the following: ants, armyworms, Bermudagrass mites (no other alternative recommended), billbugs, chinch bugs, cutworms, European chafter, green June beetle, Japanese beetle (larvae), grass scales, leafhoppers, fruit fly (no other alternative exists), mole crickets, and sod webworms. Dosages range from 1.6 to 6.8 lb ai/A. Most of the recommendations are for 5.4 lb ai/A because those pests which require the high rates for control are rare occurrences.

B. In addition to the phytophagous insects, there are several medically significant arthropods that are controlled by the use of diazinon applications to grasses and lawns. The brown dog tick is a vector of Rocky Mountain spotted fever and anaplasmosis. Diazinon is also registered for control of chiggers and fleas on lawns and turf. Control of these medically important pests and the benefits derived from their control, including their potential for vectoring diseases, should be taken into consideration in the Benefit Section of the EPA analysis.

VI. Clarification is needed with respect to speculation regarding the effects of population size, genetic variability, and survival of a species as a function of each.

A. On page II–20 of the document it is stated that local interbreeding populations of birds are considered "at least partially genetically distinct," that they provide "genetic variability," and enable the "national population" to avoid the threat of extinction. We suggest that the origin of local interbreeding and behavior unique to intraspecific populations (known as demes) need have no genetic basis (this is discussed in detail in "The Origin of Species" E. Mayr). While the unfortunate loss of members from a deme might influence the rate of gene migration within the associated genotypes, there is no reason to anticipate a change in the residual gene pool. Thus, aside from the view that large scale decimation might numerically threaten species survival, there is no sound basis to assume that genetic variability is a limiting factor until a species population is very small. It then becomes a matter of population dynamics as well.

VII. We have assessed cost projections as presented by the Agency and do not concur with estimates of increased costs to consumers. The basis for this position is explained below:

A. The maximum application rate for AG 500 is 4 oz/1000 square feet. When expanded, this rate does not exceed 5.57 lb ai/A (maximum).

B. Recognizing the detailed estimates of alternative preferences made on the basis of the 10 EPA Regions, there is no real basis for presuming that proportionate preferences for alternative insecticides will vary in any great degree from current use preferences. In other words, the equivalent acre treatments denied diazinon by cancellations would be assumed by the alternative insecticides according to weighted quantities of the current proportionately preferred market.

C. The weighted proportion of the diazinon relinquished market is then increased as follows:

Compound	Pounds of diazinon replaced
Isofenphos	183,336
Trichlorfon	107,031
Carbaryl	68,623
Chlorpyrifos	46,090
Bendiocarb ([1])	
Others	107,031
Total	512,111

[1] 0 lbs—not even comparable to others.

D. When those weights are divided by the equivalent acre-treatment rates of diazinon, and then multiplied by the maximum acre treatments rates of alternatives, the numbers that represent the equivalent lbs active for the increased amounts of alternative products are obtained. Further multiplying those amounts by the costs of alternatives provided by the Agency (and including low estimated costs for "other" insecticides), the increased costs are projected as follows:

Compound	Pounds of diazinon replaced
Isofenphos	$1,833,359
Trichlorfon	97,300
Carbaryl	24,953
Chlorpyrifos	16,760
Others	194,601
Total	2,166,973

It is thus demonstrated that the costs exceed 2 million dollars. These calculations result in higher costs than presented by EPA regardless of formulation considered. This higher cost to the consumer cannot be effectively resolved by equating it to the annual fees of the individual golfer.

E. We have not attempted similar comparative justifications regarding quantities and costs with respect to sod farms but assume that similar results would be obtained.

VIII. Possible alternatives to cancellation may best serve the public interests.

A. EPA has considered the regulatory option of reducing the application rate but rejected it. Diazinon has been in use on golf courses for controlling turf pests and medically important arthropods for a long time. Considering the amount of diazinon used annually for these uses, the bird kills are too infrequent for diazinon to pose a substantial threat to wildlife. Perhaps in specific areas where the higher doses are needed and where high bird populations exist, consideration could be given to the requirement of noisemakers or other precautions such as the use of liquid formulations or more specific irrigation practices. Also, the current registered dosage rates for the use of diazinon on these sites should be carefully reviewed to determine whether or not these dosages could be reduced with no loss in efficacy. For certain rarely occurring pests where the dosage rates seem to be high (such as 11 lbs ai/A for millipedes), it may be desirable to go to alternatives to maintain a reduced application rate for diazinon.

Before exercising its regulatory options, EPA may want to pursue with USDA's National Agricultural Pesticide Impact Assessment Program the possibilities of obtaining data to determine the minimum effective dosage rates for controlling these pests in various geographical locations throughout the U.S. At the same time, EPA should consider obtaining additional toxicological data, in cooperation with Ciba-Geigy, to more clearly define the potential hazard to birds, in particular to migrating waterfowl.

The Agency considered USDA's comments on the proposed regulatory decision. Following is a point-by-point response to their comments.

1. The hazard assessment for diazinon was based on the weight of the evidence and not just on a single bird kill. The Agency considered diazinon's acute toxicity, estimated residue levels on grass and seed, estimated dose levels consumed by birds, diazinon application practices, exposure, diazinon residue data, bird kill reports, problems associated with the reporting of bird kills, and the effect on endangered species. No single incident of avian mortality, such as the large kill of Atlantic Brant Geese, is the only basis for the ecological concerns or hazard assessment.

The Agency recognizes that intentional and accidental kills attributed to diazinon may have occurred in some instances or that other pesticides may have been involved as

well. However, in other cases label directions were followed, and diazinon was the only pesticide involved. Certified pesticide applicators and experienced users of pesticides have applied diazinon properly, and bird kills have resulted. Thus, the Agency concluded that diazinon used on golf courses and sod farms will pose a lethal hazard to birds, whether it is applied properly or not.

In addition the Agency still concludes that the 700 Atlantic Brant Goose kill in New York was a result of proper application. The investigation by the State of New York concluded that diazinon was applied according to the label. The State cited the applicator for an infraction regarding licensing according to State law and not misuse (Ref. 20).

2. The Agency has determined that diazinon use poses a significant threat to birds. The Agency believes that the number of bird kills on record do not actually represent the number of kills which have occurred because of problems associated with the reporting of bird kills. Generally bird kills are not noticed and often not reported. The Agency received public comments from State, Federal, and private agencies involved with natural resource management and environmental protection that support the conclusion the bird poisonings, in general, go undetected and are not reported. In many cases predators may have carried the bird carcasses away from the site. In other cases birds may go into brush or cover on the site where they are poisoned and then die. These kills would probably go unnoticed. If the dead birds are found, the observer may not attribute the deaths to a recent insecticide application, and even if a person does suspect that a bird may have been poisoned, the individual may not know to whom to report the incident. Only a few States have personnel trained and equipped to respond to kill reports and to conduct the thorough investigation necessary to determine the pesticide, application rate used, and whether the label directions were followed. The fact that approximately 80 reports are associated with diazinon is strong evidence of repeated and regular hazardous exposure for birds from use of diazinon.

Concerning the lack of bird kills on agricultural sites such as alfalfa and clover, the Agency is concerned about the hazard to birds from diazinon application to these sites as well. As indicated in the Support Document, the data base is inadequate to evaluate the hazard at this time. The Agency will require the data necessary to evaluate fully the hazard through the reregistration process. A Registration Standard on diazinon is scheduled for completion by the end of this year.

3. Based on the weight of the evidence, the Agency has determined it has enough data to assess the avian hazard from diazinon application to golf courses and sod farms. The Agency considered diazinon's acute toxicity, estimated residue levels on grass and seed, estimated dose levels consumed by birds, exposure, diazinon residue data, bird kills, problems associated with the reporting of bird kills, diazinon application practices, and the effect on endangered species. As indicated in the Support Document, only bird kills in which diazinon was clinically diagnosed as the cause of mortality or was strongly implicated were considered.

Among the application practices considered, irrigation and the resulting grass residues were among the factors considered. The Agency determined in the Support Document that residues following application with or without irrigation would result in lethal exposure to birds. The puddles which may form after irrigation may contain diazinon residues and present another hazardous route of exposure.

The Agency realizes that residue data are available on pasture grasses. Fresh grasses have a tolerance of 60 ppm diazinon. However, the registered application rate on pasture grasses is 0.5 lb ai/A, which is less than the current application rate for the major pests on golf courses and sod farms. Direct extrapolation of the resulting residues to residues expected from higher application rates may or may not be reliable.

Instead, the Agency conducted a statistical analysis of measured residues resulting from 2, 4, and 6 lb ai/A to turf grass. This analysis is summarized in Unit II.B and provides statistically significant estimates of average residues expected to result from applications at typical turfgrass rates.

4. The Agency determined in the Support Document that sod farms are ecologically similar to golf courses. The Agency believes that the differences cited by USDA do not outweigh the similarities. Both are areas of lush, well-tended open spaces of grass which are commonly used by birds as forage sites.

EPA disagrees with USDA that the absence of reported bird kills indicates a lack of hazard. Unlike golf courses, sod farms are private businesses and are not subject to the degree of public observation occurring on most golf courses. Therefore, the Agency concluded that even though birds frequent sod farms and are likely to be exposed to lethal residues of diazinon, kills on sod farms are less likely to be observed and reported than are kills on golf courses.

5. The number of turf pests indicated by USDA is conservative. The 1986 Insecticide Product Guide (Ref. 10) lists at least twice the number of turf pests. Many are relatively minor, but under certain circumstances may be important. Diazinon is listed for control of at least 20 of those turf pests. However, other broad spectrum insecticides such as chlorpyrifos and carbaryl are also registered for the control of many of these pests.

Other pesticides are also registered for control of the Bermuda grass mite on golf courses and sod farms, including carbophenothion, dicofol, and ethion.

The inclusion of "fruit fly" among the pests of turf is probably an error and was probably intended to be "frit fly". Frit flies can be serious pests of turf, whereas fruit flies are normally not considered to be. Diazinon is the only pesticide currently registered for control of frit flies.

Cancellation of diazinon on golf courses and sod farms is not expected to affect the control of medically significant arthropods such as the brown dog tick, chiggers, and fleas. These pests are only occasionally found on golf courses and sod farms.

The brown dog tick is not a major vector of Rocky Mountain Spotted Fever in the United States. The American dog tick and the Rocky Mountain wood tick are the principal vectors of Rocky Mountain Spotted Fever in the U.S. (Ref. 5). A number of pesticides are registered for the control of these and other medically important arthropods.

6. USDA indicated that the loss of members from a deme could influence the range of the movement of genes within the associated genotype, but that a change in the residual gene pool would not necessarily result.

Demes are defined as having one or more characteristics that make the members of the deme distinct from other members of the species. Genetic make-up is one of many ways to define a deme (Refs. 4 and 8).

The Agency makes no assertion regarding population viability of any species other than the general comment that genetic variability is important in conferring individual fitness and population survivability.

7. Additional information is needed to understand adequately the assumptions USDA used in calculating its cost analysis. USDA's $2,000,000 estimate of

the costs from cancellation on golf courses are higher than Agency estimates, but are still minor compared to the maintenance cost of $1,900,000,000 for golf courses. Thus, the analysis does not alter the general conclusions reached in the benefit analysis discussed in the Support Document.

8. In the Support Document and the information submitted to the SAP, the Agency considered a variety of regulatory options including those suggested by USDA, the public, and the registrant. However, the Agency concluded that only cancellation on golf courses and sod farms would reduce the risk to an acceptable level.

C. Public Commments Received in Response to the Special Review

The Agency received 96 public comments on the initiation of Special Review and the proposed cancellation on golf courses and sod farms.

1. Comments Relating to the Avian Hazard

The Agency received 76 comments relating to the avian hazard from diazinon application to golf courses and sod farms. Fifty-seven clearly supported the proposed cancellation, including but not limited to the Fish and Wildlife Service, U.S. Department of the Interior; Canadian Wildlife Service; the States of Indiana, Colorado, New York, Texas, California, New Jersey; environmental groups such as the National Audubon Society, the Natural Resources Defense Council, the National Wildlife Federation, the Rachel Carson Council, the National Coalition Against the Misuse of Pesticides; and pesticide user groups such as ChemLawn Services.

Several businesses representing sod farm interests submitted testimonials in opposition to the proposed cancellation. The substantive comments which were made in the public comments are addressed below.

a. *Cancellation on home lawns.* The majority of the comments which supported the cancellation on golf courses and sod farms proposed that EPA also cancel diazinon use on home lawns and other grassy sites as well.

The Agency responds that the concern over the avian hazard of diazinon application includes the hazard from application on other sites as well. This was discussed in the Support Document. As previously noted, the Agency is reviewing this hazard through the reregistration process.

b. *Problems with reporting.* The Agency received many comments from the public and Federal agencies, and environmental groups concerning problems with reporting of bird kills. Generally bird kills go unnoticed and are not reported. In addition only a few States have personnel trained and equipped to respond to kill reports, should they be reported.

The Agency agrees.

c. *Risk reduction measures.* The Golf Course Superintendents Association of America (GCSAA) and others agreed that diazinon poses a hazard to birds, but argued that diazinon could still be used safely. The Association suggested that diazinon be restricted for use by certified applicators, that the application rates be lowered, and that diazinon be used in conjunction with an integrated pest management (IPM) program.

The Agency responds that the hazard assessment described in the Support Document indicated that diazinon poses a hazard to birds, even when applied according to label directions. Use in conjunction with an IPM program, especially scouting, may reduce the number of diazinon applications. However, diazinon would still be applied and would pose a hazard to birds.

The Agency also considered lowering the application rates as a regulatory option in the Support Document. Based on residue levels estimated in the Support Document (Unit IV.E of the Support Document) and based on residue data submitted during the comment period (Unit III.A of this **Federal Register** Notice), the Agency still concludes that lowering the application rate would not reduce the risk to an acceptable level.

d. *Tee and green restriction.* Ohio State University proposed diazinon application be limited to tees and greens, if no solution to puddling could be found.

The Agency indicated in the Support Document that puddling cannot always be avoided for several reasons. First, uneven topography leads to runoff and puddle formation. Second, different soils under different conditions absorb water at different rates and puddles may form.

Even if puddling could be avoided, limiting application to tees and greens would not reduce the hazard to an acceptable level. These areas are among the grass areas most favored by grazing birds. They are the most fertilized, watered, and mowed of all grassy areas on golf courses. This intense cultivation of grass makes it especially attractive to grazing birds. Greens, especially the fringe where the grass is one to two inches high, are very attractive to waterfowl and are particularly dangerous (Ref. 7).

Ciba-Geigy Corporation submitted several major points in opposition to the proposed cancellation. These points are addressed as follows:

e. *Rate reduction.* Ciba-Geigy submitted a new study of residues (Ref. 2) on turf, which the company claims shows that application of 4 lb ai/A followed by irrigation reduces the hazard to an acceptable level.

The Agency reviews this study in Unit III and concludes that the data support the Agency's determination that diazinon cannot be safely used on grass at 4 lb ai/A. As also discussed in Unit III, the data also support the conclusion that irrigation does not reduce residues to an acceptable level.

f. *Open literature residue studies.* Ciba-Geigy argued that the Agency did not consider studies by Kuhr and Tashiro (Ref. 6) and Sears and Chapman (Ref. 9), which showed low residues resulting from diazinon application.

The Agency did review these studies and determined that they were not acceptable for use in the Agency's hazard assessment for several reasons (Ref. 18). First, the studies used too small a sample size. Second, application was done by throwing out the granules by hand and watering in with a watering can, which is not the normal method of application. Third, it rained after application and the amount of rain was not quantified.

g. *Erroneous invalidation of 1982 turf studies.* Ciba-Geigy submitted a residue and field dissipation study and a waterfowl study, which the company claims were improperly invalidated by the Agency.

The Agency discussed the many problems associated with these studies in Unit II.A of the Support Document. Both studies failed to use proper study design and sampling methods.

h. *Estimates of residues unreliable.* Ciba-Geigy claims that the Agency's estimates of residues are not reliable and should not be used when actual residue data are available.

The Agency used such estimates in the Support Document because sufficient measured residue data were not available. The Agency recognizes the limitations of these estimates.

During the public comment period the Agency received new experimental data on diazinon residues on grass. These data are analyzed in Unit III and confirm the Agency's conclusions.

i. *Significant population reduction.* Ciba-Geigy claims that the Atlantic Brant Geese killed on May 7, 1984, were from the wintering areas along the Atlantic Coast and not just from the New York population. As a result the 127,300 Atlantic Coast population were not significantly reduced by the loss of

700, especially considering that 20,000 to 70,000 are killed by hunters annually.

The Agency responds that a kill of 700 birds in a single incident is an important and significant loss. It is within the Agency's mandate to protect birds from unreasonable risk, which the Agency has determined is the case with diazinon's use on golf courses and sod farms.

The U.S. Fish and Wildlife Service (USFWS) of the Department of the Interior supports this conclusion. During the public comment period USFWS commented on the relative impact of diazinon on the management of migratory birds (Ref. 13). USFWS noted that the total kills caused by diazinon, even when considering the problems associated with the reporting of bird kills, may not be large compared with the number killed from hunting. USFWS further commented that the hunting of migratory birds is sanctioned by a number of international treaties and regulated by a highly developed regulatory process. Hunting is legal, conservation-oriented, and recognized as socially beneficial.

The poisoning of waterfowl and other birds, however, is not legally sanctioned and has no redeeming social value. USFWS indicated that the unplanned killing of migratory birds should be corrected. Thus, the USFWS supports the Agency's determination to cancel the use of diazinon on golf courses and sod farms.

j. *Label amendments.* Ciba-Geigy applied to amend their labels to reduce the hazard to birds. These amendments included a seasonal Nassau County restriction, a lower application rate of 4 lb ai/ A followed by irrigation, and additional avian hazard warning statements. Ciba-Geigy also proposed an extensive education program to promote the proper use of diazinon to reduce the risk to birds.

The Agency evaluated the label amendments in the Support Document and determined that lowering the application rate, adding seasonal or geographic restrictions, and adding precautionary labeling would not adequately protect birds. In addition an education program would also not protect birds because diazinon when properly applied still results in unacceptable exposure to birds.

k. *Bird kills.* Ciba-Geigy submitted an investigation (Ref. 3) of the bird kills reported in the Support Document. The investigation contains interviews with golf course and State personnel. Much of the report contains summaries of information from the Agency's files; maps and pictures of the kill sites; photocopies of portions of Agency documents, published literature, and laboratory reports. The report also contains new information, which is largely comprised of the phone and personal interviews with golf course personnel. In some cases the personnel interviewed were not employed at the golf course at the time of the kills, but recounted stories and gave opinions regarding the circumstances surrounding a particular bird kill. The investigators concluded that accidental or deliberate misuse of diazinon caused all of the bird kills.

Although the Agency is always concerned about the misuse of any pesticide, the Agency is not persuaded that this anecdotal information establishes that diazinon was misused in all of these circumstances. Other investigative reports conducted by State and local agencies contradict Ciba-Geigy's conclusions, and Agency records indicate bird kills resulting from proper application. Pesticide users on golf courses are generally trained or are certified pesticide applicators and are expected to follow label directions. However, bird kills have still resulted.

The kill reports along with the other information presented in the Support Document and in this Notice are part of the weight of evidence which support the conclusion that the use of diazinon on golf courses and sod farms poses a hazard to birds.

2. Comments Relating to the Benefits of Diazinon on Golf Courses and Sod Farms

The Agency received 25 comments relating to the benefits of diazinon use on golf courses and sod farms. The major points and the Agency's responses are discussed below.

a. *Lack of viable alternatives.* Several comments indicated that the alternatives either do not work or do not work as well. Also, some of the alternatives are erratic in their performance and are not as reliable.

The Agency responds that based on efficacy data reviewed in Unit III, no statistically significant difference was detected between diazinon and the five other principal pesticides in controlling most of the major turf pests. The Agency agrees that diazinon may work better than its alternatives in certain cases, but in general the Agency believes that the alternatives work as well.

b. *Efficacy of lower application rates.* Several comments expressed concern that diazinon would not work as effectively at 4 lb ai/A, 2 lb ai/A, or any application rate lower than present label application rates.

In Unit III the Agency reviews efficacy data submitted during the comment period. On the basis of the data no significant difference in the control of most major pests was evident at application rates as low as 4 lb ai/A.

c. *Efficacy of irrigation.* Several comments questioned diazinon's efficacy after irrigation.

The Agency responds that Ciba-Geigy Corporation labels already recommend thorough watering for most pests. However, the labels are not clear for certain pests and recommend against watering for others such as frit flies. Watering in would reduce the efficacy of diazinon for those pests that live and/ or feed on the foliage and upper stems of the grass such as aphids, mites, ticks, frit flies, etc. For major turf pests (white grubs, sod webworm, chinch bug, mole cricket, billbugs, and European crane fly), the practice of watering in would probably enhance the efficacy of diazinon. Those pests for which watering in would reduce diazinon's efficacy (the top feeders) are relatively minor pests of turf.

d. *Non-chemical means of control.* New York State Department of Environmental Conservation, the Susquehanna Sierra Club, and others commented that there are alternative, non-chemical methods of control, which the Support Document did not address.

The Agency recognizes that considerable research is being conducted on non-chemical means of turf pest control, as indicated in Unit III.B of the Support Document. The Agency concentrated on evaluating the risks posed by alternative chemicals because they are the most likely substitutes on golf courses and sod farms if diazinon is removed from the market.

e. *Billbug control.* The University of Idaho and Washington State University were concerned about billbug control in their States. The University of Idaho indicated that they anticipate an increase in billbug damage to golf courses and sod farms, if diazinon is not available for use on these two sites. However, they were not able to quantify the impact because of the lack of data. Washington State University (WSU) submitted a report based on a 1984 field test, which they claimed demonstrated that diazinon was significantly more effective for billbug control than its major alternatives.

The Agency reviewed the data submitted by WSU. Although the test was reasonably well designed, it was a single test in one locality and involved low population levels of billbugs. Because the test was limited in sample size, limited geographically, and failed to test a worst-case situation, the

Agency concluded that the data are not adequate to demonstrate that diazinon is the most effective insecticide available for billbug control.

f. *Economic value of wildlife.* The State of Indiana, the Adirondack Park Agency, and others indicated that wildlife resources are extremely valuable and that the cost-benefit analysis did not consider the value of wildlife. The analysis was based on the impact of users shifting to alternative insect control measures.

The Agency agrees that wildlife resources such as birds are extremely valuable. However, the Agency did not estimate their value in terms of economic values for two reasons. First, such an analysis would be limited to the reported bird deaths from diazinon, which may significantly underestimate the number of actual deaths. Second, dollar values are available only on game species and do not include all species of concern. As a result an economic assessment of the loss of birds due to diazinon poisoning on golf courses and sod farms would greatly underestimate any economic value, unless many assumptions were made.

In addition such an assessment would not include the subjective value of wildlife. Many citizens enjoy watching birds or just simply enjoy the knowledge that they are there. Any economic assessment. would be a crude indicator of the overall value of wildlife.

g. *Economic impact on individual golfers.* University of Massachusetts questioned the derivation of the 7 cents per golfer.

The estimated impact of 7 cents per golfer is based on the total national impact for all golf courses and the total number of golfers in the United States. The impact on an individual golfer may be different, depending upon the location of the course, the extent of the use of diazinon, and the alternative control methods applied after diazinon's cancellation.

h. *Diazinon's cost.* The Cornbelt Chemical Company and Ciba-Geigy Corporation indicated that diazinon is one of the least costly products for turf insect control, if application rates are considered.

Ciba-Geigy quoted prices per pound for diazinon and its alternatives which are identical to prices used by EPA in the benefit analysis. Their average application rates were fairly consistent with EPA estimates, with the exception of chlorpyrifos. Ciba-Geigy's estimate was approximately 50 percent over the reported rate estimated from the golf course survey discussed in the Support Document and is significantly higher than minimum label application rates.

The Agency's economic analysis of the impacts on golf courses was more detailed than Ciba-Geigy's analysis. The Agency estimated cost per acre for five of the top pest problems and calculated a weighted average cost per acre by region, depending on The pest problems found on golf courses in that area. The Agency's and Ciba-Geigy's conclusions regarding the differential cost per acre were not significantly different.

i. *Sod farm analysis.* The American Sod Producer's Association commented that the cost implications to sod farms were grossly miscalculated, but provided no details to support the comment. They also indicated that there is no evidence in the Support Document accounting for regional differences among sod producers.

The benefit analysis for sod farms did consider regional differences for percent of sod treated with diazinon and value of sod produced. Regional impacts were recognized and discussed in the analysis in Unit III.D of the Support Document.

3. Comments Relating to Other Issues

The Agency also received comments on issues not directly related to the avian hazard.

a. *Sulfotepp.* The Susquehanna Group Sierra Club commented that diazinon formulations contain sulfotepp as a major impurity. They indicated that sulfotepp is 30 to 120 times more toxic than diazinon and considerably more stable.

EPA is aware of the sulfotepp impurity in diazinon. Information on the levels of sulfotepp in diazinon products, and analytical methods to detect the sulfotepp impurities will be required as part of the reregistration process.

b. *Hazard to humans and pets.* The Agency received several comments relating to the potential hazards to humans and pets from the use of diazinon on golf courses, sod farms, and other sites from potential water contamination. As indicated, the Agency will be conducting an intensive review of the toxicology data base and the potential for water contamination for diazinon through the reregistration process.

V. Initiation of Regulatory Actions

This Unit has several sections. The first summarizes EPA's reasons for concluding that products that contain the active ingredient diazinon and that are registered for use on golf courses and sod farms should be cancelled. The second section defines the terms used in this unit. The third section specifies the conditions of registration that are required for federally registered products to remain registered. The fourth section establishes provisions concerning the sale, distribution, and use of existing stocks.

A. Agency's Conclusions

Based on the Agency's analysis in the Support Document and the information reviewed after the Notice of Special Review and Preliminary Notice of Intent to Cancel was issued, the Agency concluded that the risk to birds outweighs the benefits of use of diazinon products on golf courses and sod farms and that unreasonable adverse effects to birds will occur. In evaluating the hazard, the Agency considered diazinon's acute toxicity, estimated residue levels on grass and seed, estimated dose levels consumed by birds, diazinon application practices, exposure, diazinon residue data, bird kills, problems associated with the reporting of bird kills, and the effect on endangered species. In evaluating the benefits the Agency considered the biology of the insect pests, their control, the user cost impact of cancellation, and the efficacy of diazinon and its major alternatives.

The Agency also considered numerous restrictions as alternatives to cancellation and concluded that even with restrictions such as reduced application rates, additional hazard warnings, geographic and seasonal restrictions, and others, diazinon would still result in hazardous exposure to birds.

The weight of the evidence leads the Agency to conclude that the risk to birds outweighs the minor benefits and that cancellation is the only appropriate action.

B. Definitions

The following terms are defined for the purposes of this Unit.

1. "Manufacturer" refers to any registrant who, as defined, sells or distributes an end-use product containing diazinon registered for use on golf courses and sod farms.

2. "Existing stocks" refers to any quantity of diazinon products registered for use on golf courses and sod farms and which are in the United States on the date of publication of this Notice and which are formulated as an end-use product.

3. "Distribute and sell" and grammatical variants refer to the distribution, sale, offering for sale, holding for sale, shipping, delivering for shipment, or receiving and (having so received) delivering or offering to deliver a pesticide product.

C. Requirements for Complying With This Notice

A manufacturer of any product containing diazinon which is registered for use on golf courses and sod farms must submit an application to amend the registration of the product within 30 days of publication in the **Federal Register** or receipt of this Notice, whichever is later, to be allowed to continue to sell and distribute the product. The application must propose to amend the registration of the product to include the following statement on top of the front panel of the label or have supplemental labeling:

This product must not be used on golf courses and sod farms.

D. Existing Stocks

The following paragraphs describe the conditions under which registrants and others may sell and distribute existing stocks of diazinon registered for golf courses and sod farms. Existing stocks may not be sold and distributed except as provided below.

1. No manufacturer may release for shipment after November 30, 1986, any diazinon product unless the product bears an amended label or has supplemental labeling affixed which complies with Unit V.C.

2. No diazinon product may be distributed or sold by a retailer or other person after April 30, 1987, unless the product bears an amended label or has supplemental labeling affixed which complies with Unit V.C.

The Agency has determined that this existing stock provision is consistent with the Act. The majority of the use season will have ended by this fall, and as a result, the Agency does not anticipate that much diazinon registered for use on golf courses and sod farms will be distributed during the period of time until November 30, 1986. These products will be quickly distributed through commerce until April 30, 1987. The Agency believes that this is the quickest and most effective way to proceed with existing stocks.

VI. Procedural Matters

This Notice announces EPA's intent to cancel the registrations of products that contain diazinon and that are registered for use on golf courses and sod farms. This Unit explains how current registrants may apply to amend their registrations to comply with the terms and conditions discussed in Unit V.

Under sections 6(b) and 3(c)(6) of FIFRA, applicants, registrants, and certain other adversely affected persons are also entitled to respond to this Notice by requesting a hearing on the actions that EPA is initiating. Unless a hearing is properly requested with regard to a particular registration or application, this action will become final by operation of law.

This unit of the Notice explains how such persons may request a hearing on EPA's final cancellation and denial Notice (and the consequences of requesting a hearing and failing to request a hearing in accordance with those procedures).

A. Procedure for Amending the Terms and Conditions of Registration To Avoid Cancellation or Denial of Application

Registrants affected by the cancellation actions set forth in this Notice may avoid cancellation by filing for an application for an amended registration which contains the label modifications detailed in Unit V.B of this Notice. This application must be filed within 30 days of receipt of this Notice or within 30 days from the publication of this Notice, whichever occurs later. Applicants for a registration subject to this Notice must file an amended application for registration within the applicable 30-day period to avoid denial of their pending application.

Applications must be submitted to:

George LaRocca, Product Manager 15, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (703-557-2400).

B. Procedures for Requesting a Hearing

To contest the cancellation action set forth in this Notice, Federal registrants or applicants may request a hearing within 30 days of receipt of this Notice, or within 30 days from publication of this Notice, whichever occurs later. Any other person adversely affected by the action described in this Notice may request a hearing within 30 days of publication of this Notice in the **Federal Register.**

A registrant or other adversely affected party who requests a hearing must file the request in accordance with the procedures established by FIFRA and EPA's Rules of Practice Governing Hearings under 40 CFR Part 164. These procedures require, among other things, that all requests must identify the specific pesticide product(s) for which a hearing is requested, and that all requests must be received by the Hearing Clerk within the applicable 30-day period. Failure to comply with these requirements will result in denial of the request for a hearing. Requests for a hearing should also be accompanied by objections that are specific for each use of each pesticide product(s) for which a hearing is requested.

Requests for a hearing must be submitted to:

Hearing Clerk (A-101), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

1. Consequences of Filing a Timely and Effective Hearing Request

If a hearing on the action initiated by this Notice is requested in a timely and effective manner, the hearing will be governed by EPA's Rules of Practice for hearings under FIFRA section 6 (40 CFR Part 164), as modified below. The hearing will be limited to the specific uses and specific product registrations for which the hearing is requested.

In the event of a hearing, the specific use or uses of the specific registered product which is the subject of the hearing will not be cancelled except pursuant to an order of the Administrator at the conclusion of the hearing. If the product is not cancelled at the conclusion of the hearing, the dates affecting release for shipment, sale, and distribution may be modified for products not relabeled in accordance with this Notice.

2. Consequences of Failure To File in a Timely and Effective Manner

If a hearing concerning the registration of a specific pesticide product subject to this Notice is not requested by the end of the applicable 30-day period, registration of that product will be cancelled, unless the registrant files a request for an amended registration within the statutory period provided herein (see Unit V).

If the registration of a product covered by this Notice is cancelled by operation of law, the sale and distribution of existing stocks is governed by the provisions of Unit V of this Notice.

C. Separation of Functions

EPA's Rules of Practice forbid anyone who may take part in deciding this case, at any stage of the proceeding, from discussing the merits of the proceeding *ex parte* with any party or with any person who has been connected with the preparation or presentation of the proceeding as an advocate or in any investigative or expert capacity, or with any of their representatives (40 CFR 164.7).

Accordingly, the following EPA offices, and the staffs thereof, are designated as the judicial staff to perform the judicial function of EPA in any administrative hearing or this Notice of Intent to Cancel: The Office of the Administrative Law Judge, the

Office of the Judicial Officer, the Administrator, the Deputy Administrator, and the members of the staff in the immediate office of the Administrator and Deputy Administrator. None of the persons designated as the judicial staff may have any *ex parte* communication with the trial staff or any other interested person not employed by EPA on the merits of any ot the issues involved in this proceeding, without fully complying with the applicable regulations.

D. Schedule

EPA believes that it would be in the public interest to reach a prompt, final decision in this matter, and accordingly is establishing a deadline for the issuance of an Initial Decision by the Administrative Law Judge (ALJ) in the event that a hearing is requested. The ALJ assigned to any adjudicatory hearing requested on the action initiated by this Notice shall issue an Initial Decision no later than 9 months from the date on which this Notice is published in the **Federal Register**. Review of any exceptions to the Initial Decision will follow the schedule provided in 40 CFR 164.101, and a Final Decision will be issued as soon as possible thereafter.

As explained earlier in this Notice, the use of diazinon on golf courses and sod farms poses a significant risk to nontarget bird species, and in fact such use may be killing substantial numbers of birds. A thorough, but prompt, examination of these risks and the associated benefits is in the public interest.

In view of the limited scope of the issues and their relatively straightforward nature, EPA believes that 9 months should give the participants ample time to conduct discovery, to present evidence, to conduct cross-examination, and to prepare briefs for the ALJ and for the ALJ to prepare and issue an Initial Decision. This schedule reflects the fact that only one kind of risk, hazard to birds, is at issue and that the proposed cancellation involves only two use sites. The schedule also reflects the fact that a considerable body of information and analysis has been assembled during the Special Review of diazinon.

Any party may by motion request that the deadline be extended. If it appears to the ALJ that additional time will be needed, the ALJ shall promptly inform the Judicial Officer of the circumstances which contribute to the need for more time and shall propose a schedule for completing the hearing, together with a new deadline for issuance of the Initial Decision. The Judicial Officer is given authority to establish a new schedule.

If an appeal from the Initial Decision is taken, it is expected that a final decision would be issued within 60 days.

VII. References

The references used in this **Federal Register** Notice are as follows:

(1) Ciba-Geigy Corporation, Agricultural Division, "Efficacy of Diazinon on Grubs and Chinch Bugs vs. Other Registered Insecticides." Submitted to the Agency October 18, 1985. Accession No. 260216.

(2) Ciba-Geigy Corporation, "Response of Ciba-Geigy Corporation to the Special Review and Proposed Cancellation of Diazinon." Public Docket No. D-05113, submitted to the Agency March 28, 1986. Accession No. 262151.

(3) Ciba-Geigy Corporation, "Reinvestigations of Bird Kills Associated With The Use of Diazinon on Turf Grass (Bio-Life Associates)." Volumes 1 and 2. Accession No. 263011 and 263012.

(4) Futuyma, D., 1979. Evolutionary Biology. Sinauer Associates, Inc., Cambridge, Massachusetts.

(5) Harwood, R.F. and M.T. James, 1979. Entomology in Human and Animal Health. 7th Edition. Macmillan Publishing Company, New York, New York.

(6) Kuhr, R.J. and H. Tashiro. "Distribution and Persistence of Chlorpyrifos and Diazinon Applied to Turf." Bulletin of Environmental Contamination and Toxicology 20, pp. 652-656, 1978.

(7) Littrell, E.E. "Mortality of American Wigeon on a Golf Course Treated with the Organophosphate Diazinon." California Fish and Game 72, pp. 12-14, 1986.

(8) Mayr, E., Animal Species and Evolution. 1963. Harvard University Press, Cambridge, Massachusetts.

(9) Sears, M. and R.A. Chapman. "Persistence and Movement of Four Insecticides Applied to Turfgrass." Journal of Economic Entomology 72, pp. 272-274, 1979.

(10) Stine, Charlotte, 1986. Insecticide Product Guide 1986. Ag Consultant and Fieldman. Volume 2.

(11) Sorensen, K.A., ed. "Insecticide and Acaricide Tests" 1981. Volume 6. Entomological Society of America, 1981.

(12) United States Department of the Interior, 1986. "Formal Section 7 Consultation on the Registration of Products Containing Diazinon For Use on Golf Courses and Sod Farms." Memorandum from Stephen W. Perry.

(13) United States Department of the Interior, 1986. "Review and Preliminary Determination To Cancel Registration of Diazinon." Memorandum from E. Lamberton.

(14) United States Environmental Protection Agency, 1986. "Analysis of Residue Data Submitted by Ciba-Geigy During Special Review of Diazinon." Memorandum from Margaret Rostker.

(15) United States Environmental Protection Agency, 1986. "Benefits/Entomological Information for the PD-4 Document on Diazinon Uses on Golf Courses and Sod Farms." Memorandum from John Kliewer.

(16) United States Environmental Protection Agency, 1986. "Bird Kills Associated With Diazinon and Reported to EEB Since Initiation of Special Review." Memorandum from Margaret Rostker.

(17) United States Environmental Protection Agency, 1986. "Diazinon Support Document." December 1985.

(18) United States Environmental Protection Agency, 1986. "EEB Review of Two Open Literature Studies." Memorandum from Margaret Rostker.

(19) United States Environmental Protection Agency, 1986. "Information Concerning Diazinon for the Scientific Advisory Panel." April 28, 1986.

(20) United States Environmental Protection Agency, 1986. "Transcript of Proceedings: United States Environmental Protection Agency, Scientific Advisory Panel, Open Meeting." May 21, 1986.

(21) York, A.C., ed. "Insecticide and Acaricide Tests," Volume 7. Entomological Society of America, 1982.

(22) York, A.C., ed. "Insecticide and Acaricide Tests," Volume 8. Entomological Society of America, 1983.

(23) York, A.C., ed. "Insecticide and Acaricide Tests," Volume 9. Entomological Society of America, 1984.

(24) York, A.C., ed. "Insecticide and Acaricide Tests," Volume 10. Entomological Society of America, 1985.

All but the published references are available for inspection in Rm. 236, Crystal Mall Building #2, 1921 Jefferson Davis Highway, Arlington, Va., from 9 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Dated: September 24, 1986.

Lee M. Thomas,

Administrator.

[FR Doc. 86-22128 Filed 9-30-86; 8:45 am]

BILLING CODE 6560-50-M

[Docket No. ECAO-R-063; FRL-3088-8]

Draft Health Assessment Document for Hydrogen Sulfide

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of first external review draft.

SUMMARY: This notice announces the availability of the first external review draft of a Health Assessment Document for Hydrogen Sulfide.

DATES: The Agency will make the document available for public review and comment on or about Wednesday, October 8, 1986. Comments must be postmarked by Wednesday, December 10, 1986.

ADDRESSES: To obtain a copy of the document, interested parties should contact the ORD Publications Center, CERI-FRN, U.S. Environmental Protection Agency, 26 West St. Clair

Street, Cincinnati, OH 45268, (513) 569–7562 or FTS 682–7562, and request the first external review draft of the Health Assessment Document for Hydrogen Sulfide. Please provide your name, mailing address, and the EPA document number EPA/600/8–86/026A.

The draft document will also be available for public inspection and copying at the EPA library, EPA headquarters, Waterside Mall, 401 M Street SW., Washington, DC.

Comments on the draft should be sent to the Project Manager for Hydrogen Sulfide, U.S. Environmental Protection Agency, Environmental Criteria and Assessment Office, MD–52, Research Triangle Park, NC 27711.

FOR FURTHER INFORMATION CONTACT: Ms. Diane Ray, U.S. Environmental Protection Agency, Environmental Criteria and Assessment Office, MD–52, Research Triangle Park, NC 27711, (919) 541–3637 or FTS 629–3637.

SUPPLEMENTARY INFORMATION: In January 1986, EPA's Office of Air Quality Planning and Standards (OAQPS) requested that the Environmental Criteria and Assessment Office (ECAO), Office of Health and Environmental Assessment (OHEA), prepare a health assessment document for hydrogen sulfide. The document will be used by EPA in the decisionmaking process regarding possible regulation of hydrogen sulfide under the Clean Air Act as amended, 42 U.S.C. 7401 *et seq.*

Dated: September 19, 1986.

Courtney Riordan,

Acting Assistant Administrator for Research and Development.

[FR Doc. 86–22125 Filed 9–30–86; 8:45 am]

BILLING CODE 6560–50–M

[OPP–00224A; FRL–3088–5]

FIFRA Scientific Advisory Panel; Appointments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Notice is given of the appointment of two members to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel established pursuant to section 25(d) of FIFRA, as amended (86 Stat. 973 and 89 Stat. 751; 7 U.S.C. 136 et seq.). Public notice of nominees along with a request for public comments appeared in the **Federal Register** of Wednesday, March 26, 1986 (51 FR 10438).

FOR FURTHER INFORMATION CONTACT: By mail:

Stephen L. Johnson, Executive Secretary, FIFRA Scientific Advisory Panel (TS–769C), Office of Pesticide Programs, Office location and telephone number: Rm. 1121, Crystal Mall Building No. 2, Arlington, VA (703–557–7695).

SUPPLEMENTARY INFORMATION: Congress mandated that the Scientific Advisory Panel would consist of seven members, selected from candidates nominated by the National Science Foundation (NSF) and the National Institutes of Health (NIH). Congress also mandated that the terms of appointment would be staggered. Accordingly, seven members were appointed on March 24, 1983, to the Panel (which, at the time, was constituted under the Federal Advisory Committee Act rather than FIFRA), with the terms of two members scheduled to expire on September 30, 1984, the terms of three members scheduled to expire on September 30, 1985, and the terms of the remaining two members scheduled to expire on September 30, 1986. In accordance with the statutory requirement, lists of nominees were requested from NIH and NSF in the areas of biotechnology, reproductive toxicology and agricultural science and a public notice of nominees, including biographical data, appeared in the **Federal Register** on March 26, 1986. No comments were received in response to this Notice.

My decision to appoint the following nominee to serve as a member of the Scientific Advisory Panel is based on the need for expertise in biotechnology:

James Michael Tiedje, Ph.D., Professor, Microbial Ecology, Michigan State University. Expertise: Microbial Ecology, Soil Microbiology. Born: February 9, 1942. Education: Iowa State University, BS 1964; Cornell University, MS 1966, Ph.D. (soil microbiology) 1968. Professional experience: From Assistant Professor to Associate Professor, 1968–1978, Professor, Microbial Ecology, Michigan State University, 1978–present. Concurrent Positions: Eli Lilly Career Development Grant, 1974; Visiting Associate Professor, University of Georgia, 1974–1975; Editor, Applied Microbiology, 1974–present; Consultant, National Science Foundation, 1974–1977. Societies: American Society of Microbiologists; American Society of Agronomists; Soil Science Society of America; American Association for the Advancement of Science. Research: Deiutrification; microbial metabolism of pesticides and other organic chemicals; microbial activities in eutrophic lakes.

The nominations for a replacement for Dr. Kilgore, although recognized authorities in their fields, do not provide the scientific expertise needed for the duties of the Panel at this time. Until such time as additional nominees can be obtained, I am reappointing Wendell W. Kilgore, based upon his expertise in environmental toxicology, agricultural science and microbiology, which meets the need for a disciplinary mix and the need for wide geographic representation:

Wendell Warren Kilgore, Ph.D., Professor, Department of Environmental Toxicology, University of California, Davis, California 95616. Born: June 21, 1929. Educational Background: University of California, AB, (biology), 1951, Ph.D. (microbiology), 1958. Professional Experience: Assistant microbiologist, University of California, 1955–1958, microbiologist, 1958–1959; microbiologist, Stanford Research Institute, 1959–1960; chairman of department, 1970–1977; director, food protection and toxicology center, 1970–1978; professor, environmental toxicology, University of California, Davis, 1968–present. Societies: American Society of Microbiologists; American Chemical Society; Society of Toxicologists. Research: Insect biochemistry, microbial biochemistry; carbohydrate metabolism, effect of pesticides on human health, mechanism of action of insect sterilants.

Meetings of the Scientific Advisory Panel are always announced in the **Federal Register** at least 15 days prior to each meeting.

Dated: September 19, 1986.

A. James Barnes,

Deputy Administrator.

[FR Doc. 86–22126 Filed 9–30–86; 8:45 am]

BILLING CODE 6560–50–M

[OPP–30273A; FRL–3088–6]

Natural Ag, Bentech Laboratories, Inc.; Approval of Pesticide Product Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of an application submitted by Natural Ag, a Division of Bentech Laboratories, Inc. to register the pesticide product "YEA", containing the active ingredient poly-*D*-glucosamine (hereafter referred to as chitosan), an active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT:
My mail: Richard F. Mountfort, Product Manager (PM) 23, Registration Division (TS–767C), Office of Pesticide Programs, 401 M Street, SW., Washington, DC 20460.
Office Location and Telephone number: Rm. 237, CM#2, Environmental Protection Agency, 1921 Jefferson Davis Hwy, Arlington, VA, (703–557–1830).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of September 15, 1986 (51 FR 32683), which announced that Natural Ag, a Division of Bentech Laboratories, Inc., 635 Water Ave., NE., Albany, OR 97321, submitted an application to EPA to register the pesticide product "YEA" containing the active ingredient chitosan at 2.50 percent, an ingredient not included in any previously registered products.

EPA approved registration of this product on September 15, 1986 for use as a plant growth regulator/wheat seed treatment, and assigned EPA Registration No. 56437–1.

The Agency considered all available information on the risks associated with the proposed use of chitosan and determined that it would be in the public interest to register this pesticide. A detailed description of the information evaluated by the Agency may be found in the related document [PP 6E3451/R853] published elsewhere in this issue of the **Federal Register** which establishes an examption from the requirement of a tolerance for chitosan when used in or on wheat.

Authority: 7 U.S.C. 136.

Dated: September 22, 1986.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 86–22129 Filed 9–30–86; 8:45 am]

BILLING CODE 6560–50–M

[OPP–64004; FRL–3089–2]

Intent To Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to cancel.

SUMMARY: EPA is issuing a notice of intent to cancel certain pesticide registrations under section 6(b) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). The registrations which the Agency intends to cancel are held by registrants whom the Agency, after a good faith effort, has been unable to contact. Persons adversely affected by this notice may request a hearing.

DATES: All registrations will be cancelled at the end of 30 days from the date of publication or receipt of this notice by registrants unless a hearing has been requested by a person adversely affected by this notice or the Agency is provided with a correct and current address of an affected registrant.

A request for a hearing by an affected registrant must be received by the Agency on or before October 31, 1986 or 30 days after receipt by mail by the affected registrant of this notice, whichever is the later date.

A request for a hearing submitted by any other adversely affected person must be received on or before October 31, 1986.

ADDRESS: Hearing requests must be submitted to: Hearing Clerk (A–110), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:
By mail: Stanley J. Austin, Registration Support and Emergency Response Branch, Registration Division (TS–767C), Office of pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.
Office location and telephone number: Rm. 716C, Crystal Mall Building #2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–4360).

SUPPLEMENTARY INFORMATION: Over the years, EPA has been unable to contact certain pesticide registrants at the addresses on file at the Agency or appearing on current pesticide product labels. EPA's inability to communicate with these registrants impairs the Agency's ability to discharge its statutory mandate to regulate pesticide products and their impact on the environment. Furthermore, it creates an undesirable situation in that some registrants may unknowingly be in violation of the Act and escape burdens assumed by other registrants in compliance with the Act.

Section 6(b) of FIFRA allows the Administrator to issue a notice of intent to cancel a pesticide's registration if that ". . . pesticide or its labeling or other material required to be submitted does not comply with the provisions of this Act. . . ."

Section 3(c)(1)(A) of FIFRA and 40 CFR 162.10(a)(1)(ii) make it a condition of registration that a registrant's address be filed with the Agency and appear on the label of the registrant's pesticide product. In addition, section 12(a)(1)(E) of FIFRA makes it unlawful to distribute, sell, offer for sale, hold for sale, ship, deliver or offer for delivery to any person a misbranded pesticide. Under FIFRA section 2(q)(2)(C)(i), failure to have the registrant's correct address on the label of its pesticide product constitutes misbranding. Therefore, failure of a registrant to submit a correct and current address and include such address as part of the label of its pesticide products is in violation of the Act's provisions and is grounds for cancellation of that registrant's registrations.

EPA issued a policy statement, published in the **Federal Register** of March 5, 1986 (51 FR 7634), indicating that the Agency may decide to initiate cancellation proceedings for registrations held by registrants whom the Agency has, after good faith efforts, been unable to contact by mail. This notice implements that policy.

This notice will be sent to all affected registrants by certified mail to the most current addresses the Agency has in its files. For the purposes of this notice, the Agency will consider validated non-delivery as receipt and the date of validated non-delivery as the date of receipt in those instances where actual receipt is not accomplished.

The impact of these cancellations on the agricultural economy is difficult to determine. It is believed that some or all of the pesticide products subject to this cancellation action are no longer on the market. Some of the pesticide products have no agricultural uses. At worst, the impact on the agricultural economy is expected to be slight.

Pursuant to section 6(b), the Sectetary of Agriculture has reviewed this notice and has no comments. The Science Advisory Panel has waived its right (under section 25(d)) to review this notice.

Registrations Subject to Cancellation

The following registrations are subject to cancellation under this notice.

Registrant	Registration Nos.
Acrolite Products, Inc., E. Inman Ave., Rahway, NJ 07065.	9799–01
Albermarle Chem., Inc., Box 1423, Charlotteville, VA 22902.	9560–02, 9560–03
Ambroid Company, Inc., 612 Montello Street, Brockton, MA 02401.	8689–02
American Research Corp., 6899 Peachtree Ind. Blvd., Norcross, GA 30071.	9235–01, 9235–02
Arguicide Company, Box 39125, Cincinnati, OH 45239.	8507–01
Batesville Chemical Company, 205 Pamela Street, Batesville, MS 38606.	6607–01, 6607–4365
BBC Laboratories, 700 N. Sepulveda Blvd., El Segundo, CA 90245.	6253–02
Belfaire Products, Inc., 250 E. 43rd Street, New York, NY 10017.	9924–01
Bronco Chemical, Inc., Box 26396, Memphis, TN 38126.	9765–01
Cambridge Sales Company, 17 Barstow Road, Great Neck, NY 11021.	6063–19, 6063–44, 6063–52
C & H Chemical Co., 3706 Raymond Street, Houston, TX 77007.	10471–03, 10471–04
Chase Instruments Corp., P.O. Box 306, Lindenhurst, NY 11757.	10620–01
Chemical Machines, 120 Lombard, Winnipeg 2, Manitoba, Canada.	3462–06

Registrant	Registration Nos.
Chemical Service Company, 1601 Indiana Ave., Laporte, IN 46350.	10074-02, 100074-03
Continental Chemical & Research Corp., 2100 N. 11th Street, Reading, PA 19604.	10482-02
Cromwell Products, Inc., 489 East State Street, Westport, CT 06880.	5794-01
Crossland Manufacturing Co., Inc., 10009 East Toledo Road, Blissfield, MI 49228.	10158-01
Direct Chemical Company, 160 Broadway, New York, NY 10038.	10495-02
Distributors Supply Company, 2351 Hampden Ave., St. Paul, MN 55114.	630-39
D&S Sales Company, Attn: Mr. David Slocumh, P.O. Box 5281, Macon, GA 31208.	11303-01
Extrin Flavors, Inc., Research Labs, 34-18 Northern Blvd., Long Island City, NY 11101.	9942-02
Glenn Chemical Company, 4149 N. Milwaukee Ave., Chicago, IL 60641.	5644-01
Goodwill Chemical Co., Inc., Freemansville Road, P.O. Box 1451, Reading, PA 19603.	10714-05
Greer Bros., 6313 Townline Road, N. Tonawanda, NY 14120.	5756-02
Hanover Industrial Chem. Corp., P.O. Box K, Hanover Park, IL 60103.	9934-01
International Lubricant Corp., Box 51118, New Orleans, LA 70150.	6031-01, 6031-02
J.H. Weiler Inspec. Serv., Inc., 5909 N. Washington Street, Denver, CO 80216.	6732-03
Lilico Product, Inc., 4913 W. Nassau Street, Tampa, FL 33607.	9695-01, 9695-02, 9695-03, 9695-04
Michigan Company, 2011 High Street, Lansing, MI 48906.	5743-02, 5743-03, 5743-04
Midland Tar Distillers, Inc., 1143 E. Jersey Street, Elizabeth, NJ 07201.	4259-01
Miracle Pet Products, Inc., 245 Cornelison Ave., Jersey City, NJ 07302.	10016-13
Mocho Industries, Inc., 200 Park Avenue, Suite 303 East, New York, NY 10017.	10354-01
Pabco Paint Corp., P.O. Box 5910, Fremont, CA 94538.	9708-01, 9708-02
RO-DI Chemical Company, Inc., 1460 W. Montrose, Chicago, IL 60640.	6339-04
Schwartz Chemical Co., Inc., 1041 Seminole Blvd., Casselberry, FL 32707.	9678-05, 9678-5389
Septi-San, Inc., 312 So. Main, Farmar City, IL 61842.	5950-11
Sportmen's Laboratories, Inc., P.O. Box 732, Anoka, MN 55303.	10725-01
Staff Supermarket Associates, Inc., 333 Jericho Turnpike, Jericho, NY 11753.	9969-03
Susgro Chemical Company, 185 E. 80th Street, New York, NY 10021.	10817-01
Talb Industries, Inc., 4041 Ridge Ave., Philadelphia, PA 19129.	4723-04
Texas State Do it Yourself Pest Control, 7526 Morley Street, Houston, TX 77017.	9717-01
The Bug Man, Box 1317, Asbury Park, NJ 07712.	11484-01, 11484-02
Trenor Laboratories, Box 586, Houston, TX 38851.	10486-02
TZL Laboratories, 103 Johnson Street, E. Syracuse, NY 13057.	10612-03
Van's Enterprises, 15 Main Street, Sussex, NJ 07461.	12011-01
Vari-Chem Industries, Ltd., 6901 N. Crescent Blvd., Pennsaukeen, NJ 08109.	10433-05
Weedco Products, P.O. Box 508, Napa, CA 94558.	11238-5227, 11238-5228
W.C. Cook Company, Attn: George Redding, 1985 N. Anson Drive, Melrose Park, IL 60160.	9147-02, 9147-03, 9147-04, 9147-05
Williams Chemical Company, 612 Franklin Avenue, Waco, TX 76701.	864-01

Dated: September 23, 1986.

James W. Akerman,

Acting Director, Registration Division.

[FR Doc. 86-22206 Filed 9-30-86; 8:45 am]

BILLING CODE 6560-50-M

[OPP-240071; FRL-3089-3]

State Registration of Pesticides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received notices of registration of pesticides to meet special local needs under section 24(c) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, from 15 States. A registration issued under this section of FIFRA shall not be effective for more than 90 days if the Administrator disapproves the registration or finds it to be invalid within that period. If the Administrator disapproves a registration or finds it to be invalid after 90 days, a notice giving that information will be published in the **Federal Register.**

DATE: The last entry of each item is the date the State registration of that product became effective.

FOR FURTHER INFORMATION CONTACT: Owen F. Beeder, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC.

Office location and telephone number: Rm. 716A, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-7893).

SUPPLEMENTARY INFORMATION: This notice only lists the section 24(c) applications submitted to the Agency. The Agency has 90 days to approve or disapprove each application listed in this notice. Applications that are not approved are returned to the appropriate State for action. Most of the registrations listed below were received by the EPA in May and June 1986. Receipts of State registrations will be published periodically. Of the following registrations, none involve a changed-use pattern (CUP). The term "changed-use pattern" is defined in 40 CFR 162.3(k) as a significant change from a use pattern approved in connection with the registration of a pesticide product. Examples of significant changes include, but are not limited to, changes from a nonfood to food use, outdoor to indoor use, ground to aerial application, terrestrial to aquatic use, and nondomestic to domestic use.

California

EPA SLN No. CA 86 0029. San Diego City Department of Agriculture. Registration is for Pyrenone Crop Spray to be used on herbs and spices to control aphids and flea beetles. May 5, 1986.

EPA SLN No. CA 86 0030. San Diego City Department of Agriculture. Registration is for Dipel 2X Worm Killer to be used on herbs and spices to control loopers and armyworms. May 14, 1986.

EPA SLN No. CA 86 0035. FMC Corp. Registration is for Thiodan 3 EC to be used on seed alfalfa to control spotted alfalfa aphids. June 4, 1986.

EPA SLN No. CA 86 0037. Monterey City Agriculture Department. Registration is for Furadan 4F to be used on artichokes to control cribrate weevils. June 5, 1986.

Georgia

EPA SLN No. CA 86 0003. FMC Corp. Registration is for Ammo 2.5EC Insecticide + Ethion 4 Miscible Miticide-Insecticide to be used on pecans to control pecan aphids (yellow and black), weevils, pecan nut casebearers, and hickory shuckworms. June 24, 1986.

Maine

EPA SLN No. ME 86 0001. Nor-Am Chemical Co. Registration is for Botran 75W to be used on potatoes to control white mold. June 11, 1986.

EPA SLN No. ME 86 0002. Mobay Corp. Registration is for Mesurol 75WP to be used on blueberries to control flies and birds. June 11, 1986.

Michigan

EPA SLN No. MI 0003. Mobay Corp. Registration is for Mesurol 75 WP to be used on blueberries and cherries to control flies and birds. June 6, 1986.

EPA SLN No. MI 86 0004. Dow Chemical Co. Registration is for Dow Antimicrobial to be used in publicly owned treatment works for disinfection of discharge waste waters. June 26, 1986.

Montana

EPA SLN No. MT 86 0005. FMC Corp. Registration is for Furadan 4F to be used on corn to control European corn borers, Banks grass mites, and grasshoppers. June 24, 1986.

Nevada

EPA SLN No. NV 86 0006. Nor-Am Chemical Co. Registration is for Botran 75W to be used on potatoes to control botrytis blight and white mold. June 23, 1986.

New Jersey

EPA SLN No. NJ 86 0007. E.I. DuPont de Nemours. Registration is for DuPont Manzate 200 Fungicide to be used for disease control on flowers, foilage plants, and ornamentals in the State of New Jersey. May 22, 1986.

North Carolina

EPA SLN No. NC 86 0002. Union Carbide Agricultural Products. Registration is for Larvin 3.2 Thiodicarb to be used on sweet corn to control earworms, European corn borers, and armyworms. May 29, 1986.

EPA SLN No. NC 86 0003. Hopkins Agricultural Chemical Co. Registration is for Snail and Slug Pellets M-2 to be used on ginseng gardens to control snails and slugs. May 29, 1986.

EPA SLN No. NC 86 0004. Chevron Chemical Co. Registration is for Ortho Diquat H/A to be used as forest site preparation. May 29 1986.

Oregon

EPA SLN No. OR 86 0005. SDS Biotech Corp. Registration is for Bravo 500 to be used on mint to control rust and septoria leaf spot. June 13, 1986.

EPA SLN No. OR 86 0006. Mobay Corp. Registration is for Mesurol 75WP to be used on blueberries to control flies and birds. June 13, 1986.

South Carolina

EPA SLN No. SC 86 0001. Pennwalt Corp. Registration is for Peach, Nectarine, and Plum Luster 274 to be used on peaches, nectarines, and plums to control brown rot and Rhizopus spoilage. May 26, 1986.

South Dakota

EPA SLN No. SD 86 0001. Pestcon Systems, Inc. Registration is for Fumitoxin Aluminum Phosphide Tablets and Fumitoxin Aluminum Phosphide Pellets to control bees infested with tracheal mites in beehives, supers, and other beekeeping equipment. May 13, 1986.

Utah

EPA SLN No. UT 86 0004. FMC Corp. Registration is for Dimethoate 267 to be used on cherries to control cherry fruit flies. June 2, 1986.

Vermont

EPA SLN No. VT 86 0001. Mobay Corp. Registration is for Mesurol 75WP to be used on blueberries to control flies and birds. May 19, 1986.

Washington

EPA SLN No. WA 86 0002. Wilbur-Ellis Co. Registration is for Dimethoate 267 to be used on broccoli, brussels sprouts, cabbage, and cauliflower to control root maggots. January 16, 1986.

EPA SLN No. WA 86 0003. Aceto Agricultural Chemicals. Registration is for Dimethogon 267 to be used on lentils to control aphids and lygus bugs. January 16, 1986.

EPA SLN No. WA 86 0004. Wilbur-Ellis Co. Registration is for Dimethoate 267 to be used on lentils to control aphids and lygus bugs. January 16, 1986.

EPA SLN No. WA 86 0021. Mobay Corp. Registration is for Mesurol 75WP to be used on blueberries to control flies and birds. May 22, 1986.

EPA SLN No. WA 86 0023. PureGro Co. Registration is for Dimethoate 2.67 EC to be used on cherries to control cherry fruit flies. May 28, 1986.

EPA SLN No. WA 86 0025. Drexel Chemical Co. Registration is for Drexel Dimethoate 2.67 to be used on lentils to control aphids and lygus bugs. June 26, 1986.

West Virginia

EPA SLN No. WV 86 0002. Mobay Corp. Registration is for Mesurol 75WP to be used on blueberries and cherries to control birds. May 30, 1986.

(Sec. 24 as amended, 92 Stat. 835 (7 U.S.C. 136))

Dated: September 24, 1986.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 86-22207 Filed 9-30-86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL HOME LOAN BANK BOARD

Cal America Savings and Loan Assn., Walnut Creek, CA.; Appointment of Receiver

Notice is hereby given that the Superior Court for the County of Contra Costa has confirmed the appointment by the Savings and Loan Commissioner for the State of California ("Commissioner") of a receiver for Cal America Savings and Loan Association, Walnut Creek, California ("Cal America"), and that pursuant to the authority contained in section 406(c)(1) of the National Housing Act, as amended (12 U.S.C. 1729(c)(1) (1982), the Federal Savings and Loan Insurance Corporation accepted the tender of the Commissioner of the appointment as receiver for Cal America, for the purpose of liquidation, effective September 19, 1986.

Dated: September 26, 1986.

Jeff Sconyers,

Secretary.

[FR Doc. 86-22226 Filed 9-30-86; 8:45 am]

BILLING CODE 6720-01-M

Cal America Savings and Loan Assn.; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 406(c)(2) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(2) (1982), the Federal Home Loan Bank Board appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Cal America Savings and Loan Association, Walnut Creek, California on September 19, 1986.

Dated: September 26, 1986.

Jeff Sconyers,

Secretary

[FR Doc. 86-22227 Filed 9-30-86; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL RESERVE SYSTEM

The Chase Manhattan Corp., et al.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 24, 1986.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *The Chase Manhattan Corporation*, New York, New York, Chase Manhattan National Corporation, New York, New York, and Chase Manhattan National Holding Corporation, Newark, Delaware; to engage through any existing subsidiaries or subsidiaries yet to be formed in acting as underwriter for credit life insurance, credit accident and health insurance, and credit unemployment insurance that is directly related to an extension of credit by Applicant and its subsidiaries, pursuant to § 225.25(b)(9) of the Board's Regulation Y. Comments on this application must be received by October 20, 1986.

B. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Bankvest, Inc.*, Wilkes-Barre, Pennsylvania; to engage *de novo* through its subsidiary, First Data Corp., Wilkes-Barre, Pennsylvania, in data processing and related services permissible under § 225.25(b)(7) of the Board's Regulation Y. These activities will be conducted in Wilkes-Barre, Pennsylvania.

C. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Bank Shares Incorporated*, Minneapolis, Minnesota; to engage *de novo* through its subsidiary Marquette Holm Insurance Agency, Inc., Minneapolis, Minnesota, in general insurance agency and insurance brokerage activities. The activities are being expanded *de novo* from a limited geographic area to nationwide, pursuant to section 4(c)(8)(G) of the Bank Holding Company Act. Comments on this application must be received by October 21, 1986.

Board of Governors of the Federal Reserve System, September 25, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-22143 Filed 9-30-86; 8:45 am]

BILLING CODE 6210-01-M

Independence Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 22, 1986.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Independence Bancorp, Inc.*, Perkasie, Pennsylvania; to acquire 100 percent of the voting shares of Third National Bank and Trust Company of Scranton, Scranton, Pennsylvania.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Charter Banc Group, Inc.*, Northfield, Illinois; to become a bank holding company by acquiring 80 percent of the voting shares of Bank of Glenbrook, Glenview, Illinois, Bank of Northfield, Northfield, Illinois, Bank of Wheaton, Wheaton, Illinois, and Bank of Winfield, Winfield, Illinois. Comments on this application must be received by October 20, 1986.

2. *City Bancorp of Bloomington-Normal, Inc.*, Bloomington, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of State Bank of Saybrook, Saybrook, Illinois.

3. *First Interstate Corporation of Wisconsin*, Sheboygan, Wisconsin; to acquire 100 percent of the voting shares of Mid-Continental Bancorporation, Inc., Milwaukee, Wisconsin, and thereby indirectly acquire Continental Bank & Trust Co., Milwaukee, Wisconsin.

4. *First Midwest Bancorp, Inc.*, Naperville, Illinois; to acquire 100 percent of the voting shares of Bancorp of Mundelein, Inc., Mundelein, Illinois, and thereby indirectly acquire Bank of Mundelein, Mundelein, Illinois. Comments on this application must be received by October 23, 1986.

5. *Mid-Continental Holdings, Inc.*, Sheboygan, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of Mid-Continental Bancorporation, Inc., Milwaukee, Wisconsin, and thereby indirectly acquire Continental Bank & Trust Co., Milwaukee, Wisconsin.

6. *Suburban Bancorp, Inc.*, Palatine, Illinois; to acquire at least 51 percent of the voting shares of Addison State Bank, Addison, Illinois. Comments on this application must be received by October 23, 1986.

7. *Waterman Bancshares, Inc.*, Waterman, Illinois; to become a bank holding company by acquiring 80 percent of the voting shares of Waterman State Bank, Waterman, Illinois.

C. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *F&M Bank Holding Company of Valley City, Inc.*, Valley City, North Dakota; to become a bank holding company by acquiring 80.85 percent of the voting shares of Farmers & Merchants Bank of Valley City, Valley City, North Dakota. Comments on this application must be received by October 24, 1986.

2. *Shelard Bancshares, Inc.*, St. Louis Park, Minnesota; to acquire 100 percent of the voting shares of Minnesota National Bank of Eajan, Eajan, Minnesota. Comments on this application must be received by October 23, 1986.

Board of Governors of the Federal Reserve System, September 25, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-22144 Filed 9-30-86; 8:45 am]

BILLING CODE 6210-01-M

NBD Bancorp, Inc., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than October 22, 1986.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *NBD Bancorp, Inc.*, Detroit, Michigan; to acquire Computer Communications of America, Inc., Detroit, Michigan, and thereby engage in servicing loans and data processing pursuant to §§ 225.25(b)(1) and 225.25(b)(7) of the Board's Regulation Y.

B. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Norwest Corporation*, Minneapolis, Minnesota; to acquire Watson Agency, Inc., Watson, Minnesota, and thereby engage in general insurance agency activities pursuant to section 4(c)(8)(G) of the Bank Holding Company Act. These activities will be conducted in the State of Minnesota.

Board of Governors of the Federal Reserve System, September 25, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-22145 Filed 9-30-86; 8:45 am]

BILLING CODE 6210-01-M

Signet Banking Corp.; Application To Engage de Novo in Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a) of the Board's Regulation Y (12 CFR 225.23(a)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 15, 1986.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Signet Banking Corporation*, Richmond, Virginia; to engage *de novo* through its subsidiary, Corporate Finance Advisors, Inc., Richmond, Virginia, in providing advice in connection with questions related to structuring and arranging for loan syndications, interest rate "swap," interest rate "cap" and similar transactions; advice in connection with merger, acquisition/divestiture and financing transactions for financial institutions; valuations of financial institutions; and the rendering of fairness opinions in connection with merger, acquisition and similar transactions for financial institutions.

Board of Governors of the Federal Reserve System, September 25, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-22146 Filed 9-30-86; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 86N-0205]

Biological Product Licenses; Interstate Blood Bank, Inc., of Louisiana; Revocation of U.S. License No. 438

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the revocation of establishment license (U.S. License No. 438) and product licenses issued to the Interstate Blood Bank, Inc., of Louisiana for the manfuacture of Fresh Frozen Plasma, Plasma, Platelets, Red Blood Cells, Source Leukocytes, and Whole Blood. In a letter dated March 14, 1986, the firm requested that its establishment and product licenses be revoked and waived an opportunity for a hearting.

DATE: The revocation of the establisment and product licenses was effective on March 28, 1986.

FOR FURTHER INFORMATION CONTACT: Joseph Wilczek, Center for Drugs and Biologics (HFN-362), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8046.

SUPPLEMENTARY INFORMATION: FDA has revoked the establisment license (U.S. License No. 438) and product licenses issued to the Interstate Blood Bank, Inc., of Louisiana for the manufacture of Fresh Frozen Plasma, Plasma, Platelets, Red Blood Cells, Source Leukocytes, and Whole Blood. Interstate Blood Bank, Inc., of Louisiana was located at 423 Crockett St. Shreveport, LA 71101. Before the licenses were revoked, the firm also operated a donor center at 700 Pennsylvania Ave., Fort Worth, TX, under the name of Interstate Blood Bank, Inc., of Texas. Together, the Shreveport and Fort Worth facilities constituted the Interstate Blood Bank, Inc., of Louisiana.

On December 9, 10, 13, and 16, 1985, FDA inspected the Fort Worth facility and found significant deviations from the applicable biologics regulations. These deviations included, but were not

limited to: (1) overbleeding by frequency and volume (21 CFR 640.3(b) and (f) and 606.100(b)(5)), (2) bleeding unsuitable donors (21 CFR 640.31 and 640.3(c)), (3) using assumed names to conceal overbleeds (21 CFR 606.160(b)(1) and 640.4(e)), and (4) collecting units of blood that could not be traced back to the donor (21 CFR 606.100(b)(13) and 606.160(c)). Due to the serious nature of the deviations that posed a significant danger to health, FDA suspended the establishment license (U.S. License No. 438) on January 15, 1986, for the Fort Worth facility.

After the suspension, the agency conducted a comprehensive investigation into the operations of Interstate Blood Bank's Fort Worth and Shreveport facilities to determine the firm's compliance with the applicable Federal regulations and the standards established in the license.

In addition to the deficiencies that were acknowledged in written responses from Interstate Blood Bank, Inc., of Louisiana dated January 25, 1986, and January 30, 1986, FDA's followup investigation revealed additional serious violative practices. FDA investigators concluded that overbleeding was known to have occurred at the Fort Worth facility and the records of Whole Blood weights maintained in Shreveport were intentionally recorded in a manner to conceal the overbleeding.

FDA's inspection and followup investigation revealed that the firm's responsible head failed to exercise control of the establishment in all matters relating to complance and training of employees. In FDA's judgement, the firm's responsible head and other designated managers at Interstate Blood Bank, Inc., of Louisiana significantly failed to fulfill their responsibilities for: (1) Taking appropriate steps to prevent and correct violative practices; (2) assuring that records accurately reflect actual conditions of operations; and (3) assuring that employees, including managers, were adequately trained and competently performed assigned functions in critical areas.

In summary, the actions of Interstate Blood Bank, Inc., of Louisiana represent significant and continued noncompliance both with the standards established in the firm's licenses and with the applicable standards in regulations designed to ensure the continued safety, purity, and potency of the products that the firm was licensed to manufacture (i.e., Fresh Frozen Plasma, Plasma, Platelets, Red Blood Cells, Source Leukocytes, and Whole Blood). Furthermore, FDA found that a number of these actions represented intentional and willful disregard for the prescribed standards. Therefore, FDA initiated revocation proceedings without providing the establishment further opportunity to achieve compliance.

As provided in 21 CFR 601.5(b), FDA issued a letter on February 26, 1986, notifying the licensee of FDA's intention to revoke U.S. License No. 438, setting forth grounds for the revocation, and offering an opportunity for a hearing on the proposed revocation. In a letter dated March 14, 1986, Interstate Blood Bank, Inc., of Louisiana, requested that its establishment and product licenses be revoked and waived an opportunity for a hearing.

The agency granted the licensee's request. In a letter to the firm dated March 28, 1986, issued under 21 CFR 601.5(a), FDA revoked the establishment license (U.S. License No. 438) and product licenses of Interstate Blood Bank, Inc., of Louisana. FDA has placed copies of the letters dated January 15, 25, 30, February 26, and March 14 and 28, 1986, on file with the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

Accordingly, under 21 CFR 12.38 and the Public Health Service Act (sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Office of Biologics Research and Review (21 CFR 5.68), the establishment license (U.S. License No. 438) and product licenses issued to Interstate Blood Bank, Inc., of Louisiana, for the manufacture of Fresh Frozen Plasma, Plasma, Platelets, Red Blood Cells, Source Leukocytes, and Whole Blood were revoked effective March 28, 1986.

This notice is issued and published under 21 CFR 601.8 and the redelegation at 21 CFR 5.67 (see the **Federal Register** of July 29, 1985; 50 FR 30696).

Dated: September 24, 1986.

Paul Parkman,

Acting Director, Center for Drugs and Biologics.

[FR Doc. 86–22152 Filed 9–30–86; 8:45 am]

BILLING CODE 4160–01–M

Oncologic Drugs Advisory Committee; Renewal

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces the renewal of the Oncologic Drugs Advisory Committee by the Secretary of Health and Human Services. This notice is issued under the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App.I)).

DATE: Authority for this committee will expire on September 1, 1988, unless the Secretary formally determines that renewal is in the public interest.

FOR FURTHER INFORMATION CONTACT: Richard L. Schmidt, Committee Management Office (HEA–306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2765.

Dated: September 23, 1986.

John M. Taylor,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 85–22147 Filed 9–30–86; 8:45 am]

BILLING CODE 4160–01–M

Health Care Financing Administration

[OACT–006–N]

Medicare Program; Part A Premium for the Uninsured Aged for the 12-Month Period Beginning January 1, 1987

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice announces Medicare monthly hospital insurance premium for the uninsured aged for the 12 months beginning January 1, 1987.

EFFECTIVE DATE: January 1, 1987.

FOR FURTHER INFORMATION, CONTACT: Solomon Mussey, (301) 594–2829.

SUPPLEMENTARY INFORMATION: Under the authority in section 1818(d)(2) of the Social Security Act (42 U.S.C. 1395i–2(d)(2)), I have determined that the monthly Medicare hospital insurance premium for the uninsured aged for the 12 months beginning January 1, 1987, is $248.

Section 1818 of the Social Security Act (Act) provides for voluntary enrollment in the hospital insurance program (Part A of Medicare), subject to payment of a monthly premium, of certain persons age 65 and older who are uninsured for social security or railroad retirement benefits and do not otherwise meet the requirements for entitlement to hospital insurance. (Persons insured under the Social Security or Railroad Retirement Acts need not pay premiums for hospital insurance.)

Section 1818(d)(2) of the Act, as amended by section 606(b) of the Social Security Amendments of 1983 (Pub. L. 98–21) requires the Secretary to determine and publish, during the next

to last quarter of each calendar year, the amount of the monthly Part A premium for voluntary enrollment for the following calendar year. The formula specified in this section requires that, for the period beginning January 1, 1987, the 1973 base year premium ($33) be multiplied by the ratio of: (1) The 1987 inpatient hospital deductible to (2) the 1973 inpatient hospital deductible, rounded to the nearest multiple of $1, or, if midway between multiples of $1, to the next higher multiple of $1.

Under section 1813(b)(2) of the Act, the 1987 inpatient hospital deductible was determined to be $572. The 1973 deductible was actuarially determined to be $76, although the 1973 deductible was actually promulgated to be only $72, to comply with a ruling of the Cost of Living Council. (See 37 FR 21452, October 11, 1972.) The monthly premium for the 12-month period beginning January 1, 1987 has been calculated using the $76 deductible for 1973, since this more closely satisfies the intent of the law. Thus, the monthly hospital insurance premium is $33 x (572/76) = $248.37, which is rounded to $248.

The monthly hospital insurance premium for the uninsured aged for the 12-month period beginning January 1, 1987, will increase to $248. That amount is 16 percent higher than the $214 monthly premium amount for the 12-month period beginning January 1, 1986.

The estimated cost of this increase to the approximately 23 thousand enrollees who do not otherwise meet the requirements for entitlement to hospital insurance will be about $9 million.

Regulatory Impact Statement

This notice merely announces amounts required by legislation. This notice is not a proposed rule or a final rule issued after a proposal, and does not alter any regulation or policy. Therefore, we have determined, and the Secretary certifies, that no analyses are required under Executive Order 12291 or the Regulatory Flexibility Act (5 U.S.C. 601 through 612).

(Sec. 1818(d)(2) of the Social Security Act (42 U.S.C. 1395i-2(d)(2)))

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance)

Dated: September 12, 1986.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: September 23, 1986.

Otis R. Bowen,

Secretary.

[FR Doc. 86-22372 Filed 9-29-86; 4:29 pm]

BILLING CODE 4120-01-M

Public Health Service

Privacy Act of 1974; Addition of Routine Use to Existing Systems of Records

AGENCY: Public Health Service, HHS.

SUMMARY: The Public Health Service (PHS) is proposing to add a new routine use to 91 systems of records, out of a total of 221 PHS systems of records. The new routine use will permit disclosure of individually identified information to the Department of Justice and to tribunals for both prosecution and defense litigation. An existing, more limited litigation routine use permitting disclosure only as necessary to defend the agency, which is contained in many of the 91 systems, will be deleted.

DATES: PHS invites interested parties to submit comments on the proposed new routine use on or before October 31, 1986. The new routine use will become effective 30 days after the date of publication unless PHS receives comments which would result in a contrary determination.

ADDRESS: Please submit comments to: PHS Privacy Act Officer, Office of Organization and Management Systems, Room 17-41, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Comments received will be available for inspection at the above address from 8:30 a.m. to 4:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Dorothea E. de Zafra, PHS Privacy Act Officer, Office of Organization and Management Systems, Room 17-41, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-3917 (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) requested in its "Privacy Act Guidance Update" of May 24, 1985, that all Federal agencies add a routine use to the published notices of all of their systems of records which will permit disclosure of information to the Department of Justice *and* to courts and tribunals for *both* prosecution and defense litigation.

PHS has been using a departmentwide standardized litigation routine use, which strictly limits the disclosure of information to the Department of Justice for defense litigation only, in notices of systems where the system manager and his/her legal advisors have determined that an employee or the agency could reasonably be expected to become a defendant in litigation initiated by individuals who are the subject of records in the system: e.g., clinical research and medical records systems. In those few instances where the system manager and his/her legal advisors have determined that the agency may need to disclose information to initiate legal proceedings against a subject individual, e.g., debt management records systems, PHS has been using a second litigation routine use permitting disclosure for prosecution purposes.

PHS has examined its systems of record and proposes to add the new routine use to those administrative systems which currently do not have any litigation routine use: e.g., administrative correspondence systems. PHS also proposes to replace the current, limited defense litigation routine use with the new, expanded litigation routine use in all other administrative systems which do not contain personal medical information: e.g., in scholarships or contracts and grants administration systems. The systems determined to be appropriate number 91 out of the total of 221 systems of records maintained by PHS.

The current defense litigation routine use reads as follows:

"In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example in defending a claim against the Public Health Service based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, disclosure may be made to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected."

The new, expanded litigation routine use which PHS proposes to adopt in accordance with OMB Privacy Act guidance, reads as follows:

"The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when

(a) HHS, or any component thereof; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components,

is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected."

PHS has determined that the remaining 130 PHS systems of records which are principally statistical survey or biomedical research systems or systems containing patient medical records, all contain sensitive information which requires either limiting the litigation routine use or omitting altogether any routine use which would permit disclosure for litigation purposes. (In some cases disclosure is prohibited by law.) That is to say, PHS officials have determined either that (1) disclosure of information for litigation under a routine use is not compatible with the purpose of the system, or (2) the addition of the expanded litigation routine use with the implied potential of prosecution could exert a "chilling effort" on the willingness of individuals, such as volunteers in clinical research studies, to provide information to PHS. The published notices of systems in the first category will omit any routine use for litigation purposes; those in the second category will continue to contain the limited routine use permitting disclosure of information to the Department of Justice if this Department should be a defendant in litigation.

The proposed new, expanded routine use will be added to or substituted in the 91 PHS systems of records listed immediately following the signature line below. (The citation immediately following the system name indicates the date the system notice was last published in the **Federal Register**.)

Wilford J. Forbush,

Deputy Assistant Secretary for Health Operations and Director, Office of Management.

Dated: September 24, 1986.

Office of the Assistant Secretary of Health

09–37–0001 Office of the Assistant Secretary for Health Correspondence Control System, HHS/OASH/OM, 49 FR 39110, October 3 1984

09–37–0002 PHS Commissioned Corps Personnel Records, HHS/OASH/OM, 48 FR 51748, November 29, 1983

09–37–0005 PHS Commissioned Corps Board Proceedings, HHS/OASH/OM, 48 FR 51752, November 10, 1983

09–37–0006 PHS Commissioned Corps Grievance, Non-Board and Pre-Board Involuntary Retirement/Separation, and Disciplinary Files, HHS/OASH/OM, 48 FR 51755, November 10, 1983

09–37–0008 PHS Commissioned Corps Unofficial Personnel Files and Other Station Files, HHS/OASH/OM, 48 FR 51756, November 10, 1983

09–37–0009 Applicants for National Center for Health Statistics Technical Assistance, HHS/OASH/NCHS, 48 FR 53794 November 29 1983

09–37–0014 Curricula Vitae of Consultants to the National Center for Health Statistics, HHS/OASH/NCHS, 47 FR 45690, October 13, 1982

09–37–0015 National Center for Health Services Research Grants Records System, HHS/OASH/NCHSR, 49 FR 26151, June 26, 1984

09–37–0016 Users of Health Statistics, HHS/OASH/NCHS, 49 FR 22541, May 30, 1984

09–37–0017 Proceedings of the Board for Correction of Public Health Service Commissioned Corps Records, HHS/OASH/OM, 50 FR 29270, July 18, 1985

Alcohol, Drug Abuse, and Mental Health Administration

09–30–0012 Saint Elizabeths Hospital Pre-Service Education Records, HHS/ADAMHA/NIMH, 48 FR 53807, November 29 1983

09–30–0013 Saint Elizabeths Hospital Training Videotape Records, HHS/ADAMHA/NIMH, 48 FR 53808, November 29, 1983

09–30–0014 Saint Elizabeths Hospital Financial System, HHS/ADAMHA/NIMH, 50 FR 25469, June 19, 1985

09–30–0015 Saint Elizabeths Hospital General Security System, HHS/ADAMHA/NIMH, 48 FR 53810, November 29, 1983

O9–30–0016 Saint Elizabeths Hospital Patients, Personal Property Record System, HHS/ADAMHA/NIMH, 48 FR 53811, November 29, 1983

09–30–0017 Saint Elizabeths Hospital Legal Office Record System, HHS/ADAMHA/NIMH, 48 FR 53812, November 29, 1983

09–30–0018 Saint Elizabeths Hospital Area D Community Mental Health Center Citizens Advisory Group Records, HHS/ADAMHA/NIMH, 48 FR 53813, November 29, 1983

09–30–0019 Saint Elizabeths Hospital Court-Ordered Forensic Investigatory Materials File, HHS/ADAMHA/NIMH, 48 FR 53813, November 29, 1983

09–30–0023 Records of Contracts Awarded to Individuals, HHS/ADAMHA/OA, 49 FR 22713, May 31, 1984

09–30–0024 Saint Elizabeths Hospital General Administrative Record System, HHS/ADAMHA/NIMH, 48 FR 53018, November 29, 1983

09–30–0027 Grants and Cooperative Agreements: Research, Research Training, Research Scientist Development, Education, Demonstration, Fellowships, Clinical Training, Community Services, HHS/ADAMHA/OA, 49 FR 22714, May 31, 1984

09–30–0029 Records of Guest Workers, HHS/ADAMHA/OA, 48 FR 53823, November 29, 1983

09–30–0030 Records of Visiting Fellows, HHS/ADAMHA/OA, 48 FR 53024, November 29, 1983

09–30–0031 Saint Elizabeths Hospital Management Information Reporting System, HHS/ADAMHA/NIMH, 49 FR 22716, May 31, 1984

09–30–0033 Correspondence Files, HHS/ADAMHA/OA 48 FR 53825 November 29, 1983

09–30–0043 Shipment Records of Drugs of Abuse of Authorized Researchers, HHS/ADAMHA/NIDA, 48 FR 53832, November 29, 1983

Centers for Disease Control

09–20–0001 Certified Interpreting Physician File, HHS/CDC/NIOSH, 48 FR 53854, November 29, 1983

09–20–0055 Research/Demonstration, and Training Grants, and Cooperative Agreements Application Files, HHS/CDC/NIOSH, 48 FR 53856, November 29, 1983

09–20–0059 Division of Training Mailing List, HHS/CDC/NIOSH, 48 FR 53857, November 29, 1983

09–20–0112 CDC Exchange Visitor and Guest Researcher Records, HHS/CDC/OPS, 47 FR 45491, October 13, 1982

09–20–0137 Passport File, HHS/CDC/IHPO, 48 FR 53865, November 29, 1983

09–20–0138 Epidemic Intelligence Service Officers Files, HHS/CDC/EPO, 47 FR 45496, October 13, 1982

09–20–0156 Cytotechnologists Proficiency Answer Sheets and Test Results (Medicare), HHS/CDC/LPO, 48 FR 53879, November 29, 1983

09–20–0157 Clinical Laboratory Technologists Proficiency Answer Sheets and Test Results (Medicare) HHS/CDC/LPO, 48 FR 53879, November 29, 1983

09–20–0158 Independent Laboratory Directors Proficiency Answer Sheets and Exam Results (Medicare), HHS/CDC/LPO, 48 FR 53880, November 29, 1983

09–20–0161 Records of Health Professionals in Disease Prevention and Control Training Programs, HHS/CDC/CPS, 48 FR 30187, June 30, 1983

National Institutes of Health

09–25–0003 Administration: Authorized Radionuclide Users File, HHS/NIH/ORS, 47 FR 45776, October 13, 1982

09–25–0004 Administration: Registry of Individuals Exposed to Chemical Carcinogens, HHS/NIH/ORS, 47 FR 45777, October 13, 1982

09–25–0005 Administration: Library Circulation and User I.D. File, HHS/NIH/OD, 47 FR 45778, October 13, 1982

09–25–0007 Administration: NIH Safety Shoes and Safety Glasses Issuance Program, HHS/NIH/ORS, 47 FR 45778, October 13, 1982

09–25–0008 Administration: Radiation Workers Monitoring, HHS/NIH/ORS, 48 FR 30760, July 5, 1983

09–25–0010 Research Resources: Registry of Individuals Potentially Exposed to Microbial Agents, HHS/NIH/NCI, 48 FR 30760, July 5, 1983

09–25–0033 International Activities: Fellowships Awarded by Foreign Organizations, HHS/NIH/FIC, 49 FR 37708, September 25, 1984

09–25–0034 International Activities: Scholars Program, HHS/NIH/FIC, 47 FR 45792, October 13, 1982

09–25–0035 International Activities: International Health Exchange Programs Participants, HHS/NIH/FIC, 47 FR 45793, October 13, 1982
09–25–0036 Grants: IMPAC (Grant/Contract Information), HHS/NIH/DRG, 48 FR 53846, November 29, 1983
09–25–0054 Administration: Property Accounting, HHS/NIH/ORS, 49 FR 37709, September 25, 1984
09–25–0075 Administration: Principal Investigators Submitting Proposals for Protection from Research Risks, HHS/NIH/OD 49 FR 33710 September 25, 1984
09–25–0078 Administration: Consultant File, HHS/NIH/NHLBI, 49 FR 37711, September 25, 1984
09–25–0087 Administration: Employees and Consultants HHS/NIH/NIAID, 47 FR 45816, October 13, 1982
09–25–0091 Administration: General Files on Employees, Donors and Correspondents, HHS/NIH/NEI, 47 FR 45818, October 13, 1982
09–25–0093 Administration: Authors, Reviewers and Members of the Journal of the National Cancer Institute, HHS/NIH/NCI, 47 FR 45819, October 13, 1982
09–25–0096 Contracts: National Cancer Institute Contract Management System Principal Investigators, Projects Officers and Contract Specialists, HHS/NIH/NCI, 47 FR 45820, Otober 13, 1982
09–25–0102 Administration: Grants Associates Program Working Files, HHS/NIH/DRG, 47 FR 45822 October 13, 1982
09–25–0106 Administration: Executive Secretariat Correspondence Records, HHS/NIH/OD, 47 FR 45824, October 13, 1982
09–25–0108 Personnel: Guest Workers/ Visiting Fellows/ Student Scientists/ Scientists Emeriti, HHS/NIH/DPM, 47 FR 45825, October 13, 1982
09–25–0112 Grants: Research, Research Training Fellowship and Construction Applications and Awards, HHS/NIH/OD, 48 FR 53849, November 29, 1983
09–25–0115 Administration: Curricula Vitae of Consultants and Clinicial Investigators, HHS/NIH/NIAID, 47 FR 45828, October 13, 1982
09–25–0117 International Activities: U.S.-Japan Program Panel Members, HHS/NIH/NIAID, 47 FR 45829, October 13, 1982
09–25–0118 Contracts: Professional Services Contractors, HHS/NIH/NCI, 47 FR 45830, October 13, 1982
09–25–0121 International Activities: Senior International Fellowships Program, HHS/NIH/FIC, 47 FR 45830, October 13, 1982
09–25–0124 Administration: Pharmacology Research Associates, HHS/NIH/NIGMS, 47 FR 45832, October 13, 1982
09–25–0135 Grants: PROPHET System Applicants Research Prospectuses, HHS/NIH/DRR 47 FR 45842, October 13, 1982
09–25–0140 International Activities: Scientific Visitors at the National Institutes of Health, HHS/NIH/FIC, 47 FR 45844, October 13, 1982
09–25–0151 Administration: Alert Records Concerning Investigations or Determinations of Misconduct by Current or Potential Recipients of Funds for Biomedical Research, HHS/NIH/OD, 48 FR 53851, November 29, 1983

Health Resources and Services Administration

09–15–0002 Records of Patients, Personal Valuables and Monies, HHS/HRSA/BHCDA, 48 FR 53885, November 29, 1983
09–15–0003 Contract Physicians and Consultants, HHS/HRSA/BHCDA, 48 FR 53886, November 29, 1983
09–15–0018 Unofficial Vital Records System, HHS/HRSA/IHS, 48 FR 53891, November 29, 1983
09–15–0022 Accounts Receivable, HHS/HRSA/OA, 48 FR 53897, November 29, 1983
09–15–0026 Medical Fellowships and Educational Loans HHS/HRSA/OA, 48 FR 53898, November 29, 1983
09–15–0027 National Health Service Corps (NHSC) and Indian Health Service (IHS) Pre-Application Recruitment and Provider File, HHS/HRSA/BHCDA, 48 FR 53899, November 29, 1983
09–15–0028 PHS Clinical Affiliation Trainee Records, HHS/HRSA/BHCDA, 48 FR 53900, November 29, 1983
09–15–0036 Indian Health Service Scholarship Program, HHS/HRSA/IHS, 49 FR 38710, October 1, 1984
09–15–0037 PHS and National Health Service Corps (NHSC) Scholarship Program, HHS/HRSA/BHCDA, 48 FR 53903, November 29, 1983
09–15–0040 Health Professions Student Loan Repayment Program, HHS/HRSA/BHPr, 48 FR 53907, November 29, 1983
09–15–0041 Health Professions Student Loan Cancellation, HHS/HRSA/BHPr, 48 FR 53908, November 29 1983
09–15–0042 Physician Shortage Area Scholarship Program, HHS/HRSA/BHCDA, 48 FR 53909, November 29, 1983
09–15–0043 Cuban Loan Program, HHS/HRSA/OA 48 FR 53910, November 29, 1983
09–15–0045 HRSA Loan Repayment/Debt Management Records System, HHS/HRSA/OA, 49 FR 42637, October 23, 1984
09–15–0046 Health Professions Planning and Evaluation, HHS/HRSA/OA, 40 FR 53913, November 29, 1983
09–15–0050 National Research Service Awards, HHS/HRS/BHPr, 48 FR 53915, November 29, 1983
09–15–0052 Nurse Practitioner Traineeships, HHS/HRSA/BHPr, 48 FR 53917, November 29, 1983

Food and Drug Administration

09–10–0002 Regulated Industry Employee Enforcement Records, HHS/FDA/ACMO, 47 FR 45412, October 13, 1982
09–10–0003 FDA Credential Holder File, HHS/FDA/EDRO 47 FR 45415, October 13, 1982
09–10–0004 Communications (Oral and Written) With the Public, HHS/FDA/ACMO, 47 FR 45415, October 13, 1982
09–10–0005 State Food and Drug Official File, HHS/FDA/EDRO, 47 FR 45416, October 13, 1982
09–10–0007 Science Advisor Research Associate Program (SARAP), HHS/FDA/EDRO, 47 FR 45417, October 13, 1982
09–10–0008 Radiation Protection Program Personnel Monitoring System, HHS/FDA/CDRH, 47 FR 55425, December 9, 1982
09–10–0009 Special Studies and Surveys on FDA-Regulated Products, HHS/FDA/ACMO, 47 FR 55426, December 9, 1982
09–10–0010 Bioresearch Monitoring Information System, HHS/FDA, 47 FR 45419, October 13, 1982
09–10–0011 Certified Retort Operators, HHS/FDA/CFSAN, 47 FR 45420, October 13, 1982
09–10–0013 Employee Conduct Investigative Records, HHS/FDA/ACMO, 47 FR 45422, October 13, 1982
09–10–0015 Blood Donor for Tissue Typing Sera and Cell Analysis and Related Research, HHS/FDA/CDB/OB, 47 FR 45423, October 13, 1982
09–10–0018 Employee Identification Card Information Record, HHS/FDA/ACMO, 47 FR 45425, October 13, 1982

[FR Doc. 86–22154 Filed 9–30–86; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF THE INTERIOR

OMB Circular A–76 Studies and Efficiency Reviews

AGENCY: Department of the Interior.

ACTION: Notice of OMB Circular A–76 studies and efficiency reviews.

SUMMARY: The Department of the Interior plans to conduct OMB Circular A–76 studies and in-house efficiency reviews of the activities shown below. Other activities may be added to this listing and published in the **Federal Register** later.

ADDRESS: Department of the Interior, Office of Management Analysis, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Ms. Kathleen M. Stewart at (202) 343–6633.

SUPPLEMENTARY INFORMATION: A–76 studies and efficiency reviews are very detailed and labor intensive. The time required to complete a study or review depends on the size of the activity, its geographic location and dispersion, and its organizational and functional complexity. Invitations for bids or requests for proposals will be published in the Commerce Business Daily when the solicitation stage of an A–76 study is reached. Contracting offices of the Department's major organizational components where A–76 studies are scheduled do not maintain consolidated bidders lists.

A–76 Studies

Office of the Secretary

Headquarters Library Services (DC) (Note: This study will include the General Services Administration headquarters and National Capital Region library services), study start, 11/1/86.

Bureau of Reclamation

Tracy Field Office (CA), Canal O&M, study start, 10/1/86.

Willows Field Office (CA), Canal O&M, study start, 6/1/87.

Grand Coulee Project Office (WA), study start, 9/1/87.

U.S. Geological Survey

National Mapping Division (VA), Photographic Laboratory, study start, 8/15/87.

Efficiency Reviews

Bureau of Reclamation

Lower Colorado Regional Office (NV), Procurement and Contracts Division, review start, 10/1/86.

Missouri Basin Regional Office (MT), Administrative Operations, review start, 10/1/86.

Engineering and Research Center (CO), Water and Land Technical Services, review start, 10/1/86.

Upper Colorado Regional Office (UT), Property and Support Services, review start, 10/1/86.

Richard S. Bari,

Director, Office of Management Analysis.

[FR Doc. 86-22163 Filed 9-30-86; 8:45 am]

BILLING CODE 4310-RK-M

Bureau of Land Management

[AZ-940-06-4220-10; A-21017]

Order Providing for Opening of Public Lands in Apache County, AZ

September 23, 1986.

In an exchange of land madeunder the provisions of the General Exchange Act of March 20, 1922 (42 Stat. 465), as amended by the Act of February 28, 1925 (43 Stat. 1090), and the Federal Land Policy and Management Act of October 21, 1976 (Pub. L. 94-579; 90 Stat. 2743), the following lands have been reconveyed to the United States:

Gila and Salt River Meridian

T. 5 N., R. 31 E.,
sec. 17, Tract B, HES 500

Less and excepting therefrom beginning at Corner No. 9 of said Tract B, HES 500; thence N. 89°46'42" W., (record N. 89°41' W.) along the south line thereof, 3,052.03 feet to the southeast corner of that certain property described in Docket 175, page 174, records of Apache County, Arizona; thence N. 07°28'35" E. (record N. 07°36' E.) along the east line of said property described in Docket 175, page 174, 77.62 feet; thence S. 89°53'15" E., 2,622.14 feet; thence along the arc of a curve to the right, having a radius of 17,288.74 feet, 419.34 feet to the east line of Tract B, HES 500; thence S. 00°19'42" E., (record S. 00°14' E.) along said east line, 77.69 feet to the point of beginning; and

Less and Excepting Therefrom beginning at Corner No. 11 of said Tract B, HES 500, said point also being a 1/16 corner of said sec 17; thence S. 07°36' W., along the west line of Tract B, 944.10 feet to the point of beginning; thence continuning S. 07°36' W., along said line 333.00 feet to Corner No. 10 of said Tract B; thence S. 89°41' E., 298.00 feet along the south line of Tract B to a point; thence N. 07°36' E., 333.00 feet to a point; thence N. 89°41' W., 298.00 feet to the point of beginning; AND

1Less and Excepting Therefrom part of said Tract B, HES 500, commencing at Corner No. 11 of said Tract B, said point also being the southwest corner of the NW¼NW¼ sec. 17; thence S. 07°36' W., along the west line of said Tract B, also being the east line of Luna Lake Village Subdivision, according to Book 1 of Maps, page 55, records of Apache County, Arizona, 649.34 feet, being the True point of beginning; thence continuing S. 07°36' W., along said west line, 294.76 feet to the northwest corner of property described in Docket 175, page 174, records of Apache County, Arizona, thence S. 89°41' E., along the north line of the property described in Docket 175, page 174, 298.00 feet; thence N. 07°36' E. parallel to said west line, 294.76 feet; thence N.89°41' W., 298.00 feet to the west line of Tract B and the True Point of Beginning.

The area described contains 72.93 acres in Apache County.

Upon acceptance of title to such lands, they became part of the Apache National Forest and are subject to all the laws, rules, and regulations applicable thereto.

Inquiries concerning the lands should be addressed to the Forest Supervisor, Apache-Sitgreaves National Forest, South Mountain Ave., P.O. Box 640, Springerville, Arizona 85938.

John T. Mezes,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 86-22177 Filed 9-30-86; 8:45 am]

BILLING CODE 4310-32-M

[AZ-940-06-4220-10; A-21018]

Order Providing for Opening of Public Lands in Gila County, AZ

September 23, 1986.

In an exchange of lands made under the provisions of the General Exchange Act of March 20, 1922 (42 Stat. 465), as amended by the Act of February 28, 1925 (43 Stat. 1090), and the Federal Land Policy and Management Act of October 21, 1976 (Pub. L. 94-579; 90 Stat. 2743), the following lands have been reconveyed to the United States:

Gila and Salt River Meridian

Tps. 4¼ and 5 N., R. 16 E. (unsurveyed), secs. 16 and 32.

Beginning at Corner No. 1 from which U.S. Location Monument No. 434, of HES No. bears S. 36°13' E., 19 chains distant; thence S. 77°18' W., 11.38 chains to Corner No. 2; thence N. 17°42' E., 58.78 chains to Corner No. 3; thence S. 19°48' E., 27.89 chains to Corner No. 4; thence S. 30°46' W., 31.70 chains to Corner No. 1, the place of beginning.

The area described contains 63.00 acres in Gila County.

Upon acceptance of title to such lands, they became part of the Tonto National Forest and are subject to all the laws, rules, and regulations applicable thereto.

Inquiries concerning the lands should be addressed to the Forest Supervisor, Tonto National Forest, 2324 E. McDowell Road, P.O. Box 5348, Phoenix, Arizona 85010.

John T. Mezes,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 85-22178 Filed 9-30-85; 8:45 am]

BILLING CODE 4310-32-M

[WY-920-06-4990-11-6001; W-90276]

Proposed Reinstatement of Terminated Oil and Gas Lease

September 23, 1986.

Pursuant to the provisions of Pub. L. 96-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3(a) and (b)(1), a petition for reinstatemen of oil and gas lease W-90276 for lands in Campbell County, Wyoming was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16-2/3 percent, respectively.

The lessee has paid the required $500.00 administrative fee and $106.25 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W-90276 effective January 1, 1986, subject to the original terms and conditions of the lease and the increase rental and royalty rates cited above.

Andrew L. Tarshis,

Chief, Leasing Section.

[FR Doc. 85-22784 Filed 9-30-85; 8:45 am]

BILLING CODE 4310-22-M

[NV-060-4321-02]

Battle Mountain District Advisory Council Meeting in Eurkea, NV

SUMMARY: Notice is hereby given in accordance with Pub. L. 94–579 and 43 CFR Part 1780 that a meeting of the Battle Mountain District Advisory Council will be held on Tuesday, October 28, 1986. The meeting will convene at 9:00 a.m. in the shoshone-Eureka Conference room at the Battle Mountain District Office in Battle Mountain, Nevada.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include:

1. Continuation of discussion of wild horse problems
2. Wilderness update and discussion.

The meeting is open to the public. Interested person may make oral statements between 1:00 and 1:30 p.m. on October 28, 1986. If you wish to make an oral statement, please contact Terry L. Plummer by 4:30 p.m. October 21, 1986.

FOR FURTHER INFORMATION CONTACT: Terry L. Plummer, District Manager, P.O. Box 1420, Battle Mountain, Nevada 89820 or phone (702) 635–5181.

Dated: September 19, 1986.

Terry L. Plummer,

District Manager, Battle Mountain, Nevada.

[FR Doc. 86–22158 Filed 9–30–86; 8:45 am]

BILLING CODE 4310-HC-M

Minerals Management Service

Outer Continental Shelf (OCS) Advisory Board Scientific Committee; Notice and Agenda of Subcommittee and Task Force Meetings

This notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Pub. L. 92–463, 5 U.S.C., Appendix I, and the Office of Management and Budget Circular A–63, Revised.

Subcommittees of the OCS Advisory Board Scientific Committee will meet November 6–7, 1986, at the Louisiana Universities Marine Consortium, Highway 56, Cocodrie, Louisiana.

The Social and Economics Effects Subcommittee, the Environmental Effects Subcommittee, the Study Design and Information Transfer Subcommittee and the Fisheries Task Froce of the OCS Advisory Board Scientific Committee will meet from 9 a.m. to 5 p.m. on November 6, and from 9 a.m. to 1 p.m. on November 7.

The agenda for the meeting will include the following subjects:

- Review of Fiscal Year 1988 Draft Regional Studies Plans;
- Discussion of Social and Economic Effects of Offshore Oil and Gas Development in the Gulf of Mexico; and
- Evaluation of Major Fisheries/Oil Spill Impact Models.

This meeting is open to the public. Approximately 30 visitors can be accommodated on a first-come/first-served basis. All inquiries concerning this meeting should be addressed to:

Dr. Don V. Aurand, Chief, Branch of Environmental Studies, Offshore Environmental Assessment Division (644), Minerals Management Service, U.S. Department of the Interior, 18th & C Streets, NW., Washington, DC 20240; telephone (202) 343–7744.

Dated: September 22, 1986.

John B. Rigg,

Associate Director for Offshore Minerals Management.

[FR Doc. 86–22186 Filed 9–30–86; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Alaska Region; Subsistence Resource Commission Meeting

SUMMARY: The Alaska Regional Office of the National Park Service announces a forthcoming meeting of the Wrangell-St. Elias National Park Subsistence Resource Commission. The following agenda items will be discussed:

1. Review and finalize commission recommendation on trapping.
2. Review status of previous recommendations.
3. Rural determination being made by the State of Alaska.
4. Consideration of other subsistence hunting proposals since last meeting.
5. NPS Wilderness Review process.
6. Status of General Management Plan and Resource Management Plan.
7. Public Comments.

DATES: The meeting of the Wrangell-St. Elias Subsistence Resource Commission will be held at the Park Headquarters in Blennallen, Alaska, Mile 105.5 Richardson Highway, starting at 1:00 p.m. on November 3 and continuing at 7:00 p.m. on November 3 and again at 9:00 a.m. on November 4.

FOR FURTHER INFORMATION CONTACT: Richard Martin, Superintendent, Wrangell-St. Elias National Park and Preserve, P.O. Box 29, Glennallen, Alaska 99588.

SUPPLEMENTARY INFORMATION: The Wrangell-St. Elias National Park Subsistence Resource Commission is authorized under Title VIII, section 808, of the Alaska National Interest Lands Conservation Act Pub. L. 96–487.

Dated: September 24, 1986.

Boyd Evison

Regional Director, Alaska Region.

[FR Doc. 86–22213 Filed 9–30–86; 8:45 am]

BILLING CODE 1310-70-M

INTERNATIONAL TRADE COMMISSION

Agency Form Submitted for OMB Review

AGENCY: United States International Trade Commission.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Commission has submitted a proposal for the collection of information to the Office of Management and Budget for review.

Purpose of Information Collection: The proposed information collection is for use by the Commission in conncection with the investigation No. 332–135 for the annual Synthetic Organic Chemicals report, instituted under the authority of section 332(b) of the Tariff Act of 1930 (19 U.S.C. 1332(b)).

Summary of Proposal:

(1) Number of forms submitted: One
(2) Title of form. Synthetic Organic Chemicals, United States Production and Sales
(3) Type of request: Extension
(4) Frequency of use: Annual
(5) Description of respondents: Firms manufacturing synthetic organic chemicals in the United States
(6) Estimated number of respondents: 752
(7) Estimated total number of hours to complete the forms: 8,272
(8) Information obtained from the form that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

Additional Information or Comment: Copies of the proposed form and supporting documents may be obtained from James A. Emanuel, telephone (202) 523–0334. Comments about the proposals should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Attention: Francine Picoult, Desk Officer for the U.S. International Trade Commission. Any comments should be specific, indicating which part of the questionnaire or study plan is objectionable, describing the problem in detail, and including specific suggested revisions or language changes.

Submission of Comments: Comments should be submitted to OMB within 2 weeks of the date this notice appears in the **Federal Register**. If you are unable to submit them promptly you should advise OMB within the 2 week period of your intent to comment on the proposal. Ms. Picoult's telephone number is (202) 395-7231. Copies of any comments should be provided to Charles Ervin (U.S. International Trade Commission, 701 E Street NW., Washington,DC 20436). Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 724-0002.

Issued: September 26, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-22242 Filed 9-30-86- 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 731-TA-320 Through 325 (Final)]

Certain Unfinished Mirrors From Belgium, the Federal Republic of Germany, Italy, Japan, Portugal, and the United Kingdom

AGENCY: United States International Trade Commission.

ACTION: Institution of final antidumping investigations and scheduling of a hearing to be held in connection with the investigations.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigations Nos. 731-TA-320 through 325 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Belgium, the Federal Republic of Germany, Italy, Japan, Portugal, and the United Kingdom of unfinished glass mirrors [1] 15 square feet or more in reflecting area, provided for in item 544.54 of the Tariff Schedules of the United States (TSUS), which have been found by the Department of Commerce, in preliminary determinations, to be sold in the United States at less than fair value (LTFV). Unless the investigations are extended, Commerce will make its final LTFV determinations on or before November 24, 1986, and the Commission will make its final injury determinations by January 9, 1987, (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673d(a) and 1673d(b))).

For further information concerning the conduct of these investigations, hearing procedures, and rules of general application, consult the Commission's Rule of Practice and Procedure, Part 207, Subparts A and C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: September 12, 1986.

FOR FURTHER INFORMATION CONTACT: Bruce Cates (202-523-0369), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002. Information may also be obtained via electronic mail by accessing the Office of Investigations remote bulletin board system for personal computers at 202-523-0103.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted as the result of affirmative preliminary determinations by the Department of Commerce that imports of certain unfihished mirrors from Belgium, the Federal Republic of Germany, Italy, Japan, Portugal, and the United Kingdom are being sold in the United States at less that fair value within the meaning of section 731 of the act (19 U.S.C. 1673). The investigations were requested in a petition filed on April 1, 1986, on behalf of the National Association of Mirror Manufacturers, Potomac, MD. In response to that petition the Commission conducted preliminary antidumping investigations and, on the basis of information developed during the course of those investigations, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (51 FR 19423, May 29, 1986).

Participation in the investigations

Persons wishing to participate in these invesgitations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list

Pursuant to § 201.11(d) of the Commission's rules (19 CFR § 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Staff report

A public version of the prehearing staff report in these investigations will be placed in the public record on November 10, 1986, pursuant to §207.21 of the Commission's rules (19 CFR 207.21

Hearing

The Commission will hold a hearing in connection with these investigations beginning at 9:30 a.m. on December 2, 1986, at the U.S International Trade Commission Building, 701 E Street NW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on November 12, 1986. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on November 17, 1986, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is November 24, 1986.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

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[1] Mirrors which have not been subjected to any finishing operations such as beveling, etching, edging, or framing.

Written submissions

All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on December 9, 1986. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before December 9, 1986.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

Issued: September 24, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-22243 Filed 9-30-85; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-6 (Sub-No. 285X)]

Burlington Northern Railroad Co.; Exemption; Abandonment in Larimer County, CO

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts Burlington Northern Railroad Company from the requirements of 49 U.S.C. 10903, *et seq.*, to abandon its 1.88-mile line of railroad in Larimer County, CO, subject to standard employee protective conditions, and a public use condition.

DATES: This exemption will be effective on October 31, 1986. Petitions to stay must be filed by October 16, 1986, and petitions for reconsideration must be filed by October 27, 1986.

ADDRESSES: Send pleadings referring to Docket No. AB-6 (Sub-No. 285X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's Representative: Peter M. Lee, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan Area), or toll-free (800) 424-5403.

Decided: September 16, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley. Commissioner Lamboley dissented with a separate expression.

Noreta R. McGee,

Secretary.

[FR Doc. 86-22167 Filed 9-30-86; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to Clean Water Act; Malco Products, Inc.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Malco Products, Inc.*, Civil Action No. C84-1566A, was lodged with the United States District Court for the Northern District of Ohio. The complaint filed by the United States alleged that defendant Malco Products, Inc. ("Malco") violated section 301 of the Clean Water Act, 33 U.S.C. 1311, by discharging pollutants to the Tuscarawas River without a National Pollutant Discharge Elimination System ("NPDES") permit.

The proposed Consent Decree immediately prohibits further discharges of process wastewater or boiler blowdown from the Malco facility. In addition, the decree requires Malco to address any remaining discharges to the Tuscarawas River by: (1) Conducting a detailed study of nature, quantity and sources of any remaining pollutants discharged from the Malco facility; (2) developing and implementing remedial measures to eliminate remaining discharges or to control such discharges through application of best available technology; and (3) requiring Malco to obtain and comply with an NPDES permit in the event that the company decides not to eliminate the remaining discharges altogether.

The proposed decree requires Malco to construct and use a new drum storage area with a roof, an impervious floor and curbing designed to prevent any spilled raw materials and products from entering existing storm drains that discharge to the Tuscarawas River. The decree also requires Malco to develop and implement a Best Management Practices plan consistent with 40 CFR 125.100 *et seq.*

The Department of Justice will receive comments relating to the proposed Consent Decree for a thirty (30) day period from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Malco Products, Inc.*, with the applicable D.J. Reference No. 90-5-1-1-2056 (N.D. Ohio).

The proposed Consent Decree may be examined at the office of the United States Attorney, 1404 East Ninth Street, Suite 600 Cleveland, Ohio 44114 and at the Office of Regional Counsel, United States Environmental Protection Agency, Region V, 230 South Street, Chicago, Illinois 60604. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy please enclose a check in the amount of $2.40 (ten cents per page reproduction cost) payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 86-22134 Filed 9-30-86; 8:45 am]

BILLING CODE 4410-01-M

Consent Judgment in Action To Enjoin Violation of the Clean Air Act ("CAA"); New York State et al.

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a Consent Decree in *United States* v. *State of New York; New York State Office of Mental Health; New York State Facilities Development Corporation; and Edward V. Regan, in his capacity as Comptroller, State of New York* (N.D.N.Y.), Civil Action No. 84–CV–1075, was lodged with the United States District Court for the Northern District of New York on August 29, 1986. The Consent Decree establishes a compliance program for the St. Lawrence facility at Ogdensburg, New York owned and operated by the defendants, to bring the facility into compliance with the Clean Air Act ("CAA"), 42 U.S.C. 7401 *et seq.*, and the applicable New York State Implementation Plan ("SIP") Part 227.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530 and should refer to *United States* v. *State of New York; New York State Office of Mental Health; New York State Facilities Development Corporation; and Edward V. Regan, in his capacity as Comptroller, State of New York*, D.J. Ref. No. 90–5–2–1–706.

The Consent Decree may be examined at the Office of the United States Attorney, Northern District of New York, 369 Federal Building, 100 Clinton Street, Syracuse, New York 13260; at the Region II office of the Environmental Protection Agency, Federal Plaza, New York, New York 10278; and the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.10 (10 cents per page reproduction charge) payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 86–22135 Filed 9–30–86; 8:45 am]

BILLING CODE 4410–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[86–71]

NASA Advisory Council; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Task Force on Space Program Goals.

DATE AND TIME: October 16, 1986, 9 a.m. to 3 p.m.

ADDRESS: National Aeronautics and Space Administration, 400 Maryland Avenue SW., Washinton, DC 20546, Room 7002.

FOR FURTHER INFORMATION CONTACT: Mr. Nathaniel B. Cohen, Code LB, National Aeronautics and Space Administration, Washington, DC 20546 (202/453–8335).

SUPPLEMENTARY INFORMATION: The NASA Advisory Council Task Force on Space Program Goals was established under the NASA Advisory Council to counsel NASA on the development of the appropriate space program goals, objectives, and policies for the next 15 to 20 years in the framework of the longer-term goals recommended by the National Commission on Space. The Task Force, chaired by Michael Collins, has a total of 8 members.

The meeting will be closed to the public from 1:15 p.m. to 3 p.m. for a discussion of qualifications of candidates to participate in the Task Force as additional members. Because this planning session will be concerned throughout with matters listed in 5 U.S.C. 552(c)(6), it has been determined that this session should be closed to the public.

Visitors will be admitted to the meeting room up to the capacity, which is approximately 60 persons including Task Force members and other participants. Visitors will be requested to sign a visitor's register.

Type of Meeting

Open—except for the closed session as noted in the following agenda.

Agenda

October 16, 1986

9 a.m.—Opening Remarks.

9:15 a.m.—Review of Recommendations of National Commission on Space.

10 a.m.—NASA Briefing on Current Planning Activities.

1:15 p.m.—Task Force Planning Session (closed).

3 p.m.—Adjourn.

Richard L. Daniels,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

September 25, 1986.

[FR Doc. 86–22199 Filed 9–30–86; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

President's Committee on the Arts and the Humanities; Plenary Meeting XIII

Thursday, October 16, 1986 at nine o'clock in the morning has been designated by the President's Committee on the Arts and the Humanities for Plenary Meeting XIII. This meeting has been scheduled in the Council Room, Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC. This is a regularly scheduled meeting at which committee activities will be reviewed and progress reported.

The Committee, charged with exploring ways to increase private support for the arts and the humanities, has generated private funds which augment their operational costs and support projects and programs which have been initiated by the President's Committee.

Agenda items on October 16 will include:

- Briefings by the Chairmen of the National Endowment for the Arts and the National Endowment for the Humanities on the highlights of their activities.
- *Nurturing the New.* Willard Butcher, Chairman and CEO, Chase Manhattan Bank, will speak on developing relationships between corporations and emerging organizations.
- *A Look to the Future—The Arts Consortium. Emerging Institutions of Cultural Diversity, L.A.*, Gerald Yoshitomi, Executive Director of Japanese American Cultural and Community Center, will discuss how emerging institutions can collaborate to appeal to foundations.

A progress report on the Networks for Secondary Schools Improvement in the Arts and the Humanities (New Alliances for Secondary Schools) project will be made by Dr. Alberta Arthurs, Director for the Arts and Humanities at the Rockefeller Foundation. This project was developed in cooperation with the President's Committee on the Arts and the Humanities. Model programs are currently underway in Philadelphia, Los

Angeles, Seattle, Atlanta, St. Louis, St. Paul and Pittsburgh. Dr. Judith Hodgson, Director of the Philadelphia model program and two participating teachers will describe developments in their project.

For further information individuals may call 202/682-5409.

John H. Clark,

Director, Council and Panel Operations, National Endowment for the Arts.

September 24, 1986.

[FR Doc. 86-22136 Filed 9-30-86; 8:45 am]

BILLING CODE 7537-01-M

National Endowment for the Humanities; Performance Review Board Revisions

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: This revises the notice of membership previously published for the National Endowment for the Humanities' Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Jack A. Crowder Jr., Director of Personnel, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

SUPPLEMENTARY INFORMATION: Pursuant to 5 U.S.C. 4314(c) the National Endowment for the Humanities (NEH) hereby revises the notice of membership published in the **Federal Register** on August 12, 1986, by adding Mr. Donald D. Gibson, Director of the Division of General Programs, to serve as an additional alternate to the Endowment's Senior Executive Service Performance Review Board. This notice also amends the August 12, 1986 notice to limit all appointments to the NEH Performance Review Board to a term of three years from October 1, 1986.

Lynne Cheney,

Chairperson.

[FR Doc. 86-22198 Filed 9-30-86; 8:45 am]

BILLING CODE 7536-01-M

NATIONAL SCIENCE FOUNDATION

Permit Applications Received Under the Antarctic Conservation Act of 1978; John L. Bengtson, et al.

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received under the Antarctic Conservation Act of 1978, Pub. L. 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act of 1978 at Title 670 of the Code of Federal Regulations.This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by October 30, 1986. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESS: Comments should be addressed to Permit Office, Room 627, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers at the above address or (202) 357-7934.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95-541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed in 1964 by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Specifically Protected Areas and Sites of Special Scientific Interest. Additional information was published in the **Federal Register** on July 17, 1986.

The applications received are as follows:

1. Applicant

John L. Bengtson, National Marine Fisheries Service, Seattle, Washington 98115.

Activity for Which Permit Requested

Taking, and Import into the U.S.A. The applicant is conducting a study of the feeding ecology, reproduction, and population dynamics of the pelagic antarctic seals and their role in the antarctic marine ecosystem. The applicant proposes to take the following species and numbers:

Species	Number	
Lobodon sp	600	Capture/release.
Do	600	Sacrifice.
Hydrurga sp	300	Capture/release.
Do	150	Sacrifice.
Leptonychotes sp	250	Capture/release.
Do	20	Sacrifice.
Ommatophoca sp	130	Capture/release.
Do	20	Sacrifice.
Arctocephalus sp	700	Capture/release.
Do	20	Sacrifice.
Mirounga sp	350	Capture/release.
Do	20	Sacrifice.

Location

Antarctic Peninsula vicinity and Weddell Sea.

Dates

1 January 1987—31 December 1988.

2. Applicant

John L. Bengtson, National Marine Fisheries Serivce, Seattle, Washington 98115.

Activity for Which Permit Requested

Enter Specially Protected Area, Enter Site of Special Scientific Interest.

The applicant requests permission to enter Cape Shirreff and Byers Peninsula on Livingston Island to census pinniped and penguin rookeries. A comprehensive census of these populations is being planned for the South Shetland Islands during the 1986-87 austral summer. In order to complete the census, it is necessary to have access to this Specially Protected Area and Site of Special Scientific Interest.

Location

Cape Shirreff—Specially Protected Area and Byers Peninsula—Site of Special Scientific Interest.

Dates

1 December 1986 to 1 May 1988.

3. Applicant

John McWethy, 1717 DeSales Street NW., Washington, DC 20036.

Activity for Which Permit Requested

Enter Specially Protected Areas, Enter Sites of Special Scientific Interest. The applicant is head of an ABC Television News team. He requests access to

protected areas accessible form MuMurdo Station. The activity to be unertaekn is phogography of wildlife. No species will be touched or disturbed in any way.

Location

McMurdo Station and vicinity, Antarctica.

Dates

November 17–24, 1986.

4. Applicant

Robert Martin, Room 254, State Capitol Building, Sante Fe, New Mexico 87503.

Activity for Which Permit Requested

Enter Specially Protected Areas, Enter Sites of Special Scientific Interest. The applicant is head of a television news team. He requests access to protected areas accessible from McMurdo Station. The activity to be undertaken is photography of wildlife. No species will be touched or disturbed in any way.

Location

McMurdo Station and vicinity, Antarctica.

Dates

November 10—December 31, 1986.

5. Applicant

Gerald L. Kooyman, University of California, San Diego, La Jolla, California 92093.

Activity for Which Permit Requested

Taking, Enter Site of Special Scientific Interest. The applicant requests permission to take Emperor penguins as part of a study of energetics of resting and foraging. The two sites proposed are alternatives in case it is not possible to conduct work at Cape Washington (covered by a separate Antarctic Conservation Act permit). Up to 75 adult birds, 20 chicks, and 10 eggs would be taken in order to attach instruments to them. Blood samples would be taken from up to 35 birds.

Location

Cape Crozier—site of Special Scientific Interest or Dumont d'Urville Station.

Dates

November 1986—February 1987.

Authority to publish this notice has been delegated by the Director of the National Science Foundation.

A.N. Fowler,

Acting Director, Division of Polar Programs.

[FR Doc. 86–22180 Filed 9–30–86; 8:45 am]

BILLING CODE 7555-01-M

Permit Applications Received Under the Antarctic Conservation Act of 1978; Stephen Green et al.

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received under the Antarctic Conservation Act of 1978, Pub. L. 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act of 1978 at Title 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by November 3, 1986. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESS: Comments should be addressed to Permit Office, Room 627, Division of Polar Programs, National Science Foundation, Washington, D.C. 20550.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers at the above address or (202) 357–7934.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed in 1964 by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest. Additional information was published in the **Federal Register** on July 17, 1986.

The applications received are as follows:

1. Applicant

Stephen Green, Sacramento Bee, P.O. Box 15779, Sacramento, California 95852.

Activity for Which Permit Requested

Enter Specially Protected Areas and Enter Sites of Special Scientific Interest. The applicant requests permission to enter protected areas in the McMurdo Station area to take photographs of wildlife. The photographs will accompany and illustrate news articles informing the general public of activities related to the U.S. Antarctic Program. No disturbance of wildlife is anticipated.

Location

McMurdo Station area, Antarctica.

Dates

November 10–17, 1986.

2. Applicant

Ronald Kuntz, UPI Newspictures, 401 Euclid Avenue, Cleveland, Ohio 44114.

Activity for Which Permit Requested

Enter Specially Protected Areas and Enter Sites of Special Scientific Interest. The applicant requests permission to enter protected areas in McMurdo Station area to take photographs of wildlife. The photographs will accompany and illustrate news articles informing the general public of activities related to the U.S. Antarctic Program. No disturbance of wildlife is anticipated.

Location

McMurdo Station area, Antarctica.

Dates

November 10–17, 1986.

3. Applicant

David Lore, The Columbus Dispatch, 34 South Third Street, Columbus, Ohio 43216.

Activity for Which Permit Requested

Enter Specially Protected Areas and Enter Sites of Special Scientific Interest. The applicant requests permission to enter protected areas in the McMurdo Station area to take photographs of wildlife. The photographs will accompany and illustrate news articles informing the general public of activities related to the U.S. Antarctic Program. No disturbance of wildlife is anticipated.

Location

McMurdo Station area, Antarctica.

Dates

November 10–17, 1986.

Authority to publish this notice has been delegated by the Director of the National Science Foundation.

A.N. Fowler,

Acting Director, Division of Polar Programs.

[FR Doc. 86–22179 Filed 9–30–86; 8:45 am]

BILLING CODE 7555-01-M

OFFICE OF PERSONNEL MANAGEMENT

Proposed Information Collection for OMB Review

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (Title 44, U.S. Code, Chapter 35), this notice announces a proposed information collection from the public. RI Form 20–41, Application to Elect Reduced Annuity With Survivor Benefit for a Former Spouse, was developed by the Office of Personnel Management for use by eligible annuitants to provide a survivor annuity benefit to eligible former spouses under the spouse equity provisions of Pub. L. 98–615 as amended by Pub. L. 99–251. For copies of this proposal call James M. Farron, Agency Clearance Officer, on (202) 632–7714.

ADDRESSES: Send or deliver comments within 10 working days from the date of publication to

James M. Farron, Agency Clearance Officer, U.S. Office of Personnel Management, 1900 E Street, NW, Room 6410, Washington, DC 20415

Katie Lewin, Information Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235, New Executive Office Building, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: James L. Bryson, (202) 632–5472.

Office of Personnel Management.

Constance Horner,

Director.

[FR Doc. 86–22162 Filed 9–30–86; 8:45 am]

BILLING CODE 6325–01–M

Committee on Executive, Legislative, and Judicial Salaries; Meeting

The Committee on Executive, Legislative, and Judicial Salaries will meet on Thursday, October 2, 1986, from 3:30 to 5:30 p.m. at 734 Jackson Place, NW., Washington, DC 20006. This will be an open organizational meeting with background briefings. Due to the Committee's interest in beginning work at the earliest possible date from appointment, it was not feasible to postpone the meeting or to give earlier notice.

For further information, contact Patsy Semple at (202) 275–6834.

Constance Horner,

Director, Office of Personnel Management.

[FR Doc. 86–22421 Filed 9–30–86; 11:38 am]

BILLING CODE 6325–01–M

RAILROAD RETIREMENT BOARD

Privacy Act of 1974; New System of Records

AGENCY: Railroad Retirement Board.

ACTION: Notice of new systems of records.

SUMMARY: The Railroad Retirement Board proposes to establish five new systems of records subject to the Privacy Act. The systems notices for these new systems of records are published below.

DATES: These new systems of records, with the exception of the proposed routine uses, will become effective as proposed without further notice in 60 calendar days from the date of this publication unless OMB approves the RRB request for a waiver of the 60-day advanced notice requirement for new or altered system reports, in which case the systems, with the exception of the routine uses, will become effective as of the date the waiver is granted. If the waiver is granted, the routine uses will be effective not earlier than 30 calendar days from the date of this publication unless comments are received before this date which would result in a contrary determination. If the waiver is not granted, the routine uses will become effective 60 days from the date of this publication unless comments are received which would result in a contrary determination.

ADDRESS: Send comments to Beatrice Ezerski, Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: LeRoy Blommaert, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, Telephone 312–751–4548.

SUPPLEMENTARY INFORMATION: After a comprehensive review of records maintained on RRB employees, and after consultation with the Office of Personnel Management, we determined that the following groups of records constitute systems of records under the Privacy Act: Employee Test Score Files, Employee Tuition Reimbursement Files, Personnel Security Files, Motor Vehicle Operator Records, and Employee Identification Card Files (Building Passes). These groups of records had not been previously published as agency systems in the Federal Register and are not covered under any other agency's government-wide system of records.

Because such systems are not proposed new systems but rather existing systems determined to be such but still requiring notice in the Federal Register and submission of a new/altered system report, we have requested the Office of Management and Budget to waive the 60-day comment period.

On September 24, 1986, the Railroad Retirement Board filed a new system report for these systems with the Speaker of the House of Representatives, the President of the Senate, and the Office of Management and Budget. This was done to comply with Section 3 of the Privacy Act of 1974 and OMB Circular No. A–130, Appendix III.

Dated: September 24, 1986.

By the Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

RRB–44

SYSTEM NAME:

Employee Test Score File.

SYSTEM LOCATION:

U.S. Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEMS:

All Railroad Retirement Board employees who have taken one or more tests in voluntary competition for posted positions under the Board's Merit Promotion Plan.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employee's name, social security account number, test score, type of test taken, date test taken.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 335.103.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

a. Records may be disclosed to the Office of Personnel Management in carrying out its functions.

b. Records may be disclosed to an agency in the executive, legislative, or judicial branch, or the District of Columbia Government, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the classifying of jobs, the letting of a contract, or the issuance of a license, grant or other benefit by the requesting

agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

c. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

d. Disclosure may be made to the Office of the President from the record of an individual in response to an inquiry from the Office of the President made at the request of that individual.

e. In the event of litigation where one of the parties is (a) the Board, any component of the Board, or any employee of the Board in his or her official capacity; (b) the United States where the Board determines that the claim, if successful, is likely to directly affect the operations of the Board or any of its components; or (c) any Board employee in his or her individual capacity where the Justice Department has agreed to represent such employees, the Board may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to effectively represent such party, provided such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper, word processing diskettes.

RETRIEVABILITY:

Name.

SAFEGUARDS:

Records are stored in locked file cabinets in a secure building.

RETENTION AND DISPOSAL:

Retention period and disposal instructions have not yet been officially established.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Personnel, U.S. Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

NOTIFICATION PROCEDURE:

Requests for information regarding an individual's record should be in writing addressed to the System Manager identified above, including the full name and social security number of the individual. Before information about any record will be released, the System Manager may require the individual to provide proof of identity or require the requester to furnish an authorization from the individual to permit release of information.

RECORD ACCESS PROCEDURES:

See Notification section above.

CONTESTING RECORD PROCEDURES:

See Notification section above.

RECORD SOURCE CATEGORIES:

Employees who have taken the tests, bureau of personnel.

RRB-45

SYSTEM NAME:

Employee Tuition Reimbursement File.

SYSTEM LOCATION:

U.S. Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Railroad Retirement Board employees who have applied for tuition reimbursement for educational courses taken pursuant to an agreement between them and the agency.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employee's name; copies of memoranda written by requesting reimbursement, and approval actions which include the title of the course(s) taken; the school at which it was taken; the final grade, the tuition cost and the employee's written evaluation on the training received.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 4103 of Title 5, United States Code and Federal Personnel Manual 410 section 1-l0a (11).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

a. Records may be disclosed to the Office of Personnel Management in carrying out its functions.

b. Records may be disclosed to an agency in the executive, legislative, or judicial branch, or the District of Columbia Government, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

c. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

d. Disclosure may be made to the Office of the President from the record of an individual in response to an inquiry from the Office of the President made at the request of that individual.

e. In the event of litigation where one of the parties is (a) the Board, any component of the Board, or any employee of the Board in his or her official capacity; (b) the United States where the Board determines that the claim, if successful, is likely to directly affect the operations of the Board or any of its components; or (c) any Board employee in his or her individual capacity where the Justice Department has agreed to represent such employees, the Board may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to effectively represent such party, provided such disclosure is compatible with the purpose for which the records were collected.

f. In the event that this system of records indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, or regulation or order issued pursuant thereto.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File Folders.

RETRIEVABILITY:

Name of employee.

SAFEGUARDS:

Kept in file cabinets in secured building with access limited to authorized personnel.

RETENTION AND DISPOSAL:

The folder and its contents are destroyed within 1 year after the employee leaves the agency.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Personnel, U.S. Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

NOTIFICATION PROCEDURE:

Requests for information regarding an individual's record should be in writing addressed to the System Manager

identified above, including the full name and social security number of the individual. Before information about any record will be released, the System Manager may require the individual to provide proof of identity or require the requester to furnish an authorization from the individual to permit release of information.

RECORD ACCESS PROCEDURES:

See Notification section above.

CONTESTING RECORD PROCEDURES:

See Notification section above.

RECORD SOURCE CATEGORIES:

Employees who request tuition reimbursement; school at which courses were taken.

RRB-46

SYSTEM NAME:

Personnel Security Files—RRB.

SYSTEM LOCATION:

U.S. Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Railroad Retirement Board employees and individuals being considered for possible employment by the Board.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records of actions taken by the Railroad Retirement Board in a personnel security investigation. If the action is favorable, the information will include identifying information and the action taken; if the action is unfavorable, the information will include the basis of the action which may be a summary of, or a selection, of information contained in an OPM investigation report. Information in an OPM investigation report may include: Date and place of birth, marital status, dates and places of residence, education, information on treatment for a mental condition, dates and places of employment, foreign countries visited, membership in organizations, birth date and place of birth of relatives, arrest records, prior employment reports, dates and levels of clearances, and names of agencies and dates when, and reasons why, they were provided clearance information on Board employees.

Note.—This system of records does *not* include the OPM investigation report itself, even though it is in possession of the Railroad Retirement Board. The report is covered under system of records OPM Central-9. Access to the report is governed by OPM.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 10450 and OMB Circular A-130 dated December 15, 1985.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USES AND THE PURPOSES OF SUCH USES:

a. Records may be disclosed to the Office of Personnel Management in carrying out its functions.

b. Records may be disclosed to an agency in the executive, legislative, or judicial branch, or the District of Columbia Government, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

c. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

d. Disclosure may be made to the Office of the President from the record of an individual in response to an inquiry from the Office of the President made at the request of that individual.

e. In the event of litigation where one of the parties is (a) the Board, any component of the Board, or any employee of the Board in his or her official capacity; (b) the United States where the Board determines that the claim, if successful, is likely to directly affect the operations of the Board or any of its components; or (c) any Board employee in his or her individual capacity where the Justice Department has agreed to represent such employees, the Board may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to effectively represent such party, provided such disclosure is compatible with the purpose for which the records were collected.

f. In the event that this system of records indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper.

RETRIEVABILITY:

Name.

SAFEGUARDS:

The records are kept in a lockable file cabinet, the combination of which is known only by the security officer and that officer's secretary. Retention and disposal: Permanent retention.

SYSTEM MANAGER(S) AND ADDRESS:

Personnel Security Officer, U.S. Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

NOTIFICATION PROCEDURE:

Requests for information regarding an individual's record should be in writing addressed to the System Manager identified above, including the full name and social security number and claim number of the individual. Before information about any record will be released, the System Manager may require the individual to provide proof of identity or require the requester to furnish an authorization from the individual to permit release of information.

RECORD ACCESS PROCEDURES:

See Notification section above.

CONTESTING RECORD PROCEDURES:

See Notification section above.

RECORD SOURCE CATEGORIES:

The individual to whom the information applies, the Railroad Retirement Board, the Office of Personnel Management, the FBI and other law enforcement agencies, and other third parties.

RRB-47

SYSTEM NAME:

Motor Vehicle Operator Records.

SYSTEM LOCATION:

U.S. Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Board employees who are required to operate motor vehicles regularly or incidentally in carrying out their official duties.

CATEGORIES OF RECORDS IN THE SYSTEM:

The RRB Motor Vehicle Operator Records System consists of a variety of records related to the issuance of a Government Motor Vehicle Operator's permit. In addition to the name of the employee, the system includes information about the employee's birthplace, SSN, employing organization, number of years driven, type of vehicles operated, current driver's license number, the state issuing driver's license, date license expires, restrictions of state license, sex, date of birth, color of hair, color of eyes, weight, height, record of traffic violations, and record of accidents. These records also include expiration dates of Motor Vehicle Operator permit, any limitations imposed on its use and the results of the annual review of each driving record.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

40 U.S.C. 471.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

a. Information may be disclosed to the Office of Personnel Management in carrying out its functions.

b. Records may be disclosed to an agency in the executive, legislative, or judicial branch, or the District of Columbia Government, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the classifying of jobs, the letting of a contract, or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

c. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

d. Disclosure may be made to the Office of the President from the record of an individual in response to an inquiry from the Office of the President made at the request of that individual.

e. In the event of litigation where one of the parties is (a) the Board, any component of the Board, or any employee of the Board in his or her official capacity; (b) the United States where the Board determines that the claim, if successful, is likely to directly affect the operations of the Board or any of its components; or (c) any Board employee in his or her individual capacity where the Justice Department has agreed to represent such employees, the Board may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to effectively represent such party, provided such disclosure is compatible with the purpose for which the records were collected.

f. In the event that this system of records indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, or regulation or order issued pursuant thereto.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper.

RETRIEVABILITY:

Name.

SAFEGUARDS:

Access to and use of these records are limited to personnel whose official duties require such access and use. Records are maintained in a secure building.

RETENTION AND DISPOSAL:

Records are retained for 3 years after the individual's government motor vehicle operator's permit expires, or the individual leaves the Board, and are then destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Supply and Service, U.S. Railroad Retirement Board, 844 Rush Street, Chicago, IL 60611.

NOTIFICATION PROCEDURE:

Requests for information regarding an individual's records should be in writing addressed to the System Manager identified above, including full name and social security number of the individual. Before any information about any record will be released, the System Manager may require the individual to provide proof of identity or require the requester to furnish an authorization from the individual to permit release of information.

RECORD ACCESS PROCEDURES:

See Notification section above.

CONTESTING RECORD PROCEDURES:

See Notification section above.

RECORD SOURCE CATEGORIES:

Information contained in this system of records is obtained: (1) From information supplied by the individual, or (2) derived from information supplied by the individual, or (3) from information supplied by officials of the Board.

RRB-48

SYSTEM NAME:

Employee Identification Card Files (Building Passes).

SYSTEM LOCATION:

U.S. Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEMS:

All headquarters Railroad Retirement Board employees. Non-Railroad Retirement Board employees who require continuous access to the Board's headquarters building (e.g., employees of vendors and contractors).

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, social security number, color code for type of pass.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Property Management Regulations, 41 CFR 101–20.301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Internal use only.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Paper.

RETRIEVABILITY:

Name. Identification cards are used for admission to the headquarters building; the application forms verify prior issuance in the event of loss or theft of card.

SAFEGUARDS:

Records are maintained in areas not accessible to the public and are not permitted to be removed from headquarters without authorization.

RETENTION AND DISPOSAL:

Application forms are retained until the person ceases to be employed by the Board at its headquarters office, or in the case of non-Railroad Retirement employees, until the building pass is withdrawn.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Personnel, U.S. Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

NOTIFICATION PROCEDURE:

Requests for information regarding an individual's record should be in writing addressed to the System Manager identified above, including the full name and social security number of the individual. Before information about any record will be released, the System Manager may require the individual to provide proof of identity or require the requester to furnish an authorization from the individual to permit release of information.

RECORD ACCESS PROCEDURES:

See Notification section above.

CONTESTING RECORD PROCEDURES:

See Notification section above.

RECORD SOURCE CATEGORIES:

Individuals to whom building passes are issued.

[FR Doc. 86-22137 Filed 9-30-86; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-23639; File No. SR-PSDTC-86-08]

Self-Regulatory Organizations; Pacific Securities Depository Trust Co.; Filing and Immediate Effectiveness of Proposed Rule Change

Pacific Securities Depository Trust Company ("PSDTC"), on September 16, 1986, submitted a proposed rule change to the Commission under section 19(b)(1) of the Securities Exchange Act of 1934 ("the Act"). The Commission is publishing this notice to solicit comments on the rule change.

PSDTC's proposed rule change would implement changes to improve the bookentry movement of issues between depositories. An interdepository subcommitte has agreed to introduce the changes in two phases. The first (or Interim) phase would implement the following changes:

- *Extension of Delivery Hours*—Cutoffs for original delivery orders will be extended from 8:00 am PST to 8:30 am PST and reclaims from 9:30 am PST to 10:45 am PST.
- *Enhancement of Record Formats*—The transmission record for interface movements has been expanded to include more information for each delivery and reclaim. Prior night deliveries from the Depository Trust Company ("DTC") will also be reported on this expanded record format. Furthermore, a standard list of reason codes will describe why a delivery reclaim is occurring.
- *Upgrading of Interdepository Communications*—Transmission of interdepository deliveries will be done over a dedicated line rather than the less dependable dial-up access.

The Interim Phase is the first step toward the establishment of more effective transmission processing between depositories. The proposed rule change would lead toward the unification of delivery systems and provide participants fair access, regardless of location.

PSDTC states that the proposed rule change is intended to promote the prompt and accurate clearance and settlement of securities transactions, to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions and to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.

The rule change has become effective, pursuant to section 19(b)(3)(A) of the Act. The Commission may summarily abrogate the rule change at any time within 60 days of filing if it appears to the Commission that abrogation is necessary or appropriate in the public interest, for protection of investors, or otherwise in furtherance of the purposes of the Act.

You may submit written comments within 21 days after this Notice is published in the **Federal Register.** Please refer to File No. SR-PSDTC-86-08, and file six copies of your comments with the Secretary of the Commission, 450 Fifth St., NW., Washington, DC 20549. Material on the rule change, other than material that may be withheld from the public under 5 U.S.C. 552, is available for inspection at the Commission's Public Reference Room at the principal offices of PSDTC.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: September 24, 1986.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-22205 Filed 9-30-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23642; File No. SR-NASD-86-25]

Self-Regulatory Organizations; Filing and Order Granting Immediate Effectiveness to Proposed Rule Change; National Association of Securities Dealers, Inc. Relating to NASD Service Charges for Processing Installment Payments of Monetary Penalties

Pursuant to section 19(b) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on September 19, 1986, the National Association of Securities Dealers, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed Section 11 of Schedule A establishes a service charge to be levied on all members or persons associated with a member who file a request with and are approved by the Corporation to pay on an installment basis monetary penalties imposed pursuant to Article V, section 1 of the Corporation's Rules of Fair Practice. The service charge for processing each approved installment payment request shall be an amount equal to 10% of the monetary penalty imposed. The service charge shall be due and payable in full with the first monthly payment.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed section 11 of Schedule A establishes a service charge to be levied on all members or persons associated with a member who file a request with and are approved by the Corporation to pay on an installment basis monetary penalties imposed pursuant to Article V, section 1 of the Corporation's Rules of Fair Practice.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Corporation does not anticipate that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self Regulatory Organization's Statement on Comment on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received with respect to the proposed rule changes contained in this filing.

III. Date of Effectiveness of Proposed Rule Change and Timing for Commission Action

The proposed rule change is effective on filing pursuant to section 19(b)(3)(A)(ii) of the Act in that it affects charges imposed by the Corporation exclusively upon its members or persons associated with its members.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD, and, in particular, the requirements of section 15A(b)(5) and the rules and regulations thereunder.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by October 22, 1986.

It is therefore ordered, pursuant to section 19(b)(3) of the Act, that the proposed rule change referenced above be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3 (a)(12).

Dated: September 24, 1986.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-22202 Filed 9-30-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23629; File No. SR-NSCC-86-11]

Self-Regulatory Organizations; Proposed Rule Change by National Securities Clearing Corp., Relating to a Statement of Policy by National Securities Clearing Corporation ("NSCC") Deemed To Be a Rule

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on September 15, 1986 NSCC filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change is attached as Exhibit 1.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to allow Participants in the Automated Customer Account Transfer ("ACAT") service to submit transfer initiation requests in automated format as an alternative to the current method available of submitting the request in paper format.

Because the Receiving Member will be initiating the request by automated data format, the rule is also being modified to provide that the Receiving Member may, nonetheless, avail itself of NSCC's facilities in order to provide to the Delivering Member any physical documentation which the Delivering Member may need to act upon the request.

Since the proposed rule change will enable Participants to timely and efficiently request on an automated basis the transfer of securities accounts of their customers, the proposed rule change is consistent with the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not perceive that the proposed rule will have an impact or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No comments on the proposed rule change have been solicited or received although NSCC has informed Participants by Important Notice dated July 2, 1986 of NSCC's ability to receive Transfer Initiation Requests in automated format. If any comments are received, they will be forwarded to the Commission.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W. Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by October 22, 1986.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 22, 1986.

Jonathan G. Katz,

Secretary.

Exhibit 1.

(Italic indicates addition; [brackets] indicate deletion.)

Automated Customer Account Transfer Service

Rule 50.

* * * * *

SEC. 2. A Member to whom a customer's securities account is to be transferred (hereinafter referred to as the "Receiving Member") may initiate the procedure by submitting to the Corporation, within such time frame as established by the Corporation from time to time, *either:*

A. A completed and signed Transfer Initiation Request form as established by the Corporation from time to time and any additional documentation determined by the Member to be needed in order to transfer the account from the Member who currently has the account (hereinafter referred to as the "Delivering Member"); *or*

B. A transfer initiation request in such automated format as the Corporation may establish from time to time.

SEC. 3. If a transfer request is initiated by submitting a Transfer Initiation Request form to the Corporation, upon receipt of [a] *the* Transfer Initiation Request form, the Corporation will retain one copy, stamp one copy and make it immediately available to the Receiving Member's representative who submitted the form and, subject to any rights the Corporation may have as provided in these Rules generally and as specifically provided below [in Section 4 of this Rule], make the original Transfer Initiation Request form available to the Delivering Member to whom it is addressed at the Corporation's facilities. Each Delivering Member shall send to the Corporation, at frequent intervals and in any event not later than the time on business days from time to time specified by the Corporation, a messenger authorized to pick up such Transfer Initiation Request forms.

[SEC. 4.] The Corporation will review the Transfer Initiation Request form for such information which the Corporation determines from time to time to be necessary. If such form does not contain the information required by the Corporation, the Corporation will return the original Transfer Initiation Request form to the Receiving Member by making it available to the Receiving Member at the Corporation's facilities. The Corporation will not be responsible for the completeness or accuracy of any information contained on the Transfer Initiation Request form and the Corporation will not verify that it has been signed by the Receiving Member's customer. Further, the Corporation assumes no responsibility for the completeness or accuracy of any documentation necessary for the Delivering Member to transfer the account. The Corporation shall only be responsible to make the Transfer Initiation Request form available to the Delivering Member to whom it is addressed or to return it to the Receiving Member; *or*

SEC. 4. If a transfer request is initiated in automated form, the Corporation will review the transfer initiation request received for such data which the Corporation determines from time to time to be necessary. Notwithstanding the foregoing, the Corporation will not be responsible for the completeness or accuracy of any information contained in the transfer initiation request. If the request does not contain the required data, the Corporation will reject the request. If the Corporation rejects the request, the Receiving Member must reinitiate the request as if it had never been previously submitted. The Receiving Member may submit, through the facilities of the Corporation, a signed Transfer Initiation Request form and such other documentation as the Delivering Member requires to transfer the account, and any such delivery shall be made pursuant to the procedures of the Corporation as the Corporation may provide from time to time. The Corporation assumes no responsibility for the completeness or accuracy of any such form or documentation submitted through the facilities of the Corporation or otherwise.

SEC. 5. Each day the Corporation will produce a report, in such form as determined by the Corporation from time to time, indicating customer account transfer requests received by the Corporation that day. On a daily basis, Members must compare the list of customer account transfer requests as reported by the Corporation that were initiated that day with any Transfer Initiation Request forms delivered to or received from the Corporation *or from another Member.* Any discrepancies between the report and Transfer Initiation Request forms received or delivered must be immediately reported to the Corporation. To the extent necessary or appropriate, the Corporation will cause an adjustment to be made to such report within such time as the Corporation determines to be necessary.

* * * * *

[FR Doc. 86-22203 Filed 9-30-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23641; File No. SR-NSCC-86-10]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by National Securities Clearing Corp., Relating to an Amendment to National Securities Clearing Corporation's ("NSCC") Rules and Procedures Revising the Fee Structure

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on August 29, 1986, NSCC filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Amend NSCC's SCC Division Rules and Procedures by revising the Fee Structure as follows:

National Securities Clearing Corporation Fee Structure

* * * * *

V. Pass-Through and Other Fees

* * * * *

B. Special Service Fees

11. Stock loan rebate payment and collection service $.50 per rebate per side

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In rule filing NSCC 86–08, NSCC established the authority to provide and the procedures for the Stock Loan Rebate and Collection Service (the "Service"). The purpose of the proposed rule change is to adopt the fee that NSCC will charge Participants who utilize the Service.

The proposed change to NSCC's Fee Structure is consistent with the requirements of the Securities Exchange Act of 1934 (the "1934 Act"), as amended, and the rules and regulations thereunder applicable to a self-regulatory organization in that it allows for the equitable allocation of fees among NSCC Participants. Inasmuch as the proposed rule change relates only to NSCC's Fee Structure, it does not affect the safeguarding of securities and funds in NSCC's custody or control for which it is responsible.

B. Self-Regulatory Organization's Statement on Comments on the Burden on Competition

NSCC does not perceive that the proposed rule will have an impact or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, and Others

No comments on the proposed rule change have been solicited or received. NSCC will notify the Securities and Exchange Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the 1934 Act and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the 1934 Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW. Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 5th Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by October 22, 1986.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 24, 1986.

Jonathan G. Katz,

Secretary.

[FR Doc. 86–22204 Filed 9–30–86; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Action Subject To Intergovernmental Review

AGENCY: Small Business Administration.

ACTION: Notice of action subject to intergovernmental review under Executive Order 12372.

SUMMARY: This notice provides for public awareness of SBA's intention to refund twenty-five presently existent Small Business Development Centers (SBDC's) on January 1, 1987. Currently, there are 45 SBDC's operating in the SBDC program. The following SBDC's are intended to be refunded, subject to the availability of funds: Arkansas; the District of Columbia; Florida; Georgia; Idaho; Illinois; Indiana; Kansas; Maine; Minnesota; Nebraska; Nevada; New Hampshire; New Jersey; North Carolina; Oklahoma; Oregon; Pennsylvania; Rhode Island; South Carolina; South Dakota; Tennessee, Utah; Washington; and Wisconsin. This notice also provides a description of the SBDC program by setting forth a condensed version of the program announcement which has been furnished to each of the SBDC's to be refunded. This publication is being made to provide the State single points of contact, designated pursuant to Executive Order 12372, and other interested State and local entities, the opportunity to comment on the proposed refunding in accord with the Executive Order and SBA's regulations found at 13 CFR Part 135.

DATE: Comments will be accepted through December 1, 1986.

ADDRESS: Comments should be addressed to Mrs. Johnnie L. Albertson, Deputy Associate Administrator for SBDC Programs, U.S. Small Business Administration, 1441 L Street NW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Same as above.

Notice of Action Subject to Intergovernmental Review

SBA is bound by the provisions of Executive Order 12372, "Intergovernmental Review of Federal Programs." SBA has promulgated regulations spelling out its obligations under that Executive Order. See 13 CFR Part 135, effective September 30, 1983.

In accord with these regulations, specifically § 135.4, SBA is publishing this notice to provide public awareness of the pending application of twenty-five presently existent Small Business Development Centers (SBDC's) for refunding. Also, published herewith is an annotated program announcement describing the SBDC program in detail.

This notice is being published three months in advance of the expected date of refunding of these SBDC's. Relevant information identifying these SBDC's and providing their mailing address is provided below. In addition to this publication, a copy of this notice is being simultaneously furnished to each affected State single point of contact which has been established under the Executive Order.

The State single points of contact and other interested State and local entities are expected to advise the relevant SBDC of their comments regarding the proposed refunding in writing as soon as possible. The SBDC proposal cannot be inconsistent with any area-wide plan providing assistance to small business, if there is one, which has been adopted by an agency recognized by the State government as authorized to do so. Copies of such written comments should also be furnished to Mrs. Johnnie L. Albertson, Deputy Associate Administrator for SBDC Programs, U.S. Small Business Administration, 1441 L Street NW., Washington, DC. 20416. Comments will be accepted by the relevant SBDC and SBA for a period of 60 days from the date of publication of this notice. The relevant SBDC will make every effort to accommodate these comments during the 60-day period. If the comments cannot be accommodated by the relevant SBDC, SBA will, prior to

refunding the SBDC, either attain accommodation of any comments or furnish an explanation of why accommodation cannot be attained to the commentor prior to refunding the SBDC.

Description of the SBDC Program

The Small Business Development Center Program is a major management assistance delivery program of the U.S. Small Business Administration. SBDC's are authorized under section 21 of the Small Business Act (15 U.S.C. 648). SBDC's operate pursuant to the provisions of section 21, a Notice of Award (Cooperative Agreement) issued by SBA, and a Program Announcement. The Program represents a partnership between SBA and the State-endorsed organization receiving Federal assistance for its operation. SBDC's operate on the basis of a State plan which provides small business assistance throughout the State. As a condition to any financial award made to an applicant, an additional amount equal to the amount of assistance provided by SBA must be provided to the SBDC from sources other than the Federal Government.

Purpose and Scope

The SBDC Program has been designed to meet the specialized and complex management and technical assistance needs of the small business community. SBDC's focus on providing indepth quality assistance to small businesses in all areas which promote growth, expansion, innovation, increased productivity and management improvement. SBDC's act in an advocacy role to promote local small business interests. SBDC's concentrate on developing the unique resources of the university system, the private sector, and State and local governments to provide services to the small business community which are not available elsewere. SBDC's coordinate with other SBA programs of management assistance and utilize the expertise of these affiliated resources to expand services and avoid duplication of effort.

Program Objectives:

The overall objective of the SBDC Program is to leverage Federal dollars and resources with those of the State academic community and private sector to:

(a) Strengthen the small business community;

(b) Contribute to the economic growth of the communities served;

(c) Make assistance available to more small businesses than is now possible with present Federal resources; and

(d) Create a broader based delivery system to the small business community.

SBDC Program Organization

SBDC's are organized to provide maximum services to the local small business community. The lead SBDC receives financial assistance from the SBA to operate a statewide SBDC Program. In states where more than one organization receives SBA financial assistance to operate an SBDC, each lead SBDC is responsible for Program operations throughout a specific regional area to be served by the SBDC. The lead SBDC is responsible for establishing a network of SBDC subcenters to offer service coverage to the small business community. The SBDC network is managed and directed by a single full-time Director. SBDC's must ensure that at least 80 percent of Federal funds provided are used to provide services to small businesses. To the extent possible, SBDC's provide services by enlisting volunteer and other low cost resources on a statewide basis.

SBDC Services

The specific types of services to be offered are developed in coordination with the SBA district office which has jurisdiction over a given SBDC. SBDC's emphasize the provision of indepth, high-quality assistance to small business owners or prospective small business owners in complex areas that require specialized expertise. These areas may include, but are not limited to: Management, marketing, financing, accounting, strategic planning, regulation and taxation, capital formation, procurement assistance, human resource management, production, operations, economic and business data analysis, engineering, technology transfer, innovation and research, new product development, product analysis, plant layout and design, agribusiness, computer application, business law information, and referral (any legal services beyond basic legal information and referral require the endorsement of the State Bar Association,) exporting, office automation, site selection, or any other areas of assistance required to promote small business growth, expansion, and productivity within the State.

The degree to which SBDC resources are directed towards specific areas of assistance is determined by local community needs, SBA priorities and SBDC Program objectives and agreed upon by the SBA district office and the SBDC.

The SBDC must offer quality training to improve the skills and knowledge of existing and prospective small business owners. As a general guideline, SBDC's should emphasize the provision of training in specialized areas other than basic small business management subjects. SBDC's should also emphasize training designed to reach particular audiences such as members of SBA priority and special emphasis groups.

SBDC Program Requirements

The SBDC is responsible to the SBA for ensuring that all programmatic and financial requirements imposed upon them by statute or agreement are met. The SBDC must assure that quality assistance and training in management and technical areas are provided to the State small business community through the State SBDC network. As a condition of this agreement, the SBDC must perform, but not be limited to, the following activities.

(a) The SBDC ensures that services are provided as close as possible to small business population centers. This is accomplished through the establishment of SBDC subcenters.

(b) The SBDC ensures that lists of local and regional private consultants are maintained at the lead SBDC and each SBDC subcenter. The SBDC utilizes and provides compensation to qualified small business vendors such as private management consultants, private consulting engineers, and private testing laboratories.

(c) The SBDC is responsible for the development and expansion of resources within the State, particularly the development of new resources to assist small business that are not presently associated with the SBA district office.

(d) The SBDC ensures that working relationships and open communications exist within the financial and investment communities, and with legal associations, private consultants, as well as small business groups and associations to help address the needs of the small business community.

(e) The SBDC ensures that assistance is provided to SBA special emphasis groups throughout the SBDC network. This assistance shall be provided to veterans, women, exporters, the handicapped, and minorities as well as any other groups designated a priority by SBA. Services provided to special emphasis groups shall be performed as part of the Cooperative Agreement.

Advance Understandings

(a) Lead SBDC's shall operate on a 40-hour week basis, or during normal State business hours of the host institution, with National holidays or State holidays as applicable excluded.

(b) SBDC subcenters shall be operated on a full-time basis. The lead SBDC shall ensure that staffing is adequate to meet the needs of the small business community.

Dated: September 25, 1986.

Charles L. Heatherly,

Acting Administrator.

Addresses of Relevant SBDC Directors

Mr. Paul McGinnis, Arkansas SBDC State Director, University of Arkansas, 5th Floor Libarary, Room 512, 33rd and University, Little Rock, AR 72204, (501) 371–5381

Ms. Nacy Flake, District of Columbia SBDC Director, Howard University, 6th and Fairmont St., NW., Washington, DC 20059, (202) 636–5150

Mr. Gregory Higgins, Florida SBDC State Director, University of West Florida, 627 University Office Boulevard, Pensacola, FL 32504, (904) 474–3016

Dr. Frank Hoy, Georgia SBDC State Director, University of Georgia, Chicopee Complex, Athens, GA 30602, (404) 542–5760

Mr. Ronald Hall, Idaho SBDC State Director, Boise State University, 1910 University Drive, Boise, ID 83725, (208) 385–1640

Mr. Jeff Mitchell, Illinois SBDC State Director, Dept. of Commerce and Community Affairs, Adams Street, Springfield, IL 62701, Morrill Hall, (217) 785–6267

Mr. Randy Meadows, Indiana SBDC State Director, Indiana Economic Development Council, One North Capitol, Suite 200, Indianapolis, IN 46204, (317) 634–6407

Ms. Susan, Osborne-Howes, Kansas SBDC State Director, Wichita State University, Campus Box 48, 021 Clinton Hall, Wichita, KS 67208, (316) 689–3193

Mr. Warren Purdy, Maine SBDC State Director, University of Southern Maine, 246 Deering Avenue, Portland, ME 04102, (207) 780–4423

Mr. Jerry Cartwright, Minnesota SBDC State Director, College of St. Thomas, 1107 Haxeltine Gates Blvd., Chaska, MN 55318, (612) 448–8810

Mr. Robert Bernier, Nebraska SBDC Director, University of Nebraska at Omaha, Peter Kiewit Center, Omaha, NE 68182, (402) 554–2521

Mr. Samuel Males, Nevada SBDC State Director, University of Nevada in Reno, College of Business 620 East Administration, Reno, NV 89557–0016, (702) 784–1717

Mr. Craig Seymour, New Hampshire SBDC State Director, University of New Hampshire, McConnell Hall, Durham, NH 03824, (603) 862–3558

Ms. Janet Holloway, Acting New Jersey SBDC State Director, Rutgers University, Ackerson Hall—3rd Floor, 180 University Street, Newark, NJ 07102, (201) 648–5950

Mr. Scott R. Daugerty, North Carolina SBDC State Director, University of North Carolina, 820 Clay Street, Raleigh, NC 27605, (919) 733–4643

Mr. Lloyd B. Miller, Oklahoma SBDC State Director, Southeastern Oklahoma State University Station A, Box 4194, Durant, OK 74701, (405) 924–0277

Mr. Sandy Cutler, Oregon SBDC State Director, Lane Community College, Downtown Center, 1059 Willamette Street, Eugene, OR 97401, (503) 726–2250

Ms. Susan Garber, Pennsylvania SBDC State Director, University of Pennsylvania, The Wharton School, 3201 Steinberg-Dietrich Hall/CC, Philadelphia, PA 19104, (215) 898–1219

Mr. Douglas Jobling, Rhode Island SBDC State Director, Bryant College, Smithfield, RI 02917, (401) 232–6000

Mr. W.F. Littlejohn, South Carolina SBDC State Director, University of South Carolina, College of Business Administration, Columbia, SC 29208, (803) 777–4907

Mr. Donald Greenfield, South Dakota SBDC State Director, University of South Dakota, School of Business, 414 East Clark, Vermillion, SD 57069, (605) 677–5272

Dr. Leonard Rosser, Tennessee SBDC State Director, Memphis State University, Fogelman College of Business and Economics, Memphis, TN 38152, (901) 454–2500

Mr. Kumen Davis, Utah SBDC State Director, University of Utah, 660 South East—Suite 418, Salt Lake City, UT 84111, (801) 581–7905

Mr. Lyle M. Anderson, Washington SBDC State Director, Washington State University, College of Business and Economics, Pullman, WA 99164, (509) 335–1576

Ms. Dolores H. Niles, Wisconsin SBDC State Director, University of Wisconsin, 602 State Street, Second Floor, Madison, WI 53703, (608) 263–7794

[FR Doc. 86–22239 Filed 9–30–86; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Order 86–9–73]

Fitness Determination of Iowa Airways, Inc.

AGENCY: Department of Transportation.

ACTION: Notice of commuter air carrier fitness determination; order to show cause.

SUMMARY: The Department of Transportation is proposing to find that Iowa Airways, Inc., fit, willing, and able to provide commuter air service under section 419(c)(2) of the Federal Aviation Act.

Responses

All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Special Authorities Division, P–47, Department of Transportation, 400 7th Street, SW., Room 6420, Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than October 16, 1986.

FOR FURTHER INFORMATION CONTACT: Kathy A. Lusby, Special Authorities Division, Department of Transportation, 400 7th Street, SW., Washington, DC 20590 (202) 366–2337.

Dated: September 25, 1986.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 86–22197 Filed 9–30–86; 8:45 am]

BILLING CODE 4910–62–M

[Order 86–9–69; Docket 40345]

Proposed Revocation of Certificate of Airpac, Inc.

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Notice of order to show cause.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order revoking the the certificate of Airpac, Inc., issued under section 401 of the Federal Aviation Act.

DATE: Persons wishing to file objections should do so no later than October 16, 1986.

ADDRESSES: Responses should be filed in Docket 40345 and addressed to the Documentary Services Division, Department of Transportation, 400 7th Street, SW., Room 4107, Washington, DC 20590 and should be served on the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Carol A. Szekely, Special Authorities Division, P–47, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590, (202) 366–9721.

Dated: September 25, 1986.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 86–22196 Filed 9–30–86; 8:45 am]

BILLING CODE 4910–62–M

Federal Highway Administration

Intent to Prepare Environmental Impact Statement; Bothell, King County, WA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a potential new road

project affecting State Route 522. The project is the Riverside Parkway, a bypass of the downtown Bothell area, in King County, Washington.

FOR FURTHER INFORMATION CONTACT: Pat O'Neil, Federal Highway Administration, Evergreen Plaza, Suite 501, 711 South Capitol Way, Olympia, Washington 98501, Telephone: (206) 753-2120.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Washington State Department of Transportation (WSDOT) and the City of Bothell, Department of Community Development, will prepare an environmental impact statement (EIS) on a potential new road project affecting State Route 522. The 1.2 mile Riverside Parkway is a proposed new road currently under study by the City of Bothell. The road would be a landscaped, low-speed parkway which would serve as a through-traffic bypass around downtown Bothell. The need for the project is expressed in a 1984 study by the Urban Land Institute, as follows:

"Clearly, the single-most significant transportation improvement before the City of Bothell is the proposed bypass . . . In the view of the panel, the future of downtown, and its combination with the capture of the recreational, visual, and development potential of the areas along the Sammamish River, cannot be achieved without the elimination of the through traffic on Bothell Way."

The road would connect State route 522 at the Wayne Curve, carry traffic across the Sammamish River south of downtown, and return traffic to SR-522 by again crossing the river at Woodinville Drive. The Riverside Parkway is the key capital improvement of the City of Bothell's Transportation Improvement Plan (adopted 1984). The Riverside Comprehensive Plan, a 1985 update to Bothell's 1971 Comprehensive Plan, directed the proposed Riverside Parkway design to be as compatible with the existing and proposed land uses as possible, including the parkland and Sammamish River Trail.

Alternatives to the proposed Riverside Parkway are limited due to constraints imposed by the street system, area geography, and the heavy through-traffic use of SR-522. As a result, four alternatives have been identified: (1) No action, (2) An alignment which closely follows the Burlington Northern Railroad right-of-way, (3) The proposed Riverside Parkway, as identified in the City's adopted Transportation Improvement Plan, and (4) Upgrading the existing SR-522.

Prior to the decision to make this EIS a cooperative effort between FHWA, WSDOT, and Bothell, several meetings were conducted between September 1985 and March 1986. This included a public briefing, a public scoping meeting, an agency scoping meeting, and a Bothell City Council public hearing. Input from all of these meetings will be considered in the EIS process. In addition, more community briefings are planned, as well as a formal public hearing during the public review period for the draft EIS. A mailing list has been established with Federal, State, and local agencies, local citizens, and the affected property owners. Public notice will be given as to the time and place of the public hearing. The draft EIS will be available for public and agency review and comment.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The provisions of OMB Circular No. A-95 regarding state and local clearinghouse review of program)

Issued on: September 9, 1986.

Pat O'Neil,

Washington Division, Olympia, Washington.

[FR Doc. 86-22181 Filed 9-30-86 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Supplement to Department Circular—Public Debt Series—No. 30-86]

Treasury Notes of Series AE-1988

Washington, September 24, 1986.

The Secretary announced on September 23, 1986, that the interest rate on the notes designated Series AE-1988, described in Department Circular—Public Debt Series—No. 30-86 dated September 17, 1986, will be 6⅜ percent. Interest on the notes will be payable at the rate of 6⅜ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 86-22138 Filed 9-30-86; 8:45 am]

BILLING CODE 4810-40-M

[Supplement to Department Circular—Public Debt Series—No. 31-86]

Treasury Notes of Series Q-1990

Washington, September 25, 1986.

The Secretary announced on September 24, 1986, that the interest rate on the notes designated Series Q-1990, described in Department Circular—Public Debt Series—No. 31-86 dated September 17, 1986, will be 6¾ percent. Interest on the notes will be payable at the rate of 6¾ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 86-22139 Filed 9-30-86; 8:45 am]

BILLING CODE 4810-40-M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 190
Wednesday, October 1, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, October 3, 1986.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Market Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 86–22306 Filed 9–29–86; 2:23 pm]

BILLING CODE 6351-01-M

2

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, October 10, 1986.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Market Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 22307 Filed 9–29–86; 2:23 pm]

BILLING CODE 6351-01-M

3

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, October 15, 1986.

PLACE: 2033 K Street, NW., Washington, DC, 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED: Proposed amendment to Rule 1.46—Application and Closing Out to Offsetting Long and Short Positions.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 86–22308 Filed 9–29–86; 2:23 pm]

BILLING CODE 6351-01-M

4

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Wednesday, October 15, 1986.

PLACE: 2033 K. Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 86–22309 Filed 9–29–86; 2:23 pm]

BILLING CODE 6351-01-M

5

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Wednesday, October 17, 1986.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Market surveillance matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 86–22310 Filed 9–29–86; 2:23 pm]

BILLING CODE 6351-01-M

6

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, October 21, 1986.

PLACE: 2033 K Street, NW., Washington, DC., 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Application of the Chicago Board of Trade for designation as a contract market in Soybean Meal Options

Application of the Chicago Board of Trade for designation as a contract market in Soybean Oil Options

Application of the Commodity Exchange, Inc., for designation as a contract market in Grade 1 Copper futures

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR. Doc. 86–22311 Filed 9–19–86; 2:23 pm]

BILLING CODE 63510-01-M

7

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Tuesday, October 21, 1986.

PLACE: 2033 K Street, NW., Washington, DC., 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR. Doc. 86–22312 Filed 9–29–86; 2:23 pm]

BILLING CODE 6351-01-M

8

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, October 24, 1986.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Market Sureillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 86–22313 Filed 9–29–86; 2:23 pm]

BILLING CODE 6351-01-M

9

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, October 31, 1986.

PLACE: 2033 K Street, NW, Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Market Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR. Doc. 86–22314 Filed 9–29–86; 2:23 pm]

BILLING CODE 6351–01–M

10

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 1:55 p.m. on Thursday, September 25, 1986, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to: (1) Receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in The Home State Bank, La Crosse, Kansas, which was closed by the State Bank Commissioner for the State of Kansas on Thursday, September 25, 1986; (2) accept the bid for the transaction submitted by Farmers Bank and Trust, National Association, Albert, Kansas; and (3) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchese and assumption transaction.

In calling the meeting, the Board determined, on motion of Chairman L. Wiliiam Seidman, seconded by Director C.C. Hope, Jr. (Appointive), concurred in by Mr. Dean S. Marriott, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration of the matters on less that seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections(c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was recessed at 2:15 p.m., and at 5:18 p.m. that same day the meeting was reconvened, by telephone conference call, at which time the Board of Directors: (1) Received bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in Heritage National Bank, Richardson, Texas, which was closed by the Deputy Comptroller of the Currency, Office of the Comptroller of the Currency, on Thursday, September 25, 1986; (2) accepted the bid for the transaction submitted by Brookhollow National Bank, Richardson, Texas, a newly-chartered national bank; and (3) provided such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction.

In reconvening the meeting, the Board determined, on motion of Chairman L. William Seidman, seconded by Director C.C. Hope, Jr. (Appointive), concurred in by Mr. Dean S. Marriott, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: September 26, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85–22287 Filed 9–29–86; 10:42 am]

BILLING CODE 6714–01–M

11

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of September 29 and October 6, 13 and 20 1986.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, DC

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of September 29

Thursday, October 2

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Options for Response to Presiding Officer's Recommendation that Formal Hearing be Convened for Sequoyah Fuels Corporation UF6 to UF4 Conversion Facility (Tentative)

Week of October 6—Tentative

Thursday, October 9

9:30 a.m.
Briefing on Advanced Reactor Designs (Public Meeting)
3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of October 13—Tentative

Thursday, October 16

2:00 pm.
3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Friday, October 17

10:00 a.m.
Briefing on Status of Fort St. Vrain (Public Meeting)

Week of October 20—Tentative

Thursday, October 23

3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

ADDITIONAL INFORMATION:

Affirmation of "Governor Cuomo's May 15 Request for Termination of Shoreham Proceeding" and "Proposed Order Terminating NFS–Erwin Proceeding" (Public Meeting) was held on September 25.

Briefing on Status of Rancho Seco (Public Meeting) scheduled for October 16 was postponed.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (202) 634–1498.

CONTACT PERSON FOR MORE INFORMATION: Robert McOsker (202) 634–1410.

Robert B. McOsker,

Office of the Secretary.

September 24, 1986.

[FR Doc. 86–22241 Filed 9–26–86; 5:05 pm]

BILLING CODE 7590–01–M

12

UNITED STATES INTERNATIONAL TRADE COMMISSION

TIME AND DATE: Thursday, October 2, 1986 at 10:00 a.m.

PLACE: Room 117, 701 E Street, NW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and Complaints:
(Certain electronic wall stud finders (Docket Number 1341)).
5. Inv. No. 731–TA–341/346 (P) (Tapered roller bearings from Hungary, Italy, Japan, the People's Republic of China, Romania, and Yugoslavia)—briefing and vote.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523–0161.

Kenneth R. Mason,

Secretary.

September 23, 1986.

[FR Doc. 86–22240 Filed 9–26–86; 5:04 pm]

BILLING CODE 7020–02–M

13

RAILROAD RETIREMENT BOARD

Public Meeting

Notice is hereby given that the Railroad Retirement Board will hold a meeting on October 8, 1986, 9:00 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 Rush Street, Chicago, Illinois, 60611. The agenda for the meeting follows:

(1) Proposed Changes in the RUIA Regulations
(2) Board Order 75–3
(3) Final Rule Regulation on Primary Insurance Amount Determinations

The entire meeting will be open to the public. The person to contact for more information is Beatrice Ezerski, Secretary to the Board, COM No. 312–751–4920, FTS No. 387–4920.

Dated: September 26, 1986.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 86–22328 Filed 9–29–86; 3:51 pm]

BILLING CODE 7905–01–M

federal register

Wednesday
October 1, 1986

Part II

United States Sentencing Commission

Preliminary Draft of Sentencing Guidelines for United States Courts

UNITED STATES SENTENCING COMMISSION

Preliminary Draft of Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of preliminary draft of sentencing guidelines for the United States courts.

SUMMARY: This preliminary draft presents an approach currently being considered by the U.S. Sentencing Commission in developing guidelines and policy statements for use by the federal courts in determining the sentences to be imposed in criminal cases. The sentencing reform provisions of the Comprehensive Crime Control Act of 1984 created the U.S. Sentencing Commission and charged it with the duty of promulgating sentencing guidelines. The guidelines are designed to provide certainty and fairness in meeting the purposes of sentencing. The objective is to avoid unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar criminal conduct, while maintaining sufficient flexibility to permit individualized sentencing when warranted by mitigating or aggravating factors not taken into account in the guidelines. Final guidelines must be submitted to Congress by April 13, 1987.

DATES: Written comments on this preliminary draft of the guidelines must be received by the Commission on or before December 3, 1986. To facilitate public input on this preliminary draft, the Commission has scheduled the following series of regional public hearings:

1. Chicago, IL—October 17, 1986, 10:00 a.m. to 4:00 p.m., Ceremonial Courtroom, 25th Floor, Dirksen Federal Building, 219 South Dearborn Street.

2. New York, NY—October 21, 1986, 10:00 a.m. to 4:00 p.m., Room 318, U.S. Courthouse, Foley Square.

3. Atlanta, GA—October 29, 1986, 10:00 a.m. to 4:00 p.m., Ceremonial Courtroom, 23rd Floor, Richard B. Russell Federal Building, 75 Spring Street, S.W.

4. Denver, CO—November 5, 1986, 10:00 a.m. to 4:00 p.m., Room C-201, 2nd Floor, U.S. Courthouse, 1929 Stout Street.

5. San Francisco, CA—November 18, 1986, 10:00 a.m. to 4:00 p.m., Ceremonial Courtroom, U.S. Courthouse, 450 Golden Gate Avenue.

6. Washington, DC—December 2 and 3, 1986, 10:00 a.m. to 4:00 p.m., Ceremonial Courtroom, U.S. Courthouse, 3rd Street and Constitution Avenue N.W.

ADDRESS: Comments may be mailed to: United States Sentencing Commission, 1331 Pennsylvania Avenue, NW, Suite 1400, Washington, DC 20004, Attention: Guidelines Comments. The Commission encourages interested members of the public to submit their comments in writing.

FOR FURTHER INFORMATION CONTACT: Paul K. Martin, Communications Director for the Commission, at the above address; telephone (202) 662-8800.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent commission in the judicial branch of the United States Government. Ordinarily, the Administrative Procedure Act and rule making requirements (including publication in the **Federal Register**, public comment and public hearing procedure) are not applicable to the judicial branch. However, 28 U.S.C. 994(w) makes the Administrative Procedure Act rule making provisions of 5 U.S.C. 553 applicable to the promulgation of sentencing guidelines by the Sentencing Commission. Although Federal Register publication of a preliminary draft of guidelines is not required by the applicable statute, the Commission has chosen to publish this preliminary document well in advance of any required publication date in order to provide a vehicle for focused critical analysis and public comment.

This preliminary draft of guidelines appears in the Notice Document section of the Register, rather than in the Rules Document section, for the following reasons: First, neither the applicable statute nor the legislative history indicates that the sentencing guidelines, when finalized, shall become a part of the Code of Federal Regulations, which consists of rules promulgated by executive branch agencies. Secondly, the more informal format of the Notices section, rather than the formal, CFR codification requirements of the Rules section, is more suitable to the presentation of the Commission's preliminary draft of guidelines and related explanatory material. Finally, the Office of Federal Register has determined that publication in the Notices section is more appropriate. For the above reasons, the Commission concurs in that determination.

With the publication of this preliminary draft, the Commission is also providing a substantial period for submission of written comments and, additionally, an opportunity for interested persons to present views during a series of six regional public hearings. In revising this preliminary draft, the Commission intends to analyze and consider all relevant public comment material, written and oral, presented to it in a timely manner. The Commission expects to publish a complete set of proposed sentencing guidelines for public comment at a later date.

The final guidelines to be submitted to Congress by April 13, 1987, shall take effect six months after their submission unless, by law, Congress modifies, rejects, or postpones them.

Authority: Sec. 217(a) of the Comprehensive Crime Control Act of 1984 (28 U.S.C. 994(a),(w),995.

William W. Wilkins, Jr.,

Chairman.

An Open Letter

The Sentencing Commission is committed to developing sentencing guidelines informed by the widest measure of public comment. To achieve this goal, the Commission has conducted its work openly. We have requested and received comment from hundreds of individuals and groups. We shall continue this approach as we work to produce a final product.

While this first draft is preliminary in nature, it does provide an excellent vehicle for public comment. We seek your critical analysis.

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Presently, judges in our federal criminal justice system are provided little guidance when confronted with the complex issue of sentencing a convicted offender. This lack of guidance has adversely affected the administration of justice by producing unwarranted disparity in sentencing. Analysis of past and current sentencing practices reveals that offenders with similar characteristics who commit similar crimes receive sentences that vary dramatically. This disparity has produced a system of justice that lacks an appropriate degree of certainty of punishment and, most importantly, fairness to the offender, the victim, and society.

After more than a decade of bipartisan efforts, the 98th Congress passed legislation that, in addition to other major criminal justice reforms, created the United States Sentencing Commission. Under its mandate from Congress, the Commission's primary responsibility is to establish sentencing policies and practices for the federal courts that avoid unwarranted disparity and meet the four purposes of sentencing: just punishment, deterrence, incapacitation, and rehabilitation. The Commission's goal is to provide a structure and framework for the sentencing decision so that similar offenders who commit similar offenses are sentenced in a similar fashion. The Commission's intention is that these efforts will ensure fairness and contribute to the reduction of crime.

The most pressing task of the Commission is to develop an intellectually sound, consistent, and workable set of sentencing guidelines for submission to Congress by April 1987. After the initial guidelines take effect, the Commission is charged with the ongoing responsbility of measuring the impact of the guidelines and their effectiveness in meeting the enumerated purposes of sentencing. In the years after initial implementation, the Commission will propose guideline amendments to Congress as revisions are needed and as new criminal statutes are enacted.

From its inception, the Commission has conducted its business openly, for it believes that this unique opportunity for sentencing reform can best be accomplished with full participation by all interested parties. Public policy is only as good as the quality and breadth of the public input that goes into its creation. The Commission has solicited comment from hundreds of individuals, organizations, and government agencies with an interest in the federal criminal justice system. In keeping with this philosophy, the Commission voted to publish a preliminary working draft of sentencing guidelines well in advance of any required publication date in order to provide a vehicle for critical analysis and public comment. While these guidelines do not reflect the views of all Commissioners, the Commission voted for publication to provide a means for identifying the issues that must ultimately be resolved. The Commission' realizes that it runs a risk by publishing at this early date when the preliminary guidelines are not drafted for all offenses and when they are not as refined as they will be several months from now. The alternative, however, would severely limit public input, and the Commission finds this unacceptable.

The preliminary draft published for public comment seeks to accomplish several goals. The first is to focus public attention on a proposed format, a possible structure and suggested sentencing ranges. The format, structure, and suggested terms of imprisonment will all be reconsidered by the Commission before the final draft is written in light of further deliberation, continued empirical research, and the receipt of written and oral comment.

The publication also highlights a series of difficult policy issues that remain unresolved. The Commission underscores these policy issues for public comment because their resolution will determine, to a great extent, the final guidelines.

The Commission's ongoing sentencing data collection and analysis efforts will continue after the guidelines are in effect to assess the impact of the guidelines on the justice system as well as changes in the crime rate. The Commission will closely monitor the effectiveness of the guidelines in meeting the purposes of sentencing and will recommend to Congress changes to strengthen the system and eliminate unfairness. Significantly, for the first time in the history of the federal criminal justice system, the commitment to an efficient and just sentencing system will be inextricably linked to a continuous monitoring and measurement process. Refinement and improvement will be ongoing.

To achieve longer-term goals, the sentencing guidelines ultimately submitted to Congress must be workable, fair, and effective. That is why publication of this preliminary draft of guidelines is so important. Only with the benefit of the insight and experience of others will the Commission be able to achieve its goal of producing a

sentencing system that truly serves the interests of justice.

In drafting these preliminary guidelines, the Commission has sought to identify facets of an offense that should lead to a greater or lesser punishment. In deciding what circumstances are relevant, the Commission has recognized that the guidelines cannot take all arguably relevant distinctions into account without producing guidelines that are unworkably complex. Too complex a system risks misapplication and invites a return to disparate sentences for similar offenses. An in adequate number of distinctions produces problems of a different kind. Guidelines that do not have a sufficient degree of complexity could result in two offenders engaging in quite different behavior receiving similar sentences.

The Commission has balanced the need for overall guideline simplicity and workability against the desirability of taking into account of all potentially relevant factors. The public is asked to review the tentative judgments embodied in the preliminary guidelines with this problem in mind. It will be helpful for those commenting not simply to identify other potentially relevant features of an offense, but also to decide whether those features are sufficiently important in enough cases to warrant additional complexity. Conversely, it would be useful to identify distinctions that these preliminary guidelines presently make that might be eliminated in the interest of simplicity, without making the guidelines significantly less fair or less effective.

Chapter One: Introduction and Overview

I. Authority and Responsibility of the Commission

The United States Sentencing Commission ("Commission") is an independent agency in the judicial branch of government composed of seven voting and two non-voting, *ex officio* members. Its principal purpose is to establish sentencing policies and practices for the federal criminal justice system, including detailed guidelines prescribing the appropriate form and severity of punishment for offenders convicted of federal crimes.

As specified in 28 U.S.C. 991(b), the policies, practices and sentencing guidelines established by the Commission are designed to:

1. effectuate the purposes of sentencing enumerated in 18 U.S.C. 3553(a)(2) (in brief, those purposes are just punishment, deterrence, incapacitation, and rehabilitation);

2. provide certainty and fairness in sentencing practices, by avoiding unwarranted sentencing disaparities among offenders with similar characteristics convicted of similar criminal conduct, while permitting sufficient judicial flexibility to take into account relevant aggravating or mitigating factors; and

3. reflect, to the extent practicable, advancement in knowledge of human behavior as related to the criminal justice process.

The Commission is also charged with the ongoing responsibilities of: evaluating the effects of the sentencing guidelines on the criminal justice system, including the impact on the resources of the Bureau of Prisons; recommending to Congress appropriate modifications of substantive criminal law and sentencing procedures, as well as revisions of the sentencing guidelines; establishing a research and development program on sentencing practices and procedures; and other related duties.

Created by the sentencing reform provisions of the Comprehensive Crime Control Act, Pub. L. No. 98–473 (1984), the Commission's authority and duties are set out in Chapter 58 of Title 28, United States Code. Procedures for implementing the guidelines system of sentencing are prescribed in a new Chapter 227 of Title 18, United States Code.

The statutory authority affecting the Commission has been amended by Congress. Pub. L. 99–217 (December 26, 1985) postponed by twelve months, until April, 1987, the deadline for submission to Congress of the initial set of sentencing guidelines. The guidelines will be subject to six months of Congressional review and take effect if no contrary action is taken by law. That legislation also postponed until November 1, 1987, the effective date for the sentencing procedure revisions accompanying the guidelines. Pub. L. 99–363 (July 11, 1986) clarified the authority of the Commission to write policy statements concerning the imposition of fines and permitted a maximum variation of six months or 25 percent, whichever is greater, between the minimum and maximum sentences of incarceration in a guideline range. This same legislation also provided that if the maximum sentence is life imprisonment, the minimum sentence must be at least 30 years.

Pursuant to sections 218 and 235 of the Comprehensive Crime Control Act of 1984, parole will be abolished for all offenders sentenced under the determinate sentences prescribed by the guidelines. This means that a sentence of five years will require imprisonment for five years, less statutory good time.

II. Commission Activities Relating to Guidelines Development

Prior to Publication

Advisory and Working Groups. One of the Commission's first action was to establish advisory and working groups with whom the Commission could consult on a continuing basis as it considered sentencing issues and drafted guidelines. These represent each of the following groups: United States Attorneys, state district attorneys, federal probation officers, defense attorneys, researchers, and federal judges. In addition to receiving written comments and critiques from the members of these groups, the Commission, over a period of several months, invited representatives of each group (including three groups of federal judges) to participate in working sessions with Commission members and staff. During these sessions, early drafts of guidelines were examined, and many of the important issues facing the Commission were given a full airing.

Topical Hearings. In order to have the benefit of a wide range of informed views the Commission has solicited written advice from hundreds of criminal justice practitioners, interest groups and other interested individuals and organizations in conjunction with a series of five public hearings in Washington, D.C. The topics of these public hearings were: Offense Seriousness Ranking (April 15, 1986); Offender Characteristics: Prior Record (May 22); Organizational Sanctions (June 10); Sentencing Options (July 15); and Plea Agreements (September 23). In connection with these hearings, the Commission received oral testimony from 46 witnesses and written comments from more than 400 additional respondents. Those contributing to the hearing process included government officials representing all facets of the criminal justice system at the federal, state, and local levels, private attorneys, interest and advocacy groups espousing a range of philosophies, other specialists in sentencing issues, victim advocates, and inmates. These public hearings and written comments significantly contributed to the development of preliminary sentencing guidelines.

Meetings. Since its inception, the Commission has met regularly and all of these meetings have been open to the public. Although most of the work involved in drafting the preliminary guidelines necessarily was

accomplished in informal working groups, the Commission has used its meetings to set an overall agenda and direction for the development of the guidelines, as well as to discuss, revise, and approve working group drafts as they have been presented to the Commission. Commission meetings also have included informational briefings and discussions with a wide variety of resource groups, including the Education and Probation Committees of the United States Judicial Conference, the General Accounting Office, the Bureau of Prisons, the National Institute for Sentencing Alternatives, the Community Corrections Division of the National Institute of Corrections, various government agencies having law enforcement responsibilities, defense attorneys, and criminal justice scholars.

In-House Research. The Commission has established a research program to assist in the development, implementation, monitoring, and evaluation of the guidelines. The research staff has collected and will continue to collect pertinent data, including detailed information on past sentencing and correctional practices, and the post-conviction activities of probationers and parolees. These data are being used or will be used for several purposes: to describe offenses and offenders who are convicted in federal court; to determine which offenders pose a high risk of recidivism; to test the application of the guidelines to actual cases; to predict the impact of the guidelines on federal prison population and other components of the federal criminal justice system; and to monitor the use of the guidelines by the federal courts. In addition to performing empirical research, the research unit reviews criminal justice research, advises the Commission about the application of scientific theory and knowledge to sentencing practices, and provides general technical and computer support.

Liaison With Other Federal Agencies. The Commission solicited information from federal agencies about the specific nature and number of offenses occurring within their areas of responsibility. Information was provided by numerous divisions of the Department of Justice, the Department of the Treasury, the Departments of Defense, Education, Health and Human Services, Interior, and Labor, the Federal Deposit Insurance Corporation, the Postal Service, and the Securities and Exchange Commission. Many of these agencies cited sentencing factors they believed important in the cases within their respective jurisdictions.

Field Research and Related Activities. The Commission has traveled across the nation to obtain information and advice as well as to give presentations regarding the efforts of the Commission.

Commissioners and staff visited four federal prisons of various classifications to gain firsthand awareness of the current facilities and operations of the Federal Bureau of Prisons. In addition, Commission staff visited a number of states and communities in which a variety of sentencing options other than imprisonment were being used. Staff visited numerous intensive probation supervision programs, including those using house arrest, electronic monitoring, and community residential facilities. Specifically, staff met with officials of the New Jersey Intensive Supervised Program; the Massachusetts Intensive Probation Program; the Quincy, Massachusetts District Court; the San Mateo County, California Adult Probation Office; the Texas Adult Probation Commission; and the Georgia Department of Offender Rehabilitation. Additionally, Commission staff met with officials of the Massachusetts Commission on Correctional Alternatives and officials of the intensive supervision program formerly operated by the state of Washington.

The fine collection and community service programs of a number of state probation departments were studied. In its efforts to establish reasonable and collectable fines and to determine an offender's likelihood and ability to pay fines, Commission staff met with officials of several banking and financial institutions, including the Fair-Isaac Companies and the Bank of America in California, and the Credit Bureau, Inc., in Atlanta, Georgia. In addition, Commission staff met with the Vera Institute of Justice in New York City about its community service programs.

Commission representatives met with United States Probation Officers at ten regional seminars and district-wide staff meetings. Through these meetings, the Commission received input from officers in the majority of federal judicial districts.

Post-Publication

Distribution. These guidelines have been mailed to each Member of Congress, Article III Judge, United States Attorney, Federal Public Defender and Chief United States Probation Officer. Copies were also sent to hundreds of other individuals and groups on the Commission's mailing lists, including defense attorneys, academics, victim advocates, and private and professional membership groups.

Public Hearings. In order to structure and facilitate public comment on the preliminary guidelines, the Commission will hold a series of regional hearings. Public attendance and participation at any of the following hearings is encouraged:

October 17, 1986—Chicago
October 21, 1986—New York City
October 29, 1986—Atlanta
November 5, 1986—Denver
November 18, 1986—San Francisco
December 2–3, 1986—Washington, DC.

Each hearing will begin at 10:00 a.m. in the host city's United States Courthouse. Following testimony by invited witnesses, the Commission will reserve time for comments from interested members of the public at each hearing.

Written Comments. The public comment period on the preliminary guidelines extends until December 3, 1986. The Commission encourages all groups and individuals with an interest in criminal justice to study the preliminary guidelines and submit written comments to the Commission by the close of the public comment period.

It will be most helpful to the Commission if written comments relating to specific guideline sections are typed on separate pages. All comments should be mailed to the following address:

United States Sentencing Commission, 1331 Pennsylvania Avenue, NW., Suite 1400, Washington, DC 20004; *Attention:* Guidelines Comments

As will be explained further in the overview of Chapter Two, preliminary guidelines for some offenses are not ready for publication at this time. They will be published in a timely fashion to allow public comment prior to submission of final guidelines to Congress.

Revision and Submission to Congress. The Commission will consider all written comments submitted, as well as the oral testimony presented at the public hearings. Based on public comment and its own continuing work, the Commission will revise and complete the guidelines and policy statements.

Under statute, the deadline for submission of the initial set of sentencing guidelines to Congress is April 13, 1987. In addition to the guidelines, the Commission must submit to Congress a report stating the reasons for the Commission's recommendations. Upon submission of the guidelines, the General Accounting Office must conduct

a study assessing the potential impact of the Commission's guidelines in comparison with the operation of the existing sentencing and parole release system.

Congress has six months from the date the guidelines are submitted to study the guidelines and impact analyses. By law, the guidelines become effective at the conclusion of the six-month review period, if no contrary action is taken.

III. Overview of the Guidelines

The preliminary guidelines utilize three important features to produce a structure that considers the appropriate degree of actual offense conduct, facilitates similar treatment of similar offenders who commit similar crimes, and is easy to apply.

The first major feature is that these guidelines operate on a system of modified real offense sentencing. That system is described more fully later in this chapter (Section VII). It means that an offender will be sentenced on this chapter (Section VII). It means that an offender will be sentenced on the basis of the conduct necessarily involved in the offense of conviction, plus the conduct done in furtherance of the offense of conviction and any injuries resulting from such conduct.

For example, every bank robbery involves some level of real, implicit, or threatened force, although those levels differ widely. The robbery in which the offender discharges a weapon is different from the robbery in which the offender pretends that there is a weapon in his or her pocket. The proposed modified real offense system takes these variations into account. This allows the sentencing judge to distinguish one offender from another, even though both are convicted of the same statutory offense.

The second feature of the guidelines is the use of generic offense descriptions. Federal criminal law contains scores of theft provisions, scores of false statement provisions, a dozen or more homicide statutes, and so forth. The preliminary guidelines group similar offense behavior and adjust that behavior by particular aggravating statutory factors where appropriate. This does not alter the substantive law, nor change the potential statutory range of punishment, but only provides offense categories for purposes of sentencing. Of course, where there is only one statute proscribing the conduct in question (tax evasion, for example), the guidelines identify the conduct by its statutory name.

The third feature, a narrative format, is one that seeks to reflect the thought process judges employ in making sentencing decisions. In this system, a numerical offense value is assigned to each relevant aspect of the offender's conduct. The offense value reflects each identified unlawful act or omission, injury or harm, hereinafter collectively referred to as the offense. The offense values in the preliminary guidelines designate the relative level of sanction for the offense in question, considering most prominently the harm resulting from the offense and the need to deter future similar offenses. The assigned values relate to a scale of 1–360. Comment is specifically invited on the offense values and aggravating and mitigating factors assigned to each offense.

To determine a sentence under these guidelines, the sentencing judge begins with the offense of conviction. The Statutory Index leads the judge to potentially applicable sections of the guidelines. The guidelines list aggravating and mitigating factors, including harms or injuries that may be present when a particular statutory offense is committed. This index is, in essence, a road map since it directs the judge to sections of the guidelines that may be applicable. If a specific section applies, the appropriate offense value is included.

To illustrate how the narrative guidelines system works, if an offender robs a bank, the offender is given a certain number of offense units for the robbery. If the offender uses a weapon, more units are added. If the offender injures someone, the judge is referred to the Assault and Battery section, where more specific units are added. A reference is also made to a property table, where additional units are assessed on the basis of the amount of money or value of the property stolen. This table is used for theft and burglary as well as for other offenses resulting in a financial loss or harm to property.

When all relevant offense characteristics have been identified and the corresponding offense values totaled, this score is adjusted up or down by applicable sections found in Chapter Three. This chapter deals with offender characteristics such as criminal history, role in the offense, acceptance of responsibility, and cooperation. Adjusting the total offense values by offender characteristics provides the total number of sanction units. Chapter Four translates those units into a sentence.

IV. Statement of Purpose

The preliminary guidelines and their accompanying policy statements are intended to establish sentencing policies and practices that:

1. Assure that the sentences imposed on offenders convicted of federal crimes:

a. Reflect the seriousness of the offense, promote respect for the law, and provide just punishment for the offense;

b. Afford adequate deterrence to criminal conduct;

c. Protect the public from further crimes by the offender; and

d. To the extent consistent with the objectives of protecting the public and providing just punishment and deterrence, promote rehabilitation of the offender in the most effective manner;

2. Provide certainty and fairness in meeting the purposes of sentencing, avoiding unwarranted sentencing disparities among offenders with similar characteristics who have been found guilty of similar criminal conduct, while maintaining sufficient flexibility to permit individualized sentences when warranted by mitigating or aggravating factors not taken into account in the establishment of general sentencing practices; and

3. To the extent practicable under the circumstances, reflect advancement in knowledge of human behavior as it relates to the criminal justice process. *See* 28 U.S.C. 991(b).

Conforming with the Congressional mandate, the guidelines adopt no single, overriding purpose for or theory of sentencing. Rather, in formulating the guidelines, the Commission has sought to take into consideration whether and to what extent each of the four stated purposes—just deserts, deterrence, incapacitation, and rehabilitation—applies in any given case, realizing that different forms of conduct are made criminal for different reasons.

Commentary

The Statement of Purpose reflects the Commission's commitment that the guidelines satisfy the multi-faceted Congressional mandate set forth in 28 U.S.C. 991(b).

Clause 1 and the last paragraph make it clear that no single purpose of sentencing has been given preeminence. By relying on rehabilitation as a rationale for sentencing only "to the extent that it is not inconsistent with other purposes," the Statement of Purpose acknowledges that the Commission is of the view that while the promoting of rehabilitation is an important goal of sentencing, it cannot be considered a substitute for the other goals of sentencing (*i.e.*, reflecting the seriousness of the offense, promoting respect for the law, providing just punishment and deterrence, and protecting the public from future criminality). The Commission believes that rehabilitation must be secondary to these other goals, especially that of protecting the public. As suggested by

28 U.S.C. 994(k), rehabilitation is not to be accomplished through imprisonment, but rather through educational or treatment programs that are conditions of probation or supervised release. Thus, under the guidelines, rehabilitation can be a primary sentencing consideration only for relatively minor offenses where other statutory considerations do not mandate imposition of a substantial penalty. However, rehabilitation may be an additional consideration beyond punishment in any appropriate case.

Clause 2, reflecting 28 U.S.C. 991(b), states that the guidelines are designed to reduce unwarranted sentencing disparity among similar offenders who have been found guilty of similar conduct. This statement is to be read in conjunction with the remainder of Chapter 58 of Title 28 and Chapter 227 of Title 18, including the need for guideline sentences to fulfill the purposes stated in 18 U.S.C. 3553(a). Because of the many considerations that enter into assessing seriousness of offenses, the amenability of the conduct to deterrence, and the need for incapacitation, the Commission has not assumed that any two offenses that produce the same level and type of harm, *e.g.*, dollar loss or physical injury, are necessarily similar and therefore require identical treatment in the guidelines. Rather, the nature and degree of harm is but one of the factors that Congress has required the Commission to consider. Other factors may vary the punishment for otherwise similar offenses. *See, e.g.*, 28 U.S.C. 994(c) (Commission to consider circumstances of the offense, community view of the gravity of offense, public concern generated by the offense, and the current incidence of the offense); 28 U.S.C. 994(d) (Commission to consider various offender characteristics). Thus, the guidelines may result in different punishment for seemingly similar crimes, such as embezzlement and tax evasion, or, in more limited instances, even for identical crimes committed by different types of offenders, for different motives, or under different circumstances.

Clause 3 signifies the Commission's cognizance of its obligation to incorporate knowledge regarding human behavior into the guidelines. Unfortunately, the limited time available has precluded development of an extensive system that relies heavily upon scientific investigation. The results of scientific research are reflected most clearly in the adjustments for criminal history in Chapter Three. The Commission plans further empirical inquiry and expects to refine the guidelines based upon analyses of the data collected to measure the impact of the guidelines, as well as information derived from other sources.

V. General Rules of Application

Rule of Construction

The provisions of these guidelines shall be construed according to the fair meaning of their terms. When a provision is susceptible to different interpretations, it shall be interpreted in the manner that is most compatible with the Statement of Purpose and the relevant commentary.

Standard of Proof

In determining the appropriate sentence under these guidelines, the court may rely on any information produced at trial, in the presentence report, or at the sentencing hearing that the court finds is supported by a preponderance of the evidence. *See* 18 U.S.C. 3577 (redesignated as 18 U.S.C. 3661 effective November 1, 1987).

Burdens of Production and Persuasion

1. The court may find that an offense characteristic exists or an adjustment factor applies if a preponderance of the evidence supports such finding.

2. The burdens of production and persuasion as to the existence of an offense characteristic or an adjustment factor shall be on the government unless the offense characteristic or adjustment factor mitigates the potential sentence in which case the burdens of production and persuasion shall be on the offender.

Commentary

The preponderance of the evidence standard is a less demanding standard than either the beyond a reasonable doubt standard used to determine the defendant's guilt or a clear and convincing evidence standard.

The use of the preponderance standard at sentencing was recently upheld in *McMillon* v. *Pennsylvania*, _____ U.S. _____, 106 S.Ct. 2411 (1986). In *McMillan*, the Court examined a Pennsylvania statute that permitted a judge to impose a mandatory minimum sentence of five years for specific felonies when the judge found by a preponderance of the evidence that the offender "visibly possessed a firearm."

The Court found that establishment of the preponderance standard was permissible under the Due Process clause, and noted that "sentencing courts have always operated without constitutionally imposed burdens of proof; embracing petitioners' suggestion that we apply the clear and convincing standard here would significantly alter criminal sentencing, for we see no way to distinguish the visible possession finding at issue here from a host of other express or implied findings sentencing judges typically make on the way to passing sentence." *McMillan, supra*, at 2420, n 8.

VI. Application Instructions

The guidelines are presented in numbered chapters, which are divided into alphabetical parts. The parts are subdivided into sections. Each section is identified by a letter and number that correspond to the part and chapter in which it is found. Section A412, for example, would be found in Part A of Chapter Four. A commentary is provided where necessary to explain the guideline in greater detail or to inform the reader of the statutory provisions governing the subject matter of a particular guideline.

The court should follow the steps set forth below to determine sentence:

1. Determine what statutes the offender has been convicted of violating.

2. Refer to the Statutory Index and determine which section of Chapter Two applies. If more than one section of Chapter Two is referenced, refer to each section and any applicable commentary to determine which is most appropriate to the offense before the court.

3. If the applicable section contains more than one base offense value, select the highest value that applies. Add special offense characteristics where applicable.

4. If the section contains a cross-reference to one or more other sections, refer to those sections and proceed as in step 3 above.

5. Repeat steps 3 and 4 for each offense of conviction.

6. When all offenses have been scored, total the offense value.

7. Refer to Chapter Three for applicable adjustments in offense value(s). After applying an adjustment, always round down to the nearest whole number.

8. Apply an adjustment for role in the offense (Chapter Three, Part A). If the offender is convicted of more than one offense and plays different roles in each offense, determine which offense values apply to which offenses and apply the adjustment separately to each. Total the offense values after they have been adjusted, rounding down to the nearest whole number.

9. Determine whether the offender is entitled to an adjustment for post-offense conduct (Chapter Three, Part B). If so, multiply the adjusted offense value from step 8 by the adjustment for post-offense conduct, rounding down to the nearest whole number.

10. Apply an adjustment for criminal history (Chapter Three, Part C) and multiply the adjusted offense value from step 9 by that adjustment, rounding down to the nearest whole number.

11. The new total is the offender's sanction unit score.

12. Refer to Chapter Four to determine the sentence.

VII. Application of Modified Real Offense Sentencing

The preliminary guidelines operate under a system of modified real offense sentencing that requires a judge to identify all relevant offense characteristics. These include unlawful acts or omissions that were done in furtherance of the crime of conviction,

as well as threatened, attempted, or completed injuries or harms that resulted therefrom. The guidelines, through a series of cross-references, tell the judge which particular characteristics to take into account.

The following offenses are excluded in determining an offender's sentence under the guidelines:

1. Conduct for which the offender has already been fully sanctioned;

2. Conduct for which further prosecution is barred.

Commentary

At the outset the Commission must decide whether to base its sentencing guidelines upon the real conduct in which the offender engaged or only the conduct for which the offender was convicted. The decision is fundamental, for it will shape both the form and the content of any guideline system. It will affect the plea negotiation process, prosecutorial decision-making, and the type and terms of the sentence. The decision is unusually difficult, because there are important advantages and disadvantages of each.

In essence, a real offense system considers all of the offender's relevant behavior while a charge of conviction offense system considers only those elements of behavior that formed part of the charge of which the offender was convicted. To understand the difference between these alternatives, consider the following examples. First, a man walks in a bank, hands a teller a shopping bag, pretends to have a gun, and passes a note that says, "I have a gun. Give me all your money." The teller puts $1,500 in the shopping bag and the offender walks out. Second, a man walks up to a teller in a bank and points a loaded gun. The offender demands money. After the teller gives him $1,500, he strikes her with the gun and demands that she collect money from elsewhere in the bank. He leaves the bank with $20,000. Assume that the grand jury charges both these defendants with violations of the same statute, 18 U.S.C. 2113(a), and that both are convicted. A guidelines sentencing system based solely upon offense of conviction treats these two offenders similarly. Both violated the same statute. The elements of the crimes for which they were convicted are the same (taking property by threat from a bank). The sentencing system would not take account of the differences in their behavior—the amount of money received; the presence of the gun; the physical injury—unless that behavior constituted an element of a separately charged offense. A real offense sentencing system, however, would take account of all the harms that the offender actually caused during the course of the conduct for which he was charged. Thus, a real offense system would punish the second man more severely in light of the gun, the extra money taken, and the physical injury caused.

In evaluating between these approaches, the Commission has considered the following six questions:

1. What standard of proof should a court use when deciding factual questions relevant to the sentencing determination?

2. To what extent should the Commission preserve the real offense sentencing system often used by the courts?

3. To what extent can the sentencing guidelines avoid problems arising from overly broad statutory definitions of offenses?

4. To what extent should power to influence the sentence vest in the prosecutor rather than the judge?

5. How can the Commission maintain justice and the appearance of justice for convicted offenders?

6. To what extent can the Commission appropriately take account of the practical needs of a criminal justice system heavily dependent on guilty pleas?

The present system of federal sentencing is largely a system of real or actual criminal conduct sentencing, although the covert nature of the process sometimes hides this fact. At present, a sentencing judge reads a presentence report prepared by a probation officer. That report tells the judge what the officer believes really occurred with respect to the crime. The judge then exercises broad discretionary power with those real facts in mind. Since the judge does not articulate the precise factors considered, nor how they weighed in the decision, the differential impact of the real conduct factors versus only those subsumed under the charge for which the offender was convicted is never known. Although the offender may challenge disputed statements of fact in the report, such challenges rarely affect the sentence because judges often avoid a hearing by stating that they will disregard the challenged portion, leaving offenders uncertain whether judges, in fact, can really do so.

Nevertheless, judges commonly consider the real criminal conduct. Thus, for example, judges sentence differently two offenders, both convicted of armed bank robbery under 18 U.S.C. 2113(a), if Offender A was reported by the probation officer to have terrified hostages with games of Russian roulette at gunpoint, whereas Offender B was armed, but did not engage in this activity. Furthermore, after an offender is convicted and sentenced, the present parole guidelines system overtly relies on real criminal conduct, as determined by a hearing officer, in making release determinations. The standard of proof for sentencing facts that a judge or the Parole Board considers under this real criminal conduct system is often unclear, but it almost certainly does not rise to the ordinary criminal trial standard of proof beyond a reasonable doubt.

One might argue, in favoring a system that resembles the status quo, that the real offense feature of sentencing permits judges to mitigate the negative effects of inconsistent and overly broad offense-defining statutes. Two seemingly alike offenders, convicted under the identical statute, can be sentenced in a way that reflects differences in motive, the manner in which the crime was executed, the circumstances surrounding the offense, the degree of premeditation, the depth of their involvement, the injury to victims, and the like. Moreover, this flexibility allows judges to serve a critically important balancing function between society's needs for retribution, deterrence, and incapacitation and its administrative need to rely heavily on plea agreements for the disposition of criminal cases. Suppose, for example, an offender pleads guilty only to tax evasion, which was part of a drug distribution operation. The judge is bound by the statutory maximum for the tax evasion offense, but can, in selecting the exact sentence within the statutorily prescribed range, give a sentence that reflects the drug-related context of the offense.

On the other hand, there are several arguments against basing a guidelines system on real criminal conduct. First, there are arguments that focus on the problem of proof and the potential appearance of injustice. A jury will have found beyond a reasonable doubt that the offender committed those acts that make up the elements of the offense charged. But, what about the rest of the real conduct that the sentence takes into account? How will the sentencing judge learn, for example, whether the offender stole $100,000 or $20,000 from the bank? (The offender, claiming he did not rob the bank at all, will not likely wish to engage in a dispute before the jury about the amount.) Unless special interrogatories are submitted to the jury, how will the judge decide whether the offender, charged with bank robbery, actually pistol whipped a teller in the course of the robbery since the jury's verdict will be a general one? While presently judges do not use the beyond a reasonable doubt standard of proof in finding facts considered in sentence determinations, that standard nonetheless sets a kind of ideal against which new proposals might be tested. Even if a preponderance of evidence standard increases procedural safeguards compared to the status quo, one may argue that this standard falls short of this ideal.

Second, there is a risk that real criminal conduct sentencing may present the appearance of injustice. A stark example might be a sentencing guidelines system that permits judges to consider factors the defendant thought mooted by agreement to the negotiated plea. Thus, a defendant indicted for drug trafficking and tax evasion who pleads guilty only to tax evasion might take umbrage at a guideline system that permitted the judge nonetheless to add to the sentence otherwise appropriate for tax evasion, an amount that reflects the drug-related context. This problem is exacerbated when the evidence of the drug-related conduct would have failed if put to a test of beyond a reasonable doubt, but passes the lesser preponderance standard. The more distinct this secondary conduct is from the offense charged and the more relaxed the standard of proof, the more a real offense procedure may appear unfair.

Third, a pure real offense system could require significant additional judicial resources. Since the judge would fix the sentence based on the offender's real conduct, an armed bank robber would not benefit from the government's agreement to allow a plea of guilty to a lesser unarmed robbery offense, since the offender would receive a higher armed robbery sentence. Of course, the judge could not impose more than the statutory maximum for the lesser charged offense. However, the new sentencing law

means that the sentence given will, in fact, be served. A five-year sentence means five years in prison, roughly equivalent to a present sentence of fifteen years; thus, the statutory maximum will not often act as a serious constraint.

Since offenders would know in advance the likely sentence for the conduct at issue, and since bargaining could not readily affect the sentence, there may be less negotiation. Whether or not diminished opportunity for plea negotiations is desirable, is much debated. Does it produce unfair sentences, unrelated to actual conduct? Does the prosecutor face an inappropriate set of incentives? Would real offense sentencing create additional needed deterrence? Regardless of the theoretical advantages or disadvantages of plea negotiation, at present, the courts dispose of approximately ninety percent of all federal criminal cases through acceptance of guilty pleas. Thus, a change in sentencing practice that significantly raises the number of cases that must be tried would likely require a considerable increase in federal judicial resources.

Fourth, a pure real offense system, not bound by the conduct defined by the charge, must decide what additional conduct to take into account. This task may be far more difficult than it first appears. Consider the bank robbery example. Should the court take account not only of the money, the threat to the teller, the gun, and the physical injury, but also of the trespass into the bank, the further trespass into a secured area behind the counter, the fright caused the bank's other employees or its customers, the unwanted physical contact caused patrons when the offender pushed past them on the way out, the offender's refusal to stop when ordered to do so by a security guard or policeman, the lunge that the offender might have made at the guard, the restraint on the teller's freedom when the offender ordered the teller to go to the back of the bank and get more money, and so forth. The decision about including or excluding much of this conduct is not obvious. Having a rule that takes all conduct into account does not solve the problem. Judges might define similar conduct differently. This would perpetuate a form of sentencing disparity and it threatens to raise a vast number of questions for resolution on appeal. Moreover, the bank robbery example is an unusually simple one.

The near opposite of a real offense system is a charge of conviction system. Its major advantages are that offenders receive maximum procedural protection, and that they would know their approximate sentencing exposure at the time of a plea agreement if they plead guilty. But there are several serious disadvantages.

First, many federal statutes, written with jurisdictional considerations in mind, are phrased in ways that make it particularly difficult to develop a charge of conviction system. Some statutes use highly general language that can encompass widely differing behavior. The Travel Act, 18 U.S.C. 1952, for example, forbids travel "in interstate . . . commerce . . . with intent" to (among other things) "promote, manage, establish, carry on, or facilitate . . . any unlawful activity." The Hobbs Act, 18 U.S.C. 1951, forbids affecting commerce "by robbery or extortion" or threats of "physical violence to any person or property." Violations of the Hobbs Act or the Travel Act should not all be punished alike. Yet, given their broad language, the indictment may easily charge a violation of the statute while omitting much of the essential information relevant to sentencing. Other federal statutes use more specific language but still forbid a wide range of conduct of varying seriousness. *See, e.g.*, 18 U.S.C. 32 (destruction of aircraft or aircraft facilities), or 18 U.S.C. 33 (destruction of motor vehicles or motor vehicle facilities). The charge alone in such cases is not necessarily indicative of the seriousness of the crime.

Second, even in the case of simply defined crimes, any fair sentencing system must take account of at least some real, uncharged elements. A bank robbery indictment, for example, need not state how much money the offender took, yet sentencing systems typically treat an offender who takes one million dollars more seriously than one who takes one thousand dollars. Similarly, although the statute penalizes any assault that takes place during the robbery, a sentencing system should treat an assault that results in physical injury differently than an assault that consists only of pretending to have a gun.

A pure charge of conviction sentencing system might mean that all persons convicted of the same offense, *e.g.*, tax evasion, would be given the same sentence, regardless of the tremendous variation that characterizes the nature and circumstances of the offense. This would be contrary to the mandate of the Sentencing Reform Act to treat like offenders alike while maintaining sufficient flexibility to permit warranted individualized sentences. An offender convicted of tax evasion where the amount of taxes evaded was $250,000, and the motive was to conceal income from the distribution of drugs should not (under either just punishment or crime control theories of sentencing) receive the same sentence as an offender convicted of tax evasion for $10,000 where the motive was to pay for catastrophic family illness. Charge of conviction sentencing invites this kind of unwarranted similarity in sentences.

Third, the closer one comes to a pure charge of conviction system, the greater the transfer of influence to determine a sentence from the judge to the prosecutor. Imagine, for example, the frequently occurring circumstance of an offender's conduct violating many different federal laws, such as laws against false statements, drug conspiracy, mail fraud, etc. By carefully selecting the charges, the prosecutor would not (as now) simply determine the maximum statutory sentence, but, rather, the prosecutor could determine close to the exact sentence. (To use a simple example, if mail fraud carried a sentence of two months per $1,000 stolen, by selecting exactly how many fraudulently sent letters to charge—for example, ten out of 1,000—the prosecutor would determine a sentence of approximately 20 months). The defense attorney, of course, might affect the charges made through negotiation about the nature of the charges or the number of counts. The results of bargaining in many cases depend in part on a host of factors not related to the seriousness of the offender's conduct. The offender will also have little bargaining power where the charges can easily be proved. The likely increase in the amount of negotiation would likely mean increased discrepancy between the real seriousness of an offender's conduct and the sentence actually served. At a minimum, given the variation in United States Attorney practices, disparity (judged in relation to actual underlying conduct) could increase significantly. The Commission's statutory mandate, however, seeks to lessen disparity, not simply to transfer its source. Since one purpose of the Sentencing Reform Act is to structure the exercise of judicial sentencing discretion, it would seem counterproductive to do so by simply transferring it to another group.

All these considerations, some of which point toward real offense sentencing and some away from it, have led the Commission to tentatively develop a modified form of such sentencing, embodying two basic compromises, one substantive and one procedural. The substantive compromise consists of what is referred to as a road map. Its objective is to include, for sentencing purposes, only those real elements (not necessarily found as elements of the crime charged) that are importantly bound up with the conduct that constitutes the crime charged. The system works as follows: Prior to sentencing an offender convicted of bank robbery, the judge will look up bank robbery in the guidelines. An explicit reference to the amount of money stolen and cross-references to those (aggravating) physical harms and conduct that typically accompany most bank robberies are given. The judge will not find any reference to conduct (*e.g.*, drug trafficking) that is unusual in a bank robbery. The guidelines take account of those harms and conduct that it lists or cross-references. They do not take account of any other conduct. (Such other conduct will affect the sentence only if the offender is charged and convicted separately.)

The following examples demonstrate how modified real offense sentencing works under the preliminary guidelines:

1. The offense of conviction is unarmed bank robbery. At sentencing the judge finds by a preponderance of the evidence that the offender carried and pointed a firearm during the commission of the offense. The offense value for using a dangerous weapon is added to the offense value for the robbery. The use of the weapon is related to and done in furtherance of the crime of conviction.

2. The offense of conviction is armed bank robbery. The evidence at trial indicates that the offender's accomplice drove the getaway car at an extremely high rate of speed from the scene. At sentencing, additional evidence is presented that shows that a child was struck by the car two blocks from the bank and permanently paralyzed. The offense value for the child's injuries is added to that for the bank robbery. The operation of the vehicle is done in furtherance of the crime

of conviction from which the injuries resulted.

3. The offender is indicted for two separate bank robberies in a two-count indictment. The bank robberies are unrelated and are not in furtherance of a conspiracy. As part of a plea agreement, Count II is dismissed on the government's motion. The offender pleads to Count I.

The offense value for the bank robbery in Count II is not added to the offense value for the bank robbery in Count I. Because the second bank robbery is not related to, resulting from, or done in furtherance of the first, it is not considered in sentencing the offender.

4. The offense of conviction is distribution of cocaine. The sentencing judge finds by a preponderance of the evidence that the purchaser died of an overdose after ingesting a small quantity of the cocaine. The offense value for the death is added to the offense value for the drug distribution. The ingestion is related to and results from the sale of the drug.

5. The offense of conviction is distribution of cocaine. Evidence at trial establishes that the offender used a twelve-year old child to transport the drugs.

The offense value for distribution of cocaine is aggravated by the offense value for using a minor child as a conduit for distributing drugs. The involvement of the child is related to and is an act done in furtherance of the offense of conviction.

6. The offense of conviction is distribution of cocaine. After the offender's arrest, officers execute a search warrant at the offender's apartment. The search reveals no other evidence linking the offender to other drug transactions. However, an illegal short-barreled shotgun is recovered. No indictment or conviction results from seizure of this weapon at the time of sentencing.

The offense for the shotgun is not, under these circumstances, added to the offense value for the drug distribution. The possession of the shotgun is not related to the offense of conviction.

7. The offense of conviction is obstruction of justice (Count I of a two-count indictment). The second count in the indictment, assaulting a federal police officer (the means of obstruction) is dismissed pursuant to a plea agreement.

The offense value for the assault in Count II is added to the offense value for the obstruction of justice in Count I. The assault is an act done in furtherance of the crime of conviction.

8. The offense of conviction is conspiracy to steal and forge one social security check. At sentencing the judge finds by a preponderance of the evidence that the offender stole, forged, and cashed 20 checks.

All of the offenses related to the 20 checks done in furtherance of the conspiracy, or that resulted therefrom, are used to calculate the total offense value for the conspiracy.

A guideline sentencing system might try to attain this same objective by promulgating a single rule, such as considering all real offense elements unless any such element constitutes a separate crime, in which case the government must charge that offense separately However, the Commission does not believe this particular rule would work in the federal system, where the existence of separate crimes often depends upon the happenstance of factors creating federal jurisdiction.

A more promising possibility is the use of a rule that allows the sentencing judge to consider all conduct or harms (threatened or accomplished) committed in furtherance of the crime of conviction. However, this rule would prove to be unusually difficult because of the inherent problems in determining what conduct to consider. In order to simplify this process, the Commission has developed preliminary guidelines that rely on explicit cross-references to determine conduct the judge shall take into account.

The Commission requests comment on the use of the modified real offense sentencing system. The Commission also welcomes comments addressed specifically to the question of whether the guidelines should incorporate a specific rule of the sort just mentioned instead of, or in addition to, the explicit cross-references. The Commission also wishes comment addressed to the specific cross-references contained in the preliminary guidelines. The reader should review the preliminary guidelines with both real offense and charge of conviction problems in mind. The reader should decide whether cross-references sufficiently identify additional conduct that is often associated with the statutory elements charged in the indictment.

A related issue is procedural. Factual disputes are unlikely in the vast majority of cases, for the jury will have resolved some disputes and the presiding judge will be able to determine the presence of associated conduct from evidence produced during the course of the trial. Agreement among the parties, particularly when a guilty plea is entered, is likely to resolve most others. When a sentencing fact is disputed, the Commission proposes that the judge determine the fact using a preponderance of evidence standard. If a hearing is necessary, it will be less formal than a trial. The government will bear the burden of proof except if a mitigating factor is in issue. The parties will have the right to present and to cross-examine witnesses. The judge may admit all evidence that is relevant and reliable except for evidence that barred by evidentiary rules. The hearing procedure produces a workable sentencing system that avoids full-fledged trials at the sentencing stage.

The Commission solicits the public's comments and suggestions on these issues.

Chapter Two—Offense Conduct

Overview

Chapter Two contains the offense conduct sections of the preliminary guidelines. The Chapter divides offenses into topical Parts, which are then subdivided into related sections. The sections may cover one statute or many. Cross-references will guide the judge from the offense of conviction to other sections of the guidelines which may be applicable.

Because of time constraints and the need to solicit further advice on certain offenses, the preliminary guidelines do not address every offense that will be addressed in the final guidelines.

Parts addressing the following categories of offenses will be published for public comment as soon as possible: Inchoate Offenses; Treason, Sabotage, and Espionage; Atomic Energy; Foreign Relations; Obstruction of Government; Obstruction of Justice; Contempt of Court; Perjury; Corruption; Monetary Offenses; Public Health and Pollution; and General Regulatory Offenses. Comment is solicited on the manner in which Chapter Two organizes offenses.

The offenses listed in each section have a corresponding base offense value. There may also be one for more specific offense characteristics which raise or lower the base offense value. The number of these characteristics will vary according to the nature of the behavior involved. For instance, kidnapping has the potential aspects of abduction, ransom request, length of restraint, the nature of the victim, and physical and psychological injury.

When determining final offense values the Commission will consider the following: (1) The range of sentences contained in the relevant statutes, as a rough guide to Congressional intent; (2) actual present sentencing practice, as one indicator of current judicial judgments about appropriate sentences; (3) data relevant to crime control considerations, especially specific and general deterrence, recidivism and incapacitation; (4) data about the damage caused by various crimes; (5) data about the difficulty of detection and conviction for various crimes; (6) the parole guidelines; (7) systematic surveys designed to determine public judgments of the relative seriousness of crimes and the appropriateness of sentences; (8) analogous practices in states and other countries; and (9) written and oral testimony submitted to the Commission by knowledgeable groups and witnesses. Once final guidelines are implemented, factors that determine sentences under the guidelines will be monitored and revised. The Commission will continously examine the administrative impact of sentences by testing their effect upon the workload of the courts and prison capacity.

The Commission has not yet completed the research necessary to set firm numerical values. However, extensive data collection and data analysis are ongoing. The Commission has assembled past practices data from several sources, including the FPSSIS

data from the Administrative Office of the U.S. Courts. In addition, over 10,000 presentence investigation reports have been collected and are being coded. Further analysis will be extensive.

Bacause final offense values remain to be determined, and because no final decision has been made about methods for including mitigating and aggravating factors, impact analysis would be premature.

Offense values rest on preliminary research results and initial efforts to reflect appropriate sentences for different forms of criminal conduct. Due to the Commission's desire to obtain early comment, the published numerical values must be treated as highly tentative, preliminary, and subject to change.

Each section may also contain one or more cross-references. These references are the means of carrying out the scheme of Modified Real Offense Sentencing described earlier. Cross-references will refer the sentencing judge to sections of the guidelines to determine if the harms described there took place in addition to the base offense and, if so, how many additional points should be added to the base offense value.

The Commission is particularly interested in receiving comment directed toward the approach taken in these sections, the apparent ease or difficulty in applying them, and the appropriateness of the factors described therein. It would be useful, in particular, if judges, probation officers, and others would attempt to apply this draft to actual cases. The principal objective of that exercise would be to determine if the format used can be practically applied and if the factors chosen are the ones a judge would consider in an actual sentencing situation.

Part A—Offenses Involving the Person

1. *Homicide Offenses.*

18 U.S.C. 113(a)
18 U.S.C. 241
18 U.S.C. 245(b)
18 U.S.C. 351
18 U.S.C. 1111
18 U.S.C. 1112
18 U.S.C. 1114
18 U.S.C. 1751
49 U.S.C. 1472(i)

Introduction. In all cases, the principal interest protected by federal laws against homicide is the physical security of the person. Laws prohibiting murder of certain officials and employees of the United States foster an additional interest: the ability of the government to function effectively and without disruption. This is accomplished by ensuring that individuals are protected from any enhanced dangers to which they may be subject as a result of their governmental position or employment. Murder of a foreign official within the United States creates a federal interest in the ability to effectively conduct foreign policy and foreign relations.

The homicide series of offenses is organized into five levels. Each level includes a list of specific aggravating factors and a cross-reference to the psychological injuries section for those cases in which the immmediate family of the victim suffers a significant or extreme level of emotional harm due to the conduct of the offender. The offense values take into account the culpability of the offender, any unique characteristics of the victim, the residual harm done to the immediate family of the victim, and the effectiveness of imprisonment in protecting the interests enumerated above.

The guidelines place emphasis on the circumstances in which the life was taken rather than the statutory categories of homicide, because most federal statutes prohibiting the taking of human life do not focus on the usual common law circumstances. Statutes concerning civil rights, aircraft hijacking, the use of explosives, trainwrecking, and others do not differentiate among the various classes of homicide. They simply provide an aggravation of the maximum available penalty when "death results."

A211. *Homicide—Level One.* If death resulted under any of the following circumstances, the sentence shall be life imprisonment, unless the penalty of death is imposed:

1. murder committed under any of the circumstances other than jurisdictional circumstances, described as murder in the first degree in 18 U.S.C. 1111;

2. death that resulted under such circumstances as would constitute murder and the victim was the President of the United States or the President-elect;

3. death that occurred as a result of an aircraft hijacking; or

4. murder that was motivated by the possibility of pecuniary gain or in order to enforce a political demand.

A212. *Homicide—Level Two.* If death resulted under circumstances that would constitute murder, other than as described in A211, the base offense value for each instance is 240.

a. Specific Offense Characteristics

1. If the victim was a government official or employee, other than a government official listed in A211, killed in or because of the performance of official duties, add 36 to the base offense value. It is not necessary for the offender to have been aware of the official status of the victim.

2. If the victim was vulnerable due to age or mental or physical condition, add 24 to the base offense value.

3. If the conviction of murder was based on reckless conduct that rises to the level of malice, subtract 100 from the base offense value.

b. Cross-References

1. If any victim suffered psychological injury, add the appropriate offense value from A251 (Psychological Injury). (*See* definition of victim in Commentary).

2. If the death occurred during the course of another offense, not included in 18 U.S.C. 1111, consult the guideline relevant to that offense and add the appropriate offense value.

A213. *Homicide—Level Three.* If death resulted under circumstances that would constitute voluntary manslaughter, the base offense value for each instance is 120.

a. Specific Offense Characteristics

1. If the victim was a government official or employee, other than a government official listed in A211, killed in or because of the performance of official duties, add 36 to the base offense value. It is not necessary for the offender to have been aware of the official status of the victim.

2. If the victim was vulnerable due to age or mental or physical condition, add 24 to the base offense value.

b. Cross-References

1. If any victim suffered psychological injury, add the appropriate offense value from A251 (Psychological Injury).

2. If the death occurred during the course of another offense, not included in 18 U.S.C. 1111, consult the guideline relevant to that offense and add the appropriate offense value.

A214. *Homicide—Level Four.* If death resulted by reason of the offender's reckless conduct not amounting to malice, the base offense value is 30.

a. Specific Offense Characteristics

1. If the death was caused because the offender was under the influence of any intoxicating substance, add 24 to the base offense value.

2. If the offender used a weapon or other dangerous device, add 12 to the base offense value.

b. Cross-References

1. If the death occurred during the course of another offense, not included in 18 U.S.C. 1111, consult the guideline

relevant to that offense and add the appropriate offense value.

A215. *Homicide—Level Five.* If death resulted by reason of the offender's negligent conduct, the base offense value is 12.

a. Specific Offense Characteristics

1. If the offender was under the influence of any intoxicating substance, add 12 to the base offense value.

2. If the offender used a weapon or other dangerous device, add 6 to the base offense value.

A216. *Assault with Intent to Kill (Attempted Murder).* See Assault and Battery, A221–A225.

Commentary

Homicide level one offenses involving death provide for mandatory life imprisonment in a limited number of cases. (The availability of the death penalty is a matter of Congressional and judicial determination.) These include first degree murder (premeditated murder and some felony murders) now subject to the mandatory maximum penalty of life imprisonment under 18 U.S.C. 1111. While persons convicted under that provision presently are entitled to consideration for early release on parole, the abolition of parole will effectively convert their punishment into life imprisonment. 18 U.S.C. 4205 providing for parole eligibility after ten years in life terms will be repealed effective with the implementation of guidelines. Other categories of offenses subject to the life imprisonment provision include: assassination of the President or President-elect, death occurring during an aircraft hijacking, and murder-for-hire. The risk of death during an aircraft hijacking is so great that if any life is lost the appropriate penalty should be the maximum allowed by law.

Homicide level two offenses provide substantial punishment for those who cause death under circumstances not described in the first level but under circumstances that would constitute murder. These penalties are further enhanced if the victim was vulnerable due to age or physical or mental condition, or the victim was a federal, state, local, or foreign government official, including a law enforcement or correctional officer, killed in or because of performance of official duties. Further aggravation of the penalty at this level is possible if the victim's immediate family suffered psychological injury as a result, or if the death took place during the course of another offense. In the latter case, the offense value for the underlying offense is added to the base offense value for the death. As a practical matter, an offender who knowingly causes a death during the course of a serious felony will be subject to life imprisonment, whether or not the felony is included in the list of felony murder predicates found in 18 U.S.C. 1111. Persons involved in lesser predicate offenses will be punished at proportionally lower levels. Under A212, if murder is based on reckless conduct that supports a finding that the offender acted with malice, the offense value is reduced to provide a distinction between this and intentional conduct.

Homicide level three offenses provide a base offense value for voluntary manslaughter. The statutory recognition that this offense should not be punished as severely as murder is reflected in the offense value. However, the same factors that increase a murder sentence also apply to voluntary manslaughter.

Homicide level four offenses establish a base offense value for reckless homicide. In recognition of the need to properly punish and deter individuals from operating a vehicle while intoxicated, an aggravating factor is included to punish drunk drivers. If the reckless conduct rises to the level of malice, consult A212.

Homicide level five offenses cover negligent homicide. The emphasis on motive and victim are removed since the offender has no motive and is indifferent to the victim's identity. As with reckless homicide, intoxicated offenders are treated at a higher level because their conduct is inherently more dangerous.

Assault with intent to kill is treated under Part A, Section 2, Assault and Battery.

In crimes of violence, the base offense values reflect the assumption that at least a minimal level of psychological injury occurred. The offense value for the lowest level of such injury has therefore been factored into the base offense value for offenses involving the person. In instances in which psychological injury has been significant or extreme, an appropriate increase in the penalty will result.

2. Assault and Battery.

18 U.S.C. 111
18 U.S.C. 112
18 U.S.C. 113
18 U.S.C. 114
18 U.S.C. 351

Introduction. The same interests protected by federal laws involving homicide, physical security, and the ability of the government to function effectively and without disruption are fostered by federal laws concerning physical injury. Physical injuries are defined in the Commentary. The specific aggravating factors focus on the nature of the victim, the use of weapons and the motivation of the offender. These items are also cross-referenced by a number of other guideline sections (*e.g.*, civil rights, criminal sexual conduct, kidnapping, and loansharking). The sections cross-referencing the physical injury provisions are those in which physical injury is likely to accompany the underlying offense.

A221. *Assault and Battery.* The base offense value is 6.

a. Specific Offense Characteristics

1. If the victim was the President of the United States or the President-elect, add 60 to the base offense value.

2. If the offender used any deadly or dangerous weapon or device during and in relation to any crime of violence or drug trafficking crime, add 60 to the base offense value.

3. If the offender used a bomb or explosive, a short-barreled shotgun or short barreled rifle, acid, or other especially dangerous weapon or substance with the intent of injuring, add 60 to the base offense value.

4. If the victim was a government official or employee, other than named in 1 above, assaulted in or because of the performance of official duties, add 36 to the base offense value.

5. If the assault was motivated to enforce a political demand, add 30 to the base offense value.

6. If the offender discharged a firearm or used any dangerous weapon or device other than listed in 2 above with the intent of injuring, add 24 to the base offense value.

7. If the victim was vulnerable due to age or mental or physical condition, add 12 to the base offense value.

8. If the offender discharged or displayed a firearm or other dangerous weapon or device with the intent of threatening, add 12 to the base offense value.

b. Cross-References

1. If the victim suffered physical injury, add the base offense value from A222–A225 (Assault and Battery).

2. If any victim suffered psychological injury, add the appropriate offense value from A251 (Psychological Injury).

3. If property was damaged, destroyed, or taken, add the appropriate offense value from Part B, Offenses Involving Property.

A222. *Severe Bodily Injury.* The base offense value is 120.

A223. *Permanent Bodily Injury.* The base offense value is 96.

A224. *Serious Bodily Injury.* The base offense value is 60.

A225. *Bodily Injury.* The base offense value is 20.

Commentary

Section A221a.2 and 3 satisfy the Congressional mandate of 18 U.S.C. 924(c).

Assaults represent a danger to personal safety whether or not bodily injury results to the intended victim. The base offense value of 6 reflects the potential seriousness of any behavior that evidences a disregard for the physical security of others. The penalty is increased when the conduct or the instrument used in the assault poses special additional danger to personal security. Therefore, the use of instruments or materials that are potentially life threatening, but are generally not criminalized elsewhere, results in an add-on of 24. The use of firearms, explosives, or similar devices results in an add-on of 60, consistent with the related provisions in Part K, Offenses Involving Public Order and

Safety. However, when applying A221, additional add-ons for the use of weapons under Part K are not appropriate.

An aggravating factor could be provided for cases of family violence. This factor has not been included in this preliminary draft. The Commission solicits comment on the subject.

The Commission has not resolved the issue of how to treat inchoate crimes in general. Such resolution may affect the section on Assault and Battery as it relates to crimes such as attempted murder.

The levels of physical injury are:

1. *Severe Bodily Injury.* Severe bodily injury means that the victim suffered the loss, or long-term or permanent impairment of more than one bodily function.

2. *Permanent Bodily Injury.* Permanent bodily injury means that the victim suffered the loss, or long-term or permanent impairment of a bodily function.

3. *Serious Bodily Injury.* Serious bodily injury means that the victim received an injury that required medical intervention, such as surgery, hospitalization, or physical rehabilitation or that caused the temporary loss of a bodily function.

4. *Bodily Injury.* Bodily injury is any other physical injury.

3. Criminal Sexual Conduct.

18 U.S.C. 113(a)
18 U.S.C. 1153
18 U.S.C. 1203
18 U.S.C. 2031
18 U.S.C. 2032
Assimilative Crimes

Introduction. The interest protected in guidelines for unlawful sexual acts is the physical security of the person. A number of the cases involving such acts enter federal jurisdiction under assimilative crimes provisions. Although the federal provisions governing these acts are framed in the traditional (and narrower) language of rape, statutory rape, and sodomy, in recent years there have been many developments in reforms of existing law. For purposes of sentencing, the guidelines have therefore adopted broader categories of offender conduct to more easily include violations under the assimilative crimes provision. These categories are inclusive of traditional federal offenses and address those circumstances and factors that the Commission has concluded warrant additional consideration in sentencing the sex offender.

For purposes of this section, Criminal Sexual Conduct means a sexual act accomplished by means of aggravated force or coercion, or by such other means as are set forth herein. A Sexual Act means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any instrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, except when such intrusion is accomplished for medically recognized treatment or diagnostic purposes, or where otherwise authorized by law. Aggravated Force means that the offender used actual force of an aggravated nature to overcome the victim or threatened death or used a deadly weapon. Force of an aggravated nature is defined as any degree of violence above a simple assault and battery. Coercion means that the offender threatened to use actual force or physical violence to overcome the victim or threatened to retaliate in the future by actual force or physical violence or by kidnapping the victim or another person. Criminal Sexual Conduct with a Minor means a sexual act with a person under the age of sixteen years old, and not by means of aggravated force or aggravated coercion.

A231. *Criminal Sexual Conduct by Aggravated Force or Coercion.* The base offense value is 150.

a. Specific Offense Characteristics

1. If the victim was under age 16, add 60 to the base offense value.

2. If the victim was in the custody, care, or control of the offender, add 36 to the base offense value.

3. If the victim was vulnerable due to advanced age or mental or physical condition, or was a corrections officer, add 12 to the base offense value.

b. Cross-References

1. If the victim suffered physical injury, add the appropriate offense value from A222–A225 (Assault and Battery).

2. If the victim suffered an unlawful restraint beyond that involved in and incidental to the commission of a sexual battery, add the appropriate offense value from A241–A242 (Unlawful Restraint).

3. If any victim suffered psychological injury, add the appropriate offense value from A251 (Psychological Injury).

Commentary

Sexual offenses addressed in this section are crimes of violence. The primary factors that differentiate such offenses for sentencing are the circumstances or means by which the act is accomplished and the vulnerability of the victim. Thus, the greatest sentence should be imposed for a sexual offense that is accomplished under circumstances of violence, where a weapon is used, and where such conduct is directed to a victim particularly vulnerable to both the conduct and its foreseeable results.

Although actual force of an aggravated nature is a primary consideration in determining seriousness of conduct, the threat of death or use of a deadly weapon poses a danger to the victim that is similar to physical violence. Such conduct is therefore punished to the same extent as the actual use of force.

When physical injury, additional restraint, or psychological injury result from the conduct, these factors should be reflected in the sentence imposed. Consequently, these are identified by cross-references.

A232. *Criminal Sexual Conduct by Other Means.* The base offense value is 48.

a. Specific Offense Characteristics

1. If the victim was under age 16, add 60 to the base offense value.

2. If the victim was in the custody, care, or control of the offender, add 36 to the base offense value.

3. If the victim was vulnerable due to advanced age or mental or physical condition, add 12 to the base offense value.

b. Cross-References

1. If the victim suffered physical injury, add the appropriate offense value from A222–A225 (Assault and Battery).

2. If the victim suffered an unlawful restraint beyond that involved in and incidental to the commission of a sexual battery, add the appropriate offense value from A241–A242 (Unlawful Restraint).

3. If any victim suffered psychological injury, add the appropriate offense value from A251 (Psychological Injury).

Commentary

This section applies to sexual conduct that occurs without the presence of aggravated force or coercion. This would include the use of force that would equate to simple assault and battery or when drugs, intoxicants, or similar substances are used to initiate the commission of the offense. Physical injury, additional restraint, or psychological injury that result from the conduct should be reflected in the sentence imposed. Consequently, these are identified by cross-references.

A233. *Criminal Sexual Conduct with a Minor (Including Statutory Rape).* If the offender committed criminal sexual conduct with a minor, absent circumstances of any force or coercion, the base offense value is 12.

a. Specific Offense Characteristics

1. If the victim was under age 12 or the offender was more than three years older than the victim, add 60 to the base offense value.

2. If the victim was in the custody, care, or control of the offender, add 48 to the base offense value.

3. If the victim was otherwise vulnerable due to mental or physical condition, add 12 to the base offense value.

b. Cross-References

1. If the victim suffered physical injury, add the appropriate offense value from A222–A225 (Assault and Battery).

2. If any victim suffered psychological injury, add the appropriate offense value from A251 (Psychological Injury).

3. If the offense involved the prostitution, recruiting for prostitution, transportion for prostitution, or transportion for sexual exploitation of a minor, add the appropriate offense value from Part E, Offenses Involving Criminal Enterprises.

4. If the offense involved exploitation of a minor by production of sexually explicit visual or printed material, or by prostitution, add the appropriate offense value from Part E, Offenses Involving Criminal Enterprises.

Commentary

Although the federal provision dealing with statutory rape, 18 U.S.C. 2032, prohibits only relations with a female under sixteen, the trend in reform of such laws has recognized gradations based upon the youthfulness of the victim as well as the age of the offender. Under such reforms, increased severity of sanctions has resulted when it should be obvious to the offender that the victim is an adolescent, and where the offender is considerably older than the victim.

A234. *Attempts and Assaults with Intent.* If the offender attempted to commit or assaulted with the intent to commit any act of criminal sexual conduct hereinabove, the base offense value is the offense value applicable if the act had been completed.

Commentary

Attempts pose significant danger and trauma. Since the legal distinction between an attempt and the completed act hinges on the occurrence of slight intrusion, no justification exists to mitigate an attempt.

A235. *Unlawful Sexual Contacts.* If the offender engaged in or attempted to engage in unlawful sexual contacts that are not within the definition of criminal sexual conduct, the base offense value is 6.

a. Specific Offense Characteristics

1. If the victim was under age 12, or the offender was more than four years older than the victim, add 12 to the base offense value.

2. If the victim was otherwise vulnerable due to age or mental or physical condition, add 12 to the base offense value.

3. If the victim was in the custody, care or control of the offender, add 24 to the base offense value.

b. Cross-References

1. If the victim suffered physical injury, add the appropriate offense value from A222–A225 (Assault and Battery).

2. If the victim suffered an unlawful restraint beyond that involved in and incidental to the commission of a sexual act, add the appropriate offense value from A241–A242 (Unlawful Restraint).

3. If any victim suffered psychological injury, add the appropriate offense value from A251 (Psychological Injury).

Commentary

Unlawful sexual contacts deal with improper touching or fondling. If any intrusion occurs, consult the appropriate section above. Since circumstances under which this conduct occurs can vary greatly, it is difficult to capture all the various distinctions in the Specific Offense Characteristics.

The Commission solicits comment regarding the distinctions that should be made for this offense, and guidance for the circumstances in which it would be appropriate for the judge to deviate from the guideline.

4. Abduction or Unlawful Restraint.

18 U.S.C. 351
18 U.S.C. 1201
18 U.S.C. 1202
18 U.S.C. 1751
18 U.S.C. 2422
18 U.S.C. 2423

Introduction. As with other offenses involving the person, the principal interests protected by federal laws against unlawful restraint are the physical security of the person and the ability of the government to function effectively and without disruption. The unlawful restraint provisions take into account three general factors: the nature of the victim; the duration of the abduction; and the motivation of the offender.

The victim categories parallel those in other parts of Part A. The age or vulnerability of the victim is considered as well as the official status of the victim. The latter consideration allows enhanced treatment of terrorist acts, as does the provision aggravating the offense if a political demand is made.

A241. *Abduction or Unlawful Restraint of the President.* If any victim was the President of the United States or the President-elect, the base offense value is life imprisonment.

A242. *Abduction or Unlawful Restraint.* If any victim, other than the President or President-elect was abducted or unlawfully restrained, the base offense value is 60.

a. Specific Offense Characteristics

1. If a monetary or political demand was made, add 60 to the base offense value.

2. If the victim was a government official or employee victimized in or because of the performance of official duties (other than those described in A241) or was vulnerable due to age or mental or physical condition, add 36 to the base offense value.

3. If the abduction lasted more than one hour, add 24 to the base offense value.

b. Cross-References

1. If the victim suffered physical injury or was the victim of criminal sexual conduct, add the appropriate value from A222–A225 (Assault and Battery) or A231–A235 (Criminal Sexual Conduct).

2. If any victim suffered psychological injury, add the appropriate offense value from A251 (Psychological Injury).

A243. *Ransom Money.* The base offense value is 60 unless the victim was a person identified in A241, in which case the base offense value is 72. (18 U.S.C. 1202)

Commentary

The durational aspect of an unlawful restraint is significant for purposes of sentencing. While it is possible to conceive of short term abductions that are as serious, if not more serious, than some long term abductions, in general, extended duration is a serious aggravator of the offense. A short term abduction will be aggravated if it took place during some other offense, the offense value of which may be added to the base offense value.

A life sentence is imposed if the President or President-elect is abducted, because of the significant effect on the operation of government. Because government officials may be especially vulnerable due to their official duties, there is an aggravating factor for these types of potential victims.

Cross-references are made to the physical injury, criminal sexual conduct, and psychological injury provisions for further aggravation.

Section A243 specifically includes conduct prohibited by 18 U.S.C. 1202.

5. Psychological Injury.

A251. *Psychological Injury*

a. Offenses Involving the Person

1. If the court determines that a victim suffered extreme psychological injury, add 48 to the base offense value.

2. If the court determines that a victim suffered significant psychological injury, add 24 to the base offense value.

b. Other Offenses

If the court determines that a victim of the offense suffered extreme or

significant psychological injury, add 12 to the base offense value.

The levels of psychological injury are:

1. *Extreme Psychological Injury.* Extreme psychological injury means a substantial impairment of the intellectual, psychological, or emotional capacity of a victim that is likely to be of extended and continuous duration or to last for a period in excess of 120 days, that manifests itself by physical symptoms or changes in behavioral patterns that are capable of objective diagnosis, and that is established by a preponderance of the evidence by expert testimony.

2. *Significant Psychological Injury.* Significant psychological injury means a significant impairment of the intellectual, psychological, or emotional capacity of a victim that is likely to be temporary or intermittent and that is established by a preponderance of the evidence by any competent testimony.

Commentary

"Victim of the offense," for the purposes of A251, includes the victim and a member of the victim's immediate family who can demonstrate significant or extreme psychological injury as the result of the offense against the victim, *e.g.*, a parent of a homicide victim.

Although there is no provision of the federal criminal law that specifically punishes the infliction of emotional or psychological injury, such harm often results from the offender's conduct. Definitions are drawn from language developed in the civil tort of "outrage" or "infliction of emotional distress," as modified in the context of criminal law and procedure.

Offense Against the Person. If the court finds that the degree of psychological harm is much greater than that typically experienced by other victims of the same type of offense, it shall add 24 or 48 to the base offense value for the offense, depending on the level of psychological harm found to exist.

Other Offenses. An additional offense value of 12 is appropriate in nonviolent offenses where credible evidence shows that the victim suffered at least significant psychological injury as a result of the offender's conduct.

While the Commission believes that sentencing judges often consider psychological injuries, it recognizes that such harm is often difficult to quantify. Comment on the appropriateness of including such harm is invited.

Part B—Offenses Involving Property

1. Theft and Property Destruction.

18 U.S.C. 641
18 U.S.C. 657
18 U.S.C. 659
18 U.S.C. 661
18 U.S.C. 656
18 U.S.C. 1703
18 U.S.C. 1708
18 U.S.C. 2118
18 U.S.C. 2113(b)
18 U.S.C. 2314

B211. *Theft.* The base offense value is 2 plus the offense value from B251 (Property Table).

a. Specific Offense Characteristics

1. If the property stolen was a firearm, explosive, or destructive device, add 12 to the base offense value.

2. If the property stolen was a controlled substance, add 12 to the base offense value.

3. If the offender embezzled money, property, services, or any thing of value, add 6 to the base offense value.

4. If the property stolen was undelivered United States mail, add 6 to the base offense value.

B212. *Receiving Stolen Property.* The base offense value is 2 plus the offense value from B251 (Property Table).

a. Specific Offense Characteristics

1. If the property was for resale or included a firearm, explosive, or destructive device, add 12 to the base offense value.

B213. *Property Damage or Destruction.* The base offense value is 2 plus the offense value from B251 (Property Table).

a. Specific Offense Characteristics

1. If the offender used fire, an explosive, a dangerous device, or a firearm to damage a residence, building, vehicle, or other structure or place where persons were present or were likely to be present, add 60 to the base offense value.

2. If the offender used fire, an explosive, a dangerous device, or a firearm to damage property, other than one described in 1 above, add 24 to the base offense value.

3. If the offender damaged a public facility, and thereby caused a significant impairment of any function of a public facility, add 24 to the base offense value.

4. If the property destroyed was undelivered United States mail, add 6 to the base offense value.

b. Cross-References

1. If a victim suffered death, physical injury, or psychological injury, add the appropriate offense value from Part A, Offenses Involving the Person.

Commentary

This subpart contains three sections involving the simplest forms of property offenses, theft, embezzlement, transactions in stolen goods, and damage or destruction of property.

Section B211 addresses theft offenses. The primary emphasis is placed on the amount of property taken. The sentencing court is referred to a Property Table, B251, which provides a point score based on the value of the property taken. To ensure that even minor thefts receive some level of punishment, the base offense value will always be at least 6.

Some property cannot be readily valued in a dollar amount. It has significance or worth beyond the monetary value, such as in those instances where a family heirloom is stolen or destroyed. Recognizing that value in such instances is difficult to determine, the Commission foresees that a sentence outside the guideline range may be appropriate when the court is faced with this issue.

The penalty for theft or destruction of mail is aggravated because theft from the mails disrupts the integrity of a public function. Therefore, it deserves a sanction that is higher than would be accorded the dollar loss alone.

Cases of embezzlement receive added punishment beyond the value of the property. This reflects the injury inflicted upon the victim as well as the greater opportunity for theft in such instances, and the resulting need to deter such conduct.

The theft of firearms or destructive devices also receives additional punishment in an effort to further purposes of deterrence and incapacitation of those involved in this type of criminal activity.

Receiving stolen property, B212, is treated like theft offenses. An aggravating factor is included to address the professional fence, a person who receives stolen property for resale, and a person who deals in stolen firearms. By providing an illegal market for stolen property, such persons provide an incentive for theft. As such, deterrence considerations support a significant additional sanction beyond that applied to the person who purchased stolen property for personal use.

The third section property offenses, B213, addresses property damage or destruction. As in cases of theft, to ensure that even minor damage to property receives some level of punishment, the base offense value will always be at least 6.

The use of fire, explosives, dangerous devices, or firearms to damage property where persons are likely to be present receives an additional offense value of 60, consistent with the specific aggravating factors found in related provisions of Part K, Offenses Involving Public Order and Safety. To avoid double counting, there is no further cross-reference to Part K.

The offense value for damage to property in cases where persons are not likely to be injured (*e.g.*, destruction of a mailbox or a barn that has been deserted for years) is still increased if the damage is caused by fire, an explosive, a dangerous device, or firearm, in recognition of the inherent threat of additional injury or harm arising from the criminal use of such devices or weapons.

In cases of property damage involving more extensive public disruptions, the monetary value of property damaged or destroyed may not alone reflect the injury inflicted. For example, the destruction of a $500 telephone line may cause a significant interruption in services to thousands of people.

2. Burglary and Trespass.

18 U.S.C. 1382
18 U.S.C. 2113(a)
18 U.S.C. 2115

B221. *Burglary.* The base offense value is 24.

a. Specific Offense Characteristics

1. If the building was a dwelling occupied during the offense, add 40 to the base offense value.

2. If the building was a dwelling unoccupied during the offense, add 30 to the base offense value.

b. Cross-References

1. If any victim suffered death, physical injury, or psychological injury, add the appropriate offense value from Part A, Offenses Involving the Person.

2. If any property was stolen or destroyed, add the appropriate value from B211 (Theft) or B213 (Property Damage) to the base offense value.

B222. *Trespass.* The base offense value is 6.

a. Specific Offense Characteristics

1. If on the premises of a highly secured government facility or a nuclear energy facility, add 6 to the base offense value.

2. If on the premises of a dwelling, add 12 to the base offense value.

b. Cross-References

1. If any victim suffered death, physical injury, or psychological injury, add the appropriate offense value from Part A, Offenses Involving the Person.

2. If any property was stolen or destroyed, add the appropriate value from B211 (Theft) or B213 (Property Damage) to the base offense value.

Commentary

Burglary and trespass often are incidental to other offenses. The intent to commit further crimes and the risk to other persons are reasons for the severity of the punishment for burglary. This is especially true when a dwelling is involved. The guidelines reflect these factors in determining an appropriate sentence. Actual injuries to persons and property are reflected in the cross-references.

Most trespasses punishable under federal law involve federal lands or property. The trespass section includes two specific offense characteristics. The first deals with trespasses on highly secured facilities and nuclear energy facilities, where there is a significant federal interest to protect.

Additionally, a sentence enhancement is provided for trespass in a dwelling. There is obviously a greater danger of personal injury in such a trespass as well as a greater actual harm through loss of personal security to the owner.

3. Robbery, Extortion and Blackmail.

18 U.S.C. 1951
18 U.S.C. 1952
18 U.S.C. 2113
18 U.S.C. 2114
18 U.S.C. 2118

B231. *Robbery.* The base offense value is 36.

a. Specific Offense Characteristics

1. If the offender used a dangerous weapon or device, add 60 to the base offense value.

2. If the robbery was attempted or accomplished by more than one offender using force or threats of force to take control over any facility or any persons in the facility, add 36 to the base offense value.

3. If the offender robbed a financial institution or a federal facility or institution, add 24 to the base offense value.

4. If the property stolen was a controlled substance, add 12 to the base offense value.

b. Cross-References

1. For the property stolen, add the appropriate value from B211 (Theft) to the base offense value.

2. If any property was destroyed, add the appropriate value from B213 (Property Damage) to the base offense value.

3. If any victim suffered physical injury or psychological injury resulted, add the appropriate value from Part A, Offenses Involving the Person, to the base offense value.

4. If a hostage was taken during the robbery, add the appropriate value from Part A, Offenses Involving the Person, to the base offense value.

Commentary

The use of a dangerous weapon or device constitutes the most serious aggravating characteristic of a robbery.

A "take-over" robbery of a facility presents a high degree of planning and danger to human safety. Such robberies are often committed by gangs or experienced robbers. Considerations of incapacitation, deterrence and just punishment warrant the enhancement of a sentence for robberies committed under "take-over" circumstances.

Drugs or other controlled substances are often the motive for robberies of a Veterans Administration Hospital, a pharmacy on a military base or a similar facility. The specific offense characteristic for this type of robbery takes into consideration the dangers and security problems presented and satisfies Congressional intent.

If a robbery is aggravated by actual personal injury, the taking of a hostage, or loss or destruction of property, reference is made to other sections of the guidelines.

B232. *Extortion.* Reserved.
B233. *Blackmail.* Reserved.

4. *Counterfeiting and Forgery.*

18 U.S.C. 471
18 U.S.C. 472
18 U.S.C. 473
18 U.S.C. 495
18 U.S.C. 500
18 U.S.C. 501
18 U.S.C. 510
18 U.S.C. 1003
18 U.S.C. 2314
18 U.S.C. 2315

B241. *Counterfeiting and Forgery.* If the offender committed any offense involving counterfeiting, forgery, or uttering, the base offense value is 6 or, if the face value (if any) of the counterfeit, forged, altered, or fraudulently endorsed item exceeds $2,000, use the base offense value from B251 (Property Table).

a. Specific Offense Characteristics

1. If the offender possessed or had custody or control over counterfeiting devices and materials for use in illegally printing or coining any currency, obligation, or security of the United States, add 24 to the base offense value.

2. If the offense involved more than ten falsely made, forged, counterfeit, or altered currency bills, obligations, or securities of the United States, add 12 to the base offense value.

3. If the offense involved ten or fewer falsely made, forged, counterfeit, or altered currency bills, obligations, or securities of the United States, add 6 to the base offense value.

Commentary

The base offense value applies to a wide range of statutes dealing with forgery and counterfeiting, a variety of items protected by federal law, such as food stamps, postage stamps, foreign bank notes, military discharge papers, and automobile identification numbers. The more serious offenses will be appropriately aggravated by application of the property table to reflect the face value (if any) of the forged item.

Obligations and securities of the United States are treated as an aggravated subject of forgery, alteration, and counterfeiting. The offender who passes an altered or counterfeit $20 bill would be subject to a total offense value of 12, while an offender who possessed $5,000 in counterfeit $20 bills would be subject to a total offense value of 20, by application of the property table. Similarly, an offender who possesses or has control over counterfeiting devices and materials is viewed as the most culpable, because of the sophistication and planning involved in manufacturing counterfeit obligations and securities.

An offender who both forges and utters a check is treated the same as an offender who only forges or utters it.

5. Property Table.

B251. *Property Table.*

Monetary value	Offense value
Up to $1,000	4
$1,001 to $2,000	6
$2,001 to $5,000	8
$5,001 to $10,000	12
$10,001 to $25,000	16
$25,001 to $50,000	20
$50,001 to $100,000	24
$100,001 to $200,000	30
$200,001 to $500,000	36
$500,001 to $1,000,000	42
$1,000,001 to $2,000,000	48
$2,000,001 to $5,000,000	54
Over $5,000,000	60

Commentary

In punishing property offenses, the underlying principle is that an offender's sanction should increase with the dollar amount of property involved in the offense. There are ten categories in this table. Some cases may fall at the low end of a monetary grouping or the top of the next grouping. In those close cases, the sentencing court may adjust the sentence within the applicable discretionary guideline range to compensate for any concern that category range was too high or low for the particular offense involved.

Part C—Offenses Involving Taxation

1. Offenses Involving Income Taxes.

26 U.S.C. 7201
26 U.S.C. 7202
26 U.S.C. 7203
26 U.S.C. 7204
26 U.S.C. 7205
26 U.S.C. 7206
26 U.S.C. 7207
26 U.S.C. 7215

C211. *Tax Evasion.* The base offense value is determined by the table below. Application of the table is to be based upon the tax deficiency, *i.e.*, the total amount of tax that the taxpayer evaded or attempted to evade. The deficiency does not include any interest or penalties. If multiple counts are involved, *e.g.*, when the taxpayer evaded taxes in several years, the deficiencies should be added. If the offense involved an attempt to evade taxes that, as of the time of the offense had not yet become due, compute the deficiency using a tax rate of 30%.

Deficiency	Base offense value
Up to $1,000	10
$1,001 to $5,000	12
$5,001 to $10,000	14
$10,001 to $20,000	16
$20,001 to $35,000	18
$35,001 to $70,000	22
$70,001 to $120,000	26
$120,001 to $200,000	30
$200,001 to $350,000	36
$350,001 to $600,000	42
$600,001 to $1,000,000	48
$1,000,001 to $2,000,000	54
Over $2,000,000	60

a. Specific Offense Characteristics

1. If all or part of the taxpayer's income was obtained unlawfully, application of the table is to be based upon the deficiency plus the amount of any unreported unlawfully-obtained income. Unreported income is presumed to have been obtained unlawfully, unless otherwise established by the offender. Example: Suppose that the offender's tax deficiency is $25,000 and the amount of unreported income is $60,000. Unless it is established that the unreported income was obtained lawfully, the deficiency for purposes of applying the table would be $85,000, and the offense value would be 26 rather than 18.

b. Cross-References

1. If the offense occurred in connection with a course of conduct in which the offender aided, assisted, procured, counseled, or advised another to violate the internal revenue laws (other than in respect to the taxes that are involved in the instant tax evasion offense), whether through fraud or otherwise, add the offense value from C214.

C212. *Willful Failure to File Return, Supply Information or Pay Tax.* The base offense value is 80 percent of the offense value for Tax Evasion specified in C211.

a. Specific Offense Characteristics

1. If the offense involved only a failure to pay tax when due, the base offense value is 50 percent of the base offense value specified in C211 (Tax Evasion).

2. If the offense involved only a failure to file a return or supply required information, *i.e.*, no tax was due, the base offense value is 6.

b. Cross-References

1. If the offense occurred in connection with a course of conduct in which the offender aided, assisted, procured, counseled, or advised another to violate the internal revenue laws (other than with respect to the taxes that are involved in the instant tax evasion offense), whether through fraud or otherwise, add the offense value from C214.

C213. *Fraud and False Statements (Under Penalty of Perjury).* The base offense value is 10.

a. Cross-References

1. If the offense occurred in connection with a course of conduct in which the offender aided, assisted, procured, counseled, or advised another to violate the internal revenue laws (other than with respect to the taxes that are involved in the instant offense), whether through fraud or otherwise, add the offense value from C214.

2. If the conduct was in furtherance of an effort to evade payment of a tax, including a plan to evade a tax that, at the time of the offense had not yet become due, the offense value is the offense value for C211 (Tax Evasion).

C214. *Aiding, Assisting, Procuring, Counseling, or Advising Tax Fraud.* The base offense value is 10.

a. Specific Offense Characteristics

1. If the conduct occurred in connection with an effort to evade a specific tax obligation, the base offense value is that for evasion of tax by the principal from C211 (Tax Evasion). Use a tax rate of 30 percent to compute the deficiency.

2. If the offender was in the business of preparing or assisting in the preparation of tax returns or the provision of documentation for the substantiation of tax returns, or if the conduct was in furtherance of an organized movement to encourage others to violate the internal revenue laws, add 6.

C215. *Fraudulent Returns, Statements, or Other Documents.* The base offense value is 8.

C216. *Failing to Collect or Truthfully Account For and Pay Over Tax.* The base offense value is from C211 (Tax Evasion).

a. Specific Offense Characteristics

1. If the employer untruthfully accounted to his/her employees for any taxes withheld, add 4.

C217. *Failing to Deposit Collected Taxes in Trust Account as Required After Notice.* The base offense value is 6, or 25 percent of the offense value from C211 (Tax Evasion), whichever is greater.

C218. *Failing to Furnish an Employee a True Statement Regarding a Tax Withheld from the Employee.* The base offense value is 6.

C219. *Furnishing False Information to an Employer in a Withholding Exemption Certificate, or Failing to Supply Information that Would Require an Increase in the Tax to be Withheld.* The base offense value is 4.

2. Offenses Involving Alcohol and Tobacco Taxes.

26 U.S.C. 5601
26 U.S.C. 5604
26 U.S.C. 5662
26 U.S.C. 5686

C221. *Offenses Involving Non-Payment of Taxes.* The base offense value is the base offense value from C211 (Tax Evasion). The deficiency is

the amount of unpaid taxes, or the taxes that the offender attempted to evade.

C222. *Regulatory Offenses.* The base offense value is 8.

3. Offenses Involving Customs.

18 U.S.C. 542
18 U.S.C. 545
18 U.S.C. 549

C231. *Evading Import Duties or Restrictions (Smuggling).* The base offense value is determined by applying the table in C211 (Tax Evasion) to the amount of the duty evaded.

a. Specific Offense Characteristics

1. If entry of the object is prohibited, restricted or limited, then in lieu of the duty evaded, use (a) 25% of the fair market value of the object in the United States, or (b) the difference between the fair market value of the object in the United States and the fair market value of the object in the country of origin, or (c) the actual duty evaded, whichever is largest, in applying the table in C211 (Tax Evasion).

2. If the duty evaded (as defined in a.1., if applicable) is less than $500, and the object is for the personal use of the offender rather than resale, the offense value is 6.

C232. *Receiving or Trafficking in Smuggled Property.* The base offense value is the offense value from C231 (Smuggling) with respect to the smuggled object.

Commentary

1. Offenses Involving Income Taxes

This part deals with criminal violations of the internal revenue laws. The offense values have been set independently of those for offenses such as fraud or theft because the collection of taxes involves a unique governmental interest and estimates of the level of evasion are extremely high.

C211. Tax Evasion

This section deals with conduct proscribed by 26 U.S.C. 7201, which is entitled "Attempt to evade or defeat tax." In order for there to be a violation of 26 U.S.C. 7201, there must be an affirmative act in furtherance of the evasion of taxes. If there is no affirmative act another section may apply, *e.g.*, if the taxpayer did not pay the tax and did not file a return, *see* C212.

If the tax obligation involved is not the offender's (in which case this guideline may be applied by cross-reference), the offender will be liable only for the amount of the taxes that he/she aided, abetted, or caused the taxpayer to attempt to evade. The enhancement for unreported unlawfully obtained income applies to the extent that the offender was aware or should have been aware that the income was unlawfully obtained. A question has been raised over whether an employee who is required by his/her employer to prepare fradulent returns for the purpose of evasion should be treated less severely than the principal, but the Commission tentatively has elected not to attempt to make that distinction.

False statements in furtherance of the evasion (*see* C213, C215 and C219) are considered part of tax evasion, and should not be treated as separate or additional offenses unless they occur in connection with taxes other than those that the offender is charged with evading or attempting to evade.

This guideline does not provide a lower penalty for an unsuccessful attempt. Such attempts generally involve fully completed acts that, but for fortuitous circumstances such as action by the I.R.S., would result in the evasion. The statute makes no distinction in punishment between an attempt and a completed offense; indeed, the offense is denominated an attempt.

In addition to reducing disparity, this guideline should result in a significant increase in average sentence length for large-scale evasions. Under current practices the sentence lengths tend to be relatively unrelated to the amount of tax evaded. The guideline should result in moderate increases for the great majority of cases that involve less than $100,000 in tax evaded. The most significant change is that fewer cases will result in probation or fines without any imprisonment.

Factors considered for incorporation into the guidelines included: (1) The amount of tax evaded, (2) whether the income on which the tax was evaded was unlawfully obtained, (3) the proportion of the tax evaded to the total tax due, (4) the number of years of evasion, (5) whether there was careful planning, (6) whether the offender encouraged others to evade taxes, and (7) whether the offender assisted to evade taxes.

Only factors 1, 2, and 7 were expressly incorporated.

Factor 1 (the amount of tax that the offender evaded or attempted to evade). This is the most important factor, since the primary injury is loss of revenue.

Factor 2 (whether the income was lawfully or unlawfully obtained). Assigning a higher offense value to evasion of tax on income obtained unlawfully involves some complexity. Nonetheless, because such income is generally unreported, making its existence especially difficult to prove, this factor is sufficiently important for deterrence purposes to require inclusion. Use of this factor requires the court to determine, in addition to the amount of tax evaded, whether and how much income was obtained unlawfully. One can imagine contentions as to the source of the income, *e.g.*, that it was derived from gambling activity, that would be complex to resolve. Because of this, and also because unreported income is probably the most difficult to detect and prove, the guidelines specify that it shall be presumed that unreported income was not obtained lawfully unless credible evidence to the contrary is produced.

Factors 3 (the proportion of the tax due that was evaded) and 4 (the number of years of evasion). Factor 3 raises issues as to whether it is more serious to evade, for example, $20,000 in tax when it is 40% of the tax due, or $20,000 in tax when that is 70% of the tax due. Factor 4 relates to whether it is more serious to evade $20,000 in tax during one year or spread out over three years. These factors appear less important than 1 and 2 for sentencing purposes. To include either of them would significantly increase the complexity of the guidelines without an adequate corresponding benefit. These factors might be taken into consideration within the guideline range.

Factor 5 (careful planning). It is difficult to commit tax evasion without planning. To the extent that this factor denotes unusual efforts to prevent detection (such as the use of off-shore bank accounts), it may be dealt with through a general aggravating factor applicable to most crimes, or might be taken into account as a factor warranting a sentence at the high end of the guideline range.

Factor 6 (encouraging others to evade taxes). Frequently, this factor will rise to the level of advising or assisting others to violate the internal revenue laws, in which case it will result in an adjustment to the total offense value. Otherwise, this factor might assist the court in setting a sentence within the guideline range.

Factor 7 (advising or assisting others to evade taxes.) This factor, which usually constitutes a violation of 26 U.S.C. 7206(2), significantly increases the risk of revenue loss and therefore has been expressly included as an aggravating factor.

C212. Willful Failure To File Return, Supply Information or Pay Tax

This section refers to violations of 26 U.S.C. 7203. Such violations are usually serious misdemeanors that are similar to tax evasion, except that there need be no affirmative act in support of the offense. Three types of violations are distinguished. The most frequently prosecuted case involves both a failure to file and a failure to pay the tax; but for the lack of the requisite affirmative act, it would constitute tax evasion. It therefore receives a relatively high punishment that is tied to the amount of unpaid tax. If the offender files a return and supplies the necessary information but nonetheless willfully fails to pay the tax when due, the offense is treated as less serious because it is easy to detect and does not violate as many of the taxpayer's duties. Cases in which the offender owes no tax but fails to file a return pose a relatively minor threat to the tax-collection system and therefore have been assigned a low offense value. If failure to file is part of a larger scheme, the offense value for that larger offense will be applicable under the "modified real offense" sentencing approach adopted by the guidelines.

C213 and C214. Fraud and False Statements; Aiding, Assisting, Procuring, Counseling, or Advising Tax Fraud

C213 refers primarily to conduct proscribed by 26 U.S.C. 7206(1), but also applies to 26 U.S.C. 7206(3)–(5).

C214 applies to conduct proscribed by 26 U.S.C. 7206(2). In addition, as an aggravating factor referred to in other guidelines, it applies to any conduct where the offender aids, assists, procures, counsels or advises another to violate the internal revenue laws, whether or not the method of violation amounts to fraud.

Together, these guidelines cover the wide variety of conduct prohibited by 26 U.S.C. 7206, which generally amounts to actual or attempted tax evasion (subdivision 1), or assisting in tax evasion (subdivision 2). Accordingly, the guidelines treat the offenses as tax evasion. The amount of the deficiency is the amount of tax that the conduct was intended to evade or assist in evading. If multiple tax obligations are involved, the deficiencies should be added.

In instances where the offender is setting the groundwork for future tax evasion, he/she may make false statements that state net income but, as of the time of conviction, may not yet have resulted in a tax deficiency. In those cases, the deficiency is to be computed using a rate of 30%—an approximation to the maximum under the new tax laws. The same rate is used when the taxes of another person are involved, so as to avoid complex problems of proof and invasion of privacy. Misreporting by the principal, which the offender facilitated, would still have to be established.

In certain instances, such as promotion of a tax shelter scheme, the offender may advise other persons to violate their tax obligations through filing returns that find no support in the tax laws. If this type of conduct is shown to have resulted in the filing of identifiable false returns (regardless of whether the principals were aware of their falsity), it will be treated as evasion of the approximate amount (computed by using a tax rate of 30%) by which the returns understate the taxes due; otherwise, the offense value is set at 6. A more severe punishment is specified for the tax preparers because their misconduct poses a greater risk of revenue loss and is more clearly willful. The same is true for tax protesters.

Currently, 26 U.S.C. 7206(1) is sometimes used to prosecute persons who, without attempting to evade taxes, misrepresent the source of their income. In such cases, the offender generally is seeking to disguise the unlawful source, such as drug dealing, presumably to avoid attracting the attention of law-enforcement authorities. Such offenses have been assigned a base offense value of 10. An alternative approach would tie the punishment to the source and amount of the income, resulting in larger penalties when serious criminal activity or large sums of money are involved. The Commission invites comment on whether such an approach would be preferable, and, if so, how it should be implemented.

C215. Fraudulent Returns, Statements, or Other Documents

This section refers to conduct proscribed by 26 U.S.C. 7207, a misdemeanor. It is to be distinguished from 26 U.S.C. 7206(1) (C213), a felony, an element of which is a false statement made under penalty of perjury.

C216. Willfully Failing to Collect or Account for and Pay Over Tax

This section refers to conduct proscribed by 26 U.S.C. 7202. The failure to collect or truthfully account for the tax must be willful, as must the failure to pay.

This offense is a felony that is prosecuted infrequently. Where no effort is made to cheat the employee, the offense is a pure form of tax evasion, and is treated as such in the guidelines. In the event that the employer not only fails to account to the IRS and pay over the tax, but also collects the tax from the employees and does not account to them for it, it is both a form of embezzlement and a form of tax evasion. To cover such instances, an aggravating adjustment has been provided.

C217. Failing to Deposit Collected Taxes as Required After Notice

This section refers to conduct proscribed by 26 U.S.C. 7215, 7512(b).

This offense is a misdemeanor that does not require any intent to evade taxes, nor even that the taxes have not been paid. The more serious felony is 26 U.S.C. 7202 (*see* C216).

This offense is likely to be relatively easy to detect and fines may be a feasible punishment. Accordingly, it has been graded considerably lower, than tax evasion, although some effort has been made to tie the offense value to the level of taxes that were not deposited. The deficiency is the amount of tax that was not deposited. If funds are deposited and withdrawn without being paid to the IRS, they should be treated as never having been deposited. A fine that is a percentage of the funds not deposited is suggested.

C218. Willfully Failing to Furnish an Employee a True Statement Regarding a Tax Withheld from the Employee's Remuneration

This section refers to conduct proscribed by 26 U.S.C. 7204, a relatively minor misdemeanor that is infrequently prosecuted.

C219. Willfully Furnishing False Information to an Employer in a Withholding Exemption Certificate, or Failing to Supply Information that Would Require an Increase in the Tax to be Withheld.

This section refers to conduct proscribed by 26 U.S.C. 7205.

Unless it is part of a tax-evasion scheme, this offense is not serious. Although the extent to which the employee claimed unwarranted deductions is probably significant for sentencing purposes, it was not incorporated into the guidelines because the range of judicial discretion permitted is adequate to deal with the factor.

2. Offenses Involving Alcohol and Tobacco Taxes

This part deals with 26 U.S.C. 5601–5605, 5607, 5608, 5661, 5671, 5697, and 5762, where the essence of the conduct is tax evastion or a regulatory violation. Because such offenses are no longer a major enforcement priority, no effort has been made to provide a section-by-section set of guidelines. Rather, the conduct is dealt with functionally, dividing it into two broad categories: tax evasion offenses and regulatory offenses.

C221. Offenses Involving Non-payment of Taxes

The most frequently prosecuted conduct violating this section is operating an illegal still (26 U.S.C. 5601(a)(1)). Offenses in this subsection are treated as equivalent to income tax evasion offenses. The tax deficiency is the total amount of all unpaid taxes that were due on the alcohol or tobacco.

Certain of these statutes deal with conduct that, in some instances, might more properly be characterized as theft. For example, 26 U.S.C. 5601(a)(12) proscribes "removing . . . any distilled spirits on which the tax has not been paid or determined." If the offender is not the owner of the spirits, in which case primary objective may be to steal, the guideline section for theft should be applied. If the offender also failed to pay taxes on the stolen spirits, the offense value for Tax Evasion would apply in addition.

C222. Regulatory Offenses

For offenses where there is no effort to evade taxes, such as recordkeeping violations, the offense value is set at 8. Prosecutions for these offenses are infrequent.

3. Offenses Involving Customs

This part deals with violations of 18 U.S.C. 541–545, 547, 1915 and 19 U.S.C. 283, 1436, 1464, 1465, 1586(e), 1708(b). *These guidelines are primarily aimed at offenses that thwart revenue collection or trade regulation.* They are not intended to deal with the importation of contraband, such as drugs, or other items such as obscene material or firearms, importation of which is prohibited or restricted for non-economic reasons and as to which other, more specific legislation applies.

C231. Evading Import Duties or Restrictions (Smuggling)

This offense is treated as equivalent to tax evasion. There are two exceptions: (1) A lower offense value, 6, is set for cases involving small amounts of customs duties evaded by tourists. Such conduct currently is rarely prosecuted. (2) Special provisions result in a higher offense value for certain items whose entry is prohibited, limited or restricted. Especially when protective quotas are in effect, the duties evaded on such items may not adequately reflect the economic harm resulting from their importation. Accordingly, an alternative measure of the "duty" evaded based upon the items' fair market value is provided. The rate of 25 percent was selected because it is considered an intermediate-range protective tariff. Although the increase in market value due to importation provides an even better estimate of the harm, it may be difficult to measure.

C232. Receiving or Trafficking in Smuggled Property

This offense, which is encompassed by 18 U.S.C. 545, is treated as equivalent to smuggling. Note that the reduced offense value for small tourist-type cases literally does not, and is not intended to, apply to traffickers. This reflects a judgment that a professional trafficker who is caught with even a small amount of merchandise should be treated more seriously than a person who merely acquires goods for personal own use.

Part D—Offenses Involving Drugs

1. *Unlawful Manufacturing, Importing, Exporting, Trafficking, or Possession With Intent; Continuing Criminal Enterprise.*

21 U.S.C. 841
21 U.S.C. 843
21 U.S.C. 845
21 U.S.C. 845a
21 U.S.C. 848
21 U.S.C. 952
21 U.S.C. 953
21 U.S.C. 955
21 U.S.C. 957
21 U.S.C. 959

Introduction. For any controlled substance not specifically defined below, any reference to a particular controlled substance is also meant to include in that reference the substance and any analogous substances including, all salts, isomers, and salts of isomers. For example, the reference to PCP also includes its analogs PHP and TCP.

"Narcotic" is defined as in 21 U.S.C. 802(17) and includes the following substances whether produced by extraction, chemical synthesis, or any other method: opium and opiates (or their derivatives); poppy straw and concentrate of poppy straw; coca leaves and their extracts that contain cocaine or ecgonine; all isomers, esters, ethers, salts, and salts of isomers, esters, and ethers of the foregong as appliable (21 U.S.C. 802(17)); or any compound mixture or preparation which contains any quantity of any of these substances.

"Opiate" is defined as in 21 U.S.C. 802(18) to mean any drug or other substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having such addiction-forming or addiction-sustaining liability.

"Traffic" means (a) to sell, pledge, transfer, distribute, dispense, or otherwise dispose of to another person; or (b) to buy, receive, possess, or obtain control of with intent to do any of the foregoing, or to otherwise knowingly aid or assist in any manner in any part of the distribution or sale.

"Marijuana" means all parts of the plant Cannabis sativa L, whether growing or not; the seeds therof; the resin extracted from any part of such plant; and every compound, manufactured salt, derivative, mixture, or preparation of such plant, its seeds, or its resin. 21 U.S.C. 802(16).

The offense values assigned to offenses involving controlled substances depend on the type and amount of the controlled substance (*see* D211, A–D), and the presence of aggravating factors such as selling to minors and use of weapons (*see* D211 a and b).

Other factors being equal, offenses involving substances that present a similar danger are treated similarly. The guidelines were set so as to assure that larger quantities of a controlled substance considered to be less harmful are needed to achieve the same offense value as smaller amounts of a substance considered more harmful.

The drug offense tables measure the scale of the offense. The best evidence of the scale of the offense is normally the quantity of the controlled substance seized in the illegal transaction. For convenience in application, the tables provide the offense values for designated amounts of certain controlled substances that either are the subject of numerous prosecutions or have been specifically identified by statute. Equivalency conversion tables for other controlled substances are reserved for later publication.

Scale amounts for heroin and other schedule I–II opiates, cocaine, and marijuana and other cannabis products refer to the total weight of the controlled substance. If any mixture contains any detectable amount of a controlled substance, the entire amount of the mixture shall be considered in measuring the quantity. If a mixture contains a detectable amount of more than one controlled substance, the more serious controlled substance, as determined by its schedule classification, shall determine the name affixed to the entire quantity. Other substances are measured in terms of the number of doses. A pill, tablet, capsule, or other single unit of user packaging is considered a dose. Tables to convert bulk amounts into doses are reserved for later publication.

D211. *Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession With Intent to Commit Any of the Above Offenses)*

(A) If the substance is heroin or another Schedule I–II opiate,[1] the base offense value is that determined from the following table.

Amounts	Base offense value
1 kg. or more heroin or equivalent amount of other Schedule I–II opiate	180
500 to < 1,000 gms. heroin or equivalent amount of other Schedule I–II opiate	168
250 to < 500 gms. heroin or equivalent amount of other Schedule I–II opiate	144
100 to < 250 gms. heroin or equivalent amount of other Schedule I–II opiate	132
25 to < 100 gms. heroin or equivalent amount of other Schedule I–II opiate	72
10 to < 25 gms. heroin or equivalent amount of other Schedule I–II opiate	66
< 10 gms. heroin or equivalent amount of other Schedule I–II opiate	48

[1] A heroin equivalency table relating to other opiates is reserved for later publication.

(B) If the substance is cocaine, the base offense value is that determined from the following table.

Amount	Base offense value
2 kg. or more cocaine	180
1 kg to < 2 kg. cocaine	168
500 gms. to < 1 kg. cocaine	144
250 to < 500 gms. cocaine	132
100 to < 250 gms. cocaine	72
25 kg to < 100 gms. cocaine	66
10 to < 25 gms. cocaine	48
< 10 gms. cocaine	28

(C) If the substance is any other Schedule I–V controlled substance, except marijuana, the base offense value for the dose amounts [2] is determined from the following table.

Amount	Offense value		Schedule
	PCP/LSD	Other schedule I–III (except Marijuana)	
IV–V:			
200,000 or more doses	204	168	84
100,000 to < 200,000 doses	192	144	72
50,000 to < 100,000 doses	180	132	60
25,000 to < 50,000 doses	168	120	52
10,000 to < 25,000 doses	156	60	48
2,500 to < 10,000 doses	144	42	38
1,000 to < 2,500 doses	126	30	22
100 to < 1,000 doses	96	18	14
< 100 doses	48	12	12

(D) If the substance is marijuana or other cannabis product,[3] the offense value is that determined from the following table.

Amount	Base offense value
20,000 lbs. or more marijuana or equivalent	108
2,000 to < 20,000 lbs. marijuana or equivalent	72
200 to < 2,000 lbs. marijuana or equivalent	48
50 to < 200 lbs. marijuana or equivalent	32
10 to < 50 lbs. marijuana or equivalent	24
1 to < 10 lbs. marijuana or equivalent	18
< 1 lb. marijuana or equivalent	12

a. Specific Offense Characteristics

1. If the offender is at least 18 years of age and distributes any portion of a controlled substance to a person who is less than 18 years of age, or if the transaction takes place within 1,000 feet of an elementary or secondary school, add 18 to the base offense value.

[2] A dose is equal to one pill, tablet, capsule, or other single unit.

[3] A marijuana equivalency table relating to other cannabis products is reserved for later publication

2. If the offender is at least 18 years of age and uses a person who is less than 18 years of age to assist or in any way facilitate the commission of the offense, add 18 to the base offense value.

b. Cross-References

1. If a firearm was in the possession or under the control of the offender or an accomplice during the commission of the offense, add the appropriate offense value from Part K, Offenses Involving Public Order and Safety.

2. If the offender caused physical injury, add the appropriate offense value from Part A Offenses Involving the Person.

3. If the offender used a special skill, trade, training, education, or position with a financial or other institution or public office to significantly assist or facilitate the commission of the offense, the offender's role in the offense shall be presumed to be at least at the level defined in Chapter Three, Part A, Role In The Offense, which requires the sentencing judge to multiply the total offense value by 1.2.

4. If the offender has one or more final prior convictions for an offense described in D211, the base offense value is doubled.

D212. *Continuing Criminal Enterprise.* For a first conviction for engaging in a continuing criminal enterprise the base offense value is 120, or the total of the offense value(s) applicable to the predicate offenses, whichever is greater. In determining the total offense value for engaging in a continuing criminal enterprise:

1. If any of the predicate offenses have resulted in the imposition of a final sentence prior to sentencing for the current offense, do not add the offense value for the conduct covered by such sentence. However, any sentence imposed under a continuing criminal enterprise conviction shall be consecutive to such other sentence.

2. If any of the predicate offenses have been established initially during the prosecution under a continuing criminal enterprise charge by either special verdict of the jury, or by findings of the court subsequent to a general verdict or plea of guilty, then the base offense value shall be added to the offense value(s) for such predicate offenses.

For a second and subsequent conviction for engaging in a continuing criminal enterprise, the base offense value is 240, or the total of the offense value(s) applicable to the predicate offenses, whichever is greater.

a. Specific Offense Characteristics.

1. If the offender used a person who is less than 18 years of age to assist or in any way facilitate the commission of the offense, add 18 to the base offense value.

b. Cross-References

1. If a firearm was used by the offender or an accomplice in relation to or in furtherance of the offense, add the appropriate offense value from Part K, Offenses Involving Public Order and Safety.

2. If the offender caused death or physical injury add the appropriate offense value from Part A, Offenses Involving the Person.

Commentary

Section D212 refers to conduct proscribed by 21 U.S.C. 848.

As in Part E, Offenses Involving Criminal Enterprises, E211, which refers to violations of 18 U.S.C. 1962 (Racketeer Influenced and Corrupt Organizations offenses), emphasis is placed on the predicate offenses required for conviction. To avoid double-counting, the method for determining the total offense value that is used under E211 is also used under D212. The assigned offense value reflects the Congressional intent to provide a mandatory minimum term of imprisonment for the leaders of large-scale drug enterprises.

When sentencing for convictions under 21 U.S.C. 848, it is especially important that the sentence reflect the offender's role in the enterprise. A conviction will have already established that the offender controlled and exercised decision-making authority over one of the most serious forms of ongoing criminal activity. Therefore, attention is specifically directed to Chapter Three, Part A, Role in the Offense, and the Commentary thereunder, which expressly provides that a conviction under 21 U.S.C. 848 "automatically establishes the applicability of a multiplier of 2" to the base offense value.

D213. *Attempts and Conspiracies.* If any offender enters into a conspiracy or attempts to commit any offense involving a controlled substance, the offense value shall be the same as if the object(s) of the conspiracy or attempt had been completed. All applicable specific offense characteristics and cross-references shall be used in calculating the total offense value.

D214. *Determining Amount When No Seizure Occurs.* If there is no drug seizure or the amount seized does not reflect the actual scale of the offense, the sentencing judge shall determine the quantity of the controlled substance by a preponderance of the evidence. The government's burden of proof may be met by any competent evidence including, but not limited to the following:

1. the quantity associated with known price and market value;

2. financial or other records;

3. testimony concerning the offender's similar transactions, including testimony as to the quantities involved in previous transactions for controlled substance offenses;

4. if a laboratory was involved, testimony regarding the size and capability of the laboratory; or

5. testimony concerning other reliable facts for determining quantity.

Commentary

Violations of laws that prohibit the use or distribution of controlled substances represent a serious harm to individuals and to society. Illegal drug transactions in many instances fund the coffers of organized crime. Evidence increasingly has established a correlation between drug abuse and other crimes and additional resultant harms. Therefore, the controlling principles in formulating these guidelines were deterrence and incapacitation. Drug offenders at every level show a high rate of recidivism. Those who have not been deterred should be incapacitated.

The aggravating factors recognize the increased culpability for offenders who distribute to or use a minor to violate the drug laws. If the violator was also a minor, no aggravating factor is imposed. The possession of dangerous weapons or infliction of physical injury is not uncommon in drug violations. Weapons pose an additional danger not only to offenders but to undercover officers and the public at large. An aggravating factor was included to deter such conduct.

Certain types of offenders are essential to drug violations. These include but are not limited to pilots, boat captains, accountants, bankers, financiers, lawyers, doctors, laboratory technicians, public officials, and others who have a special skill, trade, profession, or position that is used to significantly facilitate the commission of a drug offense. An aggravating factor is included to enhance the punishment in an attempt to deter these individuals from criminal activity.

Recidivists should be dealt with more severely in recognition of the need to incapacitate those who repeatedly fail to obey the law.

While it is not necessary to have seized all or any of the controlled substances involved in a drug transaction to establish guilt, it is often difficult to establish the quantity. The intent of D214 is to allow for appropriate punishment for offenders by recognizing that the sentencing judge may determine the quantity involved even though there was no seizure.

If the offender is convicted of an offense involving negotiations to distribute a controlled substance, the weight under negotiation in an uncompleted distribution shall be used to calculate the applicable amount, provided that the government establishes by a preponderance of the evidence that the offender was reasonably capable of providing the amount of the controlled substance under negotiation.

If the offender is convicted of a conspiracy that includes transactions in controlled substances in addition to those which are the subject of substantive counts of conviction, each conspiracy transaction shall be included with those of the substantive counts of conviction to determine scale. However, the same transaction shall not be subject to sanction under both a conspiracy count and a substantive count of conviction.

2. *Unlawful Possession.*

21 U.S.C. 844

D221. *Unlawful Possession*

(a) If the substance is heroin or any Schedule I–II opiate, the base offense value is 18.

(b) If the substance is cocaine, PCP, or LSD, the base offense value is 16.

(c) If the substance is any other controlled substance, the base offense value is 12.

a. Specific Offense Characteristics

1. If a firearm was in the possession or under the control of the offender or an accomplice during the commission of the offense, add 24 to the base offense value.

2. If a victim suffered physical injury, add the appropriate offense value from Part A, Offenses Involving the Person.

3. If the offender has one or more final prior convictions for an offense(s) involving a controlled substance, the base offense value shall be twice the base offense value shown above.

Commentary

The controlling principles are deterrence and incapacitation. Possession is a crime. The demand for unlawful drugs is a major part of the overall problem the drug laws attempt to address.

As with other drug violations, the possession of a weapon or infliction of physical injury are aggravating factors. Recidivists should be dealt with more severely in recognition of the need to incapacitate those who repeatedly fail to obey the law.

D222. *Acquiring a Controlled Substance by Forgery, Fraud, Deception, or Subterfuge (21 U.S.C. 843(a)(3)).* The base offense value is 12.

Commentary

This violation is infrequently prosecuted in federal court. The controlling consideration is deterrence.

3. *Regulatory Violations.*

D231. *Violations of 21 U.S.C. 843(a).* The base offense value is 6.

D232. *Violations of 21 U.S.C. 842 (a) or (b) (Prosecuted Under 21 U.S.C. 842(c)(2)).* The base offense value is 6.

D233. *Violations of 21 U.S.C. 954 (Prosecuted under 21 U.S.C. 961(2)).* The base offense value is 6.

Commentary

These violations are less frequently prosecuted in federal court. Again, deterrence is the controlling principle involved in formulating the preliminary guidelines.

Part E—Offenses Involving Criminal Enterprises

1. *Racketeering.*

18 U.S.C. 1951
18 U.S.C. 1952
18 U.S.C. 1952A
18 U.S.C. 1952B
18 U.S.C. 1962

E211. *Unlawful Conduct Relating to Racketeer Influenced and Corrupt Organizations.* The base offense value is 12 plus the offense value applicable to the underlying racketeering activity. In determining the total offense value for RICO violations:

1. If any of the underlying racketeering activity has resulted in the imposition of a final sentence prior to sentencing for the current offense, do not add the offense value for the conduct covered by such sentence. However, any sentence imposed under RICO shall be consecutive to such other sentence.

2. If any of the underlying racketeering activity has been established initially during the prosecution under RICO by either special verdict of the jury or by findings of the court subsequent to a general verdict or plea of guilty, then the offense value(s) for such activity shall be added to the base RICO offense value (12).

E212. *Interstate or Foreign Travel or Transportation in Aid of a Racketeering Enterprise.* The base offense value is the offense value applicable to a) any crime of violence that was the purpose of the travel or transportation, or b) any other unlawful activity, as defined in 18 U.S.C. 1952(b), in pursuance or furtherance of which the travel or transportation was undertaken.

E213. *Interfering with Commerce by Threats or Violence* (18 U.S.C. 1951); *Use of Interstate Commerce Facilities in the Commission of Murder-For-Hire;* (18 U.S.C. 1952A); *Violent Crimes in Aid of Racketeering Activity;* (18 U.S.C. 1952B). The base offense value is the offense value applicable to the underlying unlawful conduct done, caused, or intended.

Commentary

The federal racketeering offenses cover a wide variety of criminal activity, normally prosecuted as state offenses. The federal interest derives from conduct that affects interstate or foreign commerce or violates a federal law. Thus, while the conduct may be described in jurisdictional terms (*e.g.*, engaging in a pattern of racketeering activity), the real evil addressed is the underlying conduct. These sections, therefore, give primary emphasis to the underlying conduct.

When sentencing for racketeering offenses, it is especially important that the sentence reflect the offender's role in the racketeering scheme. Therefore, attention is specifically directed to Chapter Three, Part A, Role in the Offense, for the application of any appropriate adjustment to the offense values(s) determined under Chapter Two.

In E211, the underlying conduct is scored for sentencing purposes, and 12 offense value points are added. The additional RICO offense value reflects a recognition by the Commission that these offenses typically involve a pattern of illegal conduct often caused or supported by organized crime, with a high probability of continued illegal conduct; therefore, an enhanced sanction is both deserved and necessary for crime control purposes.

If the underlying activity has already been punished, it is not given a double count, but a sentence under this provision will be consecutive to any other such sentence.

Sections E212 and E213 deal with more specific offenses akin to racketeering conduct. All derive their offense values strictly from the underlying conduct, with no offense value attributable to the conduct that provides the federal jurisdiction nexus (*e.g.*, interstate travel or use of the mail). Unlike the previous section, there is no additional criminal conduct (*e.g.*, pattern of racketeering activity) for which sentencing value need be added to the offense value assignable to the underlying illegal activity.

Section E212 refers to "Travel Act" offenses proscribed by 18 U.S.C. 1952, a jurisdictional statute that reaches a broad variety of underlying unlawful conduct preceded by or involving interstate or foreign commerce travel, or use of commerce facilities.

Section E213 refers to "Hobbs Act" offenses proscribed by 18 U.S.C. 1951, a jurisdictional statute that reaches a broad variety of underlying criminal conduct involving interference with commerce or industry through robbery, extortion, or physical violence. This section also covers the "murder-for-hire" offense proscribed by 18 U.S.C. 1952A (Section 1002(a) of the Comprehensive Crime Control Act of 1984). That statute is jurisdictional, reaching the underlying conduct of murder or intended murder committed for pecuniary gain, with the requisite federal nexus provided by interstate or foreign commerce travel, use of commerce facilities, or use of the mail. Section E213 relates to violent crimes in aid of racketeering activity proscribed by 18 U.S.C. 1952B (Section 1002(b) of the Comprehensive Crime Control ACt of 1984). That statute is jurisdictional, reaching the underlying conduct of contract murder and other violent crimes committed by organized crime figures. The requisite federal nexus is provided by involvement of an "enterprise" (as defined in 18 U.S.C. 1952B(b)(2)) engaged in "racketeering activity" (as defined in 18 U.S.C. 1961).

2. *Extortionate Extension of Credit Offenses.*

18 U.S.C. 892
18 U.S.C. 893
18 U.S.C. 894

E221. *Making, Financing, or Collecting an Extortionate Extension of Credit.* The base offense value is 24, or the offense value from the property table, Part B, Offenses Involving Property, whichever is greater. For purposes of the guidelines, application of the property table is to be based on 5× the amount of money loaned.

a. Specific Offense Characteristics

1. If the offense involved an illegal debt, add 12 to the base offense value.

b. Cross-References

1. If the conduct involved death or physical injury, add the applicable offense value from Part A, Offenses Involving the Person.

2. If any victim suffered psychological injury, add the appropriate offense value from Part A, Offenses Involving the Person, (Psychological Injury).

3. If property was damaged, destroyed, or taken, add the appropriate offense value from Part B, Offenses Involving Property.

Commentary

This section refers to offenses involving the making or financing of extortionate extensions of credit, or the collection of loans by extortionate means. Because these "loan-sharking" offenses typically involve violence or threats of violence and provide economic support for organized crime, they are considered a serious threat to public welfare, and the Commission has assigned offense values with these considerations in mind. For purposes of applying the table in Part B, Offenses Involving Property, a figure equivalent to five times the measurable amount of money loaned is a fair approximation of the real harm involved in such an offense.

If the evidence establishes that actual violence or damage to property was associated with the extortionate extension of credit, then reference should be made to Part A, Offenses Involving the Person, and Part B, Offenses Involving Property, and the appropriate offense values added. However, no additional offense value should be assigned for threats of violence or other harm, since threatening conduct is inherent in the offense and subsumed in the base offense value.

3. *Gambling Offenses.*

15 U.S.C. 1172
15 U.S.C. 1173
15 U.S.C. 1174
15 U.S.C. 1175
18 U.S.C. 1082
18 U.S.C. 1084
18 U.S.C. 1301
18 U.S.C. 1302
18 U.S.C. 1303
18 U.S.C. 1304
18 U.S.C. 1306
18 U.S.C. 1511
18 U.S.C. 1953
18 U.S.C. 1955

E231. *Engaging in a Gambling Business.* The base offense value is the offense value determined below, relative to the scale of the gambling enterprise. If the scale of the enterprise cannot be determined directly from the examples provided, it may be determined by analogy with the examples.

1. If a very large scale enterprise (*e.g.*, a sports book with an average daily gross of more than $18,000; a horse book with an average daily gross of more than $4,800; a numbers banker with an average daily gross of more than $2,400; a dice or card game with an average daily "house cut" of more than $1,200; or video gambling involving eight or more machines), the base offense value is 24.

2. If a large scale enterprise (*e.g.*, a sports book with an average daily gross of $4,501–$18,000; a horse book with an average daily gross of $1,201–$4,800; a numbers banker with an average daily gross of $601–$2,400; a dice or card game with an average daily "house cut" of $301–$1,200, or video gambling involving four–seven machines), the base offense value is 18.

3. If a medium scale enterprise (*e.g.*, a sports book with an average daily gross of $1,500–$4,500; a horse book with an average daily gross of $400–$1,200; a numbers banker with an average daily gross of $200–$600; a dice or card game with an average daily "house cut" of $100–$300; or video gambling involving two–three machines), the base offense value is 12.

4. If a small scale enterprise (*e.g.*, a sports book with an average daily gross of less than $1,500; a horse book with an average daily gross of less than $400; a numbers banker with an average daily gross of less than $200; a dice or card game with an average daily "house cut" of less than $100; or video gambling involving one machine), the the base offense value is 6.

E232. *Transmission of Wagering Information.* The base offense value is that applicable to E231 (Engaging in a Gambling Business).

E233. *Interstate Transportation of Wagering Paraphernalia.* The base offense value is 6.

a. Specific Offense Characteristics

1. If the paraphernalia was intended for use in a gambling business, the base offense value is that applicable to E231 (Engaging in a Gambling Business).

E234. *Unlawful Conduct Relating to Gambling Ships.* The base offense value is that applicable to E231 (Engaging in a Gambling Business).

E235. *Unlawful Conduct Relating to Lottery Tickets or Related Matter.* The base offense value is 6.

a. Specific Offense Characteristics

1. If the lottery tickets were intended for engaging in or for use in a gambling business, the base offense value is that applicable to E231 (Engaging in a Gambling Business).

E236. *Unlawful Conduct Relating to Slot Machines or Other Gambling Devices.* The base offense value is 6.

a. Specific Offense Characteristics

1. If the offense involved trafficking in devices for use in a gambling business, the base offense value is that applicable to E231 (Engaging in a Gambling Business).

Commentary

When gambling offenses are part of a criminal enterprise they often provide economic support for organized crime. With these considerations in mind, the Commission has set a minimal base offense value for isolated gambling transactions and a higher base offense value for gambling enterprise violations. In regard to the latter, the offense value is to be enhanced according to the scope of the criminal enterprise, using the examples in E231.

4. *Obscenity Offenses.*

18 U.S.C. 1461
18 U.S.C. 1462
18 U.S.C. 1463
18 U.S.C. 1464
18 U.S.C. 1465
18 U.S.C. 2252

E241. *Importing, Mailing, or Transporting Obscene Matter.* The base offense value is 6.

a. Specific Offense Characteristics

1. If the offense involved distribution for pecuniary profit, the base offense value is from the following table. Application of the following table is to be based on the retail value of the material if it can be determined. If the retail value of the material cannot be determined, application of the following table is to be based on the gross revenue derived from the obscene matter, or on a value of $10 per discrete book, pamphlet, film, thing, or device; whichever is greater.

Retail value of material	Offense value
$1,000 or less	6
$1,001 to $10,000	8
$10,001 to $25,000	12
$25,001 to $50,000	18
$50,001 to $100,000	24
$100,001 or more	30

2. If the offense involved distribution for pecuniary profit to any person less

than sixteen years of age, add 12 to the base offense value.

b. Cross-References

1. If the conduct involved material relating to the sexual exploitation of a minor, apply E242 (Transporting, Receiving, or Distributing Material Involving the Sexual Exploitation of a Minor) rather than this section.

E242. *Transporting, Receiving, or Trafficking in Material Involving the Sexual Exploitation of a Minor.* The base offense value is 24, or 12 plus the offense value applicable to E241 (Importing, Mailing, or Transportating Obscene Matter), whichever is greater.

a. Specific Offense Characteristics

1. If the offense involved trafficking in or transporting material that depicts a minor under age twelve, add 12 to the base offense value.

b. Cross-References

1. If the conduct involved the sexual exploitation of a minor by production of sexually explicit visual or printed material, add the appropriate value from E261 (Sexually Exploiting a Minor by Production of Sexually Explicit Visual or Printed Material).

E243. *Broadcasting Obscene Langauge.* The base offense value is 3.

a. Specific Offense Characteristics

1. If the offense was committed using, or on a communications frequency used by, a commercial broadcasting station, add 3 to the base offense value.

Commentary

Section E241 refers to offenses involving the mailing, importation, and interstate transportation for sale or distribution of obscene materials. The base offense value reflects a judgment that these types of offenses pose a threat to accepted moral standards and values and often provide economic support for organized crime. When the obscenity distribution offense is part of a for-profit enterprise, the sanction is enhanced according to the scope of the criminal scheme, as determined by the estimated retail value of pornographic materials involved.

If the evidence establishes distribution for profit to a minor under age 12, the sanction is further enhanced. The additional sanction reflects a judgment that minors are more impressionable and vulnerable purchaser-victims of obscenity purveyors. It is not necessary to establish that the offender knew the purchaser was under age 12.

If the offense involves the distribution of material that includes the visual depiction of a minor engaging in sexually explicit conduct, refer to guideline E242 for the determination of the base offense value.

Section E242 refers to the distribution of materials that visually depict a minor or minors engaging is sexually explict conduct. The base offense value is substantially higher than the base value applicable to the distribution of obscene materials not involving the visual depiction of minors engaging in such conduct. The severity of the sanction reflects a Commission and Congressional judgment (*See* preamble to the Child Protection Act of 1984, Pub. L. No. 98–292) that child pornography is a serious crime problem in which minors, particularly runaway and homeless youth, are exploited. Such exploitation of minors is harmful to the well-being of the children involved and society.

This section also reflects a Commission judgment that the distribution and sale of such material is generally more serious than the ultimate purchase or receipt by a customer. Nevertheless, the receipt of this material is deemed more serious than the ordinary customer purchase of obscene materials because these purchases supply the economic motive for exploitation of children.

This sanction is to be enhanced according to the scope of the child pornography enterprise, based on the retail value of the distributed materials and applicable offense values in E241. If the offense involves depiction of a minor or minors under age 12, a higher offense value is assigned.

If the conduct involves the production of child pornography (as opposed to its distribution, sale, or purchase), guideline E261 should be applied. Frequently, the unlawful conduct will involve both the production and distribution of child pornography, in which case both E261 and E242 should be applied.

Radio broadcasting of obscene language, 18 U.S.C. 1464, is generally considered a less serious offense than the distribution of obscene printed matter, which has greater permanence and typically involves an organized business enterprise. If the obscene or profane broadcasting occurs over a commercial radio station, as opposed to a citizens' band or other limited transmission, the sanction is more serve because of the generally wider audience affected by the broadcast and its commercial nature.

5. *Prostitution Offenses.*

18 U.S.C. 2421
18 U.S.C. 2422
18 U.S.C. 2423

E251. *Owning or Operating a Prostitution Business.* The base offense value is 12.

a. Specific Offense Characteristics

1. If the conduct involved the prostitution or recruiting for prostitution of a person less than sixteen years of age, the base offense value is 36.

2. If the conduct involved the prostitution or recruiting for prostitution of a person at least sixteen years but less than eighteen years of age, the base offense value is 24.

b. Cross-References

1. If the violation involved death or physical injury, add the appropriate offense value from Part A, Offenses Involving the Person.

2. If any victim suffered psychological injury, add the appropriate offense value from Part A, Offenses Involving the Person (Psychological Injury).

3. If the offense involved criminal sexual conduct with a minor, add the appropriate offense value from Part A, Offenses Involving the Person.

E252. *Transportation for the Purpose of Prostitution or Prohibited Sexual Conduct.* The base offense value is 6.

a. Specific Offense Characteristics

1. If the conduct was for the purpose of prostitution, the offense value is that from E251 (Owning or Operating a Prostitution Business).

2. If the conduct was for the purpose of the sexual exploitation of a minor, the offense value is that for E261 (Sexually Exploiting a Minor by Production of Sexually Explicit Visual or Printed Material).

E253. *Engaging in Prostitution.* The base offense value is 4.

Commentary

Guidelines E251, E252 and E253 refer to prostitution offenses within federal jurisdiction.

Reflecting a concern for the exploitation of minors, particularly runaway and homeless youth, the Commission has enhanced the offense value when one or more minors are involved in a prostitution enterprise. The offense value is further enhanced if a minor under age 16 is involved.

If the conduct involves personal injury (death, bodily injury, or psychological injury) or a threat of personal injury to an individual involved in a prostitution enterprise or other person, then reference should be made to the applicable guidelines in Part A and the offense value from those applicable guidelines added.

6. Sexual Exploitation of a Minor.

E261. *Sexually Exploiting a Minor by Production of Sexually Explicit Visual or Printed Material.* The base offense value is 36.

a. Specific Offense Characteristics

1. If the person exploited was under age 12 at the time of the exploitation, add 12 to the base offense value.

b. Cross-References

1. If the conduct involved a physical injury described in Part A, Offenses Involving the Person, add the appropriate offense value.

2. If any victim suffered psychological injury, add the appropriate offense value from Part A, Offenses Involving the Person (Psychological Injury).

3. If the conduct involved an offense described in E242 (Transportion, Receiving, or Trafficking in Material

Involving the Sexual Exploitation of a Minor), add the appropriate offense value.

4. If the offense involved criminal sexual conduct with a minor, add the appropriate offense value from Part A, Offenses Involving the Person.

Commentary

This offense commonly involves the production source or base of a child pornography enterprise. Because the offense directly involves the exploitation of a minor or minors under age 18, the base offense value is higher than for the distribution of the sexually explicit material after production. Since offenders of this section frequently commit the conduct described in E242, cross-reference is made to that section. If the conduct involves the exploitation of a minor under age 12, the offense value is further enhanced. Additionally, if the exploitation involves personal or psychological injury to a minor, or the threat of such injury, reference should be made to Part A and the applicable offense value(s) from that Part should be added to the offense value determined under this guideline. Each minor child exploited shall be considered a separate offense.

7. Trafficking in Contraband Cigarettes.

18 U.S.C. 2342(a)

E271. *Unlawful Conduct Relating to Contraband Cigarettes.* The base offense value is 6, or the offense value from the tax evasion table, Part C, Offenses Involving Taxation, whichever is greater.

1. Application of the Tax Evasion Table is to be based upon the amount of tax that is the object of evasion.

Commentary

This offense generally involves evasion of state excise taxes and becomes a federal matter only upon the establishment of minimum quantities transported in interstate commerce or by use of interstate communications. The size of operations giving rise to federal jurisdiction typically suggests the involvement of criminal organizations. Since this offense is basically a tax matter, the other element considered, in addition to the nature of the offense arising under these statutes, is the amount of tax that is the object of evasion.

The section sets a base offense value reflecting the nature of the offense. The base value is to be used only where it is higher than the offense value established under the Tax Evasion Table.

8. Corruption in Employee Welfare or Pension Benefit Plans.

18 U.S.C. 1954

E281. *Unlawfully Offering, Accepting, or Soliciting Anything of Value to Influence the Operation of an Employee Welfare or Pension Benefit Plan.* The base offense value is 9, or the offense value from the property table in Part B, Offenses Involving Property, whichever is greater. Application of the property table is to be based upon the value of the unlawful gratuity or the value of the action to be taken or affected in return for the unlawful gratuity, whichever is greater.

Commentary

This offense proscribes solicitation or receipt of kickbacks and other illegal gratuities involving employee welfare or pension benefit plans. The base offense value reflects a concern for safeguarding employee funds covered under the Employee Retirement Income Security Act against those who would mismanage such funds for their own financial gain. The Commission recognizes that this offense may involve organized crime, particularly when large sums of money from pension plans are transacted in response to the kickback, or when the illegal gratuity is itself large. Hence, the base offense value is to be enhanced as appropriate through application of the property table, bsed upon the value of the unlawful gratuity or the value of the action to be taken or affected in return for the unlawful gratuity, whichever is greater. For example, if a benefit plan officer receives a $10,000 kickback for approving a $1,000,000 loan from a benefit plan, then the amount of money to be equated to a offense value in the property table would be $1,000,000 the value of the loan, rather than $10,000, the amount of the kickback.

Part F—Offenses Involving Fraud and Deception

18 U.S.C. 285–291
18 U.S.C. 371
18 U.S.C. 656, 659
18 U.S.C. 1001–1030
18 U.S.C. 1341–1344

Introduction. The base offense value for the fraud guidelines is determined by fundamental variables relating to single or multiple transactions and victims. Specific offense characteristics are then applied to reflect aggravated deceptive and fraudulent conduct and victim impact.

The fraud section does not link offense characteristics to specific statutes. Most fraud statutes contain general language that applies to a broad range of offenses of widely varying severity. For example, the mail and wire fraud statues, 18 U.S.C. 1341 and 1343, apply to any person who devises or intends to devise a scheme or artifice to defraud by use of false or fraudulent pretenses, representations, or promises in order to obtain money or property. By application of the statute, a mail order scheme to defraud an individual of $50 would constitute the same violation or offense as a multi-million dollar false billing scheme victimizing businesses nationwide. In order to differentiate among fraud offenses, the guidelines specify characteristics of the conduct and impact of these offenses on victims. For example, a violation of the mail fraud statute might be covered under a combination of several specific offense characteristics.

Some of the statutes to which Part F applies are referred to in the commentary on specific offense characteristics. While these guidelines are designed primarily for the fraud statutes, they may also relate to fraud involving specific statutory violations addressed elsewhere in the guidelines, such as securities and taxation.

Property Table for Fraud Offenses. Part F includes a table for property gained or lost through fraud offenses. The cumulative property loss or gain (whichever is higher) associated with the offense is treated as a general aggravating characteristic to be added to the base offense value. The table has been structured to add minimal offense values where the gain or loss is relatively low. The increasing offense values for losses or gains exceeding $20,000 recognize increased financial injury to the victim or victims and the higher level of planning and sophistication generally involved in financially successful fraudulent conduct.

The property table is based on actual gain or loss only. Many fraud schemes have a greater potential impact than the actual loss or gain. However, the guidelines partially compensate for this by using higher offense values for more aggravated conduct.

Multiple-Count Indictments. Ongoing fraud usually results in multiple count indictments. For example, mail and wire fraud schemes, check kiting, misapplication of bank funds, credit card fraud, and government program fraud generally involve multiple transactions. By using a modified real offense sentencing approach, aggravated criminal conduct and victim impact are captured without aggregating offense values for each count. However, the cumulative loss or gain produced by a common scheme or course of conduct shall be used in applying the Property Table for Fraud Offenses.

If the offender was convicted of other criminal offenses committed in the course of a fraudulent scheme, the offense values generated by those offenses are governed by the guidelines relating to the other criminal conduct. The offense values generated by other criminal offenses shall be added to the offense values for the fraud. For example, if the offender engaged in a scheme to defraud an insurance company by burning an insured building, the offense values flowing from the arson would be added to those

generated by the mail fraud scheme. If the offender was convicted of failure to report income from a fraudulent scheme on a federal tax return, the applicable guideline provisions for offenses involving taxation would be applied to determine the offense value to be added to that generated by the fraud itself.

If, in the same case, the offender was convicted of other fraud offenses that were not part of an ongoing scheme or course of conduct, the offense values generated by the other fraudulent offenses would be treated cumulatively. For example, if a bank officer or teller embezzled money from two prior employer-banks, the sanction units for the separate series of transactions would be treated cumulatively. If an offender engaged in a boiler room fraud by selling non-existent shares in precious metals futures, and was also convicted of submitting a fraudulent loan application to a federally insured bank, the offense values flowing from these fraudulent schemes would be treated cumulatively and added together.

F211. *Fraud and Deception.* The base offense value for criminal conduct constituting fraud or deception is determined as follows:

1. If the fraud consisted of a single occurrence or transaction and did not involve more than one victim, the base offense value is 6.

2. If the fraud consisted of more than one transaction or occurrence and did not involve more than one victim, the base offense value is 8.

3. If the fraud consisted of a scheme or artifice to defraud more than one victim, the base offense value is 12.

a. Specific Offense Characteristics

1. If the offender obtained money, property, services, or any other thing of value, by falsely representing that he/she was acting on behalf of a charitable, educational, or religious cause or organization, or on behalf of a government or law enforcement agency, add 4 to the base offense value.

2. If the offense involved the concealment of illicit gains or transactions by use of accounts or transactions outside the United States, add 6 to the base offense value.

3. If the offender knowingly violated a judicial or administrative order or decree by the fraudulent conduct, add 6 to the base offense value.

4. If the offender defrauded a victim or victims knowing that the victim or victims were vulnerable to the offense because of age, physical or mental condition, or similar characteristics, add 8 to the base offense value.

5. If the offense caused one or more victims to sustain a substantial loss relative to income or assets, add 8 to the base offense value.

6. If the offense potentially endangered the health or safety of a person or the general public, add 10 to the base offense value.

7. If the offense involved a breach of a fiduciary duty or professional trust, add 10 to the base offense value.

8. If the offense involved a breach of a public trust, add 12 to the base offense value.

9. If the offense involved property loss to the victim(s) or gain to the offender, then refer the Property Table for Fraud Offenses and add the offense value for the loss or gain, whichever is greater, to the total offense value for the fraudulent conduct.

b. Cross-References

1. If any victim suffered psychological injury as a direct result of the offender's conduct, add the appropriate offense value from Part A, Offenses Involving the Person.

PROPERTY TABLE FOR FRAUD OFFENSES

Dollar loss or gain	Base offense value
$5,000 or less	2
$5,001–$10,000	4
$10,001–$15,000	5
$15,001–$20,000	6
$20,001–$50,000	8
$50,001–$100,000	10
$100,001–$250,000	14
$250,001–$1,000,000	18
$1,000,001–$2,000,000	24
$2,000,001–$5,000,000	36
$5,000,001–$25,000,000	48
Over $25,000,000	60

Commentary

Base Offense Value

Overview. The base offense values distinguish between fraud offenses involving single and multiple transactions or occurrences and victims. These alternative base offense values are mutually exclusive. The provision that most accurately describes the offense shall be applied as the base offense value. All additional specific offense characteristics and cross-referenced aggravating factors are added to the appropriate base offense value.

For purposes of the fraud guidelines, a "transaction" is a fraudulent act, such as making a misleading or false statement or using a false pretense. The commission of a jurisdictional act, such as a mailing or an interstate telephone call, is not a "transaction."

1. *Single Transaction.* The lowest offense value level for the fraud guidelines is attributed to fraud involving a single occurrence or transaction that does not involve multiple victims. This low base line value would be applied to conduct such as the following:

a. An offender knowingly makes false statements on an application for a federally guaranteed student lona (18 U.S.C. 1001).

b. An applicant knowingly makes a false or inflated claim for benefits under a federal program (18 U.S.C. 287).

c. An offender uses a counterfeit or altered certificate of deposit to pledge as collateral for a loan from a federally insured savings and loan institution (18 U.S.C. 1014).

2. *Multiple Transactions.* This factor applies to two or more tansactions that do not involve multiple victims. A minimal increase in base offense value is given the offender who engages in multiple transactions. While repeated fraudulent conduct warrants some increase in the offense value, the application of specific offense characteristics captures the aggravating characteristics and victim impact of the offense. This approach takes into consideration the possibility that an offender who engages in only one offense may be far more culpable and cause more significant harm than an offender who engages in several fraudulent transactions of a relatively insignificant nature. The following is an example of the conduct to which this factor applies.

A testing laboratory provides the offender, a defense contractor, with a certification falsely representing that voltage regulators manufactured by the contractor conform to government specifications. The defense contractor thereafter use the fraudulent certification to obtain contracts and to provide defective, substandard voltage regulators to various United States and foreign military agencies (18 U.S.C. 371 1001, 1341).

3. *Multiple Victims.* The guidelines specify higher offense values for all multiple victim offenses without creating distinctions based upon the numbers of victims involved. Aggravated victim impact and property loss factors reflect the scale of the offense and its cumulative impact on victims.

Examples of the conduct to which this factor applies include the following:

a. An offender conducts a deceptive advertising campaign that induces victims to send money for non-existent goods or services (18 U.S.C. 1341).

b. An offender conducts a "boiler room" operation by making interstate telephone calls inducing victims to invest in non-existent commodities futures (18 U.S.C. 1343).

Specific Offense Characteristics

1. *False pretenses involving charitable causes and government agencies.* This factor applies to offenders who take advantage of victims' trust in government or law enforcement agencies or their generosity and charitable motives. Taking advantage of a victim's self-interest does not mitigate the seriousness of fraudulent conduct. However, offenders who exploit victims' charitable impuses or trust in government create particular harm.

Examples of conduct to which this factor applies include the following:

a. A group of offenders solicit by mail contributions to a non-existent famine relief organization (18 U.S.C. 1341).

b. An offender diverts donmations for a religiously affiliated school by mail solicitations to church members in which she falsely claims to be a fundraiser for the school (18 U.S.C. 1341).

c. Three offenders conduct a land swindle in which one offender misrepresents to victims that he/she is an employee of the Tennessee Valley Authority and that the victim's land is to be seized by eminent domain so that T.V.A. can dam a nearby river. Shortly thereafter, a co-conspirator approaches the victim and offers to buy the land at a distress price. The victim agrees to sell, and the third offender assists in conducting the transaction. Some of the arrangements for the sale are made by mail (18 U.S.C. 1341).

d. An offender gains access to a federal agency's records. Posing as a federal debt collection agent, he/she mails notices to the victim threatening legal action if a substantial payment is not made immediately. The offender then appears in person to collect payment (18 U.S.C. 1341).

2. *Transactions and accounts outside the United States.* Offenses that involve manipulation of transactions or accounts outside the United States to conceal illicit profits and criminal conduct entail a particularly high level of sophistication and complexity. These offenses are difficult to detect, and require costly investigations and complex prosecutions. Diplomatic processes often must be used to secure testimony and evidence beyond the jurisdiction of United States courts. The offense value reflects the need to deter and punish this form of sophisticated conduct.

Examples of conduct to which this factor applies include the following:

a. A bank officer conceals the proceeds of unsecured loans that he/she has fraudulently diverted to himself by transferring the funds under an assumed name to accounts in the Cayman Islands (18 U.S.C. 656, 1343).

b. A party official deposits illegal campaign contributions in Swiss bank accounts to conceal the source and amount of money a public figure receives from a narcotics organization (18 U.S.C. 371, 1001, 1343 1952).

c. A brokerage house computer programmer transfers funds diverted from a pension fund investment account to a Canadian bank account in a relative's name (18 U.S.C. 1030, 1343 2314).

3. *Violation of judicial or administrative order or decree.* The offender who has been subject to civil or administrative proceedings for the same or similar fraudulent conduct demonstrates aggravated criminal intent and is deserving of additional punishment for not conforming with the requirements of judicial process of orders issued by federal, state, or local administrative agencies. If it is established that an entity the offender controlled was a party and the offender had knowledge of the prior decree or order, this provision applies even if the offender was not a specifically named party in that prior. For example, an offender whose business had been previously enjoined from selling a dangerous product, but who was engaged in fraudulent conduct to sell the product anyway, would be subject to this provision.

4. *Vulnerable victims.* This factor applies to offenders who intentionally exploit vulnerable victims. The offense value reflects the higher degree of moral culpability involved. This factor applies only if the characteristic rendered a victim vulnerable to the specific offense.

Examples of the conduct to which this factor applies include the following:

a. Offenders sell bogus cures for cancer to terminally ill victims (18 U.S.C. 1341).

b. A salesperson sells multiple insurance policies to victims who are not able to understand the terms of their policies (18 U.S.C. 1341).

c. An offender solicits advance employment fees from poor or unemployed victims for non-existent jobs (18 U.S.C. 1341, 1343).

5. *Substantial loss.* This factor applies to any offense in which a victim's assets or income were substantially affected by the fraudulent conduct. Application of this factor does not require that a victim become insolvent or be forced into bankruptcy as a direct result of the offender's conduct. Examples of substantial loss would include the loss of a major portion of the victim's savings, loss of equity in a residence due to a second mortgage, or the incurring of indebtedness as a direct result of the offender's fraud.

This factor also recognizes that fraud offenses may have a substantial impact on organizational or institutional victims, such as causing a business to become insolvent or a bank to fail.

6. *Risk to health or safety.* This characteristic applies to fraud that creates a danger to the health and safety of individuals or the general public.

Examples of offenses to which this factor applies include:

a. A businessman hires someone to commit arson for profit in an insurance fraud scheme. The lives of occupants of neighboring buildings are placed at risk and two firefighters are seriously hurt in the fire (18 U.S.C. 1341).

b. A defense contractor fraudulently provides the Air Force with defective parachute cord not conforming to government and contract specifications (18 U.S.C 1001, 1341).

c. A chemical manufacturer fails to disclose to the Food and Drug Administration the carcinogenic effects of a drug in tests on laboratory animals (18 U.S.C 1001, 13421).

d. A cardiologist perpetrates a Medicare fraud scheme, receiving kickbacks from a medical supply manufacturer for using that company's pacemakers and performs unnecessary pacemaker implants (18 U.S.C 371, 1341).

This factor also applies to mail frauds involving medical or cosmetic products where use is dangerous to health, such as "cures" for cancer that delay the victim's seeking appropriate medical care, treatments for baldness causing serious skin damage, or health-threating diet products (18 U.S.C 1341).

Physical injury need not actually occur for application of this special offense characteristic. However, physical injury does occasionally result from fraudulent conduct. The Commission cannot adequately consider or predicate guidelines based upon such unique cases. Therefore, a sentence exceeding the guidelines may be warranted in these unusual cases.

7. *Breach of professional trust or fiduciary duty.* Many of the most serious fraud offenses are facilitated by a breach of a fiduciary or professional trust. Exploiting a confidential or fiduciary relationship to defraud others is treated as a relatively sever aggravating factor because of the basic public policy and societal interests involved. Deterrence and just punishment are important considerations in sentencing an offender who abuses a position of trust.

Examples of conduct subject to this provisions are:

a. An executor of an estate converts liquid assets of the estate to his own use by transfer to his personal investment account in another state (18 U.S.C 1343).

b. An attorney advises a client to invest in an out of state recreational land development project, but the attorney conceals from the client his own financial interest in the project and that most of the client's "investment" will go directly to an out of state business controlled by the attorney (18 U.S.C 1341).

8. *Breach of public trust.* Corrupotion by a public official is a substantial aggravating factor because of the harm done to the integrity of public institutions and the loss of public confidence that results.

An example of conduct subject to this provision is:

a. A municipal court judge signs bail release forms that are then mailed to attorneys who give the judge cash payments from the released bail money (18 U.S.C. 1341).

Cross-References

Psychological injury. Fraud can cause significant psychological injury to victims, both because of the sense of personal betrayal that accompanies many crimes against individuals and because of stress resulting from financial difficulties. This provision is applicable to conduct that causes psychological injury as defined in Part A. Offenses Involving the Person.

The following is an example of the aggravated psychological stress to which this factor applies:

a. In an advance fee scheme, an offender fraudulently obtains money by promising to file reparation claims against the Federal Republic of Germany on behalf of Nazi concentration camp survivors. The offender requires the victims to prepare and submit chronologies of their experiences in concentration camps, including physical abuse, medical experimentation and the murder of family members (18 U.S.C 1341).

Part H—Offenses Involving Individual Rights

1. *Offenses Involving Civil Rights.*

18 U.S.C. 241
18 U.S.C. 242
18 U.S.C. 245
18 U.S.C. 246
18 U.S.C. 1231
42 U.S.C. 3631

H211. *Interfering with Civil Rights.*
The base offense value is 6.

a. Specific Offense Characteristics

1. If the offender conspired to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any civil right, add 12 to the base offense value.

2. If the offender and at least one other person went in disguise on the highway or on the premises of another with intent to prevent or hinder the exercise of any civil right, add 12 to the base offense value.

3. If the offender acted under color of law but not in a conspiracy with others, add 6 to the base offense value.

b. Cross-References

1. If the violation involved death or physical injury, add the appropriate offense value from Part A, Offenses Involving the Person.

2. If any victim suffered psychological injury, add the appropriate offense value from Part A, Offenses Involving the Person (Psychological Injury).

3. If the violation involved damage to or taking of property, add the appropriate offense value from Part B, Offenses Involving Property.

Commentary

This section refers to violation of civil rights or privileges secured under the Constitution or laws of the United States proscribed by 18 U.S.C. 241, 242, 245,and 246, and 42 U.S.C. 3631. For offenses involving political rights, *see* Subpart 2 of this Part. Often, a violation of this provision will include an offense from Part A (Offenses Involving the Person) or Part B (Offenses Involving Property). If so, consult those sections and add the applicable offense values.

These offense may involve property damage, assaults, and homicides. Such underlying conduct is so serious that it must be considered as the most signficant factor in punishing the offender. Yet the fact that a person's civil rights have been violated is something more than a jurisdictional issue. Federal constitutional and statutory rights have real value, although it is a difficult task to quantify or distinguish among them for sentencing purposes.

The specific offense characteristics represent Congressional intent to punish more seriously those civil rights violators who act in concert with others or wear a disguise. In addition, a violation committed by an offender acting under color of law should be aggravated.

H212. *Transporting Strikebreakers.* The base offense value is 6.

a. Cross-References

1. If the violation involved death or physical injury, add the appropriate offense value from Part A, Offenses Involving the Person.

2. If any victim suffered psychological injury, add the appropriate offense value from Part A, Offenses Involving the Person (Psychological Injury).

3. If the violation involved damage to or taking of property, add the appropriate offense value from Part B, Offenses Involving Property.

Commentary

This section refers to the offense of transporting strikebreakers or interstate traveling of strikebreakers, conduct proscribed by 18 U.S.C. 1231.

This offense is treated under Part H, Offenses Involving Individual Rights, because the right to strike is a federally protected right.

2. Political Rights Offenses.

2 U.S.C. 437g(d)
18 U.S.C. 241
18 U.S.C. 242
18 U.S.C. 597
18 U.S.C. 601
42 U.S.C. 1973i

H221. *Obstructing an Election or Registration.* The base offense value is that determined below.

1. If the obstruction occurred by use or threat of force against person or property, the base offense value is 18.

2. If the obstruction occurred by forgery, fraud, theft, or deceit (except as provided in 4), the base offense value is 12.

3. If the obstruction occurred by offering, giving, or agreeing to give anything of value to another person, or a member of that other person's immediate family, for or because of that person's voting, refraining from voting, voting for or against a particular candidate, or registering to vote, the base offense value is 12.

4. If offender a) solicited, demanded, accepted, or agreed to accept anything of value for or because of his or her voting, refraining from voting, voting for or against a particular candidate, or registering to vote, b) gave information that he/she knows to be false, to establish his or her eligibility to vote, or c) voting more than once in a federal election, the base offense value is 6.

a. Specific Offense Characteristics

1. If the offese involved 20 or more voters, ballots, or registrations, add 6.

2. If the offense involved giving information that the offender knows is false to an election examiner or hearing officer, or knowingly and willfully concealing a material fact from an election examiner or hearing officer, add 6.

b. Cross-References

1. If the violation involved death or physical injury, add the appropriate offense value from Part A, Offenses Involving the Person.

2. If any victim suffered psychological injury, add the appropriate offense value from Part A, Offenses Involing the Person (Psychological Injury).

3. If the violation involved damage to or taking of property, add the appropriate offense value from Part B, Offenses Involving Property.

Commentary

This section refers to conduct proscribed by 18 U.S.C. 241, 242, 245(b)(1)(A), 592, 593, 594 and 597, and 42 U.S.C. 1973 i(c), 1973i(d) and 1973i(e).

Sections H221–H229 deal with violations of political rights. These sections are different from the conduct involved in H211 in that, while the underlying conduct here may appear to be quite trivial and harmless, the interference with political process is significant. For instance, the registrar of voting may deliberately deprive an individual of his or her right to vote by "losing" a piece of paper. While some emphasis is given to the manner in which the right is deprived, a somewhat greater emphasis is given to the scope of the scheme. Evidence of unlawful conduct involving 20 or more voters is indicative of a very widespread scheme, warranting significant enhancement of the offense value.

Aggravating factors also are provided for three major ways of obstructing an election: by force, by deceptive or dishonest conduct, or by bribery, with the most severe sanction being applied to use of force. If the use of force results in personal injury or property damage, the applicable sections should be consulted and appropriate offense values added.

A distinction is made between those who are seeking to obstruct an election and those who are allowing their individual votes to be corrupted. While the latter conduct is illegal, it may be viewed as the lesser of wrongs and may be less deterrable. Persons who direct others to engage in corruptive conduct will have their sentences further enhanced by reference to the provisions in Chapter Three, Part A, Role in the Offense.

H222. *Interfering with a Federal Benefit for a Political Purpose.* The base offense value is 6.

a. Specific Offense Characteristics

1. If the conduct involved 20 or more votes, ballots, or registrations, add 6.

Commentary

This section refers to conduct proscribed by 18 U.S.C. 595 and 598.

The section follows the general scheme of the previous section by placing special emphasis on the scope of the scheme. There are no special aggravating factors for the means used to implement the scheme since the means themselves are very limited and described by the underlying statutes.

H223. *Missing Authority Over Personnel for a Political Purpose.* The base offense value is 6.

a. Cross-references

1. If the conduct adversely affected an individual in his/her employment, add 6 to the base offense value.

Commentary

This section refers to conduct proscribed by 18 U.S.C. 606.

The section aggravates the offense value in a case where the misuse of personnel involves an actual loss of employment, compensation, or position. A promise of promotion, actual promotion, or mere threat of adverse action are treated less severely.

H224. *Unlawfully Soliciting a Political Contribution or Making an Unlawful Political Contribution as a Federal Public Servant, or Soliciting or Receiving a Political Contribution in a Federal Building.* The base offense value is that determined below.

a. Specific Offense Characteristics

1. If the offender was a public servant who unlawfully solicited a political contribution from another person known to be a public servant or soliciting a political contribution in a federal building, the base offense value is 4.

2. If the offender was a public servant who unlawfully made a political contribution, the base offense value is 3.

3. If the offender unlawfully received a political contribution in a federal building, the base offense value is 2.

H225. *Making, Receiving, or Failing to Report an Excess or Otherwise Unlawful Campaign Contribution or Expenditure.* The base offense value is 6.

Commentary

These two sections (H224 and H225) refer to basically regulatory offenses. Guideline H224 covers conduct proscribed by 18 U.S.C. 602, 603 and 607. These statutes are primarily intended to protect the federal civil service from on-the-job political pressures. Minor distinctions are made in the guideline between civil servants who solicit other civil servants (the form most likely to be coercive), civil servants who make a contribution in a forbidden place, and other persons who collect the contribution in the wrong place.

Guideline H225 pertains to knowing and willful conduct proscribed by 2 U.S.C. 437g(d), regulatory offenses under the Federal Election Campaign Act.

H226. *Polling Armed Forces.* The base offense value is 6.

Commentary

This section refers to conduct proscribed by 18 U.S.C. 596. The purpose of the statute is to protect the right to vote by secret ballot among members of the Armed Forces.

H227. *Promise of Appointment, Employment, or Other Benefit for Political Activity.* The base offense value is 6.

Commentary

This section refers to conduct proscribed by 18 U.S.C. 599 and 600. The purpose of the statutes is to prevent the "buying" of votes or political support through promises of future federal employment, appointment, or other federal benefit.

H228. *Deprivation of Employment or Other Benefit for Political Contribution.* The base offense value is 6.

Commentary

This section refers to conduct proscribed by 18 U.S.C. 601.

The converse of H228, this guideline covers the deprivation of or threat to deprive federal employment or other federal benefits in order to gain a political contribution.

H229. *Solicitation From, or Disclosure of Names of, Persons on Relief.* The base offense value is 6.

Commentary

This section refers to conduct proscribed by 18 U.S.C. 604 and 605. The purpose of the statutes is to protect recipients of federal unemployment, welfare, and similar benefits from the solicitation of political contributions.

3. Privacy and Eavesdropping Offenses.

18 U.S.C. 1702
18 U.S.C. 1905
18 U.S.C. 2511
18 U.S.C. 2512
18 U.S.C. 331
21 U.S.C. 842
47 U.S.C. 605

H231. *Eavesdropping.* The base offense value is 6.

a. Specific Offense Characteristics

1. If the purpose of the conduct was to facilitate another offense, add 6, or the offense value from the applicable section for the conduct attempted or completed, whichever is greater.

2. If the purpose of the conduct was political gain, or economic gain other than in a domestic dispute, and is not covered by a.1. above, add 6 to the base offense value.

H232. *Manufacturing or Trafficking in an Eavesdropping Device.* The base offense value is 6.

a. Specific Offense Characteristics

1. If the offense involved more than 25 eavesdropping devices, add 12 to the base offense value.

2. If the offense involved more than six but not more than twenty-five eavesdropping devices, add 6 to the base offense value.

H233. *Possessing an Eavesdropping Device.* The base offense value is 4.

Commentary

These three sections refer to eavesdropping or conduct that facilitates eavesdropping.

If the offense involves actual eavesdropping, emphasis is given to the motivation behind the eavesdropping. The motivation may range from attempts to obtain information in domestic disputes to attempts at espionage. Obviously a range of sanctions is appropriate. The distinctions made, aggravating preparatory criminal conduct, and conduct motivated by the expectation of economic or political gain, cover a reasonable portion of the sentencing range.

Section H231 refers to conduct proscribed by 18 U.S.C. 2511 and 47 U.S.C. 605. If the conduct is intended to facilitate the commission of another offense, the base offense value is increased by 6 or the offense value applicable to the other offense committed or attempted, whichever is greater. If the purpose of the conduct is political or economic gain but the conduct does not amount to the facilitation of another offense, then the base offense value is 12. Otherwise, a base offense value of 6 is assigned this conduct.

Section H232 refers to conduct proscribed by 18 U.S.C. 2512 covering the making and selling of illegal eavesdropping devices. The offense value is enhanced according to the scope of the scheme. The person who makes a device at home and sells it to a neighbor receives a lesser sanction than an offender who is in the business of manufacturing or selling illegal eavesdropping devices.

Section H233 is the least serious offense in this series. It is merely preparatory to eavesdropping and represents no offense other than a potential one. Thus, it is assigned a lower offense value.

H234. *Obstructing Correspondence.* The base offense value is 6.

a. Cross-references

1. If the purpose of the conduct is to facilitate the commission of another offense, consult the corresponding guideline section and add the appropriate offense value.

H235. *Revealing Private Information Submitted for a Government Purpose.* The base offense value is 6.

a. Specific Offense Characteristics

1. If the offense was committed for political or economic gain or for the purpose of obstructing a governmental function, add 6 to the base offense value.

Commentary

Sections H234 and H235 involve additional privacy protections and related criminal conduct.

Section H234 pertains to the unlawful intercepting of correspondence, conduct proscribed by 18 U.S.C. 1702. While this conduct often involves theft from the mails, it is not necessary that theft be involved. Misrouting or other forms of delaying delivery are also covered. In addition, the underlying statute specifically criminalizes efforts to pry into the secrets of others. The offense value is enhanced when the purpose of the offense is to aid in the commission of another offense.

Section H235 refers to conduct proscribed by numerous statutes, including: 18 U.S.C. 1902, 1904, 1905, 1906, 1907, 1908; 7 U.S.C. 472, 608(d), 2105, 2157, 2276, 2619, 2623, 2706(c), 2904, 3204, 4307, 4504(k), 4534(c), 4810(c), 4908(c); 13 U.S.C. 214; 21 U.S.C. 842; 26 U.S.C. 7213(a)(1); 42 U.S.C. 2000g–2, 2181.

Section H235 deals with a sensitive area. Valuable information (trade secrets, crop reports, and so forth) is given to the government with an understanding that it will be kept confidential. This information is often vital to the operation of the government and business. In order to protect the flow of such information, it is necessary to punish and deter unlawful disclosures. While the base offense value is 6, if the aggravating factor of monetary or political gain is present, the conduct will be punished at a higher level.

Part K—Offenses Involving Public Order and Safety

1. *Explosives Offenses.*

18 U.S.C. 32
18 U.S.C. 34
18 U.S.C. 35
18 U.S.C. 842
18 U.S.C. 844
26 U.S.C. 5685

K211. *Failure to Report Theft of Explosives*

a. Cross-References

1. Treat this violation as a false statement and use the appropriate offense value from Part F, Offenses Involving Fraud and Deception.

Commentary

This section refers to conduct proscribed by 18 U.S.C. 842(k). Conduct involved is generally in the nature of a regulatory violation.

K212. *Improper Storage of Explosives.* The base offense value is 6.

a. Cross-References

1. If the violation resulted in death or physical injury, add the appropriate offense value from Part A, Offenses Involving the Person.

2. If the property of another was damaged or destroyed, add the appropriate offense value from Part B, Offenses Involving Property.

3. If the violation involved stolen explosives, add the appropriate offense value from Part B, Offenses Involving Property.

4. If the violation involved a false statement or document, add the appropriate offense value from Part F, Offenses Involving Fraud and Deception.

Commentary

This section refers to conduct proscribed by 18 U.S.C. 842(j).

Although the conduct involved is generally in the nature of a regulatory violation, where death or damage to property results from improper storage of explosive materials, such injuries are cross-referenced. (In such cases, the offense of conviction will usually be based upon the resultant injuries rather than a violation of 18 U.S.C. 842(j). However, the regulatory violation would be appropriate for sentencing consideration.)

In cases in which a false statement or record is used to conceal a theft of explosives, the conduct is cross-referenced to Part F, Offenses Involving Fraud and Deception.

K213. *Unlawfully Trafficking In, Receiving, or Transporting Explosives.* The base offense value is 6.

a. Specific Offense Characteristics

1. If the offender was a person prohibited by federal, state, or local law from possessing explosives, or if the offender knowingly distributed explosives to such person, add 24 to the base offense value.

b. Cross-References

1. If the violation involved stolen explosives, add the appropriate offense value from Part B, Offenses Involving Property.

2. If the violation involved a false statement or document, add the appropriate offense value from Part F, Offenses Involving Fraud and Deception.

Commentary

This section refers to various forms of conduct proscribed by 18 U.S.C. 842.

Many of the violations involved are in the nature of regulatory violations pertaining to licensees, or persons otherwise lawfully involved in transactions. Such persons are a potential source for explosive materials and represent a substantial danger to public safety in instances where they knowingly supply explosives to prohibited persons, or offer a market in stolen materials. Therefore, the base penalty in such instances is substantially enhanced. By the terms of 18 U.S.C. 842, the knowledge of offenders may be actual or constructive.

K214. *Threats Involving Explosives.* If the violation involved a threat or a maliciously false communication, the base offense value is 12.

Commentary

This section refers to conduct proscribed by 18 U.S.C. 844(e). Threats involving explosives are, by their nature, likely to be treated with seriousness and may interfere with or impair public or private activities. Under 18 U.S.C. 844(e), the potential maximum penalty for threats is five years, one-half the potential maximum ten-year penalty where the act is attempted or completed. The base offense value for such threats is set at one-half the minimum offense value determined in Part B, Offenses Involving Property, where property is actually destroyed by fire or explosives.

K215. *Unlawfully Possessing an Explosive in a Government Building.* The base offense value is 12.

a. Cross-References

1. If the violation involved stolen explosives, add the appropriate offense value from Part B, Offenses Involving Property.

Commentary

This section refers to conduct proscribed by 18 U.S.C. 844(g).

Possession of explosives in a government building can rarely be inadvertent or for reasons of personal security. The Commission considers this violation to constitute a substantial danger to public safety even though the statutory maximum prison term is one year.

K216. *Carrying or Attempting to Carry, or Placing an Explosive or Destructive Device, Firearm, or Dangerous Weapon Abroad an Aircraft* If the conduct involved:

1. an explosive, destructive device, or incendiary device, the base offense value is 24.

2. A loaded firearm or an unloaded firearm and ammunition for such firearm, the base offense value is 12.

3. any other firearm or other dangerous weapon, the base offense value is 6.

a. Specific Offense Characteristics

1. If the violation was committed willfully and without regard, or with reckless disregard for human life, and the conduct involved:

A. an explosive or destructive device, add 48 to the base offense value.

B. a loaded firearm or an unloaded firearm and ammunition for such firearm, add 36 to the base offense value.

C. any other firearm or dangerous weapon, add 24 to the base offense value.

b. Cross-References

1. If the violation resulted in death or physical injury, add the appropriate offense value from Part A, Offenses Involving the Person.

2. If any victim suffered psychological injury, add the appropriate offense value from Part A, Offenses Involving the Person (Psychological Injury).

3. If property was damaged, destroyed, or taken, add the appropriate offense value from Part B, Offenses Involving Property.

4. If the violation involved stolen explosives, firearms, or destructive or incendiary devices, add the appropriate offense value from Part B, Offenses Involving Property.

Commentary

This section refers to conduct proscribed by 18 U.S.C. 32, 33, and 49 U.S.C. 1472(l).

The possession of explosives or destructive or incendiary devices while aboard or attempting to board an aircraft can never be justified. Possession of such items constitutes a substantial danger to public safety and to commerce. A base penalty is therefore established to serve purposes of deterrence and incapacitation. In contrast to explosives, firearms are more likely to be possessed for purposes of personal security. Nevertheless, concerns for public safety, as well as the notice that is routinely provided to potential violators, warrant substantial penalties.

K217. *Shipping, Transporting or Receiving an Explosive with Knowledge or Intent that it be Used to Injure Persons or Property.* If the felonious purpose was completed, the base offense value is the value for such completed conduct. Otherwise, the base offense value is 18.

a. Cross-References

1. If the violation involved stolen explosives, add the appropriate offense value from Part B, Offenses Involving Property.

Commentary

This section refers to conduct proscribed by 18 U.S.C. 844(d).

Conduct under this section may involve cases in which offenders use explosives feloniously, in which instances there should not be a double counting with the offense value under K218. Conduct under this section may also involve cases in which offenders knowingly aid, abet or otherwise assist in the felonious use of explosives through transportation to or for others, in which instances the conduct will be punished the same as for the actual use.

K218. *Using or Carrying Explosives During or in Relation to Certain Crimes.* If the offender used or carried an explosive to commit:

1. a crime of violence or drug trafficking crime, as defined by 18 U.S.C. 924, as amended, the base offense value is 60;

2. a felony described in 1 above, the base offense value is 12.

a. Specific Offense Characteristics

If the offender has previously been convicted under 18 U.S.C. 844(h), add 60.

b. Cross-References

1. If the violation resulted in death or physical injury, add the appropriate value from Part A, Offenses Involving the Person.

2. If any victim suffered psychological injury, add the appropriate offense value from Part A, Offenses Involving the Person (Psychological Injury)

3. If property was damaged, destroyed, or taken, add the appropriate value from Part B, Offenses Involving Property.

4. If the violation involved stolen explosives, add the appropriate offense value from Part B, Offenses Involving Property.

Commentary

This section refers to conduct proscribed by 18 U.S.C. 844(h) and 26 U.S.C. 5685. The danger presented by explosives when used or carried in a violent or drug trafficking crime is reflected by a substantial penalty in such cases.

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2. *Firearms and Destructive Devices.*

18 U.S.C. 922
18 U.S.C. 923
18 U.S.C. 924
18 U.S.C. 949
26 U.S.C. 5861
26 U.S.C. 5871

K221. *Violations Involving the Manufacture, Receipt, Transportation, Distribution, Shipment or Possession of a Firearm, Destructive Device, Firearms Silencing or Muffling Device, or Ammunition.* The base offense value is 6.

a. Specific Offense Characteristics

1. If more than one weapon or device was involved, add the offense value from the following table. For the purpose of the following table, each weapon or device (not including the weapon or device used to establish the base offense value above) is to be converted to units as follows: one rifle=1; one handgun=3; one machine gun, short-barreled shotgun, short-barreled rafle, or firearm muffling or silencing device=10; one destructive device=20.

Units	Additional offense value
2-3	1
4-9	3
10-20	12
21-40	18
41 or more	36

2. If the violation involved a machine gun, short-barreled shotgun, short-barreled rifle, destructive device, or firearm muffling or silencing device, add 12 to the base offense value.

3. If the offender possessed, received or transported a firearm while in the employ of any person prohibited by federal, state, or local law from possessing a firearm, with knowledge of such prohibition, add 6 to the base of offense value.

4. If the offender was a person prohibited by federal, state, or local law from possessing firearms, or if the offender knowingly distributed firearms to such person, add 6 to the base offense value.

5. If the violation involved any firearm that had the importer's or manufacturer's serial number removed, obliterated, or altered, add 6 to the base offense value.

6. If the violation involved a handgun, add 3 to the base offense value.

b. Cross-References

1. If the violation involved a stolen firearm or destructive device, add the appropriate offense value from Part B, Offenses Involving Property.

Commentary

This section refers to various forms of conduct proscribed by 18 U.S.C. 922, 923, and 924, and 26 U.S.C. 5861, 5871.

The conduct involved is often in the nature of a regulatory violation. However, where additional offenses are involved, the appropriate penalties are added. The specific offense characteristics address conduct that by law constitute a particular danger to public safety. Many of those weapons addressed are either of particular concern to public safety, or contribute substantially to other criminal activity.

K222. *Shipping, Transporting or Receiving a Firearm with Knowledge or Intent that it be Used to Commit a Felony.* If the felonious use that was the object of the shipping, transportation, or receipt was completed, the base offense value is the value for such completed conduct. Otherwise, the base offense value is 18.

a. Cross-References

1. If the violation involved a stolen firearm or destructive device, add the appropriate offense value from Part B, Offenses Involving Property.

Commentary

This section refers to conduct proscribed by 18 U.S.C. 924(b).

The base offense value is the same as the penalty provided for completed felonious use of firearms. Conduct under this section may involve cases in which offenders use firearms feloniously, in which instances there should not be a double counting with the offense value under Section K223 below. Conduct under this section may also involve cases in which offenders knowingly aid, abet or otherwise assist in the felonious use of firearms through transportation to or for others, in which instances the conduct will be punished the same as for the actual use.

K223. *Use of Firearms or Armor-Piercing Ammunition During or in Relation to Certain Crimes.* If the offender use or carried a firearm during and in relation to any crime of violence, or drug trafficking or federal liquor law offense, the base value is 60.

a. Specific Offense Characteristics

1. If the offender used or carried a machine gun or a firearm equipped with

a firearm silencer or firearm muffler during and in relation to the commission of a crime of violence or drug trafficking offense, add 60 to the base offense value.

2. If the offender used or carried a firearm loaded with armor-piercing ammunition during and in relation to the commission of a crime of violence, add 60 to the base offense value.

3. If the violation is the offender's second conviction under 18 U.S.C. 924(c), add 60 to the base offense value.

4. If the violation is the offender's second conviction under 18 U.S.C. 924(c), and involved a machine gun or a firearm silencer or firearm muffler, add 120 to the base offense value.

b. Cross-References

1. If the violation resulted in death or physical injury, add the appropriate value from Part A, Offenses Involving the Person.

2. If any victim suffered psychological injury, add the appropriate value from Part A, Offenses Involving the Person (Psychological Injury).

3. If property was damaged or destroyed, add the appropriate value from Part B, Offenses Involving Property (Property Table).

Commentary

This section refers to conduct proscribed by 18 U.S.C. 924(c) and 929(a).

Specific offense characteristics reflect statutory mandatory minimum terms of incarceration. The seriousness of the conduct involved warrants substantial punishment for these offenders. In cases in which other injuries to persons or property result, there is a cross-reference to the guidelines specifically addressing those injuries.

3. *Transportation of Hazardous Materials.*

49 U.S.C. 1472(h)(2)
49 U.S.C. 1809(b)

K231. *Unlawfully Transporting Hazardous Material Aboard an Aircraft.* The base offense value is 6.

a. Specific Offense Characteristics

1. If the offender willfully and with intent to commit another crime, delivered the material or caused it to be delivered for transportation, add 42.

2. If the offender willfully, but without intent to commit another crime, delivered the material or caused it to be delivered for transportation, add 12.

b. Cross-References

1. If the violation resulted in death or physical injury, add the appropriate offense value from Part A, Offenses Involving the Person.

2. If property was damaged or destroyed, add the appropriate offense value from Part B, Offenses Involving Property.

Commentary

This section refers to conduct proscribed by 49 U.S.C. 1472(h)(2).

A distinction is made for sentencing purposes between those who recklessly violate 49 U.S.C. 1472(h)(2), those who do so with intent to commit another crime, and those who do so willfully but without other criminal intent.

K232. *Unlawfully Transporting Hazardous Material in Commerce.* The base offense value is 20.

a. Cross-References

1. If the violation resulted in death or physical injury, add the appropriate offense value from Part A, Offenses Involving the Person.

2. If property was damaged or destroyed, add the appropriate offense value from Part B, Offenses Involving Property.

Commentary

This section refers to conduct proscribed by 49 U.S.C. 1809(b).

The base offense value reflects the danger posed to public safety by unlawful transportation of hazardous materials.

4. *Rioting.*

18 U.S.C. 231
18 U.S.C. 1792

K241. *Engaging In, Inciting, or Attempting to Incite a Riot.* The base offense value is 6.

a. Cross-References

1. If the offender's conduct resulted in death or physical injury, add the appropriate offense value from Part A, Offenses Involving the Person.

2. If any victim suffered psychological injury, add the appropriate offense value from Part A, Offenses Involving the Person (Psychological Injury).

3. If the offender's conduct resulted in the destruction, damage, or theft of property, add the appropriate offense value from Part B, Offenses Involving Property.

K242. *Engaging In, Inciting, or Attempting to Incite a Riot Involving Persons in a Facility for Official Detention.* The base offense value is 24.

a. Cross-References

1. If the offender's conduct resulted in death or physical injury, add the appropriate offense value from Part A, Offenses Involving the Person.

2. If any victim suffered psychological injury, add the appropriate offense value from Part A, Offenses Involving the Person (Psychological Injury).

3. If the offender's conduct resulted in the destruction, damage, or theft of property, add the appropriate offense value from Part B, Offenses Involving Property.

Commentary

The base offense value for rioting reflects the danger posed to public safety by such conduct, and its potential effects upon personal and societal interests. In a prison environment, the danger to corrections officers as well as to other prisoners is substantial. When sentencing for rioting offenses, it is especially important that the sentence reflect the offender's role in the offense. Therefore, attention is specifically directed to Chapter Three, Part A, Role in the Offense.

5. *Miscellaneous Offenses.*

18 U.S.C. 13

K251. *Driving While Impaired.* The base offense value is 3.

a. Specific Offense Characteristics

If the violation involved other moving traffic violations, add 1 point for each.

b. Cross-References

1. If the violation resulted in death or physical injury, add the appropriate offense value from Part A, Offenses Involving the Person.

2. If any victim suffered psychological injury, add the appropriate offense value from Part A, Offenses Involving the Person (Psychological Injury).

K252. *Disorderly Conduct.* The base offense value is 2.

K253. *Public Intoxication.* The base offense value is 1.

Commentary

These violations are prosecuted in federal courts as assimilated crimes under 18 U.S.C. 13.

Part L—Offenses Involving Immigration, Naturalization, and Passports

1. *Immigration.*

8 U.S.C. 1324
8 U.S.C. 1325
8 U.S.C. 1326
8 U.S.C. 1327
8 U.S.C. 1328
29 U.S.C. 1816

Immigration offenses constitute a significant concern for federal authorities. The interests protected are: maintaining the integrity of the borders; safeguarding a policy of controlled immigration; and excluding certain undesirable aliens. The highest sanctions in these sections are reserved for those who aid or solicit others to enter the United States illegally.

L211. *Smuggling or Transporting an Unlawful Alien.* The base offense value is that determined below.

a. Specific Offense Characteristics

1. If the offender received anything of value directly for engaging in the conduct, then the base offense value is as follows:

No. of unlawful aliens	Base offense value
1-4	12
5-10	16
11-25	20
26-50	26
51 or more	32

2. If the offender had knowledge that one or more of the aliens was a member of the class of aliens that is excludable from the United States under 8 U.S.C. 1182(a)(27), (28), or (29), relating to the exclusion of aliens classified as subversives, the base offense value is the offense value from the table in subsection a.1 above, plus 2.

3. Otherwise, the base offense value is 50% of the offense value from the table in subsection a.1 above.

4. If the offender was armed with a firearm or other dangerous weapon during the commission of the offense, add 6 to the base offense value.

Commentary

This section refers to conduct proscribed by 8 U.S.C. 1324(a)(1), (2), and (4), 1327, 1328.

This section concerns the most serious immigration offenses and considers three main factors.

First, consideration is given to the motivation of the offender in aiding the entry of illegal immigrants. Those operating with a monetary motivation are given twice the sanction of those who act for other (*e.g.*, family) reasons. Those who violate immigration laws for monetary reasons pose the greatest problem since they are the ones most likely to engage in continuing activity.

Second, consideration is given to the scope of the scheme. While the number of illegal immigrants involved in the current offense will not always be an accurate barometer of the overall scope of the offender's involvement in immigration violations, it is a useful indicator.

Third, persons assisting the entry of aliens who are otherwise specifically excludable receive an additional penalty.

Consideration was given to adding an aggravating factor if the basic offense was one where one or more of the illegal immigrants had previously been deported. However, this type of provision would present problems of proof disproportionate to the benefits of any specific level of aggravation.

Being armed during the commission of the offense is treated as an aggravating factor because armed offenders pose a greater danger to law enforcement officers.

While no cross-reference is specifically listed for offenses involving the person, the Commission is aware that such harms do occur as a result of immigration offenses. The sentencing court in such cases may choose to go outside the guidelines.

L212. *Unlawfully Entering or Remaining in the United States as an Alien.* The base offense value is 6.

a. Specific Offense Characteristics

1. If the conduct included fraudulently acquiring or improperly using evidence of citizenship, add 6 to the base offense value.

Commentary

This section refers to conduct proscribed by 8 U.S.C. 1325 and 1326.

Where the conduct included the improper use of evidence of citizenship, an offense value of 12 is assigned. Otherwise, the offense value is 6. Whether the offender was previously deported was not included in the offense characteristics; it is included as an offender characteristic only to the extent that it resulted in previous convictions.

L213. *Harboring an Alien Unlawfully in the United States.* The base offense value is the value from L211 (Smuggling or Transporting an Unlawful Alien).

Commentary

This section refers to conduct proscribed by 8 U.S.C. 1324(a)(3).

This offense is treated the same as smuggling an unlawful alien (L211). Thus, the number of aliens and a profit motive are the primary determining factors.

The Commission is aware that harboring illegal aliens is sometimes motivated by political or humanitarian concerns. No distinction based on such motives has been included. Comments on the advisability of doing so is solicited.

L214. *Unlawful Employment of an Alien by a Farm Labor Contractor.* The base offense value is 3.

a. Specific Offense Characteristics

1. If the contractor did not have a valid certificate of registration, add 9.

Commentary

This section refers to conduct proscribed by 29 U.S.C. 1816.

An aggravating factor based on the number of aliens employed was considered but not included. It is expected that this offense will generally involve employment of multiple aliens. The offense value is substantially enhanced if the conduct (unlawful employment of illegal aliens) is by a farm labor contractor who is not properly registered with the U.S. Department of Labor.

2. *Naturalization and Passport.*

18 U.S.C. 1423
18 U.S.C. 1424
18 U.S.C. 1425
18 U.S.C. 1426
18 U.S.C. 1427
18 U.S.C. 1428
18 U.S.C. 1542
18 U.S.C. 1543
18 U.S.C. 1544
18 U.S.C. 1546

L221. *Trafficking in Evidence of Citizenship and Documents Authorizing Entry.* The base offense value is that determined below.

a. Specific Offense Characteristics

1. If the offense was committed for pecuniary gain, the base offesne value is that determined below:

No. of sets of documents	Offense value
1	12
2-10	16
11-25	20
26-50	26
51 or more	32

2. Otherwise, the base offense value is 12, or 50% of the offense value applicable from the table is subsection a.1 above, whichever is greater.

Commentary

This section refers to conduct proscribed by 18 U.S.C. 1425, 1426, 1427, and 1546.

This offense is assigned an offense value according to the scale of the conduct consistent with that of smuggling, transporting, or harboring an illegal alien.

The term "number of sets of documents" refer to the number of different identities that the documents provide, or, in the case of duplicate documents, the number of duplicate sets of documents.

L222. *Fraudulently Acquiring Evidence of Citizenship and Documents Authorizing Entry for Own Use.* The base offense value is 12.

Commentary

This section refers to conduct proscribed by 18 U.S.C. 1423, 1424, 1425, and 1546.

This offense is assigned an offense value consistent with unlawfully entering the United States by improper use of evidence of citizenship. Where both offenses occur, only the highest value should be considered.

L223. *Trafficking in a United States Passport.* The base offense value is determined by the following table:

No. of passports	Base offense value
1	14
2-10	22
11-25	26
26-50	32
51 or more	38

Commentary

This section refers to conduct proscribed by 18 U.S.C. 1542, 1543, and 1544.

This offense is assigned an offense value according to the scale of the conduct, and at a higher level than the conduct of trafficking in evidence of citizenship. Passports provide a means of identification that is widely accepted. But in addition to their use as a

means of illegal entry, they may also serve to hide the identity or aid the escape of a person engaging in other forms of illegal activity. For these reasons, the Commission has assigned this conduct a higher offense value.

L224. *Fraudulently Acquiring or Improperly Using a United States Passport.* If the conduct involved:

1. Fradulently acquiring a passport, or using a false, forged, or altered passport, or using a passport issued to another person, the base offense valued is 14.

2. Violating a condition or restriction pertaining to the passport, or a travel restriction, the base offense value is 6.

Commentary

This section refers to conduct proscribed by 18 U.S.C. 1543 and 1544.

Fraudulently acquiring a passport, or using a false, forged, or altered passport, or a passport issued to another, is assigned a base offense value of 14, which results in a mandatory minimum prison term of two months. A lower base offense value of 6 is assigned to violating a passport or travel restriction with an otherwise valid passport.

L225. *Failure to Surrender Canceled Naturalization Certificate.* The base offense value is 6.

Commentary

This section refers to conduct proscribed by 18 U.S.C. 1428.

L226. *Neglect or Refusal to Answer Subpoena.* The base offense value is 6.

Commentary

This section refers to conduct proscribed by 18 U.S.C. 1429.

Part R—Antitrust Offenses

15 U.S.C. 1
15 U.S.C. 2
15 U.S.C. 3

Introduction. These guidelines deal with violations of the antitrust laws, 15 U.S.C. 1, 2, 3. Although they are not unlawful in all countries, there is near-universal agreement that restrictive agreements among competitors, such as bid rigging, horizontal price fixing or horizontal market allocation, can cause serious economic harm. However, there is little agreement about the harmfulness of other types of antitrust violations; the law involving them is frequently unsettled and criminal prosecutions are infrequent. Consequently, the guidelines divide antitrust offense into two categories: Restrictive Pricing or Marketing Agreements Among Competitors (R211), and all other antitrust violations (R212).

R211. *Restrictive Pricing or Marketing Agreements Among Competitors*

The base offense value is determined by the table below:

Dollar value of commerce	Base offense value
Up to $1,000,000	14
$1,000,001–$3,000,000	16
$3,000,001–$10,000,000	18
$10,000,001–$25,000,000	21
$25,000,000–$50,000,000	24
Over $50,000,000	30

a. Specific Offense Characteristics

1. If the offender was previously convicted of an antitrust violaiton, add 12 ot the base offense value. (Prior convictions for antitrust offenses should not be counted in calculating the Chapter Three adjustment for prior record. Instead, use this specific adjustment and compute the general adjustment for prior record ignoring antitrust convictions.)

For purposes of applying the foregoing table, the volume of commerce attributable to any one participant in a conspiracy is the total volume of commerce done by all conspiring enterprises in the goods or services affected during the coirse of the consporacy divided by the number of such participants, or the volume of commerce actually done by the individual offender or his/her principal, whichever is greater. For sentencing purposes only, a conspiracy involving a fixed group of participants and a single type of product or service should be treated as a single violztion, regardless of whether there ar multiple agreements or meetings in furtherance of the conspiracy that might result in multiple indictments. For example, if four construction contractors meet on several occasions to rig bids on paving projects, the offense should be treated as a single conspiracy with the volume of the commerce determined by the total value of the paving contracts on which they rigged bids.

Subject to statutory limitations, large fines are suggested in addition to imprisonment. The recommended fine for an individual conspirator is 10% of the volume of commerce; for an organization, it is 50% of the volume of commerce. One hundred sixty hours of unpaid community service is suggested as an alternative to each $5,000 of fine only when it appears that the individual offender will not, over a reasonable period of time, be able to pay the fine.

Commentary

The Commission believes that the best way to deter individuals from committing this type of economic crime is through prison sentences of short to moderate length, coupled with large fines. the guideline is designed with that purpose in mind. Mandatory minimum prison sentences will be two months in the smallest cases and longer in large cases. Of course, considerably longer sentences will be possible. For cases involving repeat offenders, the guideline sentences to imprisonment can reeach the statutory maximum of three years. These impprisonment terms represent a substantial change in present practice, where only 15% of all ofenders convicted of antitrust violations are imprisoned and the average time served by those who are sentenced to a term of imprisonment is less than four months.

The offense values are not based on the amount of damage caused by the violation because damages are difficult and time-consuming to prove. The volume of commerce is a reasonable substitute for gauging the seriousness of the offense. The overlapping offense value categories are intended to reduce problems with accurate estimation of the value of commerce.

Substantial fines are an important part of the sanction. It is estimated that the average additional profit attributable to price fixing is 10% of the selling price. Because of the low probability of detection, the Commission has recommended that a fine equal to that amount be imposed on individual offenders, and a fine of five times that amount be imposed on organizations. Additional monetary penalties can be provided through private treble damage actions. When several individuals participate in a conspiracy on behalf of one employer, the sentencing court should consider apportioning the fine.

No increase in the sanction is provided for offenders who initiate an antitrust conspiracy, since such persons generally engage in a large volume of commerce and therefore will receive a larger punishment witout such an adjustment.

R212. *Antitrust Violations Not Involving Restrictive Pricing or Marketing Agreements Among Competitors.* The offense value is 10.

Commentary

The offense value for antitrust offenses that do not involve restrictive agreements among competitors has been set at the level of 10 because there is considerable debate over whether such offenses cause significant harm. Historically, the Department of Justice has given little emphasis to criminal prosecution of this type of antitrust violation. In assition, the law as to what constitutes a criminal violation in these areas is unsettled. Consequently, mandating imprisonment would be unfair. In any event, sentences in excess of six months would rarely be necessary. The civil system, which allows for privatee treble damage actions and injunctive relief, may provide a sufficient deterrent and remedial effect, particularly because non-horizontal practices generally are relatively difficult to conceal.

Part S—Securities Offenses

15 U.S.C. 77a–80b–17

Introduction. The federal securities laws provide a regulatory framework that is primarily enforced through administrative proceedings. Criminal prosecution generally focus on cases

involving intentional deception, insider trading, or other willfull misconduct that causes actual harm to the public. In addition, the securities laws contain numerous similar provisions that differ only in regard to the specific type of securities or the technical context in which the conduct occurs. For these reasons, this part of the guidelines is organized according to the functional characterization of the conduct rather than the specific code section that it may violate.

Because violations of the securities laws, although criminal, most frequently result in administrative sanctions, the guidelines provide for enhancements for offenders who have been subjected to previous administrative sanctions, in addition to the more general enhancements for prior criminal convictions.

S211. *Securities Fraud.* If the offender, in connection with the offer or sale of a security, made representations or omissions that are materially false or misleading, and the offender kenw such representations or omissions to be false or misleading or acted with reckless disregard as to their truth or falsity, then the base offense value is as follows:

Amount of loss to investors	Base offense value
Up to $30,000	14
$30,001–$100,000	16
$100,001–$300,000	18
$300,001–$500,000	22
$500,001–$1,000,000	26
$1,000,001–$3,000,000	30
$3,000,001–$5,000,000	34
$5,000,001–$10,000,000	40
$10,000,001–$25,000,000	46
Over $25,000,000	52

Special Minimum Value for Loss: The amount of loss to be utlitized in applying the table is 10% of the total offering price of the securities, or the actual loss to investors, whichever is larger.

a. Specific Offense Characteristics

1. If the security was unregistered and registration was required, add 3.

2. If the conduct violated an injunction or consent decree entered against the offender in an S.E.C. or state securities enforcement or administrative proceeding, add 6.

3. If an injunction or consent decree previously was entered against the offender in an S.E.C. or state securities enforcement proceeding relating to fraudulent or deceptive practices, add 3.

b. Cross-References

1. If the offender obtained or attempted to obtain something of value from another person by selling or offering to sell such person a security, with the intention of causing such persons to lose that investment, or without the intention of investing the funds substantially as disclosed, the offense value is that specified in Part F, Offenses Involving Fraud and Deception.

2. If the offender obstructed administrative proceedings or an investigation relating to the offense, add the offense value from S215 (Obstructing an S.E.C. Proceeding or Investigation).

Commentary

This guideline deals with certain conduct that violates 15 U.S.C. 66q, 78j or 80b–6. It also applies to convictions under 15 U.S.C. 78e (sale of unregistered securities) and 15 U.S.C. 77x (false statements in a registration statement) that involve an actual or attempted fraud. This guideline does not apply to insider trading, which is dealt with in S212.

Attempts to defraud that are unsuccessful (*i.e.*, offers that do not result in sales) or only partially successful should be punished in accordance with the provision entitled "Special Minimum Value for Loss," which scales the punishment to the size of the offering. The same provision ensures that offenders who make a fraudulent offering will be punished according to the size of the offering even if the investment results is no loss to investors. A lesser punishment is specified for offers that do not result in sales because the sale of the security would not necessarily result in injury to investors. Moreover, the inability to market the offering suggests that the disclosure adequate to dissuade investors was made or there was compliance with other regulations sufficient to enable the S.E.C. to stop the offering.

The securities laws prohibit a variety of conduct that would not necessarily have been unlawful at common law. However, many of the securities frauds that are prosecuted, including "boiler-room" operations and other offerings of what are essentially non-existent securities are as a practical matter no different from ordinary frauds. Such frauds, which involve a deliberate intent to steal, result in a complete waste of resoures, rather than merely a misallocation of investment funds due to misinformation. They are more harmful, more culpable, and more difficult to deter, and are therefore punished more severely by means of a cross-reference to the guidelines for Offense Involving Fraud and Deception.

This guideline provides for a mandatory minimum prison sentence of at least two months.

Because securities law violations most often result in administrative rather than criminal sanctions, the offender's record of criminal convictions does not adequately capture prior conduct. Accordingly, enhanced punishments are provided for offenders who previously have been adjudicated in an administrative proceeding to have violated the securities laws.

Because the requirements of registering securities is intended to provide some protection to investors, increased punishment is provided when the offering is unregistered. This adjustment does not apply when this guideline is applied by cross-reference to an offense that does not involve the offer of a security.

S212. *Insider Trading.* The base offense value is specified below.

Amount of gain to offender and persons to whom offender knowingly provided inside information	Base offense value
Up to $10,000	12
$10,001–$30,000	14
$30,001–$100,000	16
$100,001–$300,000	18
$300,001–$500,000	22
$500,001–$1,000,000	26
$1,000,001–$3,000,000	30
$3,000,001–$5,000,000	34
$5,000,001–$10,000,000	40
$10,000,001–$25,000,000	46
Over $25,000,000	52

a. Specific Offense Characteristics

1. If the offender was not an officer, director, or employee of, or attorney, auditor in investment banker for, a company in the securities of which he/she traded, or an acquiring or target company, and the offender was not expressly obligated by contract to keep the information confidential, subtract 3.

2. If the conduct violated an injunction or consent decree entered against the offender in an S.E.C. or state securities enforcement or administrative proceeding, add 6.

3. If an injunction or consent decree previously was entered against the offender in an S.E.C. or state securities enforcement proceeding relating to fraudulent or deceptive practices, add 3.

b. Cross-References

1. If the offender obstruct administrative proceedings or an investigation relating to the offense, add the offense value from S215 (Obstructing an S.E.C. Proceeding or Investigation).

Commentary

This guideline applies to conduct that violates 17 CFR 240.10b-5 (as incorporated by 15 U.S.C. 78j(b)) solely because it involves a misuse of "inside" information.

This offense is unique to the securities laws and is the subject of considerable controversy. Although the prevailing view is that insider trading should be prohibited, not everyone agrees, and other countries have not outlawed the practice. It is generally agreed, however that insider trading is neither as harmful not as reprehensible as outright deception.

With two exceptions, the Commission has nonetheless set the sanctions for insider trading at the same levels as securities fraud. This is because insider trading is more difficult to detect than deceit. The exceptions are for (1) offenses involving small profits and (2) offenses where the offender, because of his/her position, might not have appreciated the duty to refrain from trading on the basis of inside information. The

changing state of the law interpreting the extent of the duty to refrain from trading on inside information justifies a lower penalty for those persons who are more likely to be unaware that such conduct is criminal. However, when the volume of trading becomes large, it is difficult to accept the argument that the behavior was innocent; accordingly, the discount for such offenders does not increase with the amount of profit.

In most of the cases that currently are prosecuted, this guideline will mandate a minimum term of imprisonment of two months or longer. Imprisonment is not required in every case because it may be possible to provide adequate deterrence and punishment without imprisonment in cases involving relatively small profits because the Insider Trading Sanctions Act provides for a civil penalty of treble the gain; in cases involving small profits, many offenders might be able to pay the penalty.

When multiple trades are involved, the gains should be added together. Losses as a result of insider trading should not be offset against gains.

S213. *Market Manipulation (Other than Insider Trading).* The offense value is that for Securities Fraud specified in S211.

Commentary

This guideline deals with certain forms of conduct that may violate 17 CFR 240.10b–5, as incorporated by 15 U.S.C. 78j(b), but is not characterized as insider trading. It also applies to conduct proscribed by 15 U.S.C. 78a(1)–(5) or 80b–6.

The offense is treated separately for clarity and completeness. It provides a cross-reference to the guideline for securities fraud, of which market manipulation is one form. The cross-reference in S211 to the guidelines for Offenses Involving Fraud and Deception will apply in some cases.

S214. *Fraudulent or Deceptive Purchases and Tender Offers.* The offense value is that for Securities Fraud specified in S211.

a. Cross-References

1. If the offender did not intend to deliver the consideration promised or if he/she materially misrepresented the value of the consideration, the base offense value is that specified in Part F, Offenses involving Fraud and Deception.

Commentary

This guideline applies to certain forms of conduct that may violate 15 U.S.C. 78n(a), 78n(e) of 17 CFR 240.10b–5, as incorporated by 15 U.S.C. 78j, as well as more general fraud statutes.

This conduct is another form of Securities Fraud and is broken out for clarity and completeness. The only difference between this section and S211 is in the wording of the cross-reference to the guidelines for Offenses Involving Fraud and Deception.

S215. *Obstructing an SEC Proceeding or Investigation.* The base offense value is 12.

a. Specific Offense Characteristics

1. If the offender committed or suborned perjury, whether orally or in writing, the base offense value is 16.

2. If the offender provided false material written information (not under oath) or destroyed evidence, the base offense value is 14.

3. If the conduct of the offender violated an injunction or consent decree entered against the offender in an SEC or state securities enforcement or administrative proceeding, add 4.

4. If an injunction or consent decree previously was entered against the offender in an SEC or state securities enforcement proceeding relating to fraudulent or deceptive practices, add 2.

Commentary

This guideline applies to conduct that is frequently prosecuted under 18 U.S.C. 1505. However, a separate guideline tentatively has been established because the context in which the obstruction occurred provides valuable information regarding the appropriate punishment. If a more serious obstruction of justice is involved, such as one involving the use or threatened use of violence, consult the appropriate guidelines section.

This form of behavior is classified into three levels: perjury, submitting false written information, and other. Perjury is punished most severely because of the need to protect the integrity of the adjudicative process. Providing false written evidence is punished more severely than the remaining forms of conduct because of the greater risk for error when the information is not provided formally. Perjury and submitting false written statements have mandatory minimum terms of imprisonment of two or four months because of the need to ensure the effectiveness of the regulatory process in protecting investors and markets. Other forms of obstruction do not carry a mandatory minimum, but a sentence to some term of imprisonment usually would be appropriate.

S216. *Violating an Injunction or Consent Decree.* The base offense value is 16, or the offense value for the underlying conduct (as aggravated for violating the injunction or decree), whichever is greater.

Commentary

As with S215, a separate guideline tentatively has been established for violating an injunction or consent decree because the context of the violation provides useful information regarding the appropriate punishment.

A minimum term of imprisonment of four months is required because of the need to ensure that injunctions are obeyed and the administrative enforcement process, which is the backbone of securities regulation, is effective.

S217. *Regulatory Violations.* The base offense value is 10.

a. Specific Offense Characteristics

1. If the conduct involved an intentional misrepresentation to the Securities and Exchange Commission, the base offense value is 14.

2. If an injunction or consent decree previously was entered against the offender in an S.E.C. or state securities enforcement proceeding relating to fraudulent or deceptive practices, add 4 to the base offense value.

Commentary

This guideline applies to registration and reporting violations of the securities laws that are not described in S211–S216. These include, for example, violations of 15 U.S.C. 78dd (transactions on unregistered exchanges) and 15 U.S.C. 78f (national securities exchanges); most violations prosecuted under 15 U.S.C. 78ff (general penalties provision); and non-fraudulent violations prosecuted under 15 U.S.C. 77e (unregistered securities) and 15 U.S.C. 77x (general penalties and false statements in registration statements).

These violations may be highly technical and their criminal prosecution is infrequent except when actual fraud is involved. Short mandatory terms of imprisonment are provided for those violations that involve intentional misrepresentation. Such violations undermine the regulatory process and pose the greatest risk of harm to investors. Such offenses may be prosecuted under 15 U.S.C. 78ff.

Chapter Three—Offender Characteristics

Overview

Chapter Three identifies offender characteristics that aggravate or mitigate a sentence. These adjustments are applied to the total offense value determined by Chapter Two. If more than one adjustment is applicable in a given case, follow the procedures set forth in Chapter One, Part VI, Application Instructions.

Part A provides aggravating and mitigating adjustments based upon the offender's role, level of relative involvement, and, if applicable, the nature of the criminal group or enterprise involved.

Part B identifies several aspects of an offender's post-offense conduct that aggravate or mitigate a sentence. Sentencing enhancements are provided in Section 1 for an offender who engages in or suborns perjury or obstructs justice in connection with the investigation, prosecution, or sentencing for the underlying offense(s). An offender who accepts responsibility for his or her conduct and takes objective steps toward rehabilitation may be eligible for

a sentencing reduction under the provisions of Section 2. An offender may also qualify for a sentencing reduction if he or she provides assistance to authorities in accordance with the provisions of Section 3.

Part C provides for an enhancement of sentence if an offender has a prior history of criminal involvement. The adjustment takes into consideration the extent, seriousness, and recentness of the offender's prior criminal conduct.

Part D is reserved for the subject of plea agreements. The public is invited to comment and submit proposals on the policy issues relating to plea agreements presented in Chapter Six, Part C.

Public comment is also requested in Chapter Six, Part F, on the treatment of serious aggravating and mitigating factors that occur infrequently, such as brutal behavior or serious mental disability not rising to the level of a defense.

Part A—Role in the Offense

A311. If the offender was in a position of control over a criminal enterprise or organization, multiply the total offense value from Chapter Two by a number between 1.5 and 2 , depending upon the size of the enterprise and the nature of its criminal activities. If the offender is convicted under 21 U.S.C. 848, the total offense value from Chapter Two should be multiplied by 2.

The appropriate numerical multiplier shall be determined by the sentencing judge upon findings that may include, but are not limited to, the following considerations:

a. derivation of all or most of the income or resources of either the offender or the organization from illegal activities;

b. involvement by the offender or the organization in illegal activities on an ongoing basis;

c. involvement by the offender or the organization in more than one type of illegal activity;

d. size of the organization's illegal operation or scope of its illegal activities; and

e. use of violence, threats of violence, coercion, or intimidation to recruit and control subordinates in the organization or to procure other persons to perform illegal acts.

A312. If the offender directed or supervised another person or persons in the commission of the offense, or used a special skill, trade, training, education, or public position to facilitate the commission of an offense, multiply the total offense value from Chapter Two by 1.2.

A313. If the offender was either the sole participant or share comparable responsibility with another offender or offenders, no adjustment is made to the total offense value from Chapter Two.

A314. If the offender was a minor participant in the offense, multiply the total offense value from Chapter Two by a number within a range of .5 to .7, depending upon the the offender's relative culpability and the nature of the criminal conduct involved.

Commentary

Section A311 applies to offenders who are in positions of control over groups that engage in serious ongoing criminal activity. For purposes of this provision, control and the exercise of decision-making authority are significant considerations, rather than affixing a label such as "leader," "organizer," "financier," or "kingpin."

Engaging in a continuing criminal enterprise under 21 U.S.C. 848 presents one of the most aggravated forms of leadership of a criminal group. Conviction under that statute automatically establishes the applicability of a multiplier of 2.

The nature and scope of the criminal organization must be evaluated by the sentencing judge to determine the appropriate multiplier in the 1.5 to 2 range for an offender who is in a position of leadership or control.

Section A311 applies only if the criminal organization and the offender's position are relevant to the offense of conviction. For example, a leader of a motorcycle gang that is involved in the trafficking of narcotics, firearms, and stolen property would not be subject to this sentencing adjustment by reason of a conviction for an offense unrelated to gang activity.

Section A312 applies to an offender who is the most or more culpable member of any group that commits a crime, without regard to the size or nature of the group. A manager or supervisor in an otherwise legitimate business, or one of several casual acquaintances who directs or supervises the commission of a crime, qualify for this sentencing enhancement. Titles are not controlling. It is the offender's role in the offense that is significant. Objective factors of leadership may include recruitment of other offenders, planning of the offense, exercise of decision-making authority, use of a particular expertise (criminal, professional, or occupational), or right to claim a larger share of the fruits of the crime than other participants.

Section A312 also enhances the sentence of an offender who uses a special skill, training, education, trade, or public position to facilitate the commission of a crime. Thus, a pilot who smuggles cocaine from Colombia in a private plane, a doctor who prepares phony medical reports in an automobile accident insurance fraud, or a deputy sheriff who conspires with private citizens to commit a civil rights violation would be subject to this provision. A sole participant in an offense who uses professional expertise for criminal purposes qualifies for this adjustment.

Section A313 applies to a sole participant in an offense and to offenders who have comparable roles in the offense.

Section A314 applies to an offender who has a limited role in an offense that is planned, directed, and controlled by another person or persons. A minor participant is one who is not in a position to make decisions affecting the offense or to benefit substantially from its commission. In determining the appropriate numerical multiplier, the sentencing judge shall evaluate and made findings regarding the nature of the offender's role and conduct in relation to other participants.

Part B—Post-Offense Conduct

1. *Obstruction of Justice and Perjury.*

B311.. If the offender obstructed or attempted to obstruct the administration of justice, multiply the total offense value from Chapter Two by a number between 1.1 and 1.4, to be determined by the nature of the conduct.

The appropriate numerical multiplier shall be determined by the sentencing judge upon findings that may include, but are not limited to, the following considerations:

a. whether the offender knowingly and intentionally destroyed or concealed or attempted to destroy or conceal material evidence;

b. if the offender directed or procured or attempted to direct or procure another person to destroy or conceal material evidence;

c. if the offender knowingly and intentionally offered untruthful testimony concerning a material fact, or knowingly and intentionally produced or attempted to produce an altered, forged, or counterfeit document or record before a grand jury proceeding, during trial, or during a sentencing hearing;

d. if the offender directed or procured or attempted to direct or procure another person to offer perjured testimony, or to produce an altered, forged, or counterfeit document before a grand jury proceeding, during trial, or during a sentencing hearing.

B312. Section B311 shall not be applied to enhance a sentence if the United States Attorney states an intention to prosecute for the same conduct. An offender cannot later be sentenced in an independent prosecution for conduct previously used as a basis for application of this section.

Commentary

This section provides an aggravating adjustment for an offender who engages in conduct calculated to unlawfully mislead or deceive authorities and/or those involved in a judicial proceeding. Before a sentence may be aggravated under this section, the sentencing judge must find the specific conduct present by a preponderance of evidence and determine the appropriate multiplier according to the nature of the conduct and its impact on the administration of justice.

The aggravation of a sentence because of perjury or obstruction of justice is in recognition of a basic principle that no one has a right to lie or deceive or direct others to do so or to destroy evidence of a crime. While no offender is obligated to give a statement, testify, or produce evidence, an offender should not present a fabricated defense or suborn perjury. For example, this provision applies to an offender who alters records or other evidence or procures false alibi testimony. A defendant's denial of guilt is not a basis for application of this provision.

2. *Acceptance of Responsibility.*

B321. If the offender demonstrates by a preponderance of evidence that he or she recognizes and sincerely accepts responsibility for the offense(s), the sentencing judge may reduce the offender's sentence by an amount the judge deems appropriate, provided the reduction does not exceed 20 percent of the total offense value from Chapter Two. Acceptance of responsibility for the offense(s) may be established by conduct that includes, but is not limited to, the following:

1. voluntarily surrendering to authorities before charges are filed or an arrest warrant is issued;

2. voluntarily making restitution of a substantial nature before sentencing;

3. voluntarily admitting actual involvement in the offense(s);

4. voluntarily providing assistance to authorities in the recovery of fruits and/or instrumentalities of the offense(s); or

5. any other conduct that establishes by a preponderance of evidence that the offender sincerely accepts responsibility for the offense(s) and has undertaken objective steps toward rehabilitation.

B322. An offender may qualify for a reduction under this section without regard to whether the offender's conviction is based upon a guilty plea or a finding of guilty by a court or jury. An offender who enters a guilty plea is not automatically entitled to a reduction under this section.

Commentary

The reduction of a sentence available under B321 recognizes a number of societal interests. The offender who sincerely accepts responsibility for wrongdoing, who takes affirmative steps toward disassociation from past criminal conduct, and who attempts to rectify the harm done to others is entitled to receive recognition for these socially desirable actions. This conduct also is a sound indicator of rehabilitatibe potential.

The sentencing judge is in a unique position to evaluate whether the offender's post-offense conduct is sincere or merely self-serving. For this reason, the sentencing judge is not required to find that conduct such as that described actually justifies a sentencing adjustment. If the sentencing judge finds that the offender is entitled to a reduction, the amount of the reduction is totally within the discretion of the sentencing judge. However, in no event may the reduction exceed 20 percent of the adjusted offense value for an offense.

While a plea of guilty may be some evidence of the offender's acceptance of responsibility for the offense(s), a guilty plea does not automatically entitle an offender to an adjustment. The availability for the reduction under B321 is not governed by the plea entered by the offender.

Offenders who plead guilty currently receive substantially lower sentences than those who are sentenced after a trial. The rationale for this disparity is that a guilty plea "is the first step toward rehabilitation," that such pleas conserve the resources of the criminal justice system, and that witnesses (particularly victims) are spared the stress of a trial. The Commission requests comment whether this practice should be perpetuated by providing an automatic sentencing reduction for a guilty plea or whether the approach suggested by Part 2 should be followed.

3. *Cooperation.*

B331. If the United States Attorney certifies that the offender provided truthful and significant information regarding the criminal activities of another person or persons, multiply the total offense value from Chapter Two by .8.

B332. If the United States Attorney certifies that the offender actively assisted authorities in an ongoing investigation or provided truthful and significant testimony before a grand jury or in a court proceeding, multiply the total offense value by .7.

B333. If the United States Attorney certifies that the offender provided exceptional assistance to law enforcement authorities, multiply the total offense value by .6.

Commentary

The Supreme Court has recognized that an offender's willingness to cooperate with authorities is a valid consideration at sentencing. Cooperation by knowledgeable offenders is particularly valuable in the investigation and prosecution of major narcotics offenses and other organized criminal activity.

Sections B331, B332, and B333 are mutually exclusive; the United States Attorney shall select the most appropriate category if an offender's cooperation overlaps several categories. The certification of the prosecuting United States Attroney is required before the offender is eligible for the adjustments set forth in B331, B332, or B333, either at sentencing or for a reduction of sentence under the new provisions of Rule 35, Federal Rules of Criminal Procedure that become effective simultaneously with the guidelines. These provisions apply whether the offender's cooperation is in the same case, a related case, or wholly unrelated to the offense committed by the offender.

Section B333 provides for a 40 percent sentencing reduction for exceptional cooperation, such as the offender who provides valuable information and assistance in the early stages of a major investigation or who performs undercover work or testimony under life-threatening or personally dangerous circumstances.

The certification may be made under seal if it contains information that endangers any person, including the offender, or jeopardizes an ongoing investigation. However, certifications of cooperation shall be subject to the rules of discovery otherwise applicable in criminal cases.

The sentencing judge shall apply the cooperation adjustment in accordance with the certification of the United States Attorney, unless a finding is made that the certification was made in bad faith or was made in an effort to circumvent the guidelines.

Cooperation by an offender is often a subject of plea agreements. The Commission recognizes, however, that occasional disputes may arise over the existence, level, or quality of an offender's cooperation. The Commission requests specific comment accompanied by suggestions for resolution of this issue.

Part C—Criminal History

A sentence adjustment for an offender's criminal history can be justified on both just punishment and utilitarian grounds. From a just punishment perspective, repeat offenders who have already experienced intervention from the criminal justice system has ignored warnings. Therefore, they are deemed more blameworthy than offenders who have not been confronted previously. The amount of the sentence adjustment that is justified by a criminal history is a subject of debate, but many just punishment proponents accept some sentence modification for criminal record.

Crime control arguments provide a stronger justification for using criminal history to adjust a sentence. Criminal record is a strong predictor of recidivism. As a result, it is often used to increase the length of imprisonment and the level of supervision for offenders, thus addressing incapacitation and deterrence respectively.

The major components of the criminal history adjustment are the number and severity of sanctions imposed for prior convictions, and whether the offender was under criminal justice control during the commission of the current offense or had recently been released from custody. These components reflect the extent, seriousness, and recentness of criminal history. An additional item deals with the use of heroin, opiate derivatives, and other dangerous drugs. A decay factor is used to eliminate old offenses from the criminal history adjustment.

The resulting criminal history score does not include a specific item that

gives weight to a pattern of violent criminal behavior. Neither does it include any measure of unadjudicated factors that might indicate ongoing criminal behavior, such as prior failures to comply with administrative orders in major economic crime offenses, and evidence of significant income for which there is no legitimate source. Because these factors are present in a relatively small number of cases and tend to be context-specific, they are addressed in policy statements.

1. Criminal History Score.

The sum of the criminal history points from items A through E below provides the criminal history score. The definitions and instructions in Subpart 3 apply to the determination of criminal history points.

A. Score at least 3 points for each prior sentence of imprisonment for a maximum term of more than one year. For each such term:

1. score 3 points if the offender served less than three years;

2. score 4 points if the offender served three or more years but less than five years;

3. score 5 points if the offender served five or more years.

B. Score 2 points for each prior sentence of imprisonment for a maximum term of 60 days or more that is not counted above.

C. Score 1 point for each prior sentence that is not counted above.

D. Score 2 points if the offender committed the current offense:

1. while under any form of criminal justice control, including probation, parole, or supervised release, custody or escape status, or any form of release pending trial, sentencing, or appeal; or

2. within three years after any release from imprisonment on a sentence counted in (A) above; or within three years after the imposition or commencement of any sentence counted in (B) above.

E. Score 3 points if the offender had a positive urine test for heroin or any other opiate, cocaine, or PCP either at the time of arrest, during the pretrial release period, or during the presentence release period; or score 3 points if the offender is determined to have been an abuser of heroin or any another opiate, cocaine, or PCP within ten years of the current conviction.

2. Special Conditions: Policy Statements.

C321. If the offense of conviction is a violent offense or a controlled substance offense and the offender has at least two prior felony convictions, each of which is either a violent offense or a controlled substance offense, then the sentence shall equal the maximum term of imprisonment authorized for the offense. This policy statement implements 28 U.S.C. 994(h). Violent offenses are the state and federal counterpart of offenses in Chapter Two, Part A, Offenses Involving the Person, and any other offense that involves force or threat of force against a person, including burglary of a dwelling. Controlled substance offenses are described in Section 401 of the Controlled Substance Act (21 U.S.C. 841); Sections 1002(a), 1005, and 1009 of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 955, and 959); and Section 1 of the Act of September 15, 1980 (21 U.S.C. 955a).

C322. If it can be established by a prior failure to comply with an administrative order, a civil adjudication, or a preponderance of other evidence that the offender previously engaged in similar conduct (other than conduct that resulted in a previous criminal conviction), aggravation of the sentence beyond the guideline range shall be warranted.

C323. If it is determined by a preponderance of the evidence that the current offense was part of a pattern of criminal conduct from which the offender derived a substantial portion of his or her income, aggravation beyond the guideline range shall be warranted. This policy statement implements 28 U.S.C. 944(i)(2).

C324. If the offender knowingly fails to appear before a court as required by the conditions of his release, aggravation of the sentence beyond the guideline range shall be warranted; or, if the offender knowingly fails to surrender for service of sentence pursuant to a court order, he shall be sentenced to a mandatory consecutive sentence which may exceed the guideline range. This policy statement is consistent with 18 U.S.C. 3146.

3. Definitions and Instructions for Scoring Criminal History.

The following definitions and instructions apply to the scoring of criminal history points.

Prior Sentences. A prior sentence refers to a sentence imposed prior to sentencing on the current offense for conduct that is not part of the conduct constituting the current offense. If two or more prior sentences are imposed concurrently, they are to be treated as one sentence for purposes of the criminal history score, using the longest sentence of imprisonment imposed. If two or more prior sentences are imposed consecutively, they are to be treated as separate sentences for purposes of calculating the criminal history score.

When determining time served, the probation officer shall assume that the offender served one-third of the maximum term imposed, or one-third of the statutory maximum term when the maximum term was not stipulated. The offender shall be allowed to rebut this assumption and establish the fact that less time was served. However, the offender may not rebut the assumption if less time was served because the offender escaped or because the prison portion of a sentence has not yet been completed.

Sentences to Imprisonment. A sentence to imprisonment refers to an executed sentence of imprisonment, not one that has been suspended. If part of a sentence of imprisonment has been suspended, the term "sentence to imprisonment" refers to the part that has not been suspended.

Sentences for Non-Felony Offenses. Sentences based on convictions for certain non-felony offenses are to be counted only if the sentence was imprisonment for 30 days or more, or probation for at least one year. These are:

Criminal contempt of court
Disorderly conduct and similar offenses
Driving without a license or with a revoked or suspended license
False information to a police officer
Fish and game violations
Gambling
Loitering
Non-support
Prostitution
Resisting arrest
Trespassing

Sentences based on convictions for certain other non-felony offenses are not to be counted. There are:

Hitchhiking
Local regulatory violations
Public intoxication and similar offenses
Minor traffic infractions
Vagrancy

Juvenile Sentences. Juvenile sentences are counted for offenses against persons, including residential burglary and drug trafficking.

Decay Factor For Prior Sentences. If there exists a ten-year period during which the offender neither sustained a sentence of imprisonment including a maximum term of more than one year, nor is known to have served time in confinement on a sentence of imprisonment including a maximum term of more than one year, sentences imposed prior to the beginning of that ten-year period shall not be counted. Convictions for crimes of violence and

convictions for crime involving the distribution of drugs are, however, always counted. Violent offenses are the state and federal counterpart of offenses in Chapter Two, Part A, Offenses Involving the Person, and any other offense that involves force or threat of force against a person, including burglary of a dwelling. Controlled substance offenses are described in Section 401 of the Controlled Substance Act (21 U.S.C. 841); Sections 1002(a), 1005, and 1009 of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 955, and 959); and Section 1 of the Act of September 15, 1980 (21 U.S.C. 955a).

Diversionary Dispositions. A judicial determination of guilt or an admission of guilt before a judicial body for an otherwise countable offense shall be counted as a sentence under 1.C above, even if a conviction or sentence is not formally entered. This provision includes diversionary dispositions where the offender's guilt has been established but the offender is diverted prior to entry of a record of conviction.

Sentences Resulting From Military Offenses. Sentences resulting from military offenses are counted if they result from general or special court-martial for conduct that is prohibited by civilian criminal law (*e.g.*, theft, assault). Sentences resulting from summary court-martial or Article 15 proceedings are not counted. Sentences for conduct that has no counterpart in civilian criminal law (*i.e.*, strictly military offenses) are not counted.

Sentences Resulting From Foreign Convictions. Sentences resulting from foreign convictions are counted if they are for conduct that would be criminal if committed in the United States.

Sentences Resulting From Tribal Court Convictions. Sentences resulting from tribal court convictions are counted under the same conditions as sentences from any other convictions.

4. Effect of Criminal History Score.

The Commission faces a difficult problem: How should criminal history be used to promote efficiency and justice in sentencing? From a modified deserts standpoint, criminal record would play a role that is consistent with the increased blameworthiness of habitual offenders. However, no formula exists for determining how much a criminal record should matter when fixing blame. From a deterrence viewpoint, recidivists may be demonstrating their recalcitrance, and thus, may require more severe sentences. An alternative conclusion is that recidivists are not deterred by available sanctions, so from an efficiency perspective, enhanced sentences are wasteful of corrections resources. A third view is that criminal record should matter because offenders with serious criminal histories are likely to continue to victimize the public if given the opportunity, and thus, prison should be used to incarcerate offenders for periods of time during which they would otherwise be committing crimes. The quandary raised by this third view is how the Commission should determine which offenders are likely to recidivate and how to determine the appropriate term of incarceration.

The Commission invites public comment on the appropriate relationship between criminal record and sentence. To facilitate discussion, the Commission temporarily has adopted a criminal history score table that approximates the role that criminal history has played in past sentencing decisions. The Commission does not assume that replicating past practices is optimal. For example, from a pure incapacitation standpoint, an offender would be incarcerated for a long time only when the risk posed is sufficient to justify the prison costs. Otherwise, if the risk is not commensurate with the cost of incarceration, the offender would be freed. This suggests that past sentencing practices may be inconsistent with both the goals of pure incapacitation, and other pure sentencing objectives. Nevertheless, past practices provide a useful focal point for discussion.

A review of past practices indicates that the additional time attributable to criminal record is not a simple multiple of the base sentence. Rather, and perhaps surprisingly, the percentage increase attributable to criminal record is largest for offenders convicted of the least serious crimes and smallest for offenders convicted of the most serious crimes. The relationship between time served and criminal record is approximated in the criminal history score table.

The criminal history score table is somewhat complex. An alternative approach, which retains the differential proportionality across offense levels, is to provide step-by-step instructions for translating the criminal history score into as sentence enhancement. An example using this approach is shown below. In practice, other formulations are possible.

Both the criminal history score table and the step-by-step formulation have merit. The Commission seeks comment about which approach is more desirable, and seeks recommendations about the appropriate numbers to be used.

Criminal History Score Table. The criminal history score is the sum of the points from 1.A above. This table adjusts the offense value from Chapter Two by adding the appropriate number of points as set forth in the following table.

Criminal history score	Base offense value				
	1-17	18-23	24-31	32-59	60+
0	0	0	0	0	0
1	1	2	3	5	
5					
2	2	4	6	9	9
3	2	6	9	14	14
4	3	8	12	18	19
5	4	9	15	23	24
6	5	11	18	27	28
7	5	13	21	32	33
8	6	15	24	36	38
9	7	17	27	41	43
10	8	19	30	45	47
11	8	21	33	50	52
12 or more	9	23	36	54	57

Alternative Approach. This formulation provides sentence enhancements that are similar to those that appear in the criminal history score table. The criminal history score is the sum of the points from 1.A above. To adjust the offense value from Chapter Two, complete the following three steps:

1. Step 1.—Determine the multiplier from the following list. For example, if the base of offense value is 20, the multiplier is 2.

Base offense value	Multiplier
1-17	0.75
18-23	2.00
24-31	3.00
32-59	4.50
60 or more	5.00

2. Step 2.—Determine the appropriate adjustment as the product of the multiplier and the criminal history score. For example, if the multiplier is 3.00 and the criminal history score is 7, the adjustment is 21. Round the result down to the nearest whole number.

3. Step 3.—Add the adjustment to the base offense value to obtain an adjusted base offense value. For example, if the adjustment is 21 and the base offense value is 30, the adjusted base offense value is 51.

Commentary

Approximately half of the offenders convicted in federal courts have been convicted previously of misdemeanor or felony offenses. Their prior convictions result from prosecutions in the federal system, from fifty state systems and the District of Columbia, from the military, from territories, and from foreign countries. There are variations across jurisdictions and over time in offense definitions, sentencing structures, and manners of sentence pronouncement.

To minimize problems associated with cross-jurisdictional differences, the Commission tentatively determined that the criminal history score should be based on previous sentences imposed and time served

but rather than other measures, such as evaluation of the offender's actual conduct underlying the offense of conviction, the definition of the offense of conviction, or the statutory maximum sentence available for the offense. Several considerations informed this choice. Basing the criminal history score on the sentence imposed and time served can perpetuate past sentencing disparity. However, other measures also may perpetuate past disparities. For example, prior convictions perpetuate prosecutorial disparity with respect to numbers of charges or counts and reductions in charges. In addition, examining the underlying conduct of prior convictions raises practical and legal problems.

Although past disparity is a problem when using prior sentences and time served to modify the current sentence, past sentences are not random. Length of sentence imposed reflects a judicial assessment of the seriousness and scope of the underlying criminal conduct, particularly when judges consider total offense behavior. Similarly, time served results from a judicial assessment combined with assessments made by prison and parole officials.

The three sentence distinctions used in the guidelines are a custody sentence longer than one year, a custody sentence of sixty days or more but not greater than one year, and other sentences including custody sentences of less than sixty days, probation, fines, and residency in a halfway house. Criminal history points are based on the sentence imposed. To consider a sentence to be a custody sentence, a portion of the custody sentence must have been executed; that is, time must have been served (or, if the offender escaped, would have been served). Time in custody that results from a split sentence (for example, two years suspended on the service of six months) is counted as if it were a custody sentence. If the offender was resentenced by the judge after the initial sentencing hearing, the later pronouncement is used in assigning criminal history points.

The three time-served distinctions used in the guidelines are terms of less than three years, terms of from three years to less than five years, and terms of five years or more. Because it is often difficult for probation officers to ascertain time served before the sentencing hearing, the probation officer is instructed to assume that time served equals one-third of the maximum sentence imposed. The Commission realizes that the percentage of the sentence served varies widely across the country, so to prevent injustice, the offender is allowed to rebut that assumption.

A time limit for considering prior sentences is included because recent offenses are more relevant to blameworthiness and are better predictors of recidivism than are older offenses. In addition, older records are difficult to access and are often less accurate than more recent records. Nevertheless, criminal conduct involving crimes of violence and drug transactions is counted in the criminal record score regardless of when it occurred.

Drug users commit crimes at a higher rate than non-users. In addition, drug users are more likely to recidivate than are non-users. Consequently, a drug abuse item is included in the guideline.

Specific Options for Consideration

1. *Drug Abuse.* Additional options would be to delete item E or to restrict it to abuse of heroin or other opiates. The argument against inclusion rests both on possible difficulty in scoring and because it would be the only item that does not involve past instances of adjudicated criminal conduct. It is also noted that the section by section analysis of the proposed 28 U.S.C. 994(d)(5) in S.1630, which deals with factors that should be considered by the Commission in formulating the guidelines, states "Drug dependency, in the Committee's view, generally should not play a role in the decision whether or not to incarcerate the offender."

On the other hand, the observations of criminal justice practitioners and the measurements of social science researchers agree that there is a strong association between substance abuse and criminal activity. A panel of the National Academy of Sciences (NAS) reached the following conclusions:

A. Drugs are more likely to be used by people who commit crimes than by people who do not commit crimes. According to the NAS, ". . . the available evidence on participation in serious criminal activity suggests that drug users, especially multiple drug users, are much more likely to be involved than non-users." Citing a national sample of youths studied by Ellicott and Huizinga, the NAS concluded: "The self-reported participation rates for felony assault, felony theft, and robbery increase dramatically as drug use becomes more serious. . ." (A. Blumstein, *et al.*, (eds.), *Criminal Careers and "Career Criminals"*, National Academy of Sciences, Washington, DC, 1986, p. 50).

B. Among active offenders, people who abuse drugs commit crimes at a greater rate than people who do not abuse drugs. According to the NAS: "Higher frequency rates are found both among active offenders currently using drugs and among those with histories of drug use, especially early drug use as juveniles, across a variety of offense types, and using both official-arrest and self-report data." For example, the NAS reports that ". . . active offenders among participants in drug treatment programs are estimated to commit an annual average of 3 assaults, 6 to 8 robberies, and more than 20 property offenses. These rates are twice those found for adult arrestees generally." And: "During these periods (of heavy drug use), crime spurts with frequencies as much as 6 times as high as those for nonusing offenders have been reported" (NAS pp. 74–75).

C. Past drug use predicts future criminal behavior. The National Academy of Sciences reviewed four empirically derived instruments that were developed to predict future criminal behavior. Past drug use was a factor in each scale. A scale developed by the Rand Corporation contained one item about drug use in the preceding two years and another item concerning drug use as a juvenile. A scale used by the U.S. Parole Commission contains an item concerning heroin or opiate dependence. The Iowa Risk Assessment scale coded substance abuse into specific categories: history of PCP use, non-opiate injections, sniffing volatile substances; history of opiate addiction; history of heavy hallucinogenic use; history of drug problems; history of opiate or hallucinogen use, or alcohol problem; and no history. A scale developed by the Institute for Law and Society uses an item concerning heroin use.

2. *Non-Felony Offenses.* The proposal enumerates various non-felony offenses and separates them into two categories: those that are more serious and more likely to be the result of a plea down from more serious behavior, which are to be counted if a significant sentence is imposed (*i.e.*, incarceration of 60 days or more or one year or more of probation); and those that are less serious (not to be counted at all). There are two other options for addressing non-felony prior offenses. The first, similar to that presented, would retain the list of excluded offenses but count any of them as convictions if the sentence imposed was a sentence to imprisonment of 60 days or more. This option does not differentiate among the offenses on the basis of seriousness and considers only incarcerative sentences of 60 days or more as a significant sentence. The second option would exclude from the score all offenses that carried a maximum term of six months or less. The difficulty with the latter option is that statutory maximums differ from jurisdiction to jurisdiction, thereby both building in disparity and creating work for the probation officer to determine what the maximum sentence was in the jurisdiction in which the conviction was given.

3. *Juvenile Sentences.* Attempting to count every juvenile conviction may have the potential for creating large disparities due to differential availability of records. Another option would be to limit sentences for offenses committed prior to age 18 by use of the following wording:

Sentences for Offenses Committed Prior to Age 18. Sentences for offenses committed prior to age 18 are counted only if one or more of the following is applicable:

A. the offender was convicted as an adult and received a sentence of imprisonment with a maximum term of more than one year; or

B. the offender was age 21 or younger at the commencement of the current offense, and the sentence imposed for the offense committed prior to age 18 resulted in a commitment (adult or juvenile) of 60 days or more, and was imposed not earlier than four years before the commencement of the current offense. **Note:** the maximum number of points that may be scored for any sentence under this paragraph is 2.

This option attempts to capture important juvenile indicators of risk (most relevant when dealing with a young offender who has not yet had the opportunity to build an adult record) that are likely to be available across most jurisdictions. Another option would be to eliminate paragraph B, thereby excluding juvenile offenses that did not result in an adult conviction. Because of the problem of record availablity and because of the added complexity, the first option may not be meaningful since only about five percent of federal offenders are under 21.

4. *Decay Factor For Prior Sentences.* The option presented above excludes from the criminal history score criminal conduct that preceded a ten-year period within which the offender neither incurred nor served time on a sentence to incarceration of more than a year. If the offender had been convicted during this ten-year period, convictions prior to this ten-year period would be counted. Another option would be to limit consideration of prior sentences to those imposed within a certain interval before commencement of the current offense, regardless of what has occurred in the interim. Under this approach any sentence to imprisonment for which the offender remained under criminal justice control or was within three years of release at the commencement of the current offense behavior would be counted. The wording of this option would be as follows:

A. Score 3 points for each prior sentence of imprisonment for a maximum term of more than one year that was imposed within fifteen years of the commencement of the current offense behavior.

B. Score 2 points for each prior sentence to imprisonment for a maximum term of 60 days or more that is not counted above and that was imposed within ten years of the commencement of the current offense behavior.

C. Score 1 point for each prior sentence that is not counted above that was imposed within ten years of the commencement of the current offense behavior.

D. Score 2 points if the offender committed the current offense:

1. While under any form of criminal justice control, probation, parole, or supervised release, custody or escape status, or any form of release pending trial, sentencing, or appeal; or

2. within three years after any release from imprisonment on a sentence counted in A above; or within three years after the imposition or commencement of any sentence counted in B above.

Note to Section D: Any sentence giving rise to the scoring of points under either of the subsections in section D should be counted in A or B above, notwithstanding the fifteen or ten year limitation otherwise applicable.

This option is easier to apply because the date of sentencing is more easily available than the date of release on a sentence to incarceration. It adoption, however, could prevent the counting of the most serious prior criminal conduct.

Part D—Plea Agreements

[Reserved]

See Chapter Six, Part C, for a discussion of policy issues presented for public comment.

Part E—Other Offender Characteristics

The Commission's authorizing legislation requires it to consider whether a number of offender characteristics have "any relevance to the nature, extent, place of service, or other incidents of an appropriate sentence" and to take them into account only to the extent they are determined relevant. 28 U.S.C. 994(d). The characteristics are:

1. age;
2. education;
3. vocational skills;
4. mental and emotional condition to the extent that such condition mitigates the defendant's culpability or to the extent that such condition is otherwise plainly relevant;
5. physical condition, including drug dependence;
6. previous employment record;
7. family ties and responsibilities;
8. community ties;
9. role in the offense;
10. criminal history; and
11. degree of dependence upon criminal activity for a livelihood.

Chapter Three of the preliminary guidelines addresses role in the offense and degree of dependence on criminal activity for a livelihood in Part A, and criminal history in Part C. The other factors have not, however, been thoroughly addressed in this preliminary draft.

One method of permitting courts to address these characteristics would be to allow the court the discretion to consider one or more them, as appropriate, in setting the sentence within the 25 percent range. 28 U.S.C. 944(b). Another method would be to cite them as aggravating or mitigating factors where appropriate. A third method would be to treat them as multipliers in the same manner as Chapter Three adjustments.

In connection with its May 22, 1986 hearing on prior criminal history, the Commission asked over 200 persons and organizations to provide written comment on the extent to which these characteristics should be considered in sentencing. Public comment is now invited on which of these factors should be considered relevant to sentencing, and in what circumstances.

Chapter Four—Determining the Sentence

Overview

Chapter Four describes the process by which sanction units are converted into actual sentences and explains the range of sentencing options available to the court. A411 describes the conversion of sanction units into months of imprisonment. A412–A420 describe, in turn, each of the sentencing options other than imprisonment: probation, supervised release, community confinement, home detention, restitution, fines, forfeiture, community service, and order of notice to victims. Section A421 addresses the relationship of statutory maximum and mandatory minimum sentences to the guidelines, and A422 offers guidance on the use of consecutive and concurrent sentences.

The Commission has identified two issues in Chapter Four as particularly appropriate for public comment:

(1) How should sanction units be converted into terms of imprisonment?

(2) How should sanction units be converted into sentences other than imprisonment?

Two other Chapter Four-related issues are discussed in Chapter Six (Other Issues):

(1) How should the appropriate amount of a fine to impose on an offender be determined? (Chapter Six, Part A)

(2) What "eligibility criteria" or other restrictions should be established for offenders the court is considering for placement in community confinement or home detention? (Chapter Six, Part D)

A411. *Imprisonment.*

a. The guideline table set forth in (e) below displays the guideline range of months of imprisonment applicable to the total sanction units. If the exact number of the total sanction units is not listed in the table, it is to be rounded down to the nearest listed number.

b. Where the minimum number of months of imprisonment specified in the guideline range is greater than zero, that number must be satisfied by imprisonment or by custody for intervals of time as a condition of probation under 18 U.S.C. 3563(b)(11). The imprisonment or custody sentence may not exceed the highest number in that range. For example, if the offender's total sanction units are 26, the court must impose a term of imprisonment of between 14 and 20 months.

c. Where the minimum number of months of imprisonment specified in the guideline range is zero, no minimum term of imprisonment or custody is required. However, a term of imprisonment up to six months may be imposed.

d. A sentence is within the guidelines if it includes at least the minimum number, and not more than the maximum number of months of imprisonment specified in the guideline range.

e. Guideline Table

Total sanction units	Guideline range (in months of imprisonment)
Less than 14	0–6
14	2–8
16	4–10
18	6–12

Total sanction units	Guideline range (in months of imprisonment)
20	8-14
22	10-16
24	12-18
26	14-20
28	16-22
30	18-24
32	20-26
34	22-28
36	24-30
38	26-32
40	28-34
42	30-36
44	32-40
48	36-44
52	40-50
56	44-54
60	48-60
66	54-66
72	60-74
78	66-82
84	72-90
90	78-96
96	84-104
102	90-112
108	96-120
114	102-126
120	108-134
126	114-142
132	120-150
138	126-156
144	132-164
150	138-172
156	144-180
162	150-186
168	156-194
174	162-202
180	168-210
186	174-216
192	180-224
198	186-232
204	192-240
210	198-246
216	204-254
222	210-262
228	216-270
234	222-276
240	228-284
246	234-292
252	240-300
258	246-306
264	252-314
270	258-322
276	264-330
282	270-336
288	276-344
294	282-352
300	288-360
306	294-366
312	300-374
318	306-382
324	312-390
330	318-396
336	324-404
342	330-412
348	336-420
354	342-426
360	348-434
366	354-442
372 or above	360-life

Commentary

The guideline table presented above translates the offender's total sanction units into guideline ranges of months of imprisonment. Sanction units totaling less than 14 equate to an imprisonment range of zero to six months. The court may, therefore, impose a sentence other than imprisonment on offenders whose units total less than 14. Sanction unit totals of 14 or more will require the court to impose some term of imprisonment.

The selection of 14 sanction units as the level below which a court may sanction an offender without imprisonment was intended to establish a range of units (0–14) that was broad enough to permit the court to give minor offenders (including repeat violators of the most minor statutes) probation or other non-imprisonment sentences. Selection of a significantly lower number than 14 would have unnecessarily complicated the required mathematical calculations without any discernible benefit.

Because 14 sanction units correspond to a minimum of two months' imprisonment, the total of the offender's sanction units is always 12 more than the minimum months of imprisonment in the corresponding range. The maximum of the guideline range generally exceeds the minimum by the greater of 6 months or 25%, the limit allowed by 28 U.S.C. 994(b) (as amended by Pub. L. No. 99–363). For simplicity, it was decided to use only even numbers in the guideline range.

The court is required to impose a sentence within the guideline range set forth below unless the court finds that an aggravating or mitigating circumstance exists that was not adequately taken into consideration by the Commission in formulating the applicable guideline (18 U.S.C. 3553(b)).

Subject to applicable policy statements, the determination of where to sentence within the guideline range is within the discretion of the court. For example, if the total sanction units are 56, the court, in order to sentence within the guidelines, must sentence the offender to a term of imprisonment of at least 44 months but not more than 54 months.

The court must explain its specific reasons for imposing a sentence at a particular point within the range, or outside the range, in open court at the time of sentencing. 18 U.S.C. 3553(c).

The guideline table presents one approach for converting sanction units into a term of imprisonment. Another approach would be to make the conversion rate from sanction units into imprisonment depend on the nature of the offense committed. Offenses resulting in the most serious harms would result in the imposition of proportionately greater prison terms. For example, an offender who committed an offense involving the person could be required to discharge 90% of his sanction units by imprisonment, while an offender who committed an offense involving property would be required to discharge only 50% of his units by imprisonment. Comment is invited on the guideline table approach as well as any other method of converting sanction units to terms of imprisonment.

Conversion of Sanction Units Into Sentences Other Than Imprisonment

The Commission has identified several ways to address this issue. One question is common to each approach, however: what types of sentences, other than imprisonment, should be measured by sanction units? The Commission could, for example, adopt a guideline that would require an offender to compensate a victim for his/her losses separate and apart from any punishment the offender might receive for his conduct. Accordingly, under such a guideline, restitution would be required whenever feasible without regard to the satisfaction of any sanction units; the offender would still be subject to other punishment(s) in satisfaction of all sanction units. A similar approach could be taken with respect to forfeiture and an order of notice to victims.

The same question occurs with respect to probation and supervised release: should those sentences or any conditions of those sentences be accorded sanction unit value? Because the underlying purpose of many probation sentences is fundamentally rehabilitative, some observers have noted that it is inappropriate to accord any sanction unit value to their imposition. Others have contended that it would be appropriate to accord sanction unit values to those conditions that are punitive or significantly deprive the offender of some liberty, such as a condition that the offender observe a curfew or submit to urinalysis on a frequent basis. Comment is specifically invited on these issues as well as the alternative proposals outlined below.

Option 1: Mandatory Satisfaction of All Sanction Units

Under this approach, the court would be required to impose a sentence that satisfied all of the offender's sanction units. If, for example, an imprisonment range of 80–100 months applied, and the court selected the minimum of the range as the appropriate term of imprisonment, the remaining 20 months in the range would still have to be discharged by alternative sanctions of equivalent weight. Establishment of a system of this nature would require the Commission to set equivalency rates between imprisonment and all other types of sentences determined to have sanction unit value. The Commission could, for instance, develop a table that established certain terms of community confinement or home detention as the equivalent of one month's imprisonment. Other equivalencies would be established for non-confinement sentences, like fines and community service, as well. Comment is invited on both the approach in general and the equivalency rates that should be established between imprisonment and other sanctions.

Option 2: Permissive Satisfaction of All Sanction Units

There are several possible approaches to this option. The common thread among all of them is that the court would not be obligated to impose a sentence that satisfied all sanction units.

One approach would be to establish equivalencies between imprisonment and other types of sentences, but permit the court to impose non-imprisonment units in any amount up to the maximum of the range. So, for example, where the court chose to impose the minimum term of imprisonment in an 80 to 100 month range, the judge could impose additional 0–20 units of non-imprisonment sanctions.

A second approach would be to separate the sanction units into imprisonment and non-imprisonment categories, and to calculate imprisonment and non-imprisonment sanctions independently. A judge's decision to impose the minimum term of imprisonment in a range would have no bearing on the amount of non-imprisonment punishment imposed. This method obviates the need to establish equivalencies between imprisonment and other types of sentences, but would still require equivalency rates among non-imprisonment sanctions.

A third approach would be to calculate a range of imprisonment and leave the imposition of other sanctions to the total discretion of the judge. A variation on this approach, as well as the two described above, would require the court to discharge a certain minimum number or percentage of sanction units by non-imprisonment sanctions.

A412. *Probation.*

a. Imposition of Term of Probation

An offender may be sentenced to a term of probation in addition to any other sanction imposed unless:

1. the offense of conviction is a Class A or B felony (18 U.S.C. 3561(a)(1));

2. the offense of conviction is one which expressly precludes probation as a sentence (18 U.S.C. 3561(a)(2)); or

3. the offender is sentenced at the same time to a term of imprisonment for the same or a different offense (18 U.S.C. 3561(a)(3)).

b. Length of Term of Probation

When a term of probation is imposed, the length of such term shall be:

1. for a felony, not less than one nor more than five years;

2. for a misdemeanor, not more than five years;

3. for an infraction, not more than one year.

Commentary

The preliminary guideline for length of probation is identical to the maximum terms of probation set for th at 18 U.S.C. 3561(b). Comment is solicited as to whether more specific terms of probation should be provided.

C. Conditions of Probation

1. When a term of probation is imposed, the court shall impose the following conditions of probation in each case:

A. the offender shall not commit another federal, state, or local crime during the term of probation (18 U.S.C. 3563(a)(1));

B. the offender shall not leave the judicial district without obtaining permission from the probation officer;

C. the offender shall report to the probation officer as directed by the court or the probation office and submit a truthful written monthly report within the first five days of each month;

D. the offender shall permit a probation officer to visit his/her home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;

E. the offender shall answer inquiries by a probation officer and follow the instructions of the probation officer;

F. the offender shall notify the probation officer promptly of any changes in address or employment;

G. the offender shall notify the probation officer promptly if arrested or questioned by a law enforcement officer;

H. the offender shall maintain reasonable hours, with individuals with criminal felony records unless granted permission to do so by the probation officer;

I. the offender shall not possess a firearm, dangerous weapon, or destructive device;

J. the offender shall not purchase, possess, use, distribute, or administer any controlled substance, including narcotics, marijuana, depressants, or stimulants, or any paraphernalia related to the foregoing unless precribed by a physician. The offender shall not frequent places where such drugs are illegally sold, dispensed, used or given away. Neither shall the offender drink alcoholic beverages to excess;

K. the offender shall not enter into any agreement to act as an informer or special agent of any law enforcement agency;

L. as directed by the probation officer, the offender shall provide notification to third parties as to risks that may be occasioned by the offender's criminal record or personal characteristics, and shall permit the probation officer to make such notifications and to confirm the offender's compliance; and

M. the offender shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training or other acceptable reasons. The offender shall notify the probation officer immediately of any change in employment status to include job changes or being out of work.

2. If a term of probation is imposed for a felony, the court must impose a fine, an order of restitution, or community service as a condition of probation. 18 U.S.C. 3553(a)(2).

3. Custody for intervals of time may be ordered as a condition of probation during the first year of probation pursuant to 18 U.S.C. 3563(a)(11).

Commentary

Pursuant to 18 U.S.C. 3563(b), the court may impose any other conditions of probation that are reasonably related to the nature and circumstances of the offense, the history and characteristics of the offender, and the purposes of sentencing set forth at 18 U.S.C. 3563(a)(2).

A413. *Supervised Release*

a. Imposition of Term of Supervised Release

1. The court shall order a term of supervised release to follow imprisonment when:

A. a period of imprisonment of more than one year is imposed for an offense involving violence orf the distribution of sale of drugs;

B. the court determines that such a term is necessary to enforce conditions of restitution, community service, or a fine; or

C. the court determines that the offender's readjustment to society will require supervision.

2. The court may impose a term of supervised release to follow imprisonment in any other case.

b. Length of Term of Supervised Release

1. When a term of supervised release is ordered, the length of such term shall be:

A. for a Class A or B felony, 3 years;

B. for a Class C or D felony, 2 years;

C. for a Class E felony or a misdemeanor, 1 year.

c. Conditions of Supervised Release

1. When a term of supervised release is imposed, the court shall impose the following conditions of supervised release in each case:

A. the offender shall not commit another federal, state, or local crime during the term of supervised release (18 U.S.C. 3583(d));

B. the offender shall not leave the judicial district without obtaining permission from the probation officer;

C. the offender shall report to the probation officer as directed by the court or the probation office and submit

a truthful written monthly report within the first five days of each month;

D. the offender shall permit a probation officer to visit him at his/her home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;

E. the offender shall answer inquiries by a probation officer and follow the instructions of the probation officer;

F. the offender shall notify the probation officer promptly of any changes in address or employment;

G. the offender shall notify the probation officer promptly if arrested or questioned by a laws enforcement officer;

H. the offender shall maintain reasonable hours, shall associate only with law-abiding persons, and shall not associate with individuals with criminal felony records unless granted permission to do so by the probation officer;

I. the offender shall not possess a firearm, dangerous weapon, or destructive device;

J. the offender shall not purchase, possess, use, distribute, or administer any controlled substance, to include narcotics, marijuana, depressants or stimulants, or any paraphernalia related to the foregoing unless prescribed by a physician. The offender shall not frequent places where such drugs are illegally sold, dispensed, used, or given away. Neither shall the offender drink alcoholic beverages to excess;

K. the offender shall not enter into any agreement to act as an informer or special agent of any law enforcement agency;

L. as directed by the probation officer, the offender shall provide notification to third parties as to risks that may be occasioned by the offender's criminal record or personal characteristics, and shall permit the probation officer to make such notifications and to confirm the offender's compliance; and

M. the offender shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training or other acceptable reasons. The offender shall notify the probation officer immediately of any change in employment status to include job changes or being out of work.

Commentary

Where supervised release is imposed, the terms of supervised release set forth in the guideline are the maximum terms authorized by law. 18 U.S.C. 3583(b).

By statute, the court may impose any other condition of supervised release that is reasonably related to (A) the nature and circumstances of the offense; (B) the history and characteristics of the offender; (C) the need to deter further criminal conduct; and (D) the need to provide the offender with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner. Such condition must involve no greater deprivation of liberty than is reasonably necessary to achieve the needs of deterrence and rehabilitation as set forth in (C) and (D) above. The court may impose any condition that could be imposed as a condition of probation except the condition that the offender be placed in custody for intervals of time. 18 U.S.C. 3583(d).

A414. *Community Confinement*

a. Community confinement may be imposed as a condition of probation or supervised release.

b. "Community confinement" means residece in a community treatment center, restitution center, or other community residential correctional facility, and community service, employment, and/or treatment during nonresidential hours.

c. Community confinement may not be imposed for a period greater than six months.

Commentary

Subject to the restictions in A413 and A414, the court may impose such other discretionary conditions of probation or supervised release as it considers appropriate to effectuate community confinement.

A415. *Home Detention*

a. Home detention may be imposed as a condition of probation or supervised release.

b. "Home detention" means a program of confinement and supervision by means of the following:

1. restriction to the offender's home during specified hours, enforced by appropriate means of surveillance by the probation office;

2. community service, employment, and/or treatment during non-detention hours; and

3. a minimum of 8 probation officer contacts per month (including no less than 4 direct contacts per month).

c. Home detention may not be imposed for a period greater than six months.

Commentary

Subject to the restrictions listed in A413 and A414, the court may impose such other conditions of probation or supervised release as it considers appropriate to effectuate home detention.

A416. *Restitution*

a. Restitution may be imposed as a condition of probation or supervised release or as an independent sentence.

b. When an offender has been ordered to make restitution and to pay a fine, any money paid by that offender in satisfaction of sentence shall first be applied to satisfy the order of restitution.

Commentary

Where the record demonstrates sufficient evidence to justify an order of restitution and the imposition of such order will not unduly complicate or prolong the sentencing process (18 U.S.C. 3663(d)), the court shall order restitution.

A417. *Fines.* Reserved. (See discussion at Chapter Six, Part A).

A418. *Forfeiture.* Reserved.

A419. *Community Service.* Reserved.

A420. *Order of Notice to Victims.* The court may set off the cost of any notice ordered against any fine ordered.

Commentary

An order of notice to victims may only be imposed for an offense involving fraud or other intentionally deceptive practices. 18 U.S.C. 3555. The court may not require an offender to pay more than $20,000 to give notice to victims.

A421. *Statutory Maximum and Mandatory Minimum Sentences.*

a. If the application of the guidelines would result in a greater sentence than the maximum sentence authorized by statute for the offense of conviction (or, in the case of more than one count of conviction, than the maximum sentence that might be imposed if consecutive sentences were ordered), then the maximum sentence authorized by statute shall apply.

b. If the application of the guidelines would result in a sentence less than the minimum sentence required by statute, the mandatory minimum sentence shall apply.

A422. *Construction of the Sentence.*

a. The court generally shall impose a sentence on each count of the indictment on which the offender is convicted.

b. Where the court has discretion to impose concurrent or consecutive sentences, it shall exercise its discretion to produce the sentence most consistent with the applicable guidelines range set forth in A411(d).

c. The court may not impose consecutive sentences for an offense of conspiring to commit an offense or soliciting commission of an offense and for the offense that was the sole object of the conspiracy or solicitation.

Commentary

28 U.S.C. 994(1)(2) provides that the guidelines shall reflect the "general inappropriateness" of imposing consecutive terms of imprisonment for an offense of conspiring to commit an offense or soliciting commission of an offense and for the offense that was the sole object of the conspiracy or solicitation.

18 U.S.C. 3584 provides that (1) sentences of imprisonment may not be imposed consecutively for an attempt and for another offense that was the sole object of the attempt; (2) terms of imprisonment imposed at the same time must run concurrently unless the court order or governing statute requires the terms to run consecutively; and (3) terms of imprisonment imposed at different times must run consecutively unless the court orders the terms to run concurrently.

Chapter Five—Violations of Probation and Supervised Release

The Comprehensive Crime Control Act expressly directs the Commission to establish guidelines or policy statements regarding the appropriate use of probation revocation provisions (28 U.S.C. 994(a)(3)). The act also grants the Commission the general authority to issue similar guidelines and policy statements regarding the revocation of supervised release.

The approach the Commission proposes to take to the handling of violations is to establish minimum standards of compliance for the conditions of supervision that might be imposed by the judge at sentencing. The standards would require that if the person under supervision does not adhere to at least a minimum level of compliance as directed by the guidelines, certain actions would be taken by the probation officer and, ultimately, by the sentencing judge. The violations would essentially be classified as serious, serious technical, and lesser technical. Upon revocation, certain sentences would be required depending on the classification of the violation.

1. Requirements of the Comprehensive Crime Control Act

Under the Comprehensive Crime Control Act, probation becomes a sentence in itself and constitutes a final judgment. As a sentence, it is to be imposed after consideration of the general sentencing factors described in 18 U.S.C. 3553(a), and the special sentencing factors set forth in 18 U.S.C. 3562(a). When a sentence of probation is imposed there is only one mandatory condition: that the offender not commit another crime (18 U.S.C. 3563(a)(1)). If the conviction is for a felony, the statute requires the additional condition that the offender either pay a fine, pay restitution, or perform community service (18 U.S.C. 3563(a)(2)).

Otherwise, the court may impose discretionary conditions to the extent they are related to the nature and circumstances of the offense and the history and characteristics of the offender; and are related to and involve only such deprivations of liberty or property as reasonably necessary for the purposes of reflecting the seriousness of the offense, promoting respect for the law, providing just punishment for the offense, affording adequate deterrence to criminal conduct, protecting the public from further crimes of the offender, and providing the offender with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner (18 U.S.C. 3563(b)).

The Act provides that if the offender violates a condition of probation, the court may, after a hearing pursuant to Rule 32.1 of the Federal Rules of Criminal Procedure, and after considering the factors that are to be considered when a sentence is originally imposed (18 U.S.C. 3553(a)), either: (1) Continue the offender on probation, with or without extending the term or modifying or enlarging the conditions; or (2) revoke the sentence of probation and impose any other sentence that was available at the time of the initial sentencing (18 U.S.C. 3565(a)).

Under the new law, a term of supervised release may be imposed as part of a sentence to imprisonment. With the elimination of parole, supervised release permits a period of supervision by a U.S. Probation Officer upon the offender's release from imprisonment. The authorized terms of supervised release are: (1) Not more than three years for a class A or class B felony; (2) not more than two years for a class C or class D felony; and (3) not more than one year for a class E felony or a misdemeanor. The court is required to consider the following in including a term of supervised release, its length, and conditions: (1) The nature and circumstances of the offense and history and characteristics of the offender; (2) the need to afford adequate deterrence to criminal conduct; (3) the need to provide the offender with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner; (4) the kind of sentence and the sentencing range established for the applicable category of offense committed by the applicable category of the offender as set forth by the Commission guidelines; (5) any pertinent policy statement issued by the Commission; and (6) the need to avoid unwarranted sentence disparities among offenders with similar records who have been found guilty of similar conduct (18 U.S.C. 3583(c)).

One mandatory condition applies whenever a term of supervised release is imposed: that the offender not commit another crime (18 U.S.C. 3583(d)). The same discretionary conditions that may be imposed with a sentence of probation may also be imposed with supervised release, with the exception of the requirement of remaining in the custody of the Bureau of Prisons. Any condition of supervised release must be reasonably related to the nature of the offense and history of the offender, to affording adequate deterrence to criminal conduct, and to providing correctional treatment; must involve no greater deprivation of liberty than is reasonably necessary for the purposes of affording adequate deterrence to criminal conduct and providing correctional treatment; and must be consistent with any pertinent policy statements issued by the Commission (18 U.S.C. 3583(d)).

Pursuant to 18 U.S.C. 3583(e), upon consideration of the same factors that relate to imposing the term of supervised release, the court may: (1) Terminate a term of supervised release; (2) after a hearing, extend a term to a maximum term or modify, reduce, or enlarge the conditions of supervised release; or (3) treat a violation of a condition of a term of supervised release as contempt of court under 18 U.S.C. 401(3).

2. Current Probation Practices

Although presently there are no statutorily required conditions of probation, aside from the requirement that the offender not commit another crime, seven standard conditions of probation are generally imposed. These conditions are not specifically enumerated by the judge at sentencing, but are explained to the offender by the probation officer after sentencing. These conditions require the probationer to:

1. Refrain from violation of any law, and to inform the probation officer immediately if arrested or questioned by a law enforcement officer;

2. Associate only with law-abiding persons and maintain reasonable hours;

3. Work regularly at a lawful occupation and support legal dependents, if any, to the best of the offender's ability. Persons who become unemployed must notify their probation officer immediately;

4. Not leave the judicial district without permission of the probation officer;

5. Notify the probation officer immediately of any change in place of residence;

6. Follow the probation officer's instructions and report as directed; and

7. Report to the probation officer as directed.

The sentencing judge occasionally imposes additional special conditions related to the specific offense or offender.

3. Current Procedures Regarding Violations

Under the present system, a number of considerations by both the probation officer and the court may influence the response to violations of probation. These considerations may include the policies and procedures of the Probation Division or a respective district, an assessment of the offender's overall adjustment to supervision, a personal philosophy of corrections, etc. For example, the individual probation officer may determine whether to report a violation to the court and, if so, whether to request a warrant. Ultimately, the court decides whether to issue a violation warrant after weighing information provided from a variety of sources.

The Probation Division currently distributes a supervision monograph to U.S. Probation Officers that distinguishes between violations of law and technical violations and provides general policy for each. Regarding violations of law, the monograph states that the probation officer should report the violation to the court and in making a recommendation regarding revocation:

> The probation officer must weigh the risk posed by the new offense to the community at large. In most cass the commission of a criminal offense as serious or more serious as that for which the offender is currently on supervision represents an untenable risk to the well-being of the community. A series of arrests or convictions for minor offenses should be thoroughly investigated by the probation officer to determine the risk posed to the community (The Supervision Process, Publication 106, Page 18).

The supervision monograph breaks technical violations into three types. The first, an unacceptable pattern of behavior, involves violations of conditions of supervision that have been associated with serious criminal activity in the offender's past (such as a drug addict not meeting the condition of drug treatment). These violations are to be reported to the court by the U.S. Probation Officer.

The second type of technical violation, flagrant disregard for conditions, involves a willful failure by the probationer to adhere to the conditions of probation (such as refusal to pay a fine or restitution, or absconding supervision). According to the monograph, flagrant disregard also necessitates a report to the court.

The third type, incidental behavior, involves violations representing "neglect or oversight on the part of the defendant." Here the monograph states that the violations may be reported to the court, but that "the primary responsibility of the probation officer is to bring the person under supervision into compliance" (*id.*, pp. 18–19).

Because supervised release is a new form of supervision created by the Comprehensive Crime Control Act, there are no established policies or procedures for the U.S. Probation Officer regarding its revocation. The Act contains no provisions regarding the revocation of supervised release. Pending legislative proposals, however, seek to grant courts the authority to revoke supervised release. The proposal set forth below is predicated on enactment of such legislation.

4. Commission Proposals

The approach that the Commission outlines below for handling violations of conditions of probation and violations of conditions of supervised release is identical for each up to the point of the judicial determination that violations have been committed. The Commission's approach establishes minimum standards of compliance for the conditions imposed by the judge. The standards would require that, should the person under supervision not adhere to at least the minimum level of compliance established by the Commission, the probation officer, and in some cases the sentencing judge, take action. While a violator's warrant could be requested by the probation officer and issued by the sentencing judge at any time for any violation of any condition, no action would have to be taken by either the probation officer or the sentencing judge until the offender failed to meet minimum levels of compliance.

The action required of the probation officer and the judge for each condition of supervision would depend on whether the noncompliance represented lesser technical violations, serious technical violations, or new criminal behavior.

For lesser violations, including certain petty offenses, the probation officer would generally be allowed to continue casework efforts in dealing with the noncompliance. If violations continue, the court would have to be notified, at which point it would make a determination as to what action, including the issuance of a violator's warrant, should occur. At a specified point of continued violations, a warrant would have to be issued and a violation hearing held. Depending upon the specific condition violated, the court could modify or increase the conditions of supervision, or order revocation.

In the matter of more serious technical violations, the probation officer would have less discretion in providing casework efforts before notifying the court, and the court itself would be required to conduct a violation hearing at earlier stages of noncompliance.

For the most serious of violations, including conduct that constitutes new criminal behavior (except certain petty offenses), the probation officer would have no discretion in reporting the violation and the court would be required to issue a violator's warrant and conduct a violation hearing. Upon a finding that the violation occurred, revocation would be in order.

At a violation hearing where the court elects to increase the sanctions, the conditions imposed would make supervision more restrictive and afford greater control in monitoring the case than the current conditions of supervision provide. Increased sanctions could include conditions such as conditions of custody (for probation cases only), curfew, home detention, association restrictions, participation in a rehabilitation program, submission to unrinalysis, and so forth.

Upon revocation of probation, the court would be required to impose a certain sentence. For lesser technical violations a custody sentence at the midpoint of the guideline range applicable to the offender at the time he was sentenced to probation would be imposed. For more serious technical violations, a custody sentence at the maximum of the originally applicable guideline range would be imposed.

For violations that represent unlawful behavior (except for certain petty offenses), a custody sentence of 90 days beyond the maximum of the originally applicable guideline range would be imposed, provided that the sentence did not exceed the statutory maximum.

Regarding supervised release, upon judicial determination that violation of a condition had occurred, the court would also be required to impose certain sanctions. For lesser technical violations, a custody sentence of 1/6 the term of supervised release, not to exceed 1/6 of the initial term of imprisonment, would be imposed. For more serious technical violations, a sentence of 1/3 of the term of supervised release, not to exceed 1/3 of the initial term of imprisonment, would be imposed. For violations representing new criminal behavior, except for minor law violations, a sentence equal to the total term of the period of supervised

release, not to exceed the initial term of imprisonment, would be given. Under this approach, the maximum sentences that could be imposed upon revocation for lesser technical violations, serious technical violations, and new criminal behavior, respectively, would be: for class A and B felonies, six months, one year, and three years; for class C and D felonies, four months, eight months, and two years; and for class E felonies and misdemeanors, two months, four months, and one year.

5. Issues for Comment

The Commission invites public comment on several issues related to violations of probation and supervised release. These include:

1. Which violations of conditions of supervision should be considered less serious and more serious? (*See* Chapter Four of the guidelines, Determining the Sentence, for a list of proposed mandatory conditions of probation and supervised release, and 18 U.S.C. 3563(b) for examples of discretionary conditions available to court);

2. The extent to which the probation officer should have discretion in dealing with persons under supervision before formally reporting violations to the court;

3. The appropriateness of the sentences proposed above for application to revocation of supervision;

4. Upon revocation, the credit, if any, the offender should receive for time successfully spent on supervision or for compliance with other conditions of supervision such as payment of fine, community service, halfway house residency, or intervals of custody for probationers; and

5. The manner of handling probation violations for organizations.

Chapter Six—Other Issues

Part A—Fines

The Commission specifically invites comment on the method a court should use to determine the amount of a fine to be imposed on an individual offender. The next part of this chapter invites comment on the method that should be used to determine the amount of a fine to impose on an organization. See Chapter Six, Part B (Organizational Sanctions).

In October 1984, Congress enacted federal statutes that significantly raise the maximum limits on fines that may be imposed on convicted offenders. The new federal sentencing statutes that will take effect with enactment of the guidelines continue those new maximums. Under the new statutes, an individual may be fined up to $250,000 for a felony or a misdemeanor resulting in death. For any other misdemeanor, an individual may be fined up to $25,000 and, for an infraction, up to $1,000. An organization may be fined up to $500,000 for a felony or a misdemeanor resulting in death, $100,000 for any other misdemeanor, and $10,000 for an infraction. 18 U.S.C. 3571. Organizations convicted of antitrust offenses may be fined up to $1 million. 15 U.S.C. 1.

In establishing these new maximums, Congress clearly intended to make the fine a more effective sanction than it has been in the past. Previously, the low fine maximums often resulted in judges avoiding fines as a sentence because they could not be imposed in an amount sufficient to punish or deter. Congress has now granted the courts authority to impose meaningful fines and has charged the Commission with the responsibility to provide guidance in their use.

Under the new law, a sentencing judge contemplating whether to impose a fine must consider the general purposes of sentencing, including, among other things, the need for the sentence to reflect the seriousness of the offense, promote respect for the law, provide just punishment, and afford adequate deterrence to criminal conduct. In addition, the court must specifically consider the following five factors in determining whether to impose a fine, and the amount of the fine, the time for payment, and the method of payment:

(1) The ability of the offender to pay the fine in view of income, earning capacity, and financial resources (and, if the offender is an organization, the size of the organization);

(2) The burden the fine will impose on the offender and dependents, relative to the burden imposed by other punishments;

(3) Any restitution made or obligated to be made by the offender;

(4) Any measure an organizational offender has taken to discipline those officials responsible for the offense or to insure against its recurrence; and

(5) Any other pertinent equitable consideration. 18 U.S.C. 3572(a).

The Commission has identified two approaches for determining the appropriate amount of a fine to impose on an individual offender. Comment is specifically invited on these two approaches as well as on any other method of establishing an appropriate fine that meets Congressional intent. The first approach emphasizes the fine as punishment; the second emphasizes the deterrent effect of the fine.

1. The Proportionate ("Ability to Pay") Approach

The proportionate approach seeks to make the fine punitive in proportion to the offender's financial resources. While a punitive fine may have some deterrent effect, this approach does not purport to maximize deterrence. Under this approach, the sanction unit value of a fine would be expressed in terms of a percentage of the offender's income or assets determined to be "available" for fine payment.

"Available income" could be defined to mean either gross income less taxes paid, or gross income less taxes and that portion of income deemed necessary for housing, food, clothing, and other essential expenses. The first definition would render a greater amount of the offender's income available for fining; the second definition constricts the amount available by permitting the offender to protect a greater share of income from exposure to a fine. The choice of the appropriate technical definition requires resolution of a much more fundamental question about the use of the fine: how punitive is it intended to be?

Choosing the first definition would arguably permit a court to fine an offender to the extent of depriving him/her of all assets and income, including home and most basic possessions. This option affords the court the greatest opportunity to make the fine a truly punitive sanction. The more assets or income that an offender is permitted to shield from exposure to a fine, the more diluted the potential punitive impact of a fine becomes. The Commission invites public comment on whether an offender should be permitted to protect some portion of income or assets from a fine and, if so, which ones and to what extent.

Under either choice, the value of one sanction unit could be expressed, for example, as one percent of the offender's available annual income. Although the real dollar amount of the fine could differ between two offenders convicted of the same offense, the fine would have the same punitive "sting" on both of them in proportion to their respective financial resources. Any restitution obligation, on the other hand, would have to be paid in full regardless of the offender's income; if the court has to choose between imposing financial "suffering" on the offender or the victim, the guideline would direct it to impose the pain on the offender.

Proponents of basing a fine on the offender's resources argue that this approach would have two principal

benefits: (1) The sentencing court will be able to impose a fine that actually punishes the offender to the desired degree; and (2) the offender will be able to pay the fine without imposing substantial, and often futile, fine collection burdens on the federal criminal justice system.

With respect to the first benefit, if a court imposes a fine without considering its actual impact on the offender, the fine is likely to be either excessively high or low. Excessively high fines may financially overwhelm the offender and punish unfairly in relation to both the offender's culpability and society's need to deter others from committing similar crimes. If too low, the offender is not punished and other potential offenders may be encouraged rather than discouraged.

With respect to the second benefit, this approach may ensure that the fine will be an effective sanction. An offender is not punished by a large fine that he/she cannot pay. If, however, the fine is set at an amount that imposes some hardship on an offender in relation to particular financial resources, it can be both punitive and payable. Setting the fine at a punitive but payable level will also benefit the Department of Justice, the Probation Office, and other components of the criminal justice system by reducing the substantial administrative burdens of collecting delinquent fines. The Commission could assure that relatively trivial fines would not be imposed for offenses resulting in serious financial losses either by issuing a guideline directing courts to impose sanctions other than a fine when the offender is too poor or debt-laden to pay a meaningful fine or by establishing a minimum dollar amount per sanction unit.

Attempting to establish a fine that punishes an offender in relation to his or her particular financial status always presents the risk that if the amount is set too high, it may not be paid. The Commission is exploring a variety of approaches used in other contexts, *e.g.*, the consumer credit industry and child support enforcement, that can be adapted to set a fine at the appropriate level. The Commission is also considering other steps a court could take to minimize the risk of nonpayment. One step would be to impose a condition of probation prohibiting the offender from either opening new lines of credit or placing new charges on existing lines until the fine is paid. Another step would be to require that all or a substantial portion of the fine be paid at the time of sentencing, particularly in cases when the fine is imposed as a result of a negotiated plea.

The Commission could also promulgate guidelines or policy statements that would authorize a sentencing judge to impose a fine that exceeds the offender's calculated "ability to pay" level in certain circumstances. For example, the Commission could authorize the judge to impose a greater fine in cases where the court has reason to believe the offender has unreported assets or income, *e.g.*, a drug trafficker, or where the crime caused a large, but unquantifiable loss to unidentified victims, *e.g.*, environmental pollution.

2. The Harm-Based Deterrent and Compensation Approach

This approach is based on the premise that fines should compensate society for the wrong done and deter future criminal conduct. According to theory, the monetary penalty best suited to achieving these purposes is a multiple of the harm caused by the criminal act, plus an amount representing the cost of enforcement. (The size of the multiple depends upon how likely offenders are to be caught and what additional punishments, including restitution, are imposed.) The financial resources of the offender are a secondary consideration; the conduct and its consequences matter most.

This proposed approach starts with an estimate of the monetary value of the harm caused. Where this is difficult to assess, the gain to the offender might be used as a substitute. The guideline for each offender would specify a multiplier and a suggested method for estimating the harm, including a base value. For some crimes, such as price fixing, the fine might be based upon a substitute indicator of the harm, such as the volume of commerce affected. For drug offenses, it might be based upon the value of the drugs sold or the offender's estimated income from the sale of drugs. For crimes primarily involving non-economic harms, the guidelines would specify a fine amount that would vary depending upon the extent of harm or risk created. Fines would be collected only after the offender made restitution to victims.

Once the fine had been calculated, the particular offender's present or prospective ability to pay the fine would be taken into account. Familial obligations, employment history, job skills, apparent standard of living, and probable assets (including those, such as fruits of the crime, that might be concealed) would be evaluated. This procedure could be bypassed for small fines or if the offender admitted an ability to pay the prescribed fine.

If the judge determined that there was a reasonable possibility that the offender would be able to pay the prescribed fine, the judge would impose that fine, establishing an appropriate payment schedule and making use of the civil enforcement provisions in 18 U.S.C. 3613 to ensure payment. If the offender later failed to pay the fine, the judge would proceed in accordance with 18 U.S.C. 3614. Offenders who refuse to pay the fine even though they have the ability to do so would be resentenced, probably to prison. If, on the other hand, the offender made a good-faith effort to pay the fine, the judge could (1) extend the payment terms; (2) sentence the offender to an alternative form of punishment, such as community service; (3) waive the unpaid portion of the fine if the total sanction has been sufficient; or (4) sentence the offender to prison, but only if no other alternative would adequately serve the purposes of just punishment and deterrence. If at the time of initial sentencing it was clear that the offender would be unable to pay the entire fine, the judge would impose a lesser fine and consider options (1) through (4) described above.

Proponents of this system argue that it has the advantages of:

(1) To the extent possible, forcing the offender to compensate society for his/her wrongs;

(2) Ensuring that, for all offenders, the sanction imposed will be sufficient to provide just punishment and deterrence;

(3) Avoiding demeaning the seriousness of the offense by appearing to recommend trivial fines (*e.g.*, the guideline punishment for stealing $10,000 could never be a fine of $1,000);

(4) Avoiding the injustice of imposing a huge fine on someone for a trivial offense merely because the offender may be wealthy;

(5) Minimizing discrimination on the basis of socioeconomic status;

(6) Avoiding incentives for offenders to dissipate their assets or lie about their financial resources;

(7) Making it possible to impose large fines on persons, such as major drug dealers, whose financial resources may be large but difficult to establish; and

(8) It gives the sentencing judge greater flexibility than any approach that relies upon a formula.

3. Additional Issues

The Commission also invites comment on whether the cost of investigating and prosecuting the case should be taxed to the convicted offender as part of a fine, regardless of the approach taken to

calculate the amount of the fine. If so, what standard of proof should the government be required to meet to establish the cost and what procedures, if any, should the court establish to determine the government's claim for reimbursement?

Part B—Organizational Sanctions

The Commission specifically invites comment on the appropriate sentencing of organizational offenders. The oral testimony and written submissions presented to Commission in connection with its June 10, 1986 hearing on organizational sanctions have been very helpful in framing the issues and proposing possible solutions. The Commission invites public comment on the key questions it has yet to resolve in this area.

The principal provision of the Comprehensive Crime Control Act affecting the sentencing of organizations is 18 U.S.C. 3551(c). That section requires the sentencing court to impose a term of probation or a fine on a convicted organization. Section 3551(c) also authorizes a court to impose a fine as a condition of probation, and permits a court to order a forfeiture of property pursuant to 18 U.S.C. 3554 (when an organization is convicted of racketeering or drug offenses), a notice to victims pursuant to 18 U.S.C. 3555, or restitution pursuant to 18 U.S.C. 3556.

The statutory provisions affecting the imposition of fines and probation on organizations are described below, followed by two alternative approaches to their implementation. The Commission invites comments on the approaches presented as well as on any other approach, and the appropriate use of forfeiture, notice to victims, and restitution.

1. Fines

Under 18 U.S.C. 3571(b)(2), an organization convicted of a felony, or of a misdemeanor resulting in the loss of human life, may be fined up to $500,000. An organization may be fined up to $100,000 upon conviction of any other misdemeanor, and up to $10,000 upon conviction of an infraction. Organizations convicted of antitrust offenses may be fined up to $1 million. 15 U.S.C. 1.

As noted previously in the discussion of fines in the previous Part, a court contemplating whether to impose a fine on an organization must consider the general purposes of sentencing, including the need for the sentence to reflect the seriousness of the offense, promote respect for the law, and afford adequate deterrence. In determining whether to impose a fine, the amount of a fine, and the time and method of payment, the court must also consider the following five specific factors:

(1) The ability of the organization yp pay the fine in view of its income, earning capacity , financial resources, and size;

(2) the nature of the burden the fine will impose on the organization relative to the burden imposed by other punishments;

(3) Any restitution made or obligated to be made by the organization:

(4) Any measure the organization has taken to discipline those officials responsible for the offense or to insure against its recurrence; and

(5) Any other pertinent equitable consideration. 18 U.S.C. 3572(a).

Section 3572(b) of Title 18 limits the aggregate amount of a fine that may be imposed on a offender convicted of different offenses that "arise from a common scheme or plan, and that do not cause separable or distinguishable kinds of harm or damage" to twice the amount that may be imposed for the most serious offense. The greatest amount, therefore, that could be imposed on an organization convicted of multiple felonies arising from a common scheme that did not cause "separable or distinguishable kinds of harm or damage" is $1 million. The statute does not discuss the maximum fine that could be imposed when separable or distinguishable kinds of harm or damage result.

The appropriate role of fines as organizational sanctions is a major consideration of the Commission. Fines may accomplish the purposes of just punishment and deterrence, but those two purposes have different implications for the structure of fines. Just punishment may compel judges to impose a fine in terms of a percentage of the organization's income or wealth. By this standard, large organizations would probably receive a higher fine than small organizations convicted of the same crime.

By contrast, when deterrence is the primary concern, the size of the fine would be determined by the injury resulting from the criminal act and the difficulty of discovering the crime. The fine would, at least in theory, be determined by multiplying the amount of damage (or harm) intended or done by a factor representing the likelihood of detection and conviction. Fines would always be a multiple of the harm intended. The lower the likelihood of detection, the higher the multiplier and hence the higher the fine. Those criminal acts most difficult to discover would be punished most severely. Given equal difficulties of discovery, those criminal acts likely to cause more harm will be punished more severely. The offender's ability to "harm and hide" determines the punishment. Ability to pay would not be a factor in setting the level of the fine, although it might be important in devising a payment schedule.

The Commission seeks comment on whether its approach to fines should emphasize the organization's culpability and ability to pay, or the harmfulness of its conduct and the likelihood of detection. In addition, the Commission solicits public comment on which aspects of the "size of the organization," as that term is used in 18 U.S.C. 3572(a)(1), should be considered in sentencing.

2. Probation

An organization convicted of an offense may be sentenced to a term of probation unless the offense is a Class A or B felony (a crime punishable by a maximum term of imprisonment of 20 years or more) or is an offense for which probation has been expressly precluded. An organization convicted of a Class C, D, or E felony may be sentenced to probation for not less than one more than five years. An organization convicted of a misdemeanor may be sentenced to probation for up to five years, and one convicted of an infraction may be sentenced to probation for not more than one year. 18 U.S.C. 3561.

Where sentencing an organization to probation for a felony, the court must impose the following conditions on the offender: (1) The organization must not commit another federal, state, or local crime while on probation; and (2) the organization must either pay a fine, make restitution, or perform community service. 18 U.S.C. 3563(a). The only mandatory condition imposed upon probationers convicted of a misdemeanor or an infraction is the requirement that they commit no further crimes while on probation.

In addition to those mandatory conditions, organizations may receive any of the discretionary conditions of probation permitted for individual probationers. (*See* 18 U.S.C. 3563(b)), with the exception of 18 U.S.C. 3563(b)(6), which permits a court to disqualify only an individual offender from a specific occupation, business, or profession.)

The Commission seeks comment on the types of probation conditions that might be imposed and the circumstances that would justify their imposition, including but not limited to the use of internal audits and disciplinary actions; the appointment of outside directors or

supervisors; recommendations for debarment or ineligibility for federal contracts, grants, or subsidies; charitable contributions; community service; and publicity about the organization's misdeeds and subsequent corrective action.

The Commission also seeks comment on when probation should be used rather than a fine and when the two should be used together. In addition, the Commission seeks comment on the appropriate term of probation to be imposed on an organization. Finally, the Commission requests public comment on when modification or revocation of an organization's probation might be appropriate.

3. Possible Approaches to Sanctioning the Organization

The alternative approaches to the use of organizational sanctions are based on just punishment and deterrence philosophies. These general approaches are presented for comment.

A. The Just Punishment Approach

The just punishment approach retains the guidelines concepts of the offense value for measuring the severity of the organization's offense and the sanction unit for establishing the appropriate quantity of punishment. The offense values for organizations would be the same as for individuals, but different adjustment multipliers would be used to measure the organization's culpability. Adjustments to offense values could be made, for example, on the basis of whether the crime resulted from a conscious plan of top management or by the independent actions of lower echelon employees or whether the organization took steps to discipline responsible employees prior to indictment.

The guideline might then establish fines and conditions of probation to be imposed for various ranges of sanction units and, in some circumstances; permit the court to impose additional penalties. For instance, if the organization's sanction units totalled 50 or less, the guideline could mandate a fine within a range of relatively low percentages of the organization's income or assets and conditions of probation requiring the organization to correct the harm caused by its conduct.

Similarly, sanction units totalling 50–100 could result in a fine within a higher range and additional conditions of probation, such as the appointment of outside counsel to prepare a report for distribution to shareholders on how the offense actually occurred. An offense resulting in 100 sanction units or more could be punished by a fine within a range capped by the statutory maximum. The court could also be required to imposed the previously noted probation conditions, and permitted to impose additional necessary conditions, such as a restructuring of management to avoid future criminal conduct the discipline or removal of organizational officers, and a limitation on the organization's activities in certain markets or for certain periods of time.

Other types of sentences, such as restitution, forfeiture, community service, and notice to victims, and discretionary conditions of probation such as publicity concerning the organization's conviction, could also be imposed regardless of the number of sanction units.

B. The Harm-Based Deterrence and Compensation Approach

The philosophy underlying the deterrence and compensation approach is that fines should both deter organizations from engaging in criminal conduct and compensate society for the harm that the organization's acts cause. Because organizations are motivated almost entirely by economic self-interest, the obvious way to deter them from committing crimes is to make crime unprofitable.

In order to ensure that society is compensated for the harm caused by all criminals, this approach requires that the fine be set at a level equal to the harm caused by the crime divided by the probability of conviction. This same fine would also make crime unprofitable, so that deterrence should be achieved.

Implementation of this approach requires estimation of two elements of the fine computation: the value, converted into money, of all harm caused and the probability of conviction. For purely monetary crimes, estimating the harm is straightforward. For many cases involving non-economic injuries, the government already calculates a suitable estimate of the harm—for example, the cost of clean-up in a toxic waste dumping case. For other crimes, the guidelines could substitute the offender's economic gain or specify a rule assigning monetary to various types and levels of harm. Offense values or sanction unit scores would not be utilized as a guide to setting fines because those numbers are based primarily on judgments about how long individuals should be imprisoned, not how much harm they caused. For this reason, the proposed just punishment approach, which makes the fine directly proportional to the offense value and the wealth of the organization would actually place heavier emphasis on wealth than the harmfulness of the conduct.

The probability of conviction would be based upon estimates of the level of occurrence of each crime type compared to the level of detection and conviction.The probability would be adjusted based upon the organization's actions in the specific case. If, for example, the organization notified authorities immediately upon learning of the crime, the probability of conviction might be treated as near certainty, resulting in a multiplier of one. On the other hand, if the organization took elaborate measures to conceal the crime, the probability would be treated as small, resulting in a large multiplier. An amount representing the cost of detecting crimes and convicting offenders would be added to the fine.

At least three additional considerations would enter into setting the actual fine amount. First, to the extent that the responsible employees had been identified and punished, the fine for the organization would be lowered. This might result in somewhat larger fines on average for large organizations, where the responsible individuals tend to be more difficult to identify. Second, to the extent that the organization was subject to civil penalties, the fine also would be lower. This is particularly important for regulatory crimes, where the civil and criminal enforcement schemes often are interrelated. For example, an antitrust violator would be fined more when the government is the victim, because the government can only recover actual damages in a civil action, whereas private plaintiffs can recover treble damages. Third, the assets and projected earnings of the organization would be considered insofar as they affect its ability to pay the fine.

Consideration of ability to pay presents difficult problems. Imposing a fine so high that it might force a firm into bankruptcy seems undesirable because of the effects on relatively innocent parties, such as creditors and employees. However, if fines are lowered to prevent this from occurring, crime will be a good bet for the organization, and a good bet is sure to marginal firms will be encouraged to commit crimes. If firms cannot be profitable without engaging in criminal conduct, it might be better to force them out of business.

This is a prime area in which conditions of probation and other alternative sanctions designed to remove the actual wrongdoers from management and impose the cost of punishment on them might be desirable.

We invite comment on what sanctions would achieve this objective. Although it seems undesirable at first glance, we suggest consideration of whether forcing an organization into Chapter 11 reorganization through imposition of a large fine might be consistent with these goals, since the bankruptcy court would be authorized to appoint new management which could continue the business and simultaneously pursue civil remedies against the offending management. Creditors might not be injured because of the lower priority that fines and penalties have relative to general unsecured claims in bankruptcy. Although shareholders would be likely to suffer, that happens whenever a fine that exceeds the organization's gains is imposed. The organizations most likely to be driven into bankruptcy by the imposition of large fines might well be relatively small firms in which there is a substantial overlap between management and shareholders. If that is the case, the burden of the fine ultimately would fall on the responsible parties.

Part C—Plea Agreements

The Commission specifically invites comment on issues relating to the role of plea agreements under the guidelines. Congress has directed the Commisson to promulgate general policy statements for consideration by federal judges in deciding whether to accept or reject a plea agreement. 28 U.S.C. 994(a)(2)(D). The legislative history of this provision reflects concern that plea agreements might be used to undermine guidelines. S. Rep. No. 225, 98th Cong., 1st Sess. 63 (1983). Policy statements are therefore needed to insure responsible plea negotiation practices that do not perpetuate unwarranted sentencing disparities.

Public comment is specifically requested on the following issues related to plea agreements.

(1) What are the appropriate limits on judicial scrutiny of plea agreements?

(2) What standards should a sentencing judge apply in evaluating whether a plea agreement is acceptable according to the letter and spirit of the sentencing guidelines?

(3) What is the impact of the Sentencing Reform Act on "charge bargaining" under Rule 11(e)(1)(B) of the Federal Rules of Criminal Procedure?

(4) What is the impact of the Sentencing Reform Act on "sentence bargaining" under Rule 11(e)(1)(C) of the Federal Rules of Criminal Procedure?

(5) To what extent can prosecutors and defense attorneys stipulate to the underlying facts of an offense and the offender's characteristics when such factors determine the sentencing result?

Part D—Community Confinement and Home Detention

The Commission is considering the use of community confinement and home detention as appropriate conditions of probation or supervised release for certain offenders. Community confinement would involve a condition of supervision requiring residency in a community treatment center, restitution center, or other community residential facility, along with additional conditions such as community service, employment, and treatment. Home detention would involve conditions of supervision including a curfew, community service, employment and/or treatment, and would require the probation officer to maintain a high degree of contact with the individual on supervision. These sanctions are described further in Sections A414 and A415, respectively.

1. As a Condition of Probation

The Commission is attempting to determine the categories of probationers for whom community confinement and home detention would be suitable sanctions. Many serious offenders will automatically be excluded from placement in a community confinement or home detention program as a condition of probation because the guidelines will not permit them to be sentenced to probation. When the guidelines do permit probation, a sentencing court may decide that community confinement or home detention affords acceptable levels of punishment or control for an offender who the court believes requires supervision but not imprisonment.

The Commission specifically invites comments on the following questions:

What purposes of sentencing might best be fulfilled through such sanctions? Which category of offenders and offenses should be eligible for those programs? What offender characteristics, *e.g.*, history of violent or sexually assaultive conduct, should exclude an offender from consideration for these programs? Would community residential correctional facilities and probation resources be misspent if an individual with "low risk" for recidivism was placed in such a program for punitive purposes?

2. As a Condition of Supervised Release

In conjunction with supervised release (where the offender has completed a prison term and is under supervision) other questions as to which offenders should be placed into programs of community confinement and home detention are appropriate. Because Congress intended the purpose of punishment to be fulfilled by way of the individual having served a prison term, that purpose may not statutorily be considered in determining whether to place an offender on supervised release. *See* 18 U.S.C. 3583(d).

For purposes of monitoring, control, or providing rehabilitative services, however, the Commission solicits public comment in determining which of these purposes might be most appropriately fulfilled through these programs. Which categories of offenders and offenses should be eligible for placement into these programs, and which should be excluded? For example, should violent criminals who might not be placed in community confinement on probation be placed in such confinement on supervised release as a means of control and assimilation back into the community?

Part E—Determining Offense Values for Multiple Crimes

Comment is solicited on how to calculate the offense value for multiple crimes. How should the guidelines treat a bank robber who pistol whips three (or ten) tellers, a conman who sends 10,000 letters defrauding each recipient of $10, or a drug dealer who shoots a police officer, while endangering several others?

The Commission could resolve some fundamental issues in this area with the following basic rules:

1. Where one crime is charged (and conviction obtained), take into account only uncharged conduct that the guideline for the crime of conviction explicitly cross-references. (This rule flows from the proposed approach to modified offense sentencing in part VII of Chapter One).

2. Where the offender is convicted of several crimes that are not related, add the offense values (as determined by the guidelines) for each separate crime.

3. Where the offender is convicted of an inchoate crime and also the related completed crime, ignore the inchoate crime. (This is the traditional merger rule.)

4. If the offender, during a single course of conduct, has committed a financial crime or caused financial injury more than once, add the financial injuries (on the basis of the relevant guideline tables) to determine the total offense value for that series of crimes. Treat similarly other offenses, such as drug offenses, where guideline sentences rest upon quantities.

5. When an offender is convicted of two or more crimes arising out of the same course of criminal conduct, apply the appropriate guideline to each conviction; insofar as the conduct underlying the conviction overlaps, eliminate any overlapping offense value (using the higher offense value in case of conflict).

The rule presented below is particularly suitable for public comment:

6. If more than one offense is committed or injury results during the same course of conduct, add the offense values of the three most serious injuries or crimes (after calculating the offense values for each according to rules 1–5) and ignore the others.

If no rule is adopted limiting multiple injuries, the guidelines will produce seriously anomalous results where there are many injuries or threats of injury during the same course of conduct. A car driver, for example, who recklessly runs a busload of passengers off the road would receive 50 times the penalty imposed on a similar person who knocked a bus with only one passenger off the road; yet the underlying conduct is the same. An offender who threatened one hundred people with physical injury would receive one hundred times the punishment imposed on an offender who threatened one person. Of course, in each example the multiple injuries caused are considerably worse than the single injury and courts should increase the sentence to reflect that difference. The Commission does not believe that the sentence should rise directly in proportion to the number of victims involved. That is not because the injury to the fiftieth victim is any the less serious than the injury caused the first. Rather, viewed from a just punishment perspective, it is because one who hurts three people is already so highly culpable that injuring three more is not viewed as twice as bad. Viewed from a crime control perspective, the penalty for injuring three people is likely to be severe enough to deter the conduct in question; a sentence twice as severe is not needed to deter injury to six.

The Commission has considered certain alternatives to Rule (6). For example, the injuries could be added up to a multiple other than three. Or, a multiplier could be used that diminishes according to a mathematical formula as the number of separate injuries increases (as with the approach taken with financial injuries and drugs).

The Commission requests comment on the proposed rules set forth above as well as suggestions regarding workable and just alternative approaches.

Part F—Treatment of Unusual Aggravating or Mitigating Factors

The Commission requests comment on the treatment of aggravating or mitigating factors that occur only rarely but are serious concerns in the few cases where they do arise. Examples of such mitigating factors might be the presence of a serious mental disability that did not rise to the level of a successful defense, self-defense, coercion, necessity, provocation, or a criminal act done for merciful purposes, *e.g.*, euthanasia. An example of a rare, but serious aggravating factor would be extremely barbaric behavior by the offender.

The Commission has identified several options for considering these factors. One would be to promulgate a guideline expressly permitting the court to go outside the guideline range where the factor was demonstrated to be present. The guideline could establish a general standard of proof, or specific standards for each circumstance. If the court determined the factor present, the guideline could establish a certain range or amount by which the sentence could be adjusted. Another approach would be to establish separate Chapter Three adjustment multipliers for each factor.

The Commission invites comment on (1) what specific unusual factors should be considered so compelling as to warrant special treatment; (2) the standards of proof that should govern the court's inclusion of any such factor in sentencing; and (3) the method by which the Commission should permit courts to take these factors into consideration.

Conclusion

As its work has progressed, the Commission has become increasingly aware of the difficulties of foreseeing and capturing in a single set of guidelines the vast range of human conduct likely to be relevant to a sentencing decision. For this reason, the Commission has concluded that the guideline writing process is a continuing one, to be carried on with progressive changes over a period of many years, as Congress contemplated in establishing a continuing Commission. Congress realized, and the Commission agrees, that greater knowledge and experience can only improve the guidelines over time.

The Commission will collect and carefully analyze public response to these guidelines. After the guidelines become effective, the Commission will carefully consider the reasons articulated by sentencing judges for departure from the guidelines and the impact of the guidelines on all aspects of the federal criminal justice system. Guided by this analysis, the Commission will then refine future versions of the guidelines. Reason, analysis, actual practice, and public comment all will be used to produce, over the years, a progressively more informed, just, and workable set of guidelines.

United States Sentencing Commission

William W. Wilkins, Jr., Chairman
Michael K. Block, Commissioner
Stephen G. Breyer, Commissioner
Helen G. Corrothers, Commissioner
George E. MacKinnon, Commissioner
Ilene H. Nagel, Commissioner
Paul J. Robinson, Commissioner
Benjamin F. Baer, Commissioner (ex officio)
Ronald L. Gainer, Commissioner (ex officio)

William W. Wilkins, Jr.,

Chairman.

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BILLING CODE 2210-01-M

Federal Register

Wednesday
October 1, 1986

Part III

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 334

Laxative Drug Products for Over-the-Counter Human Use; Tentative Final Monograph; Notice of Proposed Rulemaking

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 334

[Docket No. 78N-036L]

Laxative Drug Products for Over-the-Counter Human Use; Tentative Final Monograph

AGENCY: Food and Drug Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is issuing a notice of proposed rulemaking that amends the tentative final monograph for over-the-counter (OTC) laxative drug products by modifying the directions for the use of bulk laxatives. This notice is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Written comments, objections, or requests for oral hearing on the proposed regulation before the Commissioner of Food and Drugs by December 1, 1986. New data relating to the directions for the use of OTC bulk laxatives by October 1, 1987. Comments on the new data by December 1, 1987. These dates are consistent with the time periods specified in the agency's revised procedural regulations for reviewing and classifying OTC drugs (21 CFR 330.10). Written comments on the agency's economic impact determination by January 29, 1987.

ADDRESS: Written comments, objections, new data, or requests for oral hearing to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drugs and Biologics (HFN-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 21, 1975 (40 FR 12902), FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), an advance notice of proposed rulemaking to establish a monograph for OTC laxative, antidiarrheal, emetic, and antiemetic drug products, together with the recommendations of the Advisory Review Panel on OTC Laxative, Antidiarrheal, Emetic, and Antiemetic Drug Products, which was the advisory review panel responsible for evaluating data on the active ingredients in these drug classes. The agency's proposed regulation, in the form of a tentative final monograph, for OTC laxative drug products was published in the **Federal Register** of January 15, 1985 (50 FR 2124). Interested persons were invited to file by May 15, 1985, written comments, objections, or requests for oral hearing before the Commissioner of Food and Drugs regarding the proposal.

In this amendment to the tentative final monograph, FDA is modifying its position on the directions for use and the dosage of OTC bulk laxative drug products that were proposed in Part 334 (50 FR 2124). Final agency action on this matter will occur with the publication at a future date of a final monograph, which will be a final rule establishing a monograph for OTC laxative drug products.

In comment 12 of the tentative final monograph (50 FR 2126), the agency stated that some of the Panel's recommendations regarding the directions for use of OTC laxative drug products required clarification. The agency stated that where the Panel recommended a daily dose of an ingredient without a dosage interval, the agency was proposing this to mean a single daily dose. However, in reviewing some of the comments submitted in response to the tentative final monograph and in further reviewing the directions for use of marketed bulk laxative drug products and the data on these products that were submitted to the Panel, the agency has found that the maximum daily dose of bulk laxatives is routinely administered in divided doses rather than as a single dose. In addition, the maximum daily dose of some bulk laxatives is so large that it may pose a risk of esophageal obstruction if taken at one time (Ref. 1). This risk can be minimized by administering bulk laxatives in divided doses rather than in a single daily dose, as originally proposed by the agency in the directions in the earlier tentative final monograph. The agency also recognizes that OTC bulk laxative ingredients are effective over a wide range of doses and dosing intervals; therefore, the dosages specified in the monograph for these drug products should be sufficiently flexible to accommodate the various dosages of marketed products that have been shown to be safe and effective.

Based on a review of the available data and information, the agency is revising the dosage and directions for the use of bulk laxatives that were previously proposed in § 334.52(d) (2), (3), (4), (5), (6), and (7) of the tentative final monograph. The dosages being proposed for children are based on the relationship of 1 dose for an adult; ½ the adult dose for children 6 to under 12 years of age; and ¼ the adult dose for children 2 to under 6 years of age. Pediatric dosages for particular ingredients have been proposed only when there is a marketing history of these ingredients being administered to childern in these age groups. For example, an ingredient without a marketed pediatric dosage for children 2 to under 6 years of age will not have a dosage for this age group in the tentative final monograph.

The agency believes that these revised dosages and directions for use provide for necessary flexibility in developing appropriate directions for the wide range of OTC bulk laxative drug products.

Reference

(1) Brunton, L. L., "Laxatives," *in* "The Pharmacological Basis of Therapeutics," 7th Ed., edited by L. S. Goodman, A. Gilman, T. W. Rall, and F. Murad, The MacMillan Publishing Co., New York, pp. 996-997, 1985.

Testing of Category II and Category III Conditions

Interested persons may communicate with the agency about the submission of data and information relating to the directions for the use of OTC bulk laxative ingredients by folllowing the procedures outlined in the agency's policy statement published in the **Federal Register** of September 29, 1981 (46 FR 47740) and clarified April 1, 1983 (48 FR 14050). That policy statement includes procedures for the submission and review of proposed protocols, agency meetings with industry or other interested persons, and agency communications on submitted test data and other information.

The agency has examined the economic consequences of this proposed rulemaking in conjunction with other rules resulting from the OTC drug review. In a notice published in the **Federal Register** of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that no one of these rules, including this proposed rule for OTC laxative drug products, is a major rule.

The agency has determined that under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Interested persons may, on or before December 1, 1986, submit to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments, objections, or requests for oral hearing before the Commissioner on the proposed regulation. A request for an oral hearing must specify points to be covered and time requested. Written comments on the agency's economic impact determination may be submitted on or before January 29, 1987. Three copies of all comments, objections, and requests are to be submitted, except that individuals may submit one copy. Comments, objections, and requests are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Comments, objections, and requests may be seen in the Office above between 9 a.m. and 4 p.m., Monday through Friday. Any scheduled oral hearing will be announced in the **Federal Register.**

Interested persons, on or before October 1, 1987, may also submit in writing new data relating to the directions for the use of OTC bulk laxatives. Written comments on the new data may be submitted on or before December 1, 1987. These dates are consistent with the time periods specified in the agency's final rule revising the procedural regulations for reviewing and classifying OTC drugs, published in the **Federal Register** of September 29, 1981 (46 FR 47730). Three copies of all data and comments on the data are to be submitted, except that individuals may submit one copy, and all data and comments are to be identified with the docket number found in brackets in the heading of this document. Data and comments should be addressed to the Dockets Management Branch (HFA–305) (address above). Received data and comments may also be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Data and comments submitted in response to this amendment will be considered by the agency in establishing a final monograph. Data submitted after the closing of the administrative record on December 1, 1987 will be reviewed by the agency only after a final monograph is published in the **Federal Register,** unless the Commissioner finds good cause has been shown that warrants earlier consideration.

List of Subjects in 21 CFR Part 334

OTC drugs Laxative drug products.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Administrative Procedure Act, it is proposed that Subchapter D of Chapter I of Title 21 of the Code of Federal Regulations be amended in Part 334 (proposed in the **Federal Register** of January 15, 1985; 50 FR 2124) as follows:

PART 334—LAXATIVE DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

1. The authority citation for Part 334 continues to read as follows:

Authority: Secs. 201(p), 502, 505, 701, 52 Stat. 1041–1042 as amended, 1050–1053 as amended, 1055–1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321(p), 352, 355, 371); 5 U.S.C. 553; 21 CFR 5.11.

2. In Subpart B, § 334.52 is amended by revising paragraphs (d)(2), (d)(3), (d)(4), (d)(5), (d)(6), and (d)(7), to read as follows:

§ 334.52 Labeling of bulk-forming laxative drug products.

* * * * *

(d) * * *

(2) *For products containing bran identified in § 334.10(a).* Adults and children 12 years of age and over: Oral dosage is up to 14 grams daily in divided doses of 1 to 7 grams per dose. Children 6 to under 12 years of age: Up to 7 grams daily is divided doses of 1 to 3.5 grams per dose. Children 2 to under 6 years of age: Up to 3.5 grams daily in divided doses of 1 to 1.75 grams per dose. Children under 2 years of age: Consult a doctor.

(3) *For products containing methylcellulose and sodium carboxymethylcellulose identified in § 334.10(b) (1) and (2).* Adults and children 12 years of age and over: Oral dosage is up to 6 grams daily in divided doses of 0.45 to 3 grams per dose. Children 6 to under 12 years of age: Up to 3 grams daily in divided doses of 0.45 to 1.5 grams per dose. Children under 6 years of age: Consult a doctor.

(4) *For products containing karaya identified in § 334.10(c).* Adults and children 12 years of age and over: Oral dosage is up to 14 grams daily in divided doses of 3.5 to 7 grams per dose. Children under 12 years of age: Consult a doctor.

(5) *For products containing malt soup extract identified in § 334.10(d).* Adults and children 12 years of age and over: oral dosage is up to 64 grams daily in divided doses of 3 to 32 grams per dose. Children 6 to under 12 years of age: Up to 32 grams daily in divided doses of 3 to 16 grams per dose. Children 2 to under 6 years of age: Up to 16 grams daily in divided doses of 3 to 8 grams per dose. Children under 2 years of age: Consult a doctor.

(6) *For products containing polycarbophil identified in § 334.10(e).* Adults and children 12 years of age and over: Oral dosage is up to 4 grams daily in divided doses of 1 gram per dose. Children 6 to under 12 years of age: Up to 2 grams daily in divided doses of 0.5 grams per dose. Children 2 to under 6 years of age: Up to 1 gram daily in divided doses of 0.5 grams per dose. Children under 2 years of age: Consult a doctor.

(7) *For products containing any psyllium ingredient identified in § 334.10(f).* Adults and children 12 years of age and over: Oral dosage is up to 30 grams daily in divided doses of 2.5 to 7.5 grams per dose. Children 6 to under 12 years of age: Up to 15 grams daily in divided doses of 2.5 to 3.75 grams per dose. Children under 6 years of age: Consult a doctor.

Dated: August 9, 1986.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 86–22150 Filed 9–30–86; 8:45 am]

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federal register

Wednesday
October 1, 1986

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 71

Proposed Establishment of Airport Radar Service Areas; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 86-AWA-40]

Proposed Establishment of Airport Radar Service Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Airport Radar Service Areas (ARSA) at the following seven locations: Barksdale Air Force Base, LA; Boise Air Terminal, ID; Bishop Airport, Flint, MI; Fort Wayne Municipal Airport, IN; Capital City Airport, Lansing, MI; Dane County Regional Airport-Truax Field, Madison, WI; and Shreveport Regional Airport, LA. Each location is a public or military airport at which a nonregulatory Terminal Radar Service Area (TRSA) is currently in effect. Establishment of each ARSA would require that pilots maintain two-way radio communication with air traffic control (ATC) while in the ARSA. Implementation of ARSA procedures at each of the affected locations would promote the efficient control of air traffic and reduce the risk of midair collision in terminal areas.

DATES: Comments must be received on or before February 9, 1987. Informal airspace meeting dates are as follows:

1. Barksdale AFB and Shreveport Regional Airport, LA—December 2, 1986.
2. Boise Air Terminal, ID—December 1, 1986.
3. Bishop Airport, Flint, MI—December 16, 1986.
4. Fort Wayne Municipal Airport, IN—December 18, 1986.
5. Capital City Airport, Lansing, MI—December 17, 1986.
6. Dane County Regional Airport-Truax Field, Madison, WI—January 6, 1987.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket [AGC-204], Airspace Docket No. 86-AWA-40, 800 Independence Avenue, SW., Washington, DC 20591.

Informal airspace meeting places are as follows:

Barksdale AFB and Shreveport Regional Airport, LA, ARSA's
Time: 7:00 p.m.
Location: Quality Inn, 5215 Monkhouse Drive, Shreveport, LA

Boise Air Terminal, ID, ARSA
Time: 7:00 p.m.
Location: Boise Interagency Fire Training Center, 3905 Vista Avenue, Boise, ID

Bishop Airport, Flint, MI, ARSA
Time: 7:00 p.m.
Location: Ainsworth High School Auditorium, 1409 W. Maple Avenue, Flint, MI

Fort Wayne Municipal Airport, IN, ARSA
Time: 7:00 p.m.
Location: Indiana Air National Guard Base, Maxwell Hall, Baer Field, Fort Wayne, IN

Capital City Airport, Lansing, MI, ARSA
Time: 7:30 p.m.
Location: Capital City Airport Terminal Building, Airport Cafeteria, Lansing, MI

Dane County Regional Airport-Traux Field, Madison, WI, ARSA
Time: 7:00 p.m.
Location: Madison Area Technical College, Truax Campus, Rooms 206A and 206B, 3500 Anderson Street, Madison, WI

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

Informal dockets may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Robert G. Burns, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9253.

SUPPLEMENTARY INFORMATION

Comments Invited

This notice involves seven locations. Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 86-AWA-40." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

Meeting Procedures

In addition to seeking written comments on this proposal, the FAA will hold informal airspace meetings for all proposed ARSA locations in order to receive additional input with respect to the proposal. The schedule of times and places of the hearings is listed above. No individual meetings will be held at the same time on separate locations in the same region, so that commenters will be able to attend all meetings in which they may have an interest. Persons who plan to attend any of the meetings should be aware of the following procedures to be followed:

(a) The meetings will be informal in nature and will be conducted by the designated representative of the Administrator. Each participant will be given an opportunity to make a presentation.

(b) The dates, times, and places for each meeting are listed above. There will be no admission fee or other charge to attend and participate. The meetings will be open to all persons on a space-available basis. The FAA representative may accelerate the agenda to enable

early adjournment if the progress of any meeting is more expeditious than planned.

(c) The meetings will not be recorded. A summary of the comments made at each meeting will be filed in the docket.

(d) Position papers or other handout material relating to the substance of the meetings may be accepted at the discretion of the FAA representative. Participants submitting handout materials should present an original and two copies to the presiding officer for approval before distribution. If approved by the presiding officer, there should be an adequate number of copies provided for further distribution to all participants.

(e) Statements made by FAA participants at the meetings should not be taken as expressing a final FAA position.

Agenda

Presentation of Meeting Procedures
FAA Presentation of Proposal
Public Presentations and Discussion

Background

On April 22, 1982, the National Airspace Review (NAR) plan was published in the **Federal Register** (47 FR 17448). The plan encompassed a review of airspace use and procedural aspects of the ATC system. Among the main objectives of the NAR were the improvement of the ATC system by increasing efficiency and reducing complexity. In its review of terminal airspace, NAR Task Group 1–2 concluded that TRSA's should be replaced. Four types of airspace configurations were considered as replacement candidates, of which Model B, since redesignated ARSA, was the consensus recommendation.

In response, the FAA published NAR Recommendation 1–2.2.1, "Replace Terminal Radar Service Areas with Model B Airspace and Service" in Notice 83–9 (July 28, 1983; 48 FR 34286) proposing the establishment of ARSA's at the Robert Mueller Municipal Airport, Austin, TX, and the Port of Columbus International Airport, Columbus, OH. ARSA's were designated at these airports on a temporary basis by SFAR No. 45 (October 28, 1983; 48 FR 50038) in order to provide an operational confirmation of the ARSA concept for potential application on a national basis.

Following a confirmation period of more than a year, the FAA adopted the NAR recommendation and, on February 27, 1985, issued a final rule (50 FR 9252; March 6, 1985) defining an ARSA and establishing air traffic rules for operation within such an area. Concurrently, by separate rulemaking action, ARSA's were permanently established at the Austin, TX, and Columbus, OH, airports and also at the Baltimore/Washington International Airport, Baltimore, MD, (50 FR 9250; March 6, 1985). The FAA has stated that future notices would propose ARSA's for other airports at which TRSA procedures were in effect.

Additionally, the NAR Task Group recommended that the FAA develop quantitative criteria for proposing to establish ARSA's at locations other than those which can included in the TRSA replacement program. The task group recommended this criteria consider—among other things—traffic mix, flow and density, airport configuration, geographical features, collision risk assessment, and ATC capabilities to provide service to users. This criteria has been developed and is being circularized through the FAA directives system.

The FAA has established ARSA's at numerous locations under a paced implementation plan to replace TRSA's with ARSA's. This is one of a series of notices to implement ARSA's at locations with TRSA's.

Related Rulemaking

This notice proposes ARSA designation at seven of the locations identified as candidates for an ARSA in the preamble to Amendment No. 71–10 (50 FR 9252). Other candidate locations will be proposed in future notices published in the **Federal Register**.

The Current Situation at the Proposed ARSA Locations

A TRSA is currently in effect at each of the locations at which ARSA's are proposed in this notice. A TRSA consists of the airspace surrounding a designated airport where ATC provides radar vectoring, sequencing, and separation for all aircraft operating under instrument flight rules (IFR) and for participating aircraft operating under visual flight rules (VFR). TRSA airspace and operating rules are not established by regulation, and participation by pilots operating under VFR is voluntary, although pilots are urged to participate. This level of service is known as State III and is provided at all locations identified as TRSA's. The NAR task group recommended the replacement of most TRSA's with ARSA's.

A number of problems with the TRSA program were identified by the task group. The task group stated that because there are different levels of service offered within the TRSA, users are not always sure of what restrictions or privileges exist, or how to cope with them. According to the task group, there is a feeling shared among users that TRSA's are often poorly defined, are generally dissimilar in dimensions, and encompass more area than is necessary or desirable. There are other users who believe that the voluntary nature of the TRSA does not adequately address the problems associated with nonparticipating aircraft operating in relative proximity to the airport and associated approach and departure courses. There is strong advocacy among user organizations that terminal radar facilities should provide all pilots the same service, in the same way, and, to the extent feasible, within standard size airspace designations.

Certain provisions of FAR section 91.87 add to the problem identified by the task group. For example, aircraft operating under VFR to or from a satellite airport and within the airport traffic area (ATA) of the primary airport are excluded from the two-way radio communications requirement of § 91.87. This condition is acceptable until the volume and density of traffic at the primary airport dictates further action.

The Proposal

The FAA is considering an amendment to § 71.501 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish ARSA's at the following seven locations: Barksdale Air Force Base, LA; Boise Air Terminal, ID; Bishop Airport, Flint, MI; Fort Wayne Municipal Airport, IN; Capital City Airport, Lansing, MI; Dane County Regional Airport-Truax Field, Madison, WI; and Shreveport Regional Airport, LA. Each of the above locations is a public or military airport at which a nonregulatory TRSA is currently in effect. The proposed locations are depicted on charts in Appendix 1 to this notice.

The FAA has published a final rule (50 FR 9252; March 6, 1985) which defines ARSA and prescribes operating rules for aircraft, ultralight vehicles, and parachute jump operations in airspace designated as an ARSA.

The final rule provides in part that any aircraft arriving at any airport in an ARSA or flying through an ARSA, prior to entering the ARSA must: (1) Establish two-way radio communications with the ATC facility having jurisdiction over the area, and (2) while in the ARSA, maintain two-way radio communications with the ATC facility. For aircraft departing from the primary airport within the ARSA, two-way radio communications must be maintained with the ATC facility having jurisdiction over the area. For aircraft departing a

satellite airport within the ARSA, two-way radio communications must be established as soon as practicable after takeoff with the ATC facility having jurisdiction over the area, and thereafter maintained while operating within the ARSA.

All aircraft operating within an ARSA are required to comply with all ATC clearances and instructions and any FAA arrival or departure traffic pattern for the airport of intended operation. However, the rule permits ATC to authorize appropriate deviations to any of the operating requirements of the rule when safety considerations justify the deviation or more efficient utilization of the airspace can be attained. Ultralight vehicle operations and parachute jumps in an ARSA may only be conducted under the terms of an ATC authorization.

The FAA adopted the NAR task group recommendation that each ARSA be of the same airspace configuration insofar as practicable. The standard ARSA consists of airspace within 5 nautical miles of the primary airport extending from the surface to an altitude of 4,000 feet above that airport's elevation, and that airspace between 5 and 10 nautical miles from the primary airport from 1,200 feet above the surface to an altitude of 4,000 feet above that airport's elevation. Proposed deviation from the standard has been necessary at some airports due to adjacent regulatory airspace, international boundaries, topography, or unusual operational requirements.

Definitions, operating requirements, and specific airspace designations applicable to ARSA may be found in 14 CFR Part 71, §§ 71.14 and 71.501, and Part 91, §§ 91.1 and 91.88.

For the reasons discussed under "Regulatory Evaluation," the FAA has determined that this proposed regulation (1) is not a "major rule" under Executive Order 12291; and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

Regulatory Evaluation

The FAA has conducted a detailed Regulatory Evaluation of the proposed establishment of additional ARSA sites. The major findings of that evaluation are summarized below, and the full evaluation is available in the regulatory docket.

a. Costs

Costs which potentially could result from the ARSA program fall into the following categories:

(1) Air traffic controller staffing, controller training, and facility equipment costs incurred by the FAA.

(2) Costs associated with the revision of charts, notification of the public, and pilot education.

(3) Additional operating costs for circumnavigating or flying over the ARSA.

(4) Potential delay costs resulting from operations within an ARSA rather than a TRSA.

(5) The need for some operators to purchase radio transceivers.

(6) Miscellaneous costs.

It has been the FAA's experience, however, that these potential costs do not materialize to any appreciable degree, and when they do occur, they are transitional, relatively low in magnitude, or attributable to specific implementation problems that have been experienced at a very small minority of ARSA sites. The reasons for these conclusions are presented below.

FAA expects that the ARSA program can be implemented without requiring additional controller personnel above current authorized staffing levels because participation at most TRSA locations is already quite high, and the reduced separation standards permitted in ARSA's will allow controllers to absorb the slight increase in participating traffic by handling all traffic much more efficiently. Further, because controller training will be conducted during normal working hours, and existing TRSA facilities already operate the necessary radar equipment, FAA does not expect to incur any appreciable implementation costs. Essentially, the FAA is modifying its terminal radar procedures in the ARSA program in a manner that will make more efficient use of existing resources.

No additional costs are expected to be incurred because of the need to revise sectional charts to remove TRSA airspace depictions and incorporate the new ARSA airspace boundaries. Changes of this nature are routinely made during charting cycles, and the planned effective dates for newly established ARSA's are scheduled to coincide with the regular 6-month chart publication intervals.

Much of the need to notify the public and educate pilots about ARSA operations will be met as a part of this rulemaking proceeding. The informal public meeting being held at each location where an ARSA is being proposed provides pilots with the best opportunity to learn both how an ARSA works and how it will affect their local operations. Because the expenses associated with these public meetings will be incurred regardless of whether or not an ARSA is ultimately established at a proposed site, they are more appropriately considered sunken costs attributable to the rulemaking process rather than costs of the ARSA program. Once the decision has been made to establish an ARSA through a final rule issued in this proceeding, however, any public information costs which follow are strictly attributable to the ARSA program. The FAA expects to distribute a Letter to Airmen to all pilots residing within 50 miles of ARSA sites explaining the operation and configuration of the ARSA finally adopted. The FAA will also issue an Advisory Circular on ARSA's. The combined Letter to Airmen and prorated Advisory Circular costs for the seven airports at which ARSA's are being proposed by this notice is estimated to be approximately $3,150. This cost will be incurred only once upon the initial establishment of the ARSA's.

Information on ARSA's following implementation of the program will also be disseminated at aviation safety seminars conducted throughout the country by various district offices. These seminars are regularly provided by the FAA to discuss a variety of aviation safety issues, and therefore will not involve additional costs strictly as a result of the ARSA program. Additionally, no significant costs are expected to be incurred as a result of the follow-on user meetings what will be held at each site following implementation of the ARSA to allow users to provide feedback to the FAA on local ARSA operations. These meetings are being held at public or other facilities which are being provided free of change or at nominal cost. Further, because these meetings are being conducted by local FAA facility personnel, no travel, per diem, or overtime costs will be incurred by regional or headquarters personnel.

FAA anticipates that some pilots who currently transit a TRSA without establishing radio communications or participating in radar services may choose to circumnavigate the mandatory participation airspace of an ARSA rather than participate. Some minor delay costs will be incurred by these pilots because of the additional aircraft variable operating cost and lost crew and passenger time resulting from the deviation. Other pilots may elect to overfly the ARSA, or transit below the 1,200 feet above ground level (AGL) floor between the 5- and 10-nautical-mile rings. Although this will not result in any appreciable delay, a small additional fuel burn will result from the climb portion of the altitude adjustment

(which will be offset somewhat by the descent).

FAA recognizes that the potential exists for delay to develop at some locations following establishment of an ARSA. The additional traffic that the radar facilities will be handling as a result of the mandatory participation requirement may, in some instances, result in minor delays to aircraft operations. FAA does not expect such delay to be appreciable. FAA expects that the greater flexibility afforded controllers in handling traffic as a result of the reduced separation standards will keep delay problems to a minimum. Those that do occur will be transitional in nature, diminishing as facilities gain operating experience with ARSA's and learn how to tailor procedures and allocate resources to take fullest advantage of the efficiencies that an ARSA will permit. This has been the experience at the three locations where ARSA's have been in effect for the longest period of time, and is the trend at most of the locations that have been more recently designated.

The FAA does not expect that any operators will find it necessary to install radio transceivers as a result of establishing the ARSA's proposed in this notice. Aircraft operating to and from primary airports already are required to have two-way radio communications capability because of existing airport traffic areas and therefore will not incur any additional costs as a result of the proposed ARSA's. Further, the FAA has made an effort to minimize these potential costs throughout the ARSA program by providing airspace exclusions, or cutouts, for satellite airports located within 5 nautical miles of the ARSA center where the ARSA would otherwise have extended down to the surface. Procedural agreements between the local ATC facility and the affected airports have also been used to avoid radio installation costs.

At some proposed ARSA locations, special situations might exist where establishment of an ARSA could impose certain costs on users of that airspace. However, exclusions, cutouts, and special procedures have been used extensively throughout the ARSA program to alleviate adverse impacts on local fixed base and airport operators. Similarly, the FAA has eliminated potential adverse impacts on existing flight training practice areas, as well as soaring, ballooning, parachuting, ultralight and banner towing activities, by developing special procedures to accommodate these activities through local agreements between ATC facilities and the affected organizations. For these reasons, the FAA does not expect that any such adverse impacts will occur at the candidate ARSA sites proposed in this notice.

b. Benefits

Much of the benefit that will result from ARSA's is nonquantifiable, and is attributable to simplification and standardization of ARSA configurations and procedures, which will eliminate much of the confusion pilots currently experience when operating in nonstandard TRSA's. Further, once experience is gained in ARSA operations, the greater flexibility allowed air traffic controllers in handling traffic within an ARSA will enable them to move traffic more efficiently than they currently are able to under TRSA's. These expected savings may or may not offset the delay that some sites may experience after the initial establishment of an ARSA, but are expected to eventually provide overall time savings to all traffic, IFR as well as VFR, that exceed delay as both pilots and controllers become more familiar with ARSA operating procedures.

Some of the benefits of the ARSA cannot be specifically attributed to individual candidate airports, but rather will result from the overall improvements in terminal area ATC procedures realized as ARSA's are implemented throughout the country. ARSA's have the potential of reducing both near and actual midair collisions at the airports where they are established. Based upon the experience at the Austin and Columbus ARSA confirmation sites, FAA estimates that near midair collisions may be reduced by approximately 35 to 40 percent. Further, FAA estimates that implementation of the ARSA program nationally may prevent approximately one midair collision every 1 to 2 years throughout the United States.The quantifiable benefits of preventing a midair collision can range from less than $100,000, resulting from the prevention of a minor nonfatal accident between general aviation aircraft, to $300 million or more, resulting from the prevention of a midair collision involving a large air carrier aircraft and numerous fatalities. Establishment of ARSA's at the sites proposed in this notice will contribute to these improvements in safety.

c. Comparison of Costs and Benefits

A direct comparison of the costs and benefits of this proposal is difficult for a number of reasons. Many of the benefits of the rule are nonquantifiable, and it is difficult to specifically attribute the standardization benefits, as well as the safety benefits, to individual candidate ARSA sites.

FAA expects that any adjustment problems that may be experienced at new ARSA locations will only be temporary, and that once established, the ARSA program will result in an overall improvement in efficiency in terminal area operations at those airports where ARSA's are established. This has been the experience at the vast majority of ARSA sites that have already been implemented. In addition to these operational efficiency improvements, establishment of the proposed ARSA sites will contribute to a reduction in near and actual midair collisions. For these reasons, FAA expects that establishment of the ARSA sites proposed in this notice will produce long term, ongoing benefits that will far exceed their costs, which are essentially transitional in nature.

International Trade Impact Analysis

This proposed regulation will only affect terminal airspace operating procedures at selected airports within the United States. As such, it will have no affect on the sale of foreign aviation products or services in the United States, nor will it affect the sale of United States aviation products or services in foreign countries.

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 small entities that could be potentially affected by implementation of the ARSA program are the fixed-based operators, flight schools, agricultural operators and other small aviation businesses located at satellite airports within 5 nautical miles of the ARSA center. If the mandatory participation requirement were to extend down to the surface at these airports, where under current regulations participation in the TRSA and radio communication with ATC is voluntary, operations at these airports might be altered, and some business could be lost to airports outside of the ARSA core. FAA has proposed to exclude almost every satellite airport located within 5 nautical miles of the

primary airport at candidate ARSA sites to avoid adversely impacting their operations, and to simplify coordinating ATC responsibilities between the primary and satellite airports. In some cases, the same purposes will be achieved through Letters of Agreement between ATC and the affected airports that establish special procedures for operating to and from these airports. In this manner, FAA expects to virtually eliminate any adverse impact on the operations of small satellite airports that potentially could result from the ARSA program. Similarly, FAA expects to eliminate potential adverse impacts on existing flight training practice areas, as well as soaring, ballooning, parachuting, ultralight, and banner towing activities, by developing special procedures that will accommodate these activities through local agreements between ATC facilities and the affected organizations. FAA has utilized such arrangements extensively in implementing the ARSA's that have been established to date.

Further, because the FAA expects that any delay problems that may initially develop following implementation of an ARSA will be transitory, and because the airports that will be affected by the ARSA program represent only a small proportion of all the public use airports in operation within the United States, small entities of any type that use aircraft in the course of their business will not be adversely impacted.

For these reasons, the FAA certifies that the proposed regulation will not result in a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required under the terms of the RFA.

List of Subjects in 14 CFR Part 71

Aviation safety, Airport radar service areas.

The Proposed Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

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

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.501 [Amended]

2. Section 71.501 is amended as follows:

Barksdale AFB, LA—[New]

That airspace extending upward from the surface to and including 4,300 feet MSL within a 5-mile radius of Barksdale AFB (lat. 32°30'06" N., long. 93°39'45" W.) and that airspace extending upward from 1,600 feet MSL to and including 4,300 feet MSL within a 10-mile radius of Barksdale AFB excluding that airspace designated as the Shreveport Regional Airport, LA, Airport Radar Service Area.

Boise Air Terminal, ID—[New]

That airspace extending upward from the surface to and including 6,900 feet MSL within a 5-mile radius of the Boise Air Terminal (lat. 43°33'54" N., long. 116°13'27" W.) and that airspace within a 10-mile radius of the Boise Air Terminal extending upward from 4,600 feet MSL to and including 6,900 feet MSL from the 096°T(080°M) bearing from the airport clockwise to the 183°T(165°M) bearing from the airport and from 4,200 feet MSL to and including 6,900 feet MSL from the 183°T(165°M) bearing from the airport clockwise to the 348°T(330°M) bearing from the airport; and from 5,200 feet MSL to and including 6,900 feet MSL from the 348°T(330°M) bearing from the airport clockwise to the 008°T(350°M) bearing from the airport.

Flint Bishop Airport, MI—[New]

That airspace extending upward from the surface to and including 4,800 feet MSL within a 5-mile radius of the Bishop Airport (lat. 42°57'56" N., long. 83°44'37" W.) and that airspace extending upward from 2,100 feet MSL to 4,800 feet MSL within a 10-mile radius of the Bishop Airport.

Fort Wayne Municipal Airport, IN—[New]

That airspace extending upward from the surface to and including 4,800 feet MSL within a 5-mile radius of the Fort Wayne Municipal Airport (lat. 40°58'42" N., long. 85°11'28" W.) and that airspace extending upward from 2,000 feet MSL to 4,800 feet MSL within a 10-mile radius of the Fort Wayne Municipal Airport.

Lansing Capital City Airport, MI—[New]

That airspace extending upward from the surface to and including 4,900 feet MSL within a 5-mile radius of the Capital City Airport (lat. 42°46'43" N., long. 84°35'14" W.) and that airspace extending upward from 2,100 feet MSL to 4,900 feet MSL within a 10-mile radius of the Capital City Airport.

Madison Dane County Regional Airport-Truax Field, WI—[New]

That airspace extending upward from the surface to and including 4,900 feet MSL within a 5-mile radius of the Dane County Regional Airport-Truax Field (lat. 43°08'22" N., long 89°20'13" W.) and that airspace extending upward from 2,300 feet MSL to 4,900 feet MSL within a 10-mile radius of the airport.

Shreveport Regional Airport, LA—[New]

That airspace extending upward from the surface to and including 4,300 feet MSL within a 5-mile radius of the Shreveport Regional Airport (lat. 32°26'48" N., long. 93°49'30" W.) and that airspace extending upward from 1,600 feet MSL to and including 4,300 feet MSL within a 10-mile radius of the airport excluding that airspace designated as the Barksdale AFB, LA, Airport Radar Service Area.

Issued in Washington, DC, on September 25, 1986.

O.E. Falsetti,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

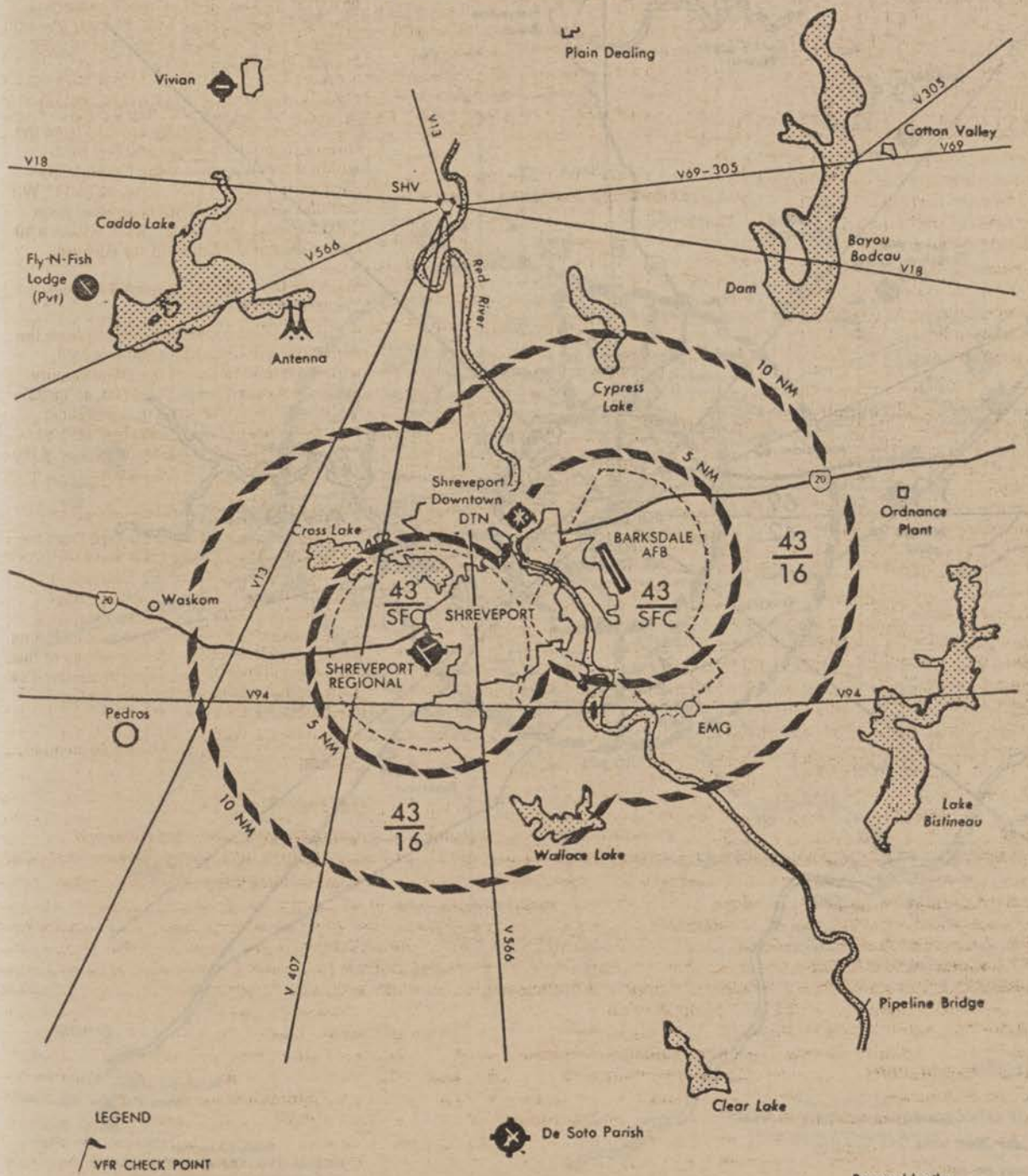
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AIRPORT RADAR SERVICE AREA

(NOT TO BE USED FOR NAVIGATION)

SHREVEPORT, LOUISIANA
SHREVEPORT REGIONAL AIRPORT
FIELD ELEV. 258' MSL

BARKSDALE AFB, LOUISIANA
FIELD ELEV. 166' MSL



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Cartographic Standards Section
ATO-259

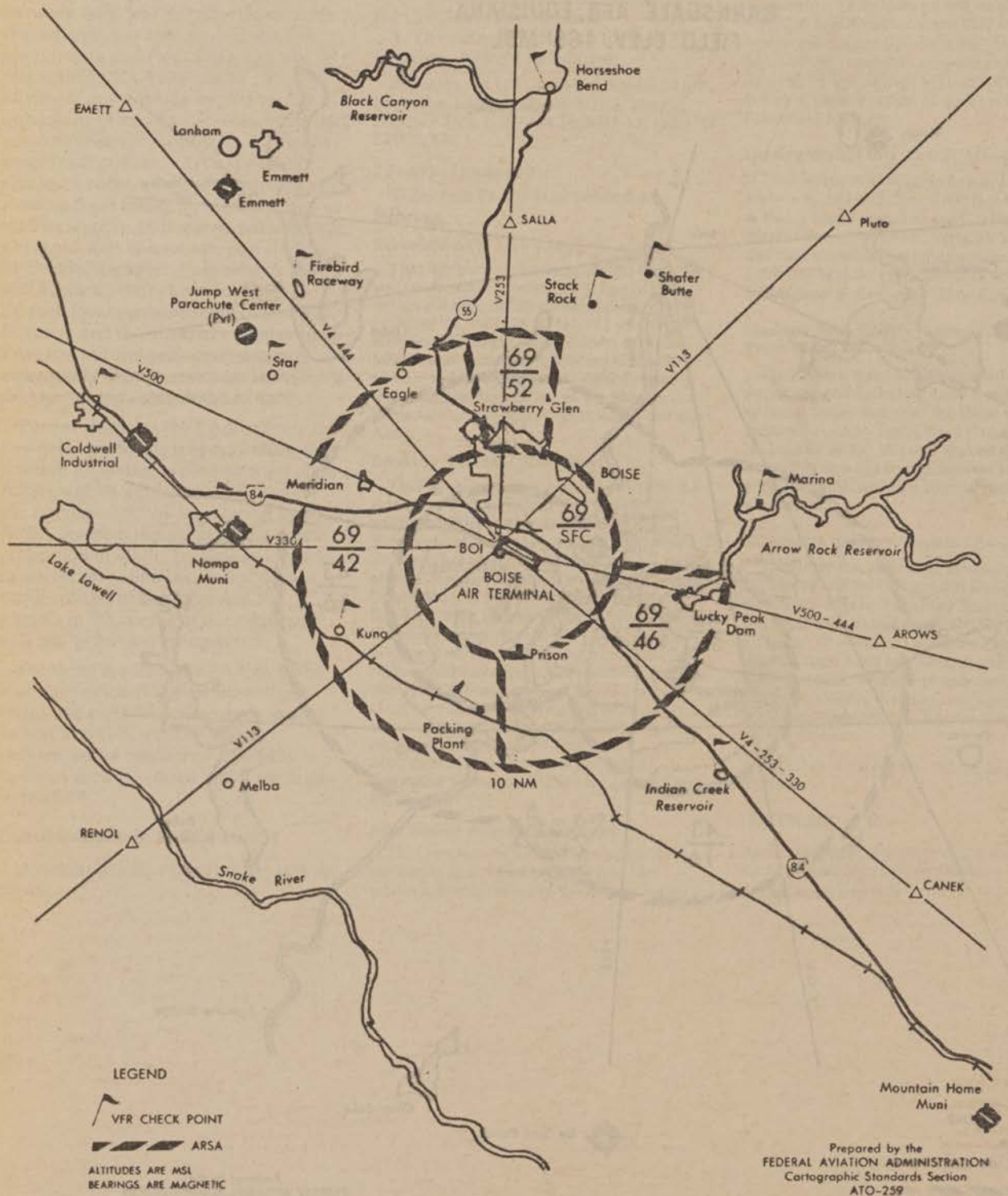
AIRPORT RADAR SERVICE AREA

(NOT TO BE USED FOR NAVIGATION)

BOISE, IDAHO

BOISE AIR TERMINAL (GOWEN FIELD) AIRPORT

FIELD ELEV. 2858' MSL

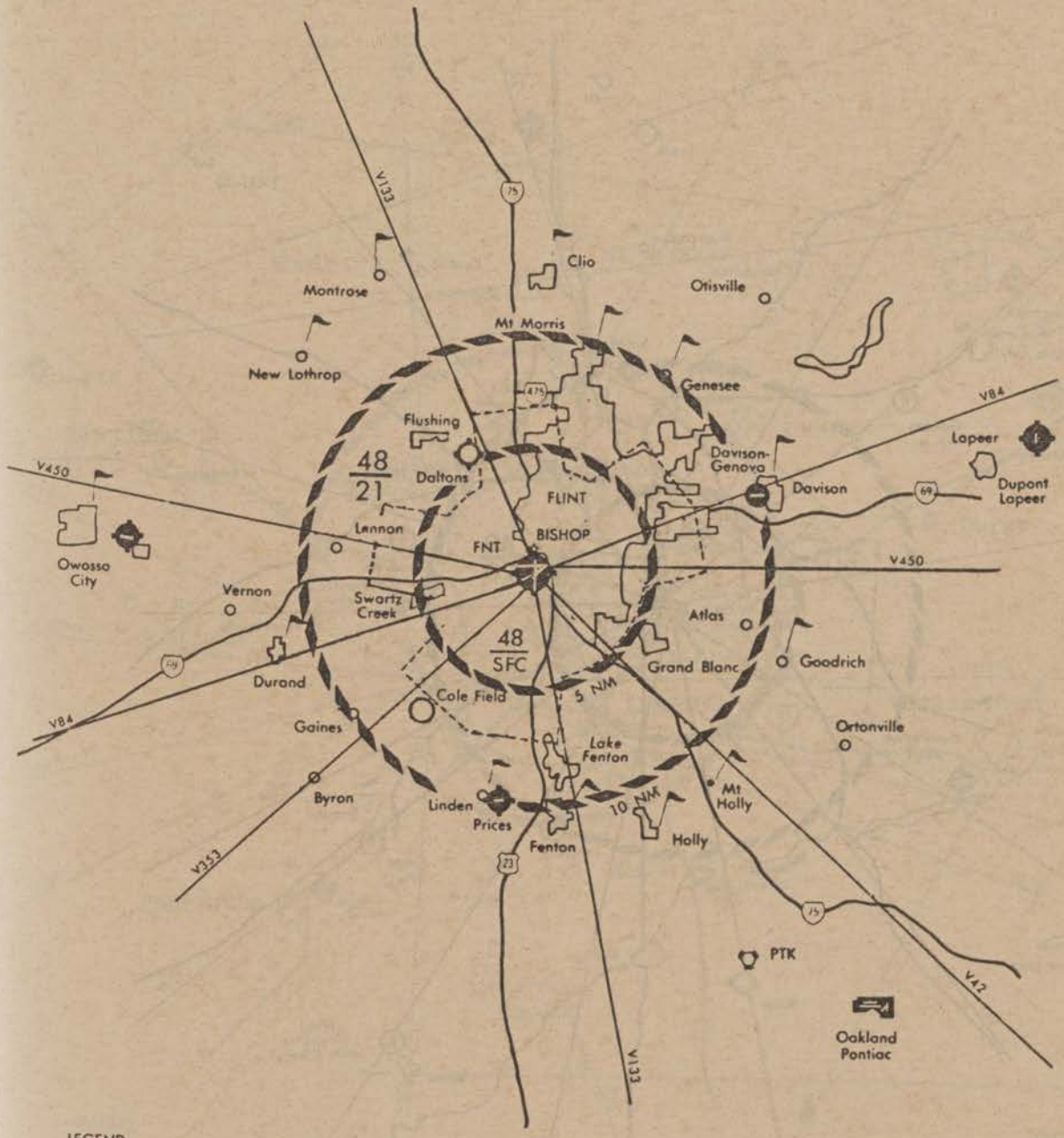


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AIRPORT RADAR SERVICE AREA

(NOT TO BE USED FOR NAVIGATION)

FLINT, MICHIGAN
BISHOP AIRPORT
FIELD ELEV. 782' MSL



LEGEND

VFR CHECK POINT

ARSA

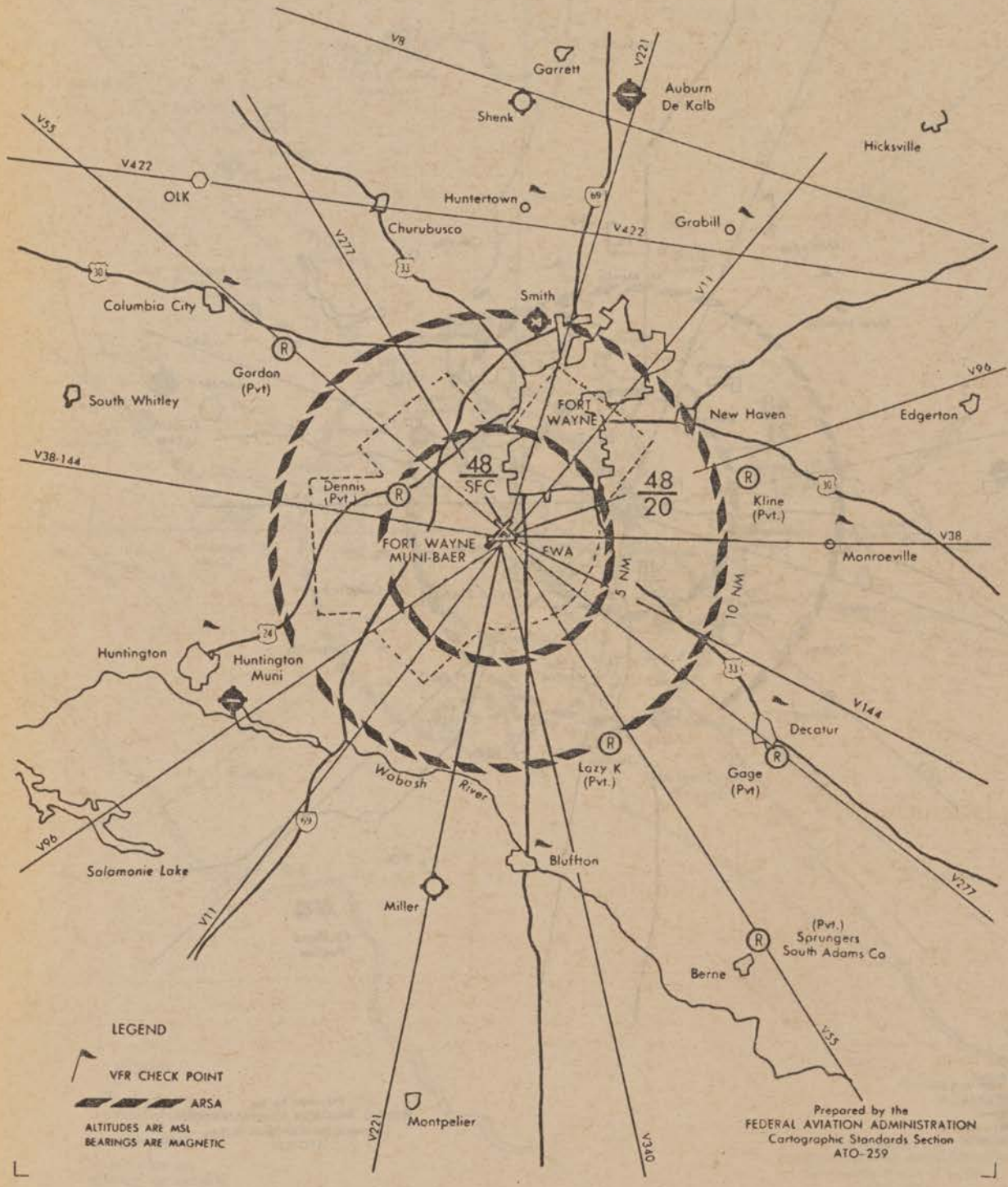
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BEARINGS ARE MAGNETIC

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AIRPORT RADAR SERVICE AREA

(NOT TO BE USED FOR NAVIGATION)

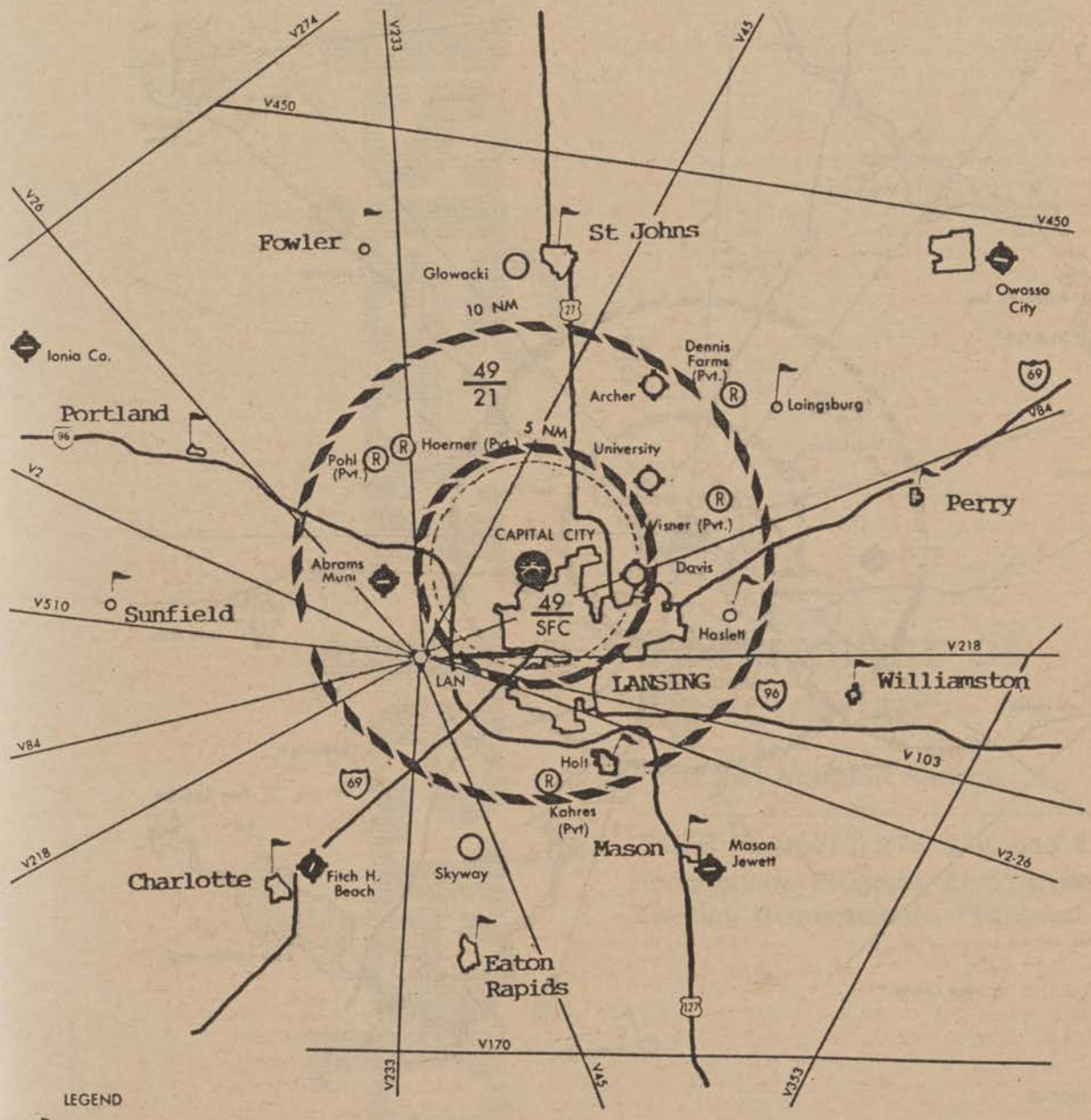
FORT WAYNE, INDIANA
FT WAYNE MUNI (BAER FIELD)
FIELD ELEV. 802' MSL



AIRPORT RADAR SERVICE AREA

(NOT TO BE USED FOR NAVIGATION)

LANSING, MICHIGAN
CAPITAL CITY AIRPORT
FIELD ELEV. 860' MSL



LEGEND

VFR CHECK POINT

ARSA

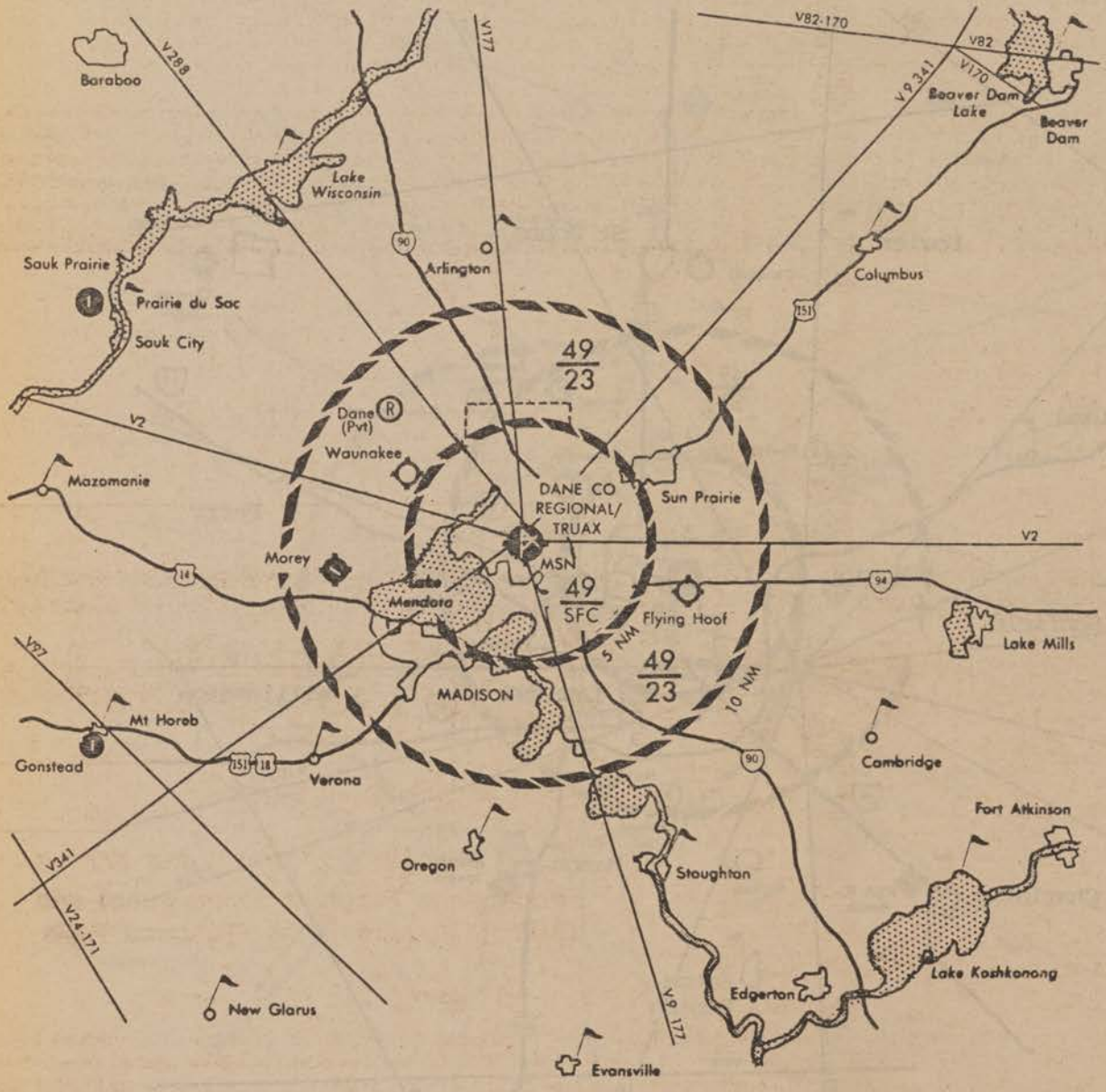
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BEARINGS ARE MAGNETIC

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AIRPORT RADAR SERVICE AREA

(NOT TO BE USED FOR NAVIGATION)

MADISON, WISCONSIN
DANE CO REGIONAL-TRUAX FLD
FIELD ELEV. 862' MSL



LEGEND

VFR CHECK POINT

ARSA

ALTITUDES ARE MSL
BEARINGS ARE MAGNETIC

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ATO-259

Federal Register

Wednesday
October 1, 1986

Part V

Department of Agriculture

Food and Nutrition Service

7 CFR Parts 272, 273, 276, and 277
Food Stamp Program; Employment and Training Requirements; Proposed Rule

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 272, 273, 276, and 277

[Amdt. No. 278]

Food Stamp Program; Employment and Training Requirements

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes extensive changes in the work requirements of the Food Stamp Program based on provisions in the Food Security Act of 1985 (Pub. L. 99–198). The Act requires that no later than April 1, 1987 every State agency shall implement an employment and training program designed by the State agency and approved by the Secretary of Agriculture. The intent of the new requirements is to ensure that able-bodied food stamp recipients are involved in a meaningful work-related activity which will eventually lead to paid employment and a decreased dependency on assistance programs.

DATES: Comments must be received by October 31, 1986.

ADDRESS: Comments should be addressed to Patricia Warner, Food and Nutrition Service, Chief, Administration and Design Branch, 3101 Park Center Drive, Alexandria, Virginia 22302.

FOR FURTHER INFORMATION: Questions regarding this proposed rulemaking should be addressed to Ms. Patricia Warner at the above address or by telephone at (703) 756–3383.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This rule has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1512–1. The Department has classified this rule as non-major. The rule's effect on the economy will be less than $100 million. The rule will have no effect on costs or prices. Competition, investment, productivity, and innovation will remain unaffected. This rule will have an effect on employment in that its goal is to place food stamp recipients in employment. There will be no effect on the competition of United States-based enterprises with foreign-based enterprises.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule related Notice(s) of 7 CFR Part 3015, Subpart V (Cite 48 FR 29115, June 24, 1983; or 48 FR 54317, December 1, 1983, as appropriate, and any subsequent notices that may apply), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This action has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, Stat. 1164, September 19, 1980). Robert E. Leard, Administrator of the Food and Nutrition Service, has certified that this rule does not have a significant economic impact on a substantial number of small entities. State and local welfare agencies will be affected because they will administer the employment and training programs called for in this rule. Certain food Stamp applicants and recipients will also be affected, as they will have to fulfill the work requirements established by the State agencies.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the reporting and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. The OMB approval number for these requirements is 0584–0339.

Background

This rulemaking proposes major changes in the content, structure and administration of the work requirements of the Food Stamp Program. There are currently three major components to the Program's work requirements. First, all State agencies are responsible for work registering non-exempt household members at least once every twelve months. This requirement will be unchanged. A second component is job search. Certain work registrants deemed to be "job ready" are assigned to perform a job search which consists of a registrant contacting up to 24 employers in an eight week period in pursuit of employment. Job search has been administered, since Fiscal Year 1982, through contractual agreements between the Food and Nutrition Service and individual State agencies. Before FY 1982, both work registration and job search were operated jointly by USDA and the Department of Labor (DOL). Portions of current food stamp regulations read as though DOL were still involved in the process. The relationship with DOL was ended in FY 1982 and this will be reflected in this proposed rule. The third work components is Optional Workfare, which enables any political subdivision, in any State, to establish and operate a workfare program. Workfare-eligible recipients are assigned to public service work in return for the household's food stamp allotment. Workfare will remain an option to States. States may include workfare in their employment and training programs or operate it separately, under Title XX of the Food Stamp Act, as amended, with at least 50 percent Federal funding.

The Food Security Act of 1985 (Pub. L. 99–198), section 1517, requires each State agency to implement, by April 1, 1987, an employment and training program, designed by the State agency and approved by the Secretary of Agriculture. The purpose of the program is to assist food stamp recipients in gaining skills, training or experience that will increase their ability to obtain employment. The rule also proposes performance standards for the percentage of persons eligible to participate that each State agency must place in its employment and training program. Section 1516 requires the Secretary to establish standards for this purpose.

This rulemaking also sets out the new eligibility disqualification criteria specified in section 1516 of Pub. L. 99–198. Specifically, the rule subjects heads of households ages 16 and 17 who are not attending school half-time or more, nor participating in an employment and training program, to the work requirements. This rule proposes that when the primary wage earner, or if none exists, the head of a household fails to comply with a work requirement or voluntarily quits a job without good cause, the entire household is disqualified. This is consistent with current policy. However, if another member of the household fails to comply, only that person is subject to disqualification. This rulemaking provides a cure for non-compliance with work programs and it specifies a sanction procedure for situations when the household member who committed the violation leave the household.

This rulemaking also proposes a number of changes to and clarifications of the rules governing voluntary quit.

Work Registration

Current rules require work registrants who move out of a project area to reregister at their new location. This proposed rulemaking specifies that reregistration should take place within ten days of a move. This will preclude a

long period during which the registrant's work status is unaccounted for, and should not be a burden to the registrant, who will be reporting his or her change of address within this timeframe anyway.

Under current regulation only persons between the ages of eighteen and sixty are subject to work registration. This proposed rulemaking subjects heads of households who are ages 16 and 17 and not attending school half-time or more, nor participating in an employment training program, to the work requirements. Other persons under the age of eighteen remain exempt from work registration.

Because work registration is no longer operated through the DOL and State Employment Security Agency offices, as is indicated in current regulation, the Department is no longer requiring that States use the ES–511 or any other nationwide form to record work registration. Under this proposed rulemaking State agencies will be able to record and keep track of work registration status by annotating application forms or work sheets, or by utilizing a form of their own design. The applicant may still work register for other household members. So that the other household members who have been registered by the person filing the application are aware of their work registration rights and responsibilities, and the consequences of failure to comply, the Department proposes that State agencies provide this information to the household in writing. A statement of rights and responsibilities is called for at 7 CFR 272.5(b)(2). This proposed rule would require that State agencies include work responsibilities on this statement. Because the rest of this statement applies to all household members and work responsibilities affect only certain members, this rule specifies that the names of those household members affected appear on the notice.

Employment and Training Programs

The change in food stamp work requirements form job search to employment and training programs reflects a desire on the part of Congress and the Department to strengthen and improve the Program's approach to work requirements. This proposed rulemaking allows States a great deal of flexibility in designing their employment and training programs. The design of the programs should be based on the goal of positive results—gaining employment for able-bodied food stamp receipients in the most cost effective manner. The Department encourages State agencies, to the maximum extent practicable, to design employment and training programs that are compatible with similar programs operating within the State. States are encouraged to take innovative approaches in designing their programs, and to avail themselves of the research that has been done in the area of work requirements. This proposed rulemaking permits each State to design an employment and training program which will best suit it needs. The Department expects that the employment and training programs will be continually evolving and improving as each State discovers, through evaluation, which interventions are successful and which are unsuccessful in ending welfare dependency. While the States will have a great deal of latitude, the statute reserves for the Secretary of Agriculture the final authority for approving or disapproving a State's plan, based on its substance. Services from the employment and training grant may only extend to applicants and participating food stamp households, not former recipients or other persons not applying for or participating in the Program.

For approval by the Secretary an employment and training program must contain one or more of the following statutorily required components.

(1) A job search program comparable with that of the AFDC program. As in AFDC, States may require applicants as well as program participants to perform job search.

(2) A job search program that includes job search training and suport activities that may consist of job skills assessments, job finding clubs, training in techniques for employability, job placement services, or other direct training, support, or educational programs which will expand the job search abilities or employability of those subject to the program.

(3) Workfare programs operated under section 20 of the Food Stamp Act of 1977 as amended and 7 CFR 273.22 of the Food Stamp regulations.

(4) Programs designed to improve the employability of work registrants through work experience or training, or both, and to enable them to move promptly into regular public or private employment. The Act specifies that employment or training programs established under these proposed regulations shall: (a) Limit assignments to projects that serve a useful public purpose; (b) to the maximum extent practicable, utilize the work registrant's skills, experience and training in making employment or training experience assignments; (c) not provide any work which replaces the work of an individual not participating in the employment or training program; (d) provide the same benefits and working conditions that are provided at the job site to employees performing comparable work for comparable hours.

(5) With the approval of the Secretary, other programs, projects and experiments aimed at assisting recipients in obtaining employment, such as the Job Training Partnership Act (JTPA) or State administered programs.

Minimum Level of Effort of Components

Public Law 99–198 and this proposed rulemaking provide State agencies with a great deal of flexibility in designing and choosing the components which will comprise their employment and training programs. However, it is incumbent upon the Department in ensuring that meaningful programs are promulgated, to establish guidelines for the minimum level of participant effort a job component must require. For example, the Department would not consider a requirement that a participant watch a one hour film about finding a job sufficient effort for an approvable job search component. An assessment of skills or employability would not constitute a component. The Department recognizes that because there will be so many variations in the nature of the job components offered, it will be unrealistic to insist on a specific minimum level of effort for each participant. Instead, the Department is proposing that job components be designed in such a fashion that compliance would entail a level of effort by work registrants no less than the current job search requirements. This requirement is that the participant must contact up to 24 employers in an eight week period in an effort to locate suitable employment. We estimate that this equals approximately 12 hours per month for two months on the part of the participant. Thus, for FNS approval, States shall design their components so that, at a minimum, compliance will entail an average of 12 hours of activity per month per participant for two months. State designs can spread this total requirement across a different number of months, i.e., a one month job club which would take 24 hours to complete. We recognize that the current requirement takes different people varying amounts of time, and we are not establishing a rigid minimum which would entail recordkeeping by the State agencies, but rather offering this guidance to States in designing their components. This minimum level of effort would not apply to persons addressed in § 273.7(f)(3)(ii) whose

benefit level divided by the minimum wage would result in fewer hours of participation than the minimum.

Exemptions From Employment and Training Programs

This rule affords State agencies a certain amount of flexibility in determining who shall participate in its employment and training programs. It is the Department's hope that such flexibility will maximize the impact of the resources expended on employment and training programs. The Department believes that work programs are appropriate for the great majority of work registrants. Only extraordinary circumstances would cause a State to exempt a person from all types of work programs. While the condition of the economy and general job readiness will have a certain impact on the number of a State's placements, there are a number of job components which do not rely on such factors. For example, the success of a workfare program is not contingent upon economic conditions, and many non-job ready persons are considered job ready after work experience. We expect States to involve non-job ready persons, rather than exclude them.

Exemptions requested by States would have to be justified to FNS in the State plan or in a separate request and the plan would not automatically be approved if the number of persons exempted is too high or the reasons for the exemptions are considered inadequate. Exemptions of more than 20 percent of the work registered case load would have to be accompanied by additional documentation of why the exemptions are warranted. If a State has a compelling reason to exempt more than 20 percent of its work registrants, it would have to explain why the additional persons it seeks to exempt are not suited to participate in any type of work program component. If exemptions above 20 percent are granted, they may affect a State's placement performance standards. Data received from job search contracts served as a guideline for the Department in proposing 20 percent as a maximum number of persons States should expect to exempt. Under the contracts 29 percent of those assessed were determined "not job ready." However, this proportion reflected data from several States which found most of their work registrants not job ready. The Department believes that the median rather than the mean is the best measure of State activity because it gives less weight to these unusual circumstances. The State median was 23 percent. The Department is rounding this down to 20 percent because the employment and training program will allow States to place persons who may not be immediately available for work in components other than job search.

Approvable plans may also exempt from participation in employment and training programs categories of work registrants for whom application of the requirements would be impracticable. Among the factors which might cause a State agency to exempt certain categories of work registrants are availability of work opportunities (high unemployment) and cost-effectiveness of the requirements.

State agencies may designate as exempt a category of all household members residing in a specific area of the State. This proposed rulemaking further implements the provision that State agencies may exempt from participation individual household members not exempted from the work registration requirements in § 273.7(b) when personal circumstances make the requirement impracticable. The rule specifies circumstances including, but not limited to, lack of job readiness and employability, the remote location of the household or work or training opportunities, physical condition, and the unavailability of child care. State agencies may also exempt, with the approval of the Secretary, members of households who have participated in the Food Stamp Program for 30 days or less. Requests for exemptions should be justified in State plans.

The proposal specifies that individual exemptions shall be evaluated at each recertification and that exemptions granted to categories undergo serious reconsideration annually, to ensure that the reason for the exemption is still valid.

Time Spent in An Employment and Training Program

There is no mention of a maximum or minimum total amount of time work registrants must devote to performing a job search, either in present regulations, or in the job search contracts. The only current restrictions on the number of hours worked apply to workfare obligations and appear in § 273.22 (e) and (f). Section 273.22(e) states that the maximum total number of hours of work required of a household each month should be determined by dividing the household's coupon allotment by the higher of the Federal or State minimum wage.

Section 273.22(f) specifies that recipients may be required to work up to, but not exceed 30 hours per week at a workfare job, or a workfare job combined with hours worked in any other compensated capacity.

This proposed rule would establish limits to the number of hours work registrants may be required to devote to food stamp employment and training programs. The maximum number of hours the members of a household may be required to devote to an employment and training obligation alone or combined with a workfare obligation shall not exceed the number of hours equal to the household's allotment for the month divided by the higher of the applicable State minimum wage or Federal minimum wage. The rule also proposes that no individual household member may be required to work more than 120 hours per month at a combination of an employment and training assignment, workfare assignment or hours worked for compensation. Both of these limitations are mandated by Pub. L. 99-198.

Voluntary Participation

The language in this proposed regulation encourages States to try to reach persons who are not required to participate in employment and training programs but for whom the participation would be worthwhile. We believe, for example, that involving persons who have children under the age of 6, and are thus exempt from work registration, but who wish to receive training and job finding assistance would be of value to the recipients and would lower long term federal costs. The Food Security Act provides State agencies the option to operate an employment and training component in which such persons may participate voluntarily.

The Act also provides that State agencies shall permit to the extent they determine practicable program participants to volunteer to participate in an employment and training program. This proposed rulemaking would implement these two statutory provisions. This rule also proposes that the number of volunteers in an employment and training program be considered by FNS in establishing State performance standards, and in determining the State's level of performance. State agencies should report, in their State plans the number of volunteers they expect to place, and count volunteers among those they report as having been placed and in their base of eligibles.

Failure To Comply

The current sanction for non-compliance with work registration and job search requirements is ineligibility for food stamp benefits for a two month period. The sanction always applies to the entire household. The Food Security

Act codifies the two-month sanction. It further specifies that the sanction shall apply to the individual who commits the violation, rather than the entire household, unless the individual committing the violation is the head of the household, is physically and mentally fit and between the ages of sixteen and sixty. In such a case, the entire household will be sanctioned, as it currently the case. This rulemaking proposes these changes. Because the Act now differentiates between the penalties for household heads and other household members with respect to work program noncompliance, it is crucial that a clear and uniform definition be applied to the term "head of household." In a regulation published March 23, 1979 (43 CFR Part 85) the Department substituted the term "primary wage earner, age 18 or over" in lieu of "head of household" to apply the voluntary quit provisions. This rule proposes to extend this substitution to the provisions of § 273.7 in applying sanctions for non-compliance with work registration or employment and training requirements.

For households in which there is no primary wage earner this rule proposes that State agencies determine whether the non-compliance was caused by the person who was considered head of household as defined in § 273.1(d) immediately prior to the non-compliance. If the violation was caused by the head of household the entire household would be sanctioned. If the non-compliance was caused by someone other than the head of household then only the individual would be sanctioned.

Under present regulations at § 273.7(h) if the individual who commits a job search violation leaves the household during the disqualification period the household may reestablish eligibility, but any new household the violating member joins is ineligible for the remainder of the disqualification period. Pub. L. 99–198 provides that the original household may still regain eligibility if the violating member leaves, but the new household is ineligible for the balance of the disqualification period only if the violating individual joins as head of household. As in the current regulations, eligibility may be reestablished if the household member who committed the violation complies with the requirement that has been violated.

It is crucial that State agencies act promptly to discover noncompliance and to initiate sanction action once the noncompliance has been established. This rule retains the requirement in § 273.7(g) that State agencies shall provide the noncomplying individual or household with a notice of adverse action no later than 10 days after determining noncompliance without good cause.

State Agency Employment and Training Plans

The Department is planning to finalize the provisions of this proposed rule by December, 1986. State agencies will then be required to submit employment and training plans to their appropriate FNS regional office and to the National office in Alexandria, Virginia no later than March 2, 1987. The plans will be evaluated during March and should be approved and ready for implementation by April 1, 1987. A State's receipt of the employment and training grant is contingent upon the Secretary's approval of the State's employment and training plan. Because the initial plan submission and approval timeframe is not lengthy, the Department reserves the right to approve plans contingent upon modifications by State agencies if necessary. An updated plan will be required annually as part of the State Plan of Operation.

Plans must include a detailed description of the components the State chooses to operate, and why; the cost of operating the components for one full year; the categories and types of individuals the State plans to exempt from participation and why, with additional justification for exemptions which exceed 20 percent of the work registrants in the State, including any cost information on why such exemptions are necessary; the characteristics of the population the State does intend to place; the geographic areas covered and not covered by the plan, and why, and the type and location of the services to be offered; the method the State will use to perform the initial count of work registrants the first month of each fiscal year; the estimated number of volunteers; the relationship between the State agency and other organizations it plans to coordinate with for services; the organizational relationship between the units responsible for certification and those responsible for operating employment and training components; and the availability of employment and training programs to Indians living on reservations. State plans should include a discussion of the employment and training needs of the work registrant population; the characteristics of the groups to be reached within the work registrant population and the expected outcomes of the program. If a State plans to operate components which are significantly more intensive than the minimum level of effort specified in § 273.7(f) requiring greater staff assistance or more costly equipment or facilities, or if the State plans to concentrate efforts on harder to place recipients, additional cost information and justification for the components should be included to assist FNS in determining whether an adjustment should be made in the State's performance standard.

If a State wants to alter the number or type of persons to be placed, or the components or location of the components it offers, it should submit a description of the changes to the appropriate FNS regional office for approval in advance of implementation of the change.

Employment and Training Program Funding

Each State agency will receive an employment and training program grant, up to a specified level each year, which will not require any State matching. State agencies will also receive 50 percent matching funds for some expenses, as discussed below. Pub. L. 99–198 authorizes the Secretary to allocate among the States from funds appropriated for each fiscal year, $40 million in Fiscal Year 1986, $50 million in Fiscal Year 1987, $60 million in Fiscal Year 1988 and $75 million in Fiscal Years 1989 and 1990. The law does not prescribe how the Secretary is to distribute this money among States.

These regulations propose intitially to distribute the funds appropriated and available for 100 percent employment and training program grants on the basis of estimates of the number of work registrants in each State as a proportion of the total number of work registrants in the country. We believe this approach is appropriate for the first year and a half of program operation because it is straightforward and targets the distribution of funds to the number of potentially eligible persons. However, the Department also believes that the best funding formula would reward States that operate programs that are the most effective in reducing beneficiary dependence on food stamps. Therefore, the Department intends to move as quickly as practicable to a funding allocation formula that rewards exemplary State performance. During the initial year and a half of program operation, the Department will be monitoring and evaluating State programs. By the end of this period (using knowledge gained through monitoring and evaluation), the Department will devise measures of effectiveness that will be incorporated

into the funding formula. Fiscal Year 1987 will be a transition year from use of job search contracts to employment and training programs. In the first half of the fiscal year, funding for job search programs will continue to be provided and overseen in a process separate from this rulemaking. In addition, some funding will be made available through grants for planning for employment and training program implementation. No more than half of the money available for 100 percent employment funding will be distributed for the first half of the fiscal year. In the second half of the fiscal year, the remainder of the available 100 percent funding will be distributed on the basis of the estimated proportion of work registrants in each State compared to the national total. The estimates of the number of work registrants in Each State will be derived from Fiscal Year 1985 quality control data, as entered in the integrated quality control system (IQCS). Fiscal Year 1988 grants will be based on estimates of the number of work registrants, according to Fiscal Year 1986 IQCS data or, if that is unavailable, Fiscal Year 1985 IQCS data in conjunction with Fiscal Year 1986 Food Stamp Program participation figures in each State.

In following fiscal years, adjustments will be made in the method of allocating funds in order to reflect differences among States in the number and characteristics of the persons served, and/or variations in program design, and/or program effectiveness. Data on the number of work registrants in each State may also be derived from reliable sources other than the IQCS data such as reports submitted by States during the previous fiscal year. In at least the first year and a half of operations, however, using a straightforward and simple allocation formula based on an existing data source will contribute to efficient implementation of work programs. Furthermore, the Department reserves the right to adjust Federal grant allocations in FY 1989 and following years if a pattern of unspent funds suggests the advisability of changes in the allocation process. Such changes will not reflect State non-performance. Non-performance is addressed separately in this rulemaking.

Under section 16(h)(2) of the Food Stamp Act, the Federal government will match administrative costs for employment and training program activities that exceed the 100 percent Federal grant. This availability of additional money will enable States to expand their programs beyond limits imposed by their Federal grant levels.

Work registration during the certification process and assessment of the readiness of the registrant to be placed in an employment and training program when performed by the certification worker will continue to be regarded as State administrative expenses funded at 50 percent. Further assessment of a registrant's readiness for placement will be considered part of the employment and training program, reimbursable at 100 pecent.

If localities wish to begin or continue optional workfare programs under Section 20 of the Act once the 100 percent funding for employment and training programs has been exhausted, the localities may receive at least 50 percent of the administrative costs of operating optional workfare programs. Because section 20(g)(2)(A) prohibits enhanced workfare funding which exceeds administrative expenses, enhanced cost sharing is available only for programs funded at the 50 percent level and reported as such.

Participant Reimbursement

Current rules at § 273.22(f) provide that participants in the Optional Workfare program shall be reimbursed for actual costs related to participation in workfare. The Federal government reimburses operating agencies for 50 percent of the costs up to $25 per month for any one individual. The proposed rule expands participant reimbursement to include 50 percent of actual costs incurred by participants in employment and training programs including applicants required to perform job search and volunteers, in any component of any employment and training program, up to $25 per month. Allowable costs may include the cost of transportation, child care, or personal safety items required for performance of work.

State agencies may assist participants with costs beyond $25, but such reimbursement will not be subject to Federal cost sharing.

Funding Mechanisms and Accountability

The rule proposes that all employment and training funds to State agencies will be distributed through State Letters of Credits (LOCs). In Fiscal Year 1987, because the implementation of these regulations is contingent on the approval of State plans, employment and training operating grants will not be available in the LOC for use until April 1, 1987. (Planning grants and grants to continue to operate job search programs will be available during the first half of the fiscal year.) It is our intent that for Fiscal Year 1987, each State will be informed of the amount of the 100 percent grant it will receive for the second half of the fiscal year prior to the beginning of the second quarter of the year.

State agencies will be responsible for reporting on work program expenditures on the SF–269 Financial Status report. Total work program expenditures will be reported in Column K of the form, the "Other" column, but will have to be further explained in an attachment to the SF–269. In the attachment, States should include the total amount spent on all work program activities, subdivided into: (a) 100 percent grant expenditures; (b) 50 percent participant reimbursement expenditures; (c) 50 percent optional workfare program funding (necessary for any enhanced funding to be paid); and (d) any other 50 percent funding for employment and training programs. These costs will be subject to the same auditing procedures as all other program costs. Enhanced funding for workfare shall be reported on the SF–270.

Non-Financial Reporting Requirements

In the current Food Stamp Program regulations the administration of work registration and job search are the responsibility of the Department of Labor's State Employment Security Agencies (SESAs). State agencies were to provide non-exempt household members with a work registration form containing the member's name, address, phone number, social security number, the expiration date of the household's certification period, an indication of an exemption from job search, and any other information agreed upon by the State agency and the SESA. This form was to be completed and taken to the SESA where the information was entered into the Employment Service Automated Reporting System (ESARS). Through the ESARS system the Department was able to monitor quarterly, for each State, the number of work registrants, the number of new applicants and renewals, the number of individuals referred to and placed in jobs, the number placed in job search, the number who obtained employment, and the number reported as not complying with the requirements.

When the Department's relationship with DOL was ended, State agencies which contracted with the Department to administer job search assumed the responsibility of reporting the number of persons referred for job search, the number assessed, the number classified as job ready, the number assigned to perform job search, the number who find employment, the number reported as not having complied, and the number of

persons disqualified as a result of noncompliance

Through this proposed rulemaking each State agency will have the responsibility to maintain information about its employment and training program and to report it quarterly to the Department. The specific information required of each State agency will be determined during the employment and training program plan approval process. Although the Department may vary reporting requirements according to the components which comprise each State's employment and training program and the characteristics of those participating, it is essential that the information reported by the States be consistent so programs can be accurately monitored and evaluated. Certain information shall be collected by all State agencies monthly, regardless of the nature of their employment and training programs. The number of persons work registered is essential for program evaluation, performance monitoring and may be a factor in determining each State's financial allotment for employment and training. Other information crucial to program monitoring and evaluation will be required as well. The Department proposes that in addition to the total number of work registrants, State agencies must report quarterly the monthly number of work registrants exempted by the State agency from placement in an employment and training program, separated by the reason for the exemption; the number of assigned persons who report to each component; the number of participants who volunteer and participate in a component; the number of program applicants placed in a component separated by those who were found ineligible for Program participation, those certified but not subsequently work registered and those subsequently work registered; the number of persons who complete a first component and who are placed in a second component the number placed in subsequent components; and the number of persons who are referred to a component but who never commence it, without good cause, and are sanctioned; the number who find employment during food stamp participation and the number who become ineligible due to that employment; and the number sanctioned for non-compliance after they have begun a component and have been counted as "placed." The Department is eager to receive comments on these proposed reporting requirements and to learn of obstacles States may have in compiling any of the requested information.

Voluntary Quit

Although the Food Security Act does not alter language pertaining to households whose primary wage earners voluntarily quit employment, the Department is proposing a number of regulatory changes through this rulemaking. Most of these changes clarify Department policy on issues about which we have received questions from State agencies.

Current regulations do not provide a method for curing a voluntary quit disqualification. This proposal provides two methods for households to regain eligibility during a voluntary quit disqualification period. First, eligibility may be reestablished if the member who caused the disqualification secures new employment which is comparable in salary or hours to the job which was quit.

Adding this provision is consistent with the intent of the Act to deter individuals from quitting their jobs and diminishing their income while receiving food stamp benefits. At the same time, this provision provides workers the flexibility of changing jobs without being penalized. The second way ineligibility can be ended is for the person who caused the disqualification to become exempt from the work registration provisions in § 237.7(b), although not under paragraph (b)(1)(iii) or (b)(1)(v). These two paragraphs exempt individuals who are participating in WIN or Unemployment Compensation work programs. The purpose of a voluntary quit penalty is to discourage people from quitting their jobs. Therefore, the Department does not believe that a household should be able to terminate the disqualification merely because its primary wage earner has begun to participate in a work program of another assistance program. Salaried employment should take precedence over work programs.

Current regulations are silent on the consequences of the departure from the household of the head of household causing the disqualification. This rulemaking proposes that the sanction shall follow the member who caused the disqualification. If that individual joins another household as head of that household, the new household shall be ineligible for balance of the disqualification period. The sanction will be applied only to the household which includes the noncomplying member. This is consistent with the provisions of § 273.7(h) which pertains to persons who do not comply with employment and training requirements.

Current regulations are also silent on the application of sanctions when household composition changes significantly between the time of the quit and the time when the sanction is to be applied. For example, State agencies have asked how they should handle cases where a non-participating individual voluntarily quits a job without good cause and then becomes a member of a household that is already participating. The question also has been raised whether a sanction should be applied when a member of a non-participating household (who is not the primary wage-earner in his or her household) quits a job, leaves that household, and applies for food stamps as a single-person household. Under current regulations, these persons would not be subject to any penalties because they were not providing the greatest amount of financial support to their household at the time of the quit, even though the household they belonged to at the time is not the one for which they are seeking food stamp assistance. The proposed rules would provide that in cases where the food stamp household's composition is different than it was when any of its members voluntarily quit a job, the State agency shall determine whether that member would have been the primary wage-earner of the food stamp applicant or participant household if there has been no voluntary quit. If the member would have been the primary wage-earner based on previous earnings, the State agency shall apply a 90-day sanction from the date the quit occurred. If the noncompliant primary wage-earner did not join or create the new household unit until part of the 90-day period has passed, the sanction would effectively be shortened. Under the proposal, persons who have voluntarily quit a job and seek food stamp assistance would not automatically be excused simply by changing their household composition.

Current rules apply the voluntary quit provisions only when the most recent job quit was 20 hours per week or more. This proposal specifies that the voluntary quit provisions apply if the recipient quits any job of 20 hours a week or more within 60 days prior to applying for benefits or at any time during participation unless the person subsequently accepts new employment of comparable wages or hours, thus nullifying the quit. By making this change the Department strengthens voluntary quit provisions and hopes to deter persons from quitting jobs without good cause.

Current rules provide that if a household is determined ineligible because the primary wage earner quit a job without good cause but the household leaves the program before the sanction is levied, the sanction shall not be imposed until the household returns to the program. The Department is proposing that the sanction should instead be imposed beginning with the first of the month after all normal procedures for taking adverse actions have been followed and shall run continuously for 90 days or until it is cured. This is consistent with the procedure used for failure to comply with work registration and employment and training requirements, and will be easier for State agencies to administer by eliminating the need to track and impose outstanding sanctions.

Current regulations do not address how State agencies should proceed if a participant quits a job in the last month of a certification period and the quit is discovered during the recertification process. Rather than recertifying the household, issuing benefits, and then immediately issuing a notice of adverse action, we are proposing that States treat the household as if it is an applicant household, and to deny eligibility for 90 days, beginning with the date of the quit. The State agency should file a claim for benefits received during the last month of the previous certification period after the quit occurred. This will be consistent with the way the State agency treats other changes in circumstances at recertification. If the State agency discovers at recertification that a voluntary quit without good cause occured in the previous certification period other than during the last month of certification, the State agency shall disqualify the household for whatever time remains of the disqualification period and file a claim against the household for the benefits it should not have received.

The Department has received a number of questions from State agencies on how to proceed if a household quits a job after submitting an application but before being certified. The proposal makes a distinction between cases in which the State agency learns of the quit before certification and those in which it does not learn of the quit until after the household is certified. When the State agency learns of the quit before the household is certified, the Department proposes that the household be regarded as an applicant household. If the quit is discovered after certification, the household shall be regarded as a participant household and the sanction shall begin the first month after adverse action procedures are taken.

This proposed rulemaking also changes § 273.7(n)(2). Current rules specify that persons exempt from work registration are exempt from the voluntary quit provisions. This proposed rulemaking retains this provision except that those persons exempted from work registration through § 273.7(b)(vii) because they are working 30 hours or more, are not exempt from voluntary quit. In addition, the regulations clarify how State agencies shall treat households certified under expedited service standards in which a voluntary quit determination is not able to be made until after the household has been certified. In such cases, the State agency shall impose the sanction from the date of the quit—as for all other applicant households—and file a claim against the household for the expedited service benefits. Currently, State agencies treat such expedited service households as if the quit occurred during participation. This means that such households receive the full disqualification while other applicant households may be effectively disqualified for less time because the voluntary quit penalty is applied from the date of the quit. This change will result in equitable treatment among applicant households certified under either type of certification processing standards.

Performance Standards

Pub. L. 99–198 directs the Secretary to set criteria for the extent of State implementation of work program components. The philosophy behind the criteria, or performance standards, is to ensure that all States meet some minimum standard of rigor, but more importantly, that employment and training programs serve substantial numbers of able-bodied people. Programs which serve small numbers of people may be successful, but may also ignore an unacceptably high number of persons. We see the performance standards the Department is proposing as consistent with the flexibility provided in Pub. L. 99–198. The Department does not regulate States on how they should meet their established performance level. However, this rule does propose to establish the minimum number of eligible participants and applicants that States must place (as defined below) in employment and training programs. The law also requires the Secretary to vary the standards by differences in program components and participant characteristics, and to consider State costs and voluntary participation when setting the standards. This proposed rule establishes the standards for Fiscal Years 1988 and 1989. The Department is proposing to establish annual performance standard with quarterly reporting requirements for those two years. Although performance standards are not proposed for April 1 through September 30, 1987, the first six months of operation of employment and training programs, there are two reasons why the Department would require that States fulfill the reporting requirements for those months. First, this period will provide a trial run for States to implement their information gathering resources for these new reporting requirements, and second, the information reported to FNS will assist the agency in making future fund allocation decisions and in establishing performance standards.

Definition of "Placed" in an Employment and Training Program

For purposes of performance standard accountability a State agency will be considered to have placed a person in an employment and training program when the person either: (1) Commences a work program component; or (2) refuses to or does not commence a component to which he/she has been assigned and is sanctioned. By considering as "placed" those persons who are sanctioned for not reporting to an assignment or in some other way refusing to begin a work activity, as well as those who do begin their activity, the Department is recognizing the State's effort in trying to assist the individual. If a person fails to comply before commencing a work or training assignment and is found to have good cause for the noncompliance that person will not be considered "placed". If the good cause for noncompliance is temporary, the individual should be given another assignment. If the good cause is a condition which will last 60 days or longer, the person should be counted as having been exempted from participation by the State agency.

It is important that when a State reports placements to FNS, individuals who commenced a work assignment and then failed to comply and were sanctioned at some later point, should not be double counted. Although these persons are sanctioned for noncompliance, these sanctions should be reported to the Agency separately so they will not be counted twice for performance purposes.

In certain components it will only be possible to determine if a person has been "placed" once the assigned activity is completed. For example, when a State requires a self-directed job search,

either at the time of application or after certification, the State may consider a person placed when it learns that the assignment is being carried out or is completed, or when sanction action is taken due to noncompliance without good cause.

Measuring the Placement of Participants

The Department is proposing that a placement be counted toward the State's performance level each time a new placement (as defined in this rule) has been made. If a person reports to a job component which spans several months, an individual would be counted as placed in the initial month only. Each time a participant is placed in a new job component, he may be counted as placed. For example, if the State places an individual in job search for two months and then in workfare, the individual would be counted as having been placed twice. This should provide State agencies with an incentive to place persons who do not find employment during their first component, into subsequent components. If a person does not comply and is sanctioned, the placement shall count in the month the sanction notice is mailed. This method of measure of the placement of participants will be evaluated during FY 88 and will be notified if the Department determines that another method would be more effective or efficient.

Counting Work Registrants

To ascertain the number of different work registrants in a State over the course of the year, the State need only count a person as being work registered in that State once in a twelve month period. The Department is aware that due to short certification periods, changes in household composition and other factors a person might actually be reregistered several times within the course of a year. However, by counting such persons as new registrants each time, the number of registrants available to be placed in the program during the course of the year is artificially inflated.

Measuring a State's Performance

When FNS evaluates a State's level of performance, two critical numbers will be used: the number of persons the State has placed in its employment and training program over the course of the year, and the number of persons who were eligible to have been placed. When the Department is determining whether or not a State has fulfilled its performance standard for the year it will weigh the number of persons placed (as defined earlier in this section) against the number of persons eligible to be placed, or the base of eligibles. The larger the base the greater number of placements a State will have to make. The majority of the base of eligibles consists of all work registrants not exempted from placement by the State agency. However, there are individuals other than work registrants who by statute are eligible to be placed. In addition to non-exempt work registrants the base of eligibles will contain persons who volunteer to participate in an employment and training program. It may also include program applicants who have been placed in a job search component. Since these persons may be counted as placed by the State, they must also be counted in the base. It is important, for evaluation, that FNS be able to differentiate between the different categories of individuals which will comprise the total base of eligibles at the end of the year. Therefore, this rule proposes that each State agency maintain separate counts of those categories eligible to participate; one for non-exempt work registrants (which should be no less than 80 percent of all work registrants), one for participants who volunteer to participate, and one for applicants who are placed in job search but are not subsequently work registered. This rule proposes that if an applicant is placed in a job search component, he or she would be counted as placed at the point of certification and if the applicant is certified and then work registered, he/she would be counted in the base of non-exempt work registrants. If, however, the applicant is either denied benefits or is certified but exempted from work registration, the applicant would be counted placed, at the point of denial, and then counted in a separate base of placed applicants who were not subsequently work registered. An applicant who is assigned a job search but who does not comply should not be counted as placed or in any base. State agencies need not count any individual in the total base of eligibles more than once in a twelve month period.

Maintaining Performance Statistics

This rule proposes that in the first month of each fiscal year, (and in April, 1987) each State count its total number of nonexempt work registrants, volunteers and if appropriate, applicants placed in job search who are not subsequently work registered. Each subsequent month the State will add to those numbers new nonexempt work registrants (excluding those who are registered at recertification during the course of a 12 month period), persons who have volunteered to participate that month, and applicants placed in job search who are not subsequently work registered. At the end of the fiscal year totals for the year (half-year in FY 1987) will have been obtained. The totals added together will be the State's base of eligibles. For example, a State counts 10,000 nonexempt work registrants in October, and adds 1,000 new nonexempt registrants each month. The State will report 12,000 nonexempt work registrants at the end of the first quarter, 15,000 by the end of the second quarter, 18,000 by the end of the third quarter, and its annual number for the year will be 21,000. If 100 volunteers are placed each month, those 1,200 volunteers would be added to the 21,000 work registrants for a total base of 22,200. The method of measuring placements would be the same. Placements will be added cumulatively each month. If the hypothetical example cited above had a 50 percent placement requirement, placements for the year would have to be 11,100.

The Department believes that this method of measurement affords States a great deal of flexibility in structuring their components and allows for a quarterly measurement so that States may measure their progress and, if necessary, take corrective action. This method of measurement also results in a more manageable amount of tracking, counting and reporting than other possible systems.

Percentage of Persons to be Placed

Pub. L. 99-198 specifies that the number of nonexempt registrants required to be placed in employment and training programs shall not exceed 50 percent through Fiscal Year 1989. The Department's research on work programs, including workfare and job search, has shown that broadly based, inexpensive job components are successful and cost effective. The Department would like to have as many food stamp recipients as possible exposed to employment and training programs. By serving a greater number of persons many of those with fewer job skills and less experience will be included in rather than exempted from participation.

To establish the standards for Fiscal Year 1988 the Department examined levels of performance (the number of job ready registrants counted as having performed job search and the number sanctioned) reached by States administering job search contracts. Based on Fiscal Year 1985 job search data, States with contracts reached a 17 percent performance level, if all placements and sanctions are counted

and if the average monthly number of work registrants measured by the Quality Control system increased by a turnover factor of 2.375 to approximate the total number of different work registrants. If the base of eligibles is reduced by 20 percent (the maximum percent FNS expects State agencies to exempt), the proportion rises to 22 percent. The Department is proposing a standard of 35 percent for Fiscal Year 1988 and 50 percent for Fiscal Year 1989. We estimate that $40 million would be required to extend the current level of job search activity in 39 States to all 53 State agencies. However, Federal grant levels are scheduled to rise to $60 million in Fiscal Year 1988 and $75 million in Fiscal Year 1989. Since increased coverage is a goal of the employment and training programs increased funding will make it easier to achieve that goal. The standard for Fiscal Year 1989 may be changed to reflect actual State performance in Fiscal Year 1987 and 1988.

Variations in Performance Standards

Although the Department believes broad based job components are very successful, we recognize that certain individuals may profit from a more targeted and intensive intervention. The Department will adjust the performance standard for an individual State if, prospectively, the State agency can show that the intensity of the job components it plans to offer, or the type of participant it plans to serve, will require a greater level of effort by the State than that allowed for in § 273.7(o)(5) of this rulemaking. The State should show that the program it is offering is appropriate for the individuals being served. If the State's selection criteria are inadequate, it may serve people who do not derive full benefit from the program, at the expense of not treating other people at all. The State should propose an adjusted performance level and justify this level to the Agency. The Department proposes to establish a minimum percentage of persons placed in programs below which no State agency may fall without a potential sanction being levied, regardless of the intensity of the program components offered or the type of persons served. In directing the Department to approve State plans and monitor employment and training programs, the Congress stressed that States operate "meaningful" programs. To that end, this rule proposed that no State agency reduce the nationwide standard by more than 40 percent. In other words, if the nationwide performance standard is 50 percent, the Department will not approve any performance levels lower than 30 percent.

State Agency Non-compliance.

When a State does not place its established percentage of work program eligibles an employment and training program, or if it fails, without good cause, to comply with the employment and training requirements in this proposed rulemaking, the Secretary shall withhold administrative funds. The funds withheld will be proportional to the percentage below its performance standard a State has fallen. For example, if a State's standard is to place 40 percent of its work registrants in an employment and training component, and the State places only 36 percent, which is 90 percent of its standards, an amount equal to 10 percent of the State's allocation for employment and training programs will be withheld from its administrative funds. However, the Secretary shall have the authority to withhold a large percentage of State funds depending on the severity of the State's infractions. Public Law 99–198 instructs the Secretary to consider a number of factors in determining whether a State agency has met its performance standard. The Act requires the Secretary to consider the extent to which persons have elected to participate in employment and training programs; placement in unsubsidized employment; increases in earnings, and the reduction in the number of persons participating in the Food Stamp Program as a result of the employment and training program. This rule does not propose a requirement that State agencies maintain and report the above information.

However, States should be aware that the Department will consider these factors, as well as those provided for in § 276.6 when determining whether a State has good cause for failing to meet its standard if the State provides the Department with adequate documentation. The good cause criteria specified in § 276.6 include natural disasters or civil disorders that adversely affect Program operations; strikes by State agency staff; changes in the Food Stamp Program or other Federal or State programs that result in a substantial adverse impact upon a State agency's management of the Program; any other circumstances in which ENS determines good cause to exist. The Formal warning, appeal and administrative review procedures specified in §§ 276.4, 276.5 and 276.6 also apply.

Workfare

This rule proposes a procedure to follow when a benefit overissuance is paid in a month in which the household has already fulfilled its workfare obligation. When the households's workfare eligibility continues, State agencies would attempt to recover the entire overissuance and give households a credit of workfare hours in subsequent months for extra hours worked during the month or months of overissuance. If workfare elighbility does not continue the State agency would consider whether the overissuance was the result of an intentional program violation, inadvertent household error, or a State agency error. If the overissuance resulted from an intentional program violation, a claim for the entire amount of overissuance would be established and pursued in accordance with § 273.18. In effect, the hours worked beyond those which would have been worked had the correct benefit level been used in calculating the workfare obligation would be forfeited. If the overissuance was caused by an inadvertent household error or a State agency error, a claim would be established only if the hours worked in warkfare multiplied by the prevailing minimum wage are less then the amount of the correct benefit plus the overissuance. In such a case a claim shall be established only for the difference.

A household's benefit level is statutorily defined on the basis of income and eligibility criteria. We believe that exchanging hours worked for a furture workfare obligation when possible is an equitable method of replacing hours worked beyond the correct workfare obligation, while exchanging hours worked for benefits is not. The only exception to this is when the hours were worked as a result of an inadvertent household or an error on the part of the State agency, and the household is no longer participating because the household has no method to recoup the extra hours worked due to the error.

Implementation

This proposal would require State welfare agencies to implement the provisions of the rulemaking no later than April 1, 1987. This date of implementation is established by the Food Security Act of 985.

List of Subjects

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs—social programs,

Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Food stamps, Fraud, Grant programs—social programs, Penalties, Reporting and recordkeeping requirements, Social security, Students.

7 CFR Part 276

Administrative practice and procedure, Food stamps, Fraud, Grant programs, Social programs, Penalties.

7 CFR Part 277

Food stamps, Government procedure, Grant programs—social programs, Investigations, Records, Reporting and recordkeeping requirements.

Accordingly, it is proposed that 7 CFR Parts 272, 273, 276 and 277 be amended as follows:

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

1. The authority citation for Parts 272, 273, 276 and 277 continues to read as follows:

Authority: 91 Stat. 958 (7 U.S.C. 2011–2029).

2. In § 272.1 a new paragraph (g)(80) is added to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) Implementation. * * *

(80) Amendment No. 278 State agencies shall implement the provisions of this amendment no later than April 1, 1987.

3. In § 272.2 the seventh sentence of paragraph (a)(2) is amended by adding the words, "the Employment and Training Plan," after the words "(currently reserved)," and a new paragraph (d)(1)(v) is added to read as follows:

§ 272.2 Plan of operation.

* * * * *

(d) * * *

(v) Employment and Training Plan as required in § 273.7(c)(4) and (5)

* * * * *

4. In § 273.3, paragraph (a)(1) is amended by removing the period at the end of paragraph (a)(1)(ix); adding a semi-colon in its place; and adding a new paragraph (a)(1)(x) to read as follows:

§ 272.3 Operating guidelines and forms.

(a) *Coverage of operating guidelines.*

* * *

(1) * * *

(x) Work registration and employment and training requirements.

* * * * *

5. In § 273.1 paragraph (d) is redesignated as paragraph (d)(1) and a new paragraph (d)(2) is added. The addition reads as follows:

§ 273.1 Household concept.

* * * * *

(d) *Head of household.* (1) * * *

(2) For purposes of failure to comply with §§ 273.7 and 273.22 head of household shall be considered to be the primary wage earner. The primary wage earner shall be that household member age 16 or over who was acquiring the greatest amount of earned financial support for the household at the time of the violation. Persons age 16 or 17 who are not household heads nor attending school or are enrolled in an employment training program on at least a half-time basis shall not be considered primary wage earners. If no primary wage earner existed at the time of the violation the State agency should determine who was the designated head of household as defined in § 273.1(d)(1) immediately prior to the violation to determine the appropriate sanction.

* * * * *

6. In § 273.7 the title and paragraph (a) are revised to read as follows:

§ 273.7 Work requirements.

(a) *Persons required to register.* Each household member who is not exempt by paragraph (b)(1) of this section shall be registered for employment by the State agency at the time of application, and once every twelve months after initial registration, as a condition of eligibility. Registrants who move out of a project area shall reregister at their new location within ten days. The registration form need not be completed by the member required to register.

* * * * *

7. Paragraph (b)(1)(i) is amended by removing the number 18 in the first and second sentences and adding in its place the number 16; a new sentence is added to the end of paragraph (b)(1)(i), and paragraph (b)(2)(i) is revised to read as follows:

(b) *Exemptions from work registration.*

(1) * * *

(i) * * * A person age sixteen or seventeen who is not a head of a household or who is attending school, or enrolled in an employment training program on at least a half-time-basis is exempt.

* * * * *

(2)(i) Persons losing exemption status due to any changes in circumstances that are subject to the reporting requirements of § 273.12 (such as loss of employment that also results in a loss of income of more than $25 a month, or departure from the household of the sole dependent child for whom an otherwise nonexempt household member was caring) shall register for employment when the change is reported. If the State agency does not use a work registration form, it shall annotate the change to the member's exemption status. If a work registration form is used, the State agency shall be responsible for providing the participant with a work registration form when the change is reported. Participants shall be responsible for returning the form to the State agency within 10 calendar days from the date the form was handed to the household member reporting the change in person, or the date the State agency mailed the form. If the household fails to return the form, the State agency shall issue a notice of adverse action stating that the household is being terminated but that the household can avoid termination by returning the form.

* * * * *

8. In § 273.7 paragraphs (c)(1), (c)(2), and (c)(3) are revised, and new paragraphs (c)(4) through (c)(8) are added. The revisions and additions read as follows:

* * * * *

(c) *State agency responsibilities.* (1) The State shall register for work each household member not exempted by the provisions of § 273.7(b), regardless of whether or not the geographic area where the member resides will be covered by an employment and/or training component. Upon reaching a determination that an applicant or a member of the applicant's household is required to register, the State agency shall explain to the applicant the pertinent work requirements, the rights and responsibilities of work registered household members, and the consequences of failure to comply. The State agency shall also provide a written statement of the above for other work registrants in the household. The State agency shall permit the applicant to complete a record or form for each household member required to register for employment in accordance with paragraph (a) of this section. Household members are considered to have registered when an identifiable work registration form is submitted to the State agency or when the registration is otherwise annotated or recorded by the State agency.

(2) If a person is not exempt from employment and training requirements

the State agency shall be responsible for assessing that person and if appropriate, referring him or her to an employment and training program component within ten days, and for taking appropriate sanction action within ten working days should the individual not comply.

(3) The State agency shall design and operate an employment and training program which may consist of one or more or a combination of employment and/or training components as described in § 273.7(f).

(4) By March 2, 1987 each State agency must prepare and submit an employment and training plan to its appropriate FNS Regional Office and to the FNS office in Alexandria, Virginia. The plan shall be available for pulbic inspection at the State agency headquarters. In addition to a discussion of the employment and training needs of the State's work registrant population, and the expected outcomes of its employment and training program, the State should detail the following information:

(i) The nature of the employment and training components the State plans to offer and the reasons for such components, including any cost information;

(ii) An operating budget for the fiscal year with an estimate of the cost of operation for one full year;

(iii) The basis used to determine the categories and individuals the State plans to exempt from its components, with additional justification for exemptions which exceed 20 percent of the number of work registrants in the State, including any cost information;

(iv) The characteristics of the population the State does intend to place;

(v) The estimated number of volunteers the State expects to place in its employment and training program;

(vi) The geographic areas covered and not covered by the plan and why, and the type and location of services to be offered;

(vii) The method the State will use to count all work registrants the first month of each fiscal year;

(viii) If a State plans to offer components which are significantly more intensive than the minimum level of effort specified in § 273.7(f), or plans to concentrate its efforts on persons who may be difficult to place, due to employment obstacles, it should be made clear in the State's employment and training plan. If, because of the nature of its components, or the population served, the State believes before it begins the year, that it will be unable to meet the performance standard established in § 273.7(o) and wishes to request a revision in the standard, it should provide the Department with detailed information about why it has chosen to operate such a component, or chosen to focus on certain persons, the benefits which will be gained by the recipient and Federal and State governments, and the number of persons it plans to serve in the component. The information provided to the Department will be used in determining whether the State's performance standard will be affected;

(ix) The organizational relationship between the units responsible for certification and the units operating the employment and training components. FNS is specifically concerned that the lines of communication be efficient and that noncompliance be reported to the certification unit within 5 working days after such noncompliance is determined;

(x) The relationship between the State agency and other organizations it plans to coordinate with for the provision of services. Copies of contracts should be included with the plan;

(xi) The availability, if appropriate, of employment and training programs to Indians living on reservations.

(5) States must submit an updated employment and training plan annually, and must submit plan revisions to the appropriate FNS regional office for approval if it plans to alter the nature or location of its components or the number of characteristics of persons served. The proposed changes shall be submitted for approval prior to implementation. The plan shall be available for public inspection at the State agency headquarters.

(6) The State shall submit quarterly reports to FNS no later than 45 days after the end of the quarter containing monthly figures for:

(i) The number of persons newly work registered;

(ii) The number of work registrants exempted by the State from employment and training programs separated by the reasons for the exemption;

(iii) The number of assigned persons who report to each employment or training component;

(iv) The number of participants who volunteer and participate in an employment and training program;

(v) The number of program applicants placed in a component, separated by those persons who were found ineligible for food stamp participation, those who were certified but not subsequently work registered and those who were work registered.

(vi) The number of persons who complete a first component and are placed in a second component and the number placed in subsequent components;

(vii) The number of persons who are referred to an employment or training component but who do not commence the component without good cause, and are sanctioned;

(viii) The number who find employment during food stamp participation and the number who become ineligible for food stamp benefits due to the employment;

(ix) The number of persons sanctioned for non-compliance with work requirements after they have begun a component and have been counted as "placed" as defined in § 273.7(o)(2).

(7) The State agency is also responsible for deregistering those work registrants who obtain employment or otherwise become exempt from the work requirement subsequent to registration, who are no longer certified for participation in the Program, or who move from the area.

(8) States must ensure, to the maximum extent practicable, that employment and training programs are provided for Indians living on reservations.

* * * * *

9. In § 273.7 paragraph (d) including its title is revised in its entirety to read as follows:

* * * * *

(d) *Federal financial participation—*

(1) *Federal cost-sharing.*

(i) State agencies shall receive an employment and training program grant for each fiscal year or portion of fiscal year in which they operate an employment and training program. The grant shall be 100 percent Federally-funded.

(A) Except as otherwise provided in paragraph (d)(1)(i)(B), of this section, the Secretary shall allocate the funding available each fiscal year or portion of fiscal year for employment and training grants on the basis of the number of work registrants in each State as a percentage of the number of work registrants nationwide, according to the most recently available reliable information.

(B) For Fiscal Year 1989 or any Fiscal Year thereafter, the Secretary will adjust the basic allocation formula to take into account variations in program designs among States, the characteristics of work registrants served, substantial amounts of unused funds for employment and training programs in States in a previous fiscal year, program effectiveness, or other factors which he determines necessary to effectively and

efficiently use Federal funds available for employment and training activities.

(C) State agencies shall use employment and training program grants to fund the administrative costs of implementing and operating employment and training programs in accordance with approved State agency plans. Employment and training grants shall not be used for the process of determining whether a participant shall be work registered, the work registration process, or any further assessment performed during the certification process.

(D) A State's receipt of the employment and training program grant as allocated under paragraph (d)(1)(i)(A) or (B) of this section is contingent on the Secretary's approval of the State's employment and training plan. If an adequate plan is not submitted, the Secretary may reallocate a State's grant among other States with approved plans. Non-receipt of an employment and training program grant does not release a State from performance requirements under paragraph (o) of this section, or sanctions for insufficient performance.

(ii) *Participant reimbursement.* Participants in employment and training programs, including volunteers and applicants required to perform job search, shall be reimbursed by the State agency for the actual costs of transportation, or other actual costs that are reasonably necessary and directly related to participation in the employment and training program. No participant cost which has been reimbursed under a workfare program operated under § 273.22, Title IV of the Social Security Act or any other work program shall be reimbursed under this section. Only costs which are up to but not in excess of $25 per month for any participant will be subject to Federal cost sharing. The State agency may reimburse participants for expenditures beyond $25 per month. Child care costs which are reimbursed may not be claimed as expenses and used in calculating the child care deduction for determining benefits.

(iii) Fifty percent of all other administrative costs incurred by State agencies in operating employment and training programs, above the costs referenced in paragraphs (1)(i) of this section, shall be funded by the Federal government.

(iv) Enhanced cost-sharing due to placement of workfare participants in paid employment is available only for workfare programs funded under § 273.22(g) at the 50 percent reimbursement level and reported as such.

(2) *Funding mechanism.* Employment and training program funding will be disbursed through States' Letters of Credit in accordance with § 277.4 of the regulations. The State agency shall ensure that records are maintained which support the financial claims being made to FNS.

(3) *Fiscal recordkeeping and reporting requirements.* Employment and training expenditures shall be reported by the State agency on the Financial Status Report (SF–269) in the column containing "Other" expenses. Employment and training expenditures shall also be separately identified in an attachment to the SF–269, as follows: total State and Federal employment and training expenditures; expenditures funded with the 100 percent Federal grant; State and Federal expenditures for participant reimbursements; State and Federal expenditures for employment and training costs at the 50 percent reimbursement level; and State and Federal expenditures for optional workfare program costs, operated under section 20 of the Food Stamp Act and § 273.22 of the regulations. Claims for enhanced funding for placments of participants in employment after their initial participation in the optional workfare program shall be submitted in accordance with § 273.22.

* * * * *

10. In § 273.7 paragraph (e) including its title, is revised in its entirety to read as follows:

* * * * *

(e) *Work registrant requirements.* Work registrants shall:

(1) Report, at the direction of the State agency, to an assessment interview and/or to an employment and training program;

(2) Participate in an employment and training program if assigned;

(3) Respond to a request from the State agency or its designee for supplemental information regarding employment status or availability for work;

(4) Report to an employer to whom referred by the State agency if the potential employment meets the suitability requirements described in paragraph (i) of this section;

(5) Accept a bona fide offer of suitable employment at a wage not less than the higher of either the applicable State or Federal minimum wage;

* * * * *

11. In § 273.7 paragraph (f) including its title, is revised in its entirety to read as follows:

* * * * *

(f) *Employment and training programs.* Persons required to register for work and not exempted by the State agency from placement in a job component shall be subject to the employment/training requirements imposed by the State agency for that individual. Requirements may vary among participants. Failure to comply without good cause with the requirements imposed by the State agency shall result in disqualification of the individual, or in the case of noncompliance of the primary wage earned as defined in § 273.1(d)(2), the entire household shall be disqualified, as indicated in paragraph (g) of this section.

(1) *Components.* To be considered acceptable by FNS, any component offered by a State agency must require a minimum level of effort by the participants. An assessment does not constitute a component. The level of effort shall be comparable to spending approximately 12 hours a month for two months making job contacts. An employment and training program offered by a State agency must offer one or more of the following components:

(i) A job search program comparable to that required for the AFDC program under Part A of Title IV of the Social Security Act. This entails up to an eight week job search program which may be imposed at the time of application to the Food Stamp Program;

(ii) A job search training program that includes reasonable job search training and support activities. Such a program may consist of job skills assessments, job finding clubs, training in techniques for employability, job placement services, or other direct training or support activities, including educational programs determined by the State agency to expand the job search abilities or employability of those subject to the program;

(iii) A workfare program as described in § 273.22;

(iv) A program designed to improve the employability of household members through actual work experience or training, or both, and to enable individuals employed or trained under such programs to move promptly into regular public or private employment. Such an employment or training experience shall:

(A) Limit employment experience assignments to projects that serve a useful public purpose in fields such as health, social services, environmental protection, urban and rural development, welfare, recreation, public facilities, public safety, and day care;

(B) To the extent possible, use the prior training, experience, and skills of the participating member in making

appropriate employment or training experience assignments;

(C) Not provide any work that has the effect of replacing the employment of an individual not participating in the employment or training experience program; and

(D) Provide the same benefits and working conditions that are provided at the job site to employees performing comparable work for comparable hours.

(v) A project, program or experiment such as a supported work program, aimed at accomplishing the purpose of the employment and training program.

(2) *Exemptions.* With the approval of the Secretary State agencies may exempt certain individuals and categories of individuals from employment and training participation. Individual exemptions shall be evaluated at each recertification and exemptions granted to categories of persons should be reviewed no less frequently than annually to determine whether they remain valid. If a State has a compelling reason to exempt more than 20 percent of its work registrants, it shall request additional exemption authority from FNS, and submit a justification for the additional exemptions, including information on the obstacles to placing those registrants in an employment and training program, and any pertinent cost information. An increased number of exemptions may result in an adjustment of the performance standard established for the State.

(i) Persons who have participated in the Food Stamp Program for 30 days or less may be exempted from participation.

(ii) Categories of persons for whom an employment and training requirement would be impracticable may be exempted. Factors such as the availability of work opportunities and the cost-effectiveness of the requirements may be considered. In making the determination of exemption the State agency may designate a category of all households residing in a specific area of the State. Such exemptions shall be evaluated annually to see if the reasons for the exemption remain valid.

(iii) State agencies may exempt from participation individual household members for whom participation is impracticable because of personal circumstances such as lack of job readiness, the remote location of work opportunities, physical condition, and the unavailability of child care.

(iv) Persons who are assigned to a job or training component, do not commence the component and are determined to have good cause shall be considered exempted if the reason for good cause will last for 60 days or longer.

(3) *Time spent in an employment and training program.* (i) The number of months a participant spends in an employment and training component shall be determined by the State agency. The State agency may also determine the number of successive components in which a participant may be placed.

(ii) The time spent participating each month in an employment and training program, combined with any hours worked that month in a workfare program under § 273.22 shall not exceed the number of hours equal to the household's allotment for that month divided by the higher of the applicable State or Federal minimum wage. The total hours of participation for any household member individually in any month, together with any hours worked in a workfare program under § 273.22 and any hours worked for compensation, shall not exceed 120.

(4) *Voluntary participation.* (i) A State agency may operate program components in which individuals elect to participate.

(ii) A State agency shall permit, to the extent it deems practicable, persons exempt from the work requirements, or those not exempt who have complied or are complying with the requirements, to participate in any employment and training program it offers.

* * * * *

12. In § 273.7 paragraph (g)(1) is revised to read as follows:

* * * * *

(g) *Failure to comply*—(1) *Noncompliance with Food Stamp Program regulations.* If the State agency determines that an individual other than the primary wage earner as defined in § 273.1(d) has refused or failed to comply with the requirements imposed by this section and by the State agency, that individual shall be ineligible to participate, as provided in this paragraph. If the primary wage earner, or if none exists the person considered head of household as defined in § 273.1(d) immediately prior to the non-compliance, fails to comply, the entire household is ineligible to participate as provided in this paragraph. Such ineligibility shall continue either until the member who caused the violation complies with the requirement as specified in paragraph (h) of this section, leaves the household, becomes exempt, or for two months, whichever occurs earlier. If the member who failed to comply joins another household as primary wage earner or head of the household, that entire household is ineligible for the remainder of the disqualification period. The State agency should determine whether good cause for the non-compliance exists, as discussed in paragraph (m) of this section. Within 10 days of the State determining the non-compliance was without good cause, the State agency shall provide the individual or household with a notice of adverse action, as specified in § 273.13. Such notification shall contain the proposed period of disqualification and shall specify that the individual or household may reapply at the end of the disqualification period. Information shall also be included with the notification on the procedures and requirements contained in paragraph (h) of this section. The disqualification period shall begin with the first month following the expiration of the adverse notice period, unless a fair hearing is requested. Each individual or household has a right to a fair hearing to appeal a denial, reduction, or termination of benefits due to a determination of nonexempt status, or a State agency determination of failure to comply with the work registration or employment and training requirements of this section. Individuals or households may appeal State agency actions such as exemption status, the type of requirement imposed, or State agency refusal to make a finding of good cause, if the individual or household believes that a finding of failure to comply has resulted from improper decisions on these matters. The results of the fair hearing shall be binding on the State agency.

* * * * *

13. In § 273.7, paragraph (h)(1) is redesignated as introductory paragraph (h) and the first sentence is revised; paragraphs (h)(1)(v) and (h)(2) are removed; paragraphs (h)(1)(i) through (h)(1)(i) are redesignated as paragraphs (h)(1) through (h)(4); newly redesignated paragraph (h)(2) is revised and paragraph (h)(3) is amended by removing the words "by the State employment security office" and paragraph (h)(4) is amended by removing the words "by the SESA". The revisions read as follows:

(h) *Ending disqualification.* Following the end of the 2 month disqualification period for noncompliance with the work registration or employment and training requirements participation may resume if a disqualified individual or household applies again and is determined eligible.

* * *

* * * * *

(2) Refusal to respond to a request from the State agency or its designee

requiring supplemental information regarding employment status or availability for work-compliance with the request.

* * * * *

14. In paragraph §273.7(i) introductory paragraph (1) is revised.

(i) *Suitable employment.* (1) In addition to any criteria established by State agencies, employment shall be considered unsuitable if:

* * * * *

15. In the first sentence of paragraph § 273.7(m), the words "job search" are removed and the words "employment and training" are added in their place.

16. The first sentence of introductory paragraph § 273.7(n) is revised; paragraphs (n)(1)(ii), (n)(1)(iv), (n)(1)(vi) and (n)(2) are revised; and a new paragraph (n)(5) is added. The additions and revisions follow:

* * * * *

(n) *Voluntary quit.* No household whose primary wage earner voluntarily quit a job of 20 hours a week or more without good cause shall be eligible for participation in the Program as specified below. * * *

(1) *Determining whether a voluntary quit occurred and application processing.* * * *

(ii) In the case of an applicant household, the State agency shall determine whether any current unemployed (i.e. employed less than 20 hours per week or receiving less than weekly earnings equivalent to the Federal minimum wage multiplied by 20 hours) household member who is required to register for work or exempted from work registration by § 273.7(b)(vii) has voluntarily quit a job of 20 hours a week or more within the last 60 days and has not accepted a new job of comparable wages or hours. If the State agency learns that a household has lost a source of income after the date of application but before the household is certified, the State agency shall determine whether a voluntarily quit occurred. If the primary wage earner is found to have quit a job without good cause, the household should be treated as an applicant household and the sanction, if applicable, should begin at the time of the quit if the State agency learns of the quit before certification. If the State agency learns of the quit after certification, the household shall be treated as a participating household and the period of ineligibility shall begin with the first month after all normal procedures for taking adverse action have been followed.

* * * * *

(iv) If a determination of voluntary quit is established, the State agency shall then determine if that member is the households's primary wage earner or if he or she was the primary wage earner of any other household at the time of the quit. For purposes of this section, the primary wage earner shall be that household member age 18 or over who was acquiring the greatest amount of earned financial support at the time of the quit. The primary wage earner is determined by comparing the projected earnings of the member who quit employment in the month the voluntary quit occurred as if he/she has not ceased employment against the actual or, if not available, the projected earnings of the remaining household members in the household applying or receiving food stamps. If a non-participating person voluntarily quits a job of 20 hours a week or more 60 days before joining a food stamp household, and has not obtained comparable employment, the household that person joins shall be disqualified starting at the date of the quit.

* * * * *

(iv) If the State agency determines that the primary wage earner of a participating household voluntarily quit his or her job without good cause while participating in the Program, the State agency shall provide the household with a notice of adverse action as specified in § 273.13 within 10 days after the determination of a voluntary quit is made unless the discovery is made during the recertification process. Such notification shall contain the proposed period of disqualification and shall specify that the household may reapply at the end of the disqualification period. Except as otherwise specified in this paragraph, the disqualification period shall be for three months or 90 days beginning with the first of the month after all normal procedures for taking adverse action have been followed. The 90 day disqualification period may be converted to a three calendar month period only for participating households. If a sanction is imposed and the household later leaves the program, the disqualification continues until it expires. Should the quit occur in the last month of the certification period and be discovered during the recertification process, the household should be treated as an applicant household and will be ineligible for benefits for 90 days from the date of the quit. A claim shall be filed for benefits received after the voluntary quit. If the State agency discovers during the recertification process a voluntary quit that occured at any time during participation prior to the last month, the State agency shall disqualify the household for any remaining months of what should have been the disqualification period and file a claim against the household for the excess benefits it received in the months when it should have been disqualified. Persons who have been disqualified for quitting a job as primary wage earner of one household will carry their sanctions with them if they join a new household. The new household will be ineligible for the remainder of the sanction period unless the person who caused the disqualification ends it per § 273.7(n)(5). Each household has a right to a fair hearing to appeal a reduction, termination, or denial of benefits due to a determination that the household's primary wage earner voluntarily quit his or her job without good cause. If the participating household requests a fair hearing and the State agency determination is upheld, the disqualification period shall begin the first of the month after the hearing decision is rendered. A household which loses such a fair hearing shall not be liable for benefits received pending the hearing.

* * * * *

(2) *Exemptions from voluntary quit provisions.* Persons who were exempt from the work registration provisions in § 273.7(b) at the time of the quit, with the exception of those exempted by § 273.7(b)(vii), shall be exempt from the voluntary quit provisions.

* * * * *

(5) *Ending a voluntary quit disqualification.* (i) Following the end of the disqualification period a household may begin participation in the program if it applies again and is determined eligible.

(ii) Eligibility may be reestablished during a disqualification period and the household shall, if otherwise eligible, be permitted to resume participation if the member who caused the disqualification secures new employment which is comparable in salary or hours to the job which was quit. Eligibility may also be reestablished if the violator becomes exempt from the work registration requirements in § 273.7(b) other than paragraphs (b)(1)(iii), (b)(1)(v), or (b)(1)(vii) of that section. Should a household which has been determined to be noncompliant without good cause split into more than one household, the sanction shall follow the member who caused the disqualification. If a sanctioned household member joins another food stamp household, that

household shall be ineligible for the balance of the period of ineligibility.

* * * * *

17. In § 273.7 a new paragraph (o) is added to read as follows:

* * * * *

(o) *Performance standards.* The Secretary shall establish an annual performance standard for the minimum number of eligible persons that States must place in employment and training programs.

(1) *Definition of "Placed" in an employment and training program.* State agencies may consider a person placed, for purposes of performance standards, if the person commences a work or training component, or does not commence a component to which he or she has been assigned and is sanctioned. Persons who do not commence a component but who have good cause for noncompliance shall not be counted as placed.

(2) *Measuring placements.* States shall count placements each time a new placement, as defined in § 273.7(o)(2) is made. If a person reports to a component which spans several months, an individual would be counted as placed in the initial month only. Each time a participant is placed in a different component after having successfully completed a prior component, they may be counted as placed. If participation is not continuous a person may be counted as having been placed more than once in the same component. If a person does not comply, and is sanctioned, the person is counted as placed in the month the sanction notice is mailed.

(3) *Counting the base of eligibles.* State agencies need not count any individual in the base of eligibles more than once in a twelve month period.

(4) *Maintaining performance statistics.* To ascertain a State's level of performance FNS will weigh the number of persons the State has placed in an employment and training program, as defined in (o)(1) of this section, against the base of persons eligible for placement. The base of eligibles shall include non-exempt work registrants, volunteers who have not been counted as work registrants, and if applicable, applicants placed in job search who have not been counted as work registrants. To arrive at an annual total of eligibles State agencies shall count the actual number of individuals in the base of eligibles in the first month of the fiscal year. Each subsequent month the State shall add to that figure the number of eligibles (non-exempt persons work registered, volunteers, and if appropriate, applicants placed in job search) added to the base that month. Separate counts should be maintained for the three types of eligibles in the base. The method of measuring the number of persons placed shall be the same. An actual count of persons placed in the first month of the fiscal year shall be taken, and the number of persons placed in each subsequent month shall be added. A cumulative total shall be kept monthly for the base of eligibles and the number of persons placed, and the monthly totals shall be reported to FNS no later than 45 days after the end of each quarter per paragraph (c)(6) of this section.

(5) *Percentage of persons to be placed.* In Fiscal Year 1988, 35 percent of eligible participants shall be placed in an employment and training program, and in Fiscal Year 1989, 50 percent of eligibles shall be placed. Beyond Fiscal Year 1989 State agencies will receive instructions and standards from FNS annually.

(6) *Variations in performance standards.* (i) The Department will adjust the performance standard for an individual State if the State can show, prospectively, that the components it plans to offer or the type of participant it plans to serve will require a significantly higher level of effort than the minimum level of effort described in § 273.7(f) and that the component will require a greater amount of State resources. If a State proposes that its performance standard be adjusted, it should propose the amount of the requested adjustment and provide a justification. The additional documentation called for in § 273.7(c) must be submitted to FNS in the State's employment and training plan. In determining whether an adjustment of the performance standard is warranted, and the level of the adjustment, FNS will consider the number of persons who will be placed, the intensity and effectiveness of the components and the cost.

(ii) The Secretary will not approve a performance standard which is lower than 40 percent of the established nationwide standard for a given year.

* * * * *

18. In § 273.7 a new paragraph (p) is added to read as follows:

* * * * *

(p) State noncompliance with Employment and Training requirements. (1) In determining whether a State agency has met a performance standard the Secretary will consider factors such as the extent to which volunteers have participated in the employment and training program; placement in unsubsidized employment; increases in earnings and the reduction in the number of persons participating in the Food Stamp Program, if the State supplies the Agency with appropriate documentation. If a State has failed to comply with the provisions of § 273.7 or failed to meet its established performance standard, FNS shall determine whether there was good cause for the noncompliance. Good cause for State noncompliance is specified in § 276.6. Lack of funding at the 100 percent Federal level shall not constitute good cause.

(2) If the Agency finds that there was no good cause for the State's noncompliance, the Agency shall withhold administrative funds. The dollar amount of the funds withheld shall be calculated by reducing the amount of the State's 100 percent Federal employment and training allocation for the pertinent year proportionately to the percentage below its standard the State's performance fell. This amount shall be withheld from the State's administrative funds as specified in § 276.4(c). The Secretary may withhold a larger percentage of the allocation depending on the severity of the noncompliance. Formal warning, appeal and administrative review provisions of §§ 276.4, 276.5 and 276.6 shall apply.

19. In § 273.18 a new paragraph (b)(4) is added to read as follows:

§ 273.18 Claims against households.

* * * * *

(b) Criteria for establishing inadvertent household and administrative error claims. * * *

(4) If a workfare obligation has been fulfilled during the month of an overissuance, a claim shall be established for the total amount of the overissuance, in accordance with the provisions of this section, except in cases where the overissuance is due to an inadvertent household or State administrative error and the household is no longer participating in the program. In such cases if the number of hours worked multiplied by the prevailing minimum wage are less than the amount of the overissuance, a claim shall be established for the difference. If there is no difference, no claim shall be established. Workfare obligations shall be adjusted in accordance with § 273.22(f)(9).

* * * * *

20. In § 273.22 paragraph (b)(1) is revised; and paragraph (f)(9) is added. The addition and revisions read as follows:

§ 273.22 Optional workfare program.

* * * * *

(b) *Program administration.* (1) A food stamp workfare program may be operated as part of a State's employment and training program, required in § 273.7(f) or may be operated outside the jurisdiction of such a program. Any State agency or other political subdivision choosing to establish and operate a workfare program must submit for FNS approval a workfare plan in accordance with the requirements of this section or § 273.7(c). For the purpose of this section, a political subdivision is any local government, including, but not limited to, any county, city, town or parish. A State agency may implement a workfare program statewide or in only some areas of the State. The areas of operation must be identified in the State workfare or employment and training plan.

* * * * *

(f) *Other program requirements.* * * *

(9) *Benefit overissuances.* If a benefit overissuance is discovered for a month or months in which a participant has already performed a workfare obligation, the State agency should follow claim recovery procedures specified in § 273.18.

(i) If the person who performed the work is still workfare eligible, the State shall determine how many extra hours were worked because of the improper benefit. The participant should be credited that number of hours toward future workfare obligations.

(ii) If workfare eligibility does not continue, the State agency shall determine whether the overissuance was the result of an intentional program violation, an inadvertent household error, or a State agency error. For an intentional program violation a claim should be established for the entire amount of the overissuance and no credit toward future workfare obligations shall be given. If this was caused by an inadvertent household error or State agency error, the State agency shall determine if the hours worked in workfare multiplied by the prevailing minimum wage total less than the amount of the correct benefit plus the overissuance. If this is the case, a claim shall be established for the difference. No credit for future workfare hours shall be given.

* * * * *

PART 276—STATE AGENCY LIABILITIES AND FEDERAL SANCTIONS

8. In § 276.1, a new paragraph (a)(4) is added to read as follows:

§ 276.1 Responsibilities and rights.

(a) *Responsibilities.* * * *

(4) Each State agency shall be responsible for operating an employment and training program in accordance with the provisions of § 273.7. If a State agency fails, without good cause, to comply with the requirements of that section, including the specific performance standards established for that State by FNS, the Secretary may withhold funds as indicated in §§ 276.1(a)(3) and 273.7(p) subject to the appeal procedure of paragraph (b) of this section.

* * * * *

PART 277—PAYMENT OF CERTAIN ADMINISTRATIVE COSTS OF STATE AGENCIES

9. Section 277.4 is amended by adding a new paragraph (b)(9) to read as follows:

§ 277.4 Funding.

* * * * *

(b) * * *

(9) Employment and training program grants, as outlined in § 273.7(f) shall be 100 percent Federally—funded.

* * * * *

Dated: September 25, 1986.

Robert E. Leard,

Administrator.

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Wednesday
October 1, 1986

Part VI

Office of Management and Budget

1987 Standard Industrial Classification Revision; Notice of Final Decisions

OFFICE OF MANAGEMENT AND BUDGET

1987 Standard Industrial Classification Revision

AGENCY: Office of Management and Budget.

ACTION: Notice of final decisions.

SUMMARY: This notice presents the Office of Management and Budget's final decisions for the 1987 revision of the Standard Industrial Classification (SIC) and information for ordering the new "Standard Industrial Classification Manual 1987." The SIC is revised periodically to reflect the economy's changing industrial composition and organization. Changes in the economy since the last major revision in 1972 require an updating of the standard. The revised SIC provides a more current classification structure with which to collect, disseminate, and analyze data on the industrial makeup of the U.S. economy.

EFFECTIVE DATE: The revision is effective January 1, 1987.

ADDRESSES: Correspondence about the final decisions should be sent to: Paul Bugg, Office of Management and Budget, 3001 New Executive Office Building, Washington, DC 20503. Orders for the new "Standard Industrial Classification Manual 1987" should be sent to the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, (703–487–4650).

FOR FURTHER INFORMATION CONTACT: Paul Bugg, Office of Management and Budget, telephone number 202–395–3093.

SUPPLEMENTARY INFORMATION: The Standard Industrial Classification (SIC) is the statistical classification system underlying all establishment-based Federal economic statistics. The SIC is used to promote the comparability of establishment data describing various facets of the U.S. economy. The SIC's basic classification unit is the establishment, i.e., an economic unit, generally at a single physical location, where business is conducted or where services or industrial operations are performed, such as a farm, mine, factory, store, or hotel. The SIC covers the entire field of economic activities by defining industries in accordance with the composition and structure of the economy. It is revised periodically to reflect the economy,s changing industrial composition and organization. The 1972 SIC Manual, as supplemented in 1977 contains the current classification of industries.[1] On February 22, 1984, the Office of Management and Budget (OMB) published a **Federal Register** (49 FR 6582) notice of intent to revise the Standard Industrial Classification for 1987, containing the "Principles and Procedures for the Review of the SIC." [2] In response, businesses; trade associations; individuals; and Federal, State, and local government agencies submitted proposals for over 1100 individual changes.

To provide technical advice for the 1987 SIC revision and to make recommendations on the individual proposals, OMB established a multiagency Technical Committee on Industrial Classification (TCIC). The TCIC is chaired by OMB and is composed of senior economists, statisticians, and classification specialists representing 18 of the Federal agencies that use the SIC. To aid in its review, the TCIC established subcommittees for Construction; Manufacturing; Trade (Wholesale and Retail); Communications; Transportation and Public Utilities; Finance, Insurance, and Real Estate; Services; and Computers. The TCIC evaluated each of the submitted changes and recommended approximately 40 percent for acceptance and inclusion in a revised SIC.

In evaluating each proposed change, the TCIC followed the guidelines presented in the published "Principles and Procedures." These guidelines specify how the proposed change should relate to: The structure of the classification; historical continuity of data; economic significance criteria; specialization and coverage ratios; compatibility with international industry and product classification systems; classification stability; the ability of statistical agencies to classify, collect, and publish industry data; disclosure of individual firm data; the cost and reporting burden to respondents; and the cost to the government.

For 1987, the scope of the review for the SIC revision took into account technological changes; institutional changes such as deregulation in the Banking, Communications, and Transportation industries; and the tremendous expansion in the service sector. Also, changes were made that improved industry detail, coverage, and definitions, or clarified definitions of individual activities and classification concepts.

The primary reasons why the TCIC accepted proposals to establish new industries are: (1) Proposed industries meet the minimum criteria for economic significance, (2) proposed industries meet required specialization and coverage ratios, (3) proposed industries present no significant difficulties or costs in collecting the information needed to make a correct classification of establishments, and (4) improvement in statistical information is large relative to the costs of the proposed change. Similarly, the TCIC generally recommended accepting proposals to combine an existing industry with a compatible category if the existing industry no longer meets the economic significance, specialization, or coverage criteria.

Special consideration was given to new industries and industry changes that meet the above criteria and also increase the capability of assessing the impact of international trade on domestic industries. In the course of U.S. participation in developing the new Harmonized Commodity Description and Coding System for international trade classification, comparisons were made between trade classification detail and the SIC. Problems and inconsistencies were identified in the SIC, in some cases confirming difficulties that had already been encountered in SIC data collection. Examples of such difficulties currently exist in Industries 3662, 3811, 3829, and 3832 covering the manufacture of communications equipment and certain instruments. To resolve such inconsistencies, changes and new industries have been accepted that meet basic SIC criteria and recognize products that are important in international trade.

After the TCIC completed its initial review, each accepted change was examined in terms of expected benefits relative to costs of implementation. During this process some changes that the TCIC had found technically feasible were rejected because the expected benefits did not balance the substantial costs involved. Once this process was finished, the TCIC recommendations were published in the **Federal Register** (51 FR 5640, February 14, 1986) with a 60-day comment period ending April 15, 1986.

OMB's Final Decisions

Taking into consideration benefits and costs, comments submitted in

[1] The "Standard Industrial Classification Manual 1972" is available from the Government Printing Office. The stock number and price are 041–001–00066–6 and $15.00, respectively. The "1977 Supplement" is now out of print and is no longer available.

[2] For your information the "Principles and Procedures for the Review of the SIC" are reprinted at the end of this notice.

response to the February 14, 1986, Federal Register notice, and other factors, including the operating budgets of the Federal agencies that must implement the revised SIC, OMB has made the final determination of the scope and substance of the 1987 revision. In general, OMB accepted the TCIC recommendations. However, in response to public comment, OMB made several changes to improve the usefulness and administration of the classification, avoid unnecessary industry code number changes, and reduce the number of detailed industry distinctions. For example, in the depository banking area there are far fewer industries than were recommended by the TCIC. Instead, distinctions based on the type of charter—Federally chartered or not Federally chartered, are retained, but those related to regulatory body or insurance are dropped. A separate industry for bank holding companies is established. Two new industries are created for courier services in Motor Freight Transportation and Air Transportation. New industries, divided between freight and passengers, are created in Water Transportation to facilitate analyses of these components. The production of prepackaged computer software is recognized as a separate industry in Services (Division I) instead of Manufacturing. In Retail Trade a new industry is created for opticians stores.

Implementation

The revision is effective January 1, 1987. In some programs, data based on the new SIC may be available beginning in 1988. However, for most programs, such data will be introduced over several years. Data series for these programs may not always be revised for years prior to the programs' implementation of the new SIC.

Highlights of the 1987 SIC Revision

The 1987 SIC revision has resulted in a net increase of 19 industries for Services (Division I), 8 for Wholesale Trade, and 7 for Manufacturing, with a net decrease of 34 for the other SIC Divisions. Deleted industries are merged into other industries and new industries are created by subdividing or restructuring existing industries. Various industries are also changed by transfers of individual activities, primarily to increase data classification accuracy, consistency, and usefulness, or by renumbering to change the existing three-digit structure.

Most of the industries that are deleted no longer meet the economic significance criteria for continued recognition as a separate industry. However, a few are dropped because the number of companies represented by the establishments classified in the industry is now so small as to cause disclosure problems in publishing data or because the distinctions required cause difficulties in classification.

As a supplement to other proposals submitted, the revision process included a comprehensive review of Transportation (Major Groups 40–47), Communications (Major Group 48), and Finance (Major Groups 60–62, and 67) to identify revisions needed due to changes in technology and government regulation. As mentioned above, basic revisions occur in Water Transportation and in the structure and detail of Banking and Other Credit Agencies (Major Groups 60–61), in particular to recognize changes in depository regulations. In addition, the decisions include the recognition of new industries for Cable and Other Pay Television (from 4833 and 4899) and Radiotelephone Communications Services (from 4811).

The growth of computer-related activities has resulted in a number of new industries. Several new industries are recognized for computers and computer peripheral equipment in Manufacturing (from 3573). There are industries for the sale of Computers and Computer Peripheral Equipment and Software in Wholesale Trade (from 5081) and Retail Trade (from 5732). Computer establishments are classified in Wholesale Trade if they sell primarily for business or government use and in Retail Trade if they sell primarily for household use. Additional detail is also added for computer services within current Group 737, including a separate industry for Prepackaged Computer Software.

The 1987 revision places considerable emphasis on improved detail for Services (Division I). There is a new Major Group 87 for selected professional and technical services, comprising elements of the current Business Services (Major Group 73) and Miscellaneous Services (Major Group 89). Industry 7392, Management, Consulting, and Public Relations, is subdivided into five new industries, and 8911, Engineering, Architectural, and Surveying Services, is subdivided into three. A number of changes are incorporated for Major Group 80, Health Services, to improve detail and data accuracy for this area of rapid growth. Other changes include the recognition of industries for Physical Fitness Facilities (from 7299, 7997, and 7999), Tax Return Preparation Services (from 7299) and Video Tape Rental (from 7394). Various other industries are also subdivided (e.g., 7321, 7393, and 7539).

There are subdivisions of some of the largest and fastest growing current industries in Manufacturing, including Miscellaneous Plastics Products (3079), Radio and Television Communications Equipment (3662), and Electronic Components, NEC (3679). Recognition of a distinct operating technology is extended to fluid power (from 3494, 3561, 3566, 3569, 3599, and 3728) and of a different fabrication technology to the distinction between die casting and other casting (from 336). Existing problems in data collection and accuracy are corrected by grouping together all relays (from 3613, 3622 and 3679) and all packaging equipment (from 3551 and 3569) and by moving or combining instruments and instrumentation systems currently covered by 3662, 3811, 3829, and 3832.

Notable changes in other SIC Divisions include the recognition of Animal Aquaculture (from 0279); the separation of surface and underground bituminous coal mining (from 1211); the separation of freight and passenger transport in Water Transportation (from Major Group 44) and the recognition of surface and air courier services (from 4211, 4213, 4511, and 4521); the recognition in Wholesale Trade of Medical and Hospital Equipment and of Opthalmic Goods (from 5086); and the separation in Retail Trade of Record and Prerecorded Tape Stores (from 5733), and Opticians Stores (from 5999). Establishments selling used automobile parts at wholesale or retail are placed together in a new industry in Wholesale Trade, because of difficulties in determining whether individual units sell primarily to households or to businesses.

1987 SIC Manual Ordering Information

Clothbound copies of the "Standard Industrial Classification Manual 1987" may be ordered now from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. The Accession Number for the clothbound manual is PB 87–100012. The prepublication price is $24.00; for orders received after December 31, 1986, the price is $30.00. Orders (including prepublication orders) of five (5) or more copies receive a 25 percent discount. It is expected that the 1987 SIC Manual will be available for shipping in early Spring 1987. The "Standard Industrial Classification Manual 1987" will be available on computer tape (9-track 1600 bpi or 6250 bpi) for $175.00, including documentation. The Accession Number

for the tape is PB 87–100020. The "SIC Manual 1987" will also be available on diskettes upon request. A shipping and handling fee of $3.00 must accompany each order for either books or tapes. Telephone orders may be placed using an NTIS Deposit Account or an American Express, Master Card, or Visa credit card by calling (703) 487–4650. Payment must accompany all mail orders.

Description of the List of Changes

The attached list of changes shows only substantive modifications in content, detail, or structure to the current 1972/1977 Standard Industrial Classification. In addition, the new "Standard Industrial Classification Manual 1987" will update and clarify many industry titles and descriptions and add numerous new example items to the indexes to reflect new activities.

The current 1972/1977 industries that are changed are listed in the left-hand column with the corresponding 1987 industries directly opposite in the right-hand column. Where two or more current industries are combined into one, a brace indicates which industries are to be combined.

Instances in which new industries are created or an existing industry changed are indicated by: (1) Specifying each changed 1972/1977 industry code and title in the left-hand column, (2) listing short descriptions of the activities involved in any multiple changes to an industry beneath the industry title, and (3) listing in the right-hand column the corresponding 1987 industry code and title for each listed change. A 1987 industry having a code without an asterisk includes only those activities now covered by the industry code in the left-hand column. A 1987 industry having a code preceded by an asterisk includes the corresponding activities described in the left-hand column plus activities from one or more other 1972/1977 industries; the other activities are included in the 1972/1977 industries specified in the parenthetical note. For example, current Industry 2065 is changed by moving certain nut processing to new Industry 2068 (which also includes activities from current Industries 2034 and 2099) and establishing a new Industry 2064 (which includes only the remaining activities from current Industry 2065).

Note that only industry (i.e., four-digit) changes are listed. Changes at the two-digit and three-digit levels are only implied. For instance, Major Groups 11 and 66 are deleted since all their industries are deleted and Industry Group 738 is added because of the four-digit industry changes.

Please note that the abbreviation "nec" used in the attached list stands for Not Elsewhere Classified.

Authority: 31 U.S.C. 1104(d), 44 U.S.C. 3504(d).

Wendy L. Gramm,

Administrator for Information and Regulatory Affairs.

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THE 1987 SIC REVISION
Summary of Changes in 1972/77 Sequence

1972/77		1987	
	A. AGRICULTURE, FORESTRY, AND FISHING		
0181	Ornamental nursery products	* 0181	Ornamental nursery products (See 0189)
0182	Food crops grown under cover	* 0182	Food crops grown under cover (See 0189)
0189	Horticultural specialties, nec		
	Ornamental nursery products	* 0181	Ornamental nursery products (See 0181)
	Food crops grown under cover	* 0182	Food crops grown under cover (See 0182)
0279	Animal specialties, nec		
	Animal aquaculture	0273	Animal aquaculture
	Other	0279	Animal specialties, nec
0721	Crop planting and protection	* 0721	Crop planting and protection (See 0729)
0722	Crop harvesting	* 0722	Crop harvesting (See 0729)
0723	Crop preparation services for market	* 0723	Crop preparation services for market (See 0729)
0724	Cotton ginning	* 0724	Cotton ginning (See 0729)
0729	General crop services		
	Crop planting and protection	* 0721	Crop planting and protection (See 0721)
	Crop harvesting	* 0722	Crop harvesting (See 0722)
	Crop preparation services for market	* 0723	Crop preparation services for market (See 0723)
	Cotton ginning	* 0724	Cotton ginning (See 0724)
0821	Forest nurseries and seed gathering		
0843	Extraction of pine gum	0831	Forest products ex. timber
0849	Gathering of forest products, nec		

* part 1

1972/77		1987	
	B. MINING		
1051	Bauxite and other aluminum ores		
1092	Mercury ores	1099	Metal ores, nec
1099	Metal ores, nec		
1111	Anthracite	1231	Anthracite mining
1112	Anthracite mining services	1241	Coal mining services
1213	Bituminous & lignite mining services		
1211	Bituminous coal and lignite		
	Bituminous coal mining, underground	1222	Bituminous coal mining, underground
	Other	1221	Bituminous and lignite coal mining, surface, and bituminous coal preparation plants
1452	Bentonite		
1453	Fire clay	1459	Clay and related minerals, nec
1454	Fuller's earth		
1459	Clay and related minerals, nec		
1472	Barite		
1473	Fluorspar		
1476	Rock salt	1479	Chemical and fertilizer mining, nec
1477	Sulfur		
1479	Chemical and fertilizer mining, nec		
1492	Gypsum		
1496	Talc, soapstone, and pyrophyllite	1499	Nonmetallic minerals, nec
1499	Nonmetallic minerals, nec		

* part 2

1972/77		1987	
	C. CONSTRUCTION		
1611	Highway and street construction		
	Recreational facilities; trailer camps	* 1629	Heavy construction, nec (See 1629)
	Culverts and curbs	* 1771	Concrete work (See 1771)
	Other	1611	Highway and street construction
1629	Heavy construction, nec	* 1629	Heavy construction, nec (See 1611)
1771	Concrete work	* 1771	Concrete work (See 1611)
	D. MANUFACTURING		
2016	Poultry dressing plants	2015	Poultry slaughtering, dressing, and processing
2017	Poultry and egg processing		
2032	Canned specialties		
	Fish cakes	* 2091	Canned and cured seafoods (See 2091)
	Other	2032	Canned specialties
2034	Dehydrated fruits, vegetables, soups		
	Nuts	* 2068	Salted and roasted nuts and seeds (See 2065, 2099)
	Other	2034	Dehydrated fruits, vegetables, soups
2038	Frozen specialties		
	Bakery products	2053	Frozen bakery products
	Other	2038	Frozen specialties, nec
2047	Dog, cat, and other pet food		
	Dog and cat food	2047	Dog and cat food
	Other pet food and meat not fit for human consumption	* 2048	Prepared feeds, nec (See 2048)
2048	Prepared feeds, nec	* 2048	Prepared feeds, nec (See 2047)

* part

1972/77		1987	
2065	Confectionery products		
	Salted and roasted nuts	* 2068	Salted and roasted nuts and seeds (See 2034, 2099)
	Other	2064	Confectionery products
2066	Chocolate and cocoa products	* 2066	Chocolate and cocoa products (See 2099)
2091	Canned and cured seafoods	* 2091	Canned and cured seafoods (See 2032)
2099	Food preparations, nec		
	Chocolate	* 2066	Chocolate and cocoa products (See 2066)
	Potato chips and similar products	2096	Potato chips and similar products
	Salted and roasted seeds	* 2068	Salted and roasted nuts and seeds (See 2034, 2065)
	Other	2099	Food preparations, nec
2258	Warp knit fabric mills	* 2258	Warp knit fabric mills (See 2292)
2271	Woven carpets and rugs	2273	Carpets and rugs
2272	Tufted carpets and rugs		
2279	Carpets and rugs, nec		
2281	Yarn mills	* 2281	Yarn mills (See 2283)
2282	Throwing and winding mills	* 2282	Throwing and winding mills (See 2283)
2283	Wool yarn mills		
	Thread	* 2284	Thread mills (See 2284)
	Yarn, made in spinning mills	* 2281	Yarn mills (See 2281)
	Yarn, made in throwing and winding mills	* 2282	Throwing and winding mills (See 2282)
2284	Thread mills	* 2284	Thread mills (See 2283)
2291	Felt goods, except woven felts and hats	* 2299	Textile goods, nec (See 2299)
2292	Lace goods	* 2258	Warp knit fabric mills (See 2258)
2293	Paddings and upholstery filling	* 2299	Textile goods, nec (See 2291)
2294	Processed textile waste		
2299	Textile goods, nec		

* part

1972/77		1987	
2321	Men's and boys' shirts and nightwear		
	Shirts	2321	Men's and boys' shirts
	Nightwear	* 2322	Men's and boys' underwear and nightwear (See 2322)
2322	Men's and boys' underwear	* 2322	Men's and boys' underwear and nightwear (See 2321)
2327	Men's and boys' separate trousers	* 2325	Men's and boys' separate trousers and casual slacks (See 2328)
2328	Men's and boys' work clothing		
	Jeans and jean-cut casual slacks	* 2325	Men's and boys' separate trousers and casual slacks (See 2327)
	Other	2326	Men's and boys' work clothing
2351	Millinery	2353	Hats, caps, and millinery
2352	Hats and caps, except millinery		
2363	Children's coats and suits	2369	Children's outerwear, nec
2369	Children's outerwear, nec		
2411	Logging camps and contractors	* 2411	Logging (See 2421)
2421	Sawmills and planing mills		
	Logging	* 2411	Logging (See 2411)
	Other	2421	Sawmills and planing mills
2431	Millwork	* 2431	Millwork (See 3442)
2492	Particleboard	* 2493	Reconstituted wood products (See 2499, 2661)
2499	Wood products, nec		
	Reconstituted wood products (e.g., medium density fiberboard, waferboard, oriented strandboard, hardboard)	* 2493	Reconstituted wood products (See 2492, 2661)
	Other	2499	Wood products, nec
2522	Metal office furniture	* 2522	Office furniture, except wood (See 2599)
2542	Metal partitions and fixtures	* 2542	Partitions and fixtures, except wood (See 2599)

1972/77		1987	
2599	Furniture and fixtures, nec		
	Office furniture	* 2522	Office furniture, except wood (See 2522)
	Partitions and fixtures	* 2542	Partitions and fixtures, except wood (See 2542)
	Other	2599	Furniture and fixtures, nec
2611	Pulp mills	* 2611	Pulp mills (See 2621, 2631)
2621	Paper mills, except building paper		
	Pulp mills	* 2611	Pulp mills (See 2611, 2631)
	Other	* 2621	Paper mills (See 2661)
2631	Paperboard mills		
	Pulp mills	* 2611	Pulp mills (See 2611, 2621)
	Other	2631	Paperboard mills
2641	Paper coating and glazing		
	Paper coating and laminating for packaging	2671	Paper coating and laminating for packaging
	Other	2672	Paper coating and laminating, except for packaging
2642	Envelopes	2677	Envelopes
2643	Bags, except textile bags		
	Bags: uncoated paper and multiwall	2674	Bags: uncoated paper and multiwall
	Other	2673	Bags: plastics, laminated and coated
2645	Die-cut paper and paperboard	2675	Die-cut paper and paperboard
2646	Pressed and molded pulp goods	* 2679	Converted paper products, nec (See 2649)
2647	Sanitary paper products	2676	Sanitary paper products
2648	Stationery products	2678	Stationery products
2649	Converted paper products, nec	* 2679	Converted paper products, nec (See 2646)
2651	Folding paperboard boxes	* 2657	Folding paperboard boxes (See 2654)
2654	Sanitary food containers		
	Folding	* 2657	Folding paperboard boxes (See 2651)
	Other	2656	Sanitary food containers

1972/77		1987	
2661	Building paper and board mills		
	Insulation board	* 2493	Reconstituted wood products (See 2492, 2499)
	Paper	* 2621	Paper mills (See 2621)
2751	Commercial printing, letterpress and screen	* 2759	Commercial printing, nec (See 2753)
2753	Engraving and plate printing		
	Platemaking	* 2796	Platemaking (See 2754, 2793, 2794, 2795)
	Printing	* 2759	Commercial printing, nec (See 2751)
2754	Commercial printing, gravure		
	Platemaking	* 2796	Platemaking (See 2753, 2793, 2794, 2795)
	Other	2754	Commercial printing, gravure
2793	Photoengraving	* 2796	Platemaking (See 2753, 2754)
2794	Electrotyping and stereotyping		
2795	Lithographic platemaking services		
2819	Industrial inorganic chemicals, nec	* 2819	Industrial inorganic chemicals, nec (See 2869)
2831	Biological products		
	Diagnostic substances	2835	Diagnostic substances
	Other	2836	Biological products, except diagnostic substances
2869	Industrial organic products, nec		
	Hydrazine	* 2819	Industrial inorganic chemicals, nec (See 2819)
	Other	2869	Industrial organic products, nec
3031	Reclaimed rubber	* 3069	Fabricated rubber products, nec (See 3069, 3555)
3041	Rubber and plastics hose and belting	3052	Rubber and plastics hose and belting

* part

1972/77		1987	
3069	Fabricated rubber products, nec		
	Molded, extruded, and lathe-cut rubber mechanical goods	3061	Molded, extruded, and lathe-cut rubber mechanical goods
	Other	* 3069	Fabricated rubber products, nec (See 3031, 3555)
3079	Miscellaneous plastics products		
	Unsupported sheet and film	3081	Unsupported sheet and film
	Unsupported profile shapes	3082	Unsupported profile shapes
	Laminated plate and sheet	3083	Laminated plate and sheet
	Pipe	3084	Pipe
	Bottles	3085	Bottles
	Plastics foam products	3086	Plastics foam products
	Custom compounding of purchased resins	3087	Custom compounding of purchased resins
	Plumbing fixtures	3088	Plumbing fixtures
	Plumbing fixture fittings: plastics	* 3432	Plumbing fixture fittings (See 3432)
	Other	3089	Plastics products, nec
3264	Porcelain electrical supplies	* 3264	Porcelain electrical and electronic supplies (See 3679)
3293	Gaskets, packing, and sealing devices	3053	Gaskets, packing, and sealing devices
3332	Primary lead	3339	Primary nonferrous metals, nec
3333	Primary zinc		
3339	Primary nonferrous metals, nec		
3361	Aluminum foundries		
	Die castings	3363	Aluminum die castings
	Other	3365	Aluminum foundries
3362	Brass, bronze and copper foundries		
	Die castings	* 3364	Nonferrous die castings, except aluminum (See 3369)
	Other	3366	Copper foundries

* part

1972/77		1987	
3369	Nonferrous foundries, nec		
	Die castings	* 3364	Nonferrous die castings, except aluminum (See 3362)
	Other	3369	Nonferrous foundries, except aluminum and copper
3423	Hand and edge tools, nec	* 3423	Hand and edge tools, nec (See 3555)
3432	Plumbing fixture fittings and trim (brass goods)	* 3432	Plumbing fixture fittings (See 3079)
3433	Heating equipment, except electric		
	Incinerators, metal: domestic and commercial	* 3567	Industrial furnaces and ovens (See 3567)
	Other	3433	Heating equipment except electric
3442	Metal doors, sash, and trim		
	Doors, windows, etc. of wood covered with metal	* 2431	Millwork (See 2431)
	Other	3442	Metal doors, sash, and trim
3444	Sheet metal work		
	Curtain wall	* 3449	Miscellaneous metal work (See 3449, 3469)
	Other	3444	Sheet metal work
3449	Miscellaneous metal work	* 3449	Miscellaneous metal work (See 3444, 3469)
3469	Metal stampings, nec		
	Curtain wall	* 3449	Miscellaneous metal work (See 3444, 3449)
	Other	3469	Metal stampings, nec
3494	Valves and pipe fittings		
	Hydraulic and pneumatic valves and hose fittings and assemblies	* 3492	Fluid power valves and hose fittings (See 3728)
	Industrial valves	3491	Industrial valves
	Plumbing and heating valves; fittings, flanges, and unions	3494	Valves and pipe fittings, nec
3531	Construction machinery	* 3531	Construction machinery (See 3536)

* part

1972/77		1987	
3536	Hoists, cranes and monorails		
	Aerial work platforms; automobile wrecker hoists	* 3531	Construction machinery (See 3531)
	Automatic stacking machines	* 3537	Industrial trucks and tractors (See 3537)
	Other	3536	Hoists, cranes and monorails
3537	Industrial trucks and tractors	* 3537	Industrial trucks and tractors (See 3536)
3549	Metalworking machinery, nec		
	Welding and soldering machines, nonelectric	* 3548	Welding apparatus (See 3623)
	Automotive maintenance equipment	* 3559	Special industry machinery, nec (See 3559, 3636)
	Other	3549	Metalworking machinery, nec
3551	Food products machinery		
	Packaging machinery	* 3565	Packaging machinery (See 3569)
	Other	3556	Food products machinery
3555	Printing trades machinery		
	Printers' rolls, blankets and roller covers	* 3069	Fabricated rubber products, nec (See 3031, 3069)
	Printers mallets	* 3423	Hand and edge tools, nec (See 3423)
	Other	3555	Printing trades machinery
3559	Special industry machinery, nec	* 3559	Special industry machinery, nec (See 3549, 3636)
3561	Pumps and pumping equipment		
	Fluid power equipment	* 3594	Fluid power pumps and motors (See 3566, 3569, 3728)
	Other	3561	Pumps and pumping equipment, except fluid power pumps
3565	Industrial patterns	3543	Industrial patterns
3566	Speed changers, drives and gears		
	Hydrostatic drives (transmissions)	* 3594	Fluid power pumps and motors (See 3561, 3569, 3728)
	Other	3566	Speed changers, drives and gears

* part

1972/77		1987	
3567	Industrial furnaces and ovens	* 3567	Industrial furnaces and ovens (See 3433)
3569	General industrial machinery, nec		
	Fluid power pumps and motors	* 3594	Fluid power pumps and motors (See 3561, 3566, 3728)
	Packaging machinery	* 3565	Packaging machinery (See 3551)
	Other	3569	General industrial machinery, nec
3572	Typewriters	* 3579	Office machines, nec (See 3579)
3573	Electronic computing equipment		
	Computers	3571	Computers
	Computer storage devices	3572	Computer storage devices
	Terminals	* 3575	Computer terminals (See 3661)
	Magnetic disks	* 3695	Recording media (See 3679)
	Other	3577	Computer peripheral equipment, nec
3574	Calculating and accounting machines	3578	Calculating and accounting machines
3576	Scales and balances, except laboratory	3596	Scales and balances, except laboratory
3579	Office machines, nec	* 3579	Office machines, nec (See 3572)
3585	Refrigeration and heating equipment	* 3585	Refrigeration and heating equipment (See 3699)
3599	Machinery, except electrical, nec		
	Fluid power cylinders and actuators	* 3593	Fluid power cylinders and actuators (See 3728)
	Other	3599	Machinery, except electrical, nec
3613	Switchgear and switchboard apparatus		
	Relays	* 3625	Relays and industrial controls (See 3622, 3679)
	Other	3613	Switchgear and switchboard apparatus
3622	Industrial controls	* 3625	Relays and industrial controls (See 3613, 3679)
3623	Welding apparatus, electric	* 3548	Welding apparatus (See 3549)

* part

1972/77		1987	
3636	Sewing machines		
	Household	* 3639	Household appliances, nec (See 3639)
	Commercial and industrial	* 3559	Special industry machinery, nec (See 3549, 3559)
3639	Household appliances, nec	* 3639	Household appliances, nec (See 3636)
3641	Electric lamps	* 3641	Electric lamps (See 3699)
3661	Telephone and telegraph apparatus		
	Teletypewriters	* 3575	Computer terminals (See 3573)
	Other	* 3661	Telephone and telegraph apparatus (See 3662)
3662	Radio and television communications equipment		
	Modems and other interface equipment	* 3661	Telephone and telegraph apparatus (See 3661)
	Radio and TV communications systems and equipment, and broadcast and studio equipment	3663	Radio and TV communications systems and equipment, and broadcast and studio equipment
	Search, detection, navigation and guidance systems and equipment	* 3812	Search, detection, navigation, and guidance systems and instruments (See 3811)
	Other communications equipment	3669	Other communications equipment, nec
	Hydrological, hydrographic, meteorological, and geophysical equipment	* 3829	Measuring and controlling devices, nec (See 3811, 3829, 3832)
	Other	* 3699	Electrical equipment and supplies, nec (See 3699)
3671	Electron tubes, receiving type		
3672	Cathode ray television picture tubes	* 3671	Electron tubes (See 3679)
3673	Electron tubes, transmitting		
3679	Electronic components, nec		
	Ferrite electronic parts and porcelain electronic supplies	* 3264	Porcelain electrical and electronic supplies (See 3264)
	Relays	* 3625	Relays and industrial controls (See 3613, 3622)
	Electron tube parts	* 3671	Electron tubes (See 3671, 3672, 3673)
	Printed circuit boards	3672	Printed circuit boards
	Recording media	* 3695	Recording media (See 3573)
	Other	3679	Electronic components, nec

* part

1972/77		1987	
3693	X-ray apparatus and tubes		
	Electromedical and electrotherapeutic apparatus	3845	Electromedical and electrotherapeutic apparatus
	Other	3844	X-ray apparatus and tubes
3699	Electrical equipment and supplies, nec		
	Electric lamp bulb parts	* 3641	Electric lamps (See 3641)
	Electric comfort heating equipment	* 3585	Refrigeration and heating equipment (See 3585)
	Other	* 3699	Electrical equipment and supplies, nec (See 3662)
3728	Aircraft equipment, nec		
	Hydraulic and pneumatic valves	* 3492	Fluid power valves and hose fittings (See 3494)
	Fluid power pumps and motors	* 3594	Fluid power pumps and motors (See 3561, 3566, 3569)
	Fluid power cylinders and actuators	* 3593	Fluid power cylinders and actuators (See 3599)
	Other	3728	Aircraft equipment, nec
3811	Engineering & scientific instruments		
	Search, detection, navigation, and guidance instruments	* 3812	Search, detection, navigation, and guidance systems and instruments (See 3662)
	Laboratory apparatus and furniture	3821	Laboratory apparatus and furniture
	Surveying and drafting apparatus	* 3829	Measuring and controlling devices, nec (See 3662, 3829, 3832)
	Analytical instruments	* 3826	Analytical instruments (See 3832)
3829	Measuring & controlling devices, nec	* 3829	Measuring and controlling devices, nec (See 3662, 3811, 3832)
3832	Optical instruments and lenses		
	Analytical instruments	* 3826	Analytical instruments (See 3811)
	Meteorological, hydrographic, hydrological, and geophysical instruments	* 3829	Measuring and controlling devices, nec (See 3662, 3811, 3829)
	Optical instruments	3827	Optical instruments
3962	Artificial flowers	* 3999	Manufacturing industries, nec (See 3999)

1972/77		1987	
3963	Buttons	3965	Needles, pins, buttons, and clothing fasteners
3964	Needles, pins, and fasteners		
3999	Manufacturing industries, nec	* 3999	Manufacturing industries, nec (See 3962)

E. TRANSPORTATION AND PUBLIC UTILITIES

4171	Bus terminal services	4173	Bus terminal and service facilities
4172	Bus service facilities		
4212	Local trucking, without storage		
	Courier services	* 4215	Courier services, except by air (See 4213)
	Other	4212	Local trucking, without storage
4213	Trucking, except local		
	Courier services	* 4215	Courier services, except by air (See 4212)
	Other	4213	Trucking, except local
4224	Household goods warehousing	4226	Special warehousing and storage, nec
4226	Special warehousing and storage, nec		
4411	Deep sea foreign transportation		
	Freight	4412	Deep sea foreign transportation of freight
	Passengers	* 4481	Deep sea transportation of passengers, except by ferry (See 4421, 4422, 4423, 4431)
4421	Noncontiguous area transportation		
	Freight	* 4424	Deep sea domestic transportation of freight (See 4422, 4423)
	Passengers	* 4481	Deep sea transportation of passengers, except by ferry (See 4411, 4422, 4423, 4431)

1972/77		1987	
4422	Coastwise transportation		
	Freight	* 4424	Deep sea domestic transportation of freight (See 4421, 4423)
	Passengers	* 4481	Deep sea transportation of passengers, except by ferry (See 4411, 4421, 4423, 4431)
4423	Intercoastal transportation		
	Freight	* 4424	Deep sea domestic transportation of freight (See 4421, 4422)
	Passengers	* 4481	Deep sea transportation of passengers, except by ferry (See 4411, 4421, 4422, 4431)
4431	Great Lakes transportation		
	Freight	4432	Freight transportation on the Great Lakes and Saint Lawrence Seaway
	Passengers, except by ferry	* 4481	Deep sea transportation of passengers, except by ferry (See 4411, 4421, 4422, 4423)
	Passengers, by ferry	* 4482	Ferries (See 4452)
4441	Transportation on rivers and canals		
	Freight	* 4449	Water transportation of freight, nec (See 4459)
	Passengers	* 4489	Water transportation of passengers, nec (See 4459)
4452	Ferries	* 4482	Ferries (See 4431)
4453	Lighterage	* 4499	Water transportation services, nec (See 4464, 4469)
4454	Towing and tugboat services	4492	Towing and tugboat services
4459	Local water transportation, nec		
	Freight	* 4449	Water transportation of freight, nec (See 4441)
	Passengers	* 4489	Water transportation of passengers, nec (See 4441)
4463	Marine cargo handling	4491	Marine cargo handling

* part

1972/77		1987	
4464	Canal operation	* 4499	Water transportation services, nec (See 4453, 4469)
4469	Water transportation services, nec		
	Marinas	4493	Marinas
	Oil spill cleanup	* 4959	Sanitary services, nec (See 4959)
	Other	* 4499	Water transportation services, nec (See 4453, 4464)
4511	Certificated air transportation		
	Air courier services	* 4513	Air courier services (See 4521)
	Other	* 4512	Air transportation, scheduled (See 4521)
4521	Noncertificated air transportation		
	Air transportation, scheduled, except sightseeing and airport services, e.g., air taxis	* 4512	Air transportation, scheduled (See 4511)
	Air courier services	* 4513	Air courier services (See 4511)
	Other	4522	Air transportation, nonscheduled
4582	Airports and flying fields	4581	Services related to air transportation
4583	Airport terminal services		
4712	Freight forwarding	4731	Freight forwarding and arrangement
4723	Freight transportation arrangement		
4722	Passenger transportation arrangement		
	Travel agencies	4724	Travel agencies
	Tour operators	4725	Tour operators
	Other	4729	Arrangement of passenger transportation, nec
4742	Railroad car rental with service	4741	Railroad car rental
4743	Railroad car rental without service		
4782	Inspection and weighing services	4785	Inspection services, fixed facilities, nec
4784	Fixed facilities for vehicles, nec		

* part

1972/77		1987	
4811	Telephone communications		
	Radiotelephone communications services	4812	Radiotelephone communications services
	Other	4813	Telephone communications, except radio telephone
4821	Telegraph communications	* 4822	Telegraph and other message communications (See 4899)
4833	Television broadcasting		
	Subscription television	* 4841	Cable and other pay TV (See 4899)
	Other	4833	Television stations
4899	Communications services, nec		
	Cable television	* 4841	Cable and other pay TV (See 4833)
	Message communications	* 4822	Telegraph and other message communications (See 4821)
	Other	4899	Communications services, nec
4959	Sanitary services, nec	* 4959	Sanitary services, nec (See 4469)

F. WHOLESALE TRADE

5013	Automotive parts and supplies		
	New automotive parts and automotive equipment	5013	Motor vehicle parts and supplies, new
	Used automotive parts	* 5015	Motor vehicle parts, used (See 5931)
5039	Construction materials, nec		
	Brick, stone, and related products	5032	Brick, stone, and related products
	Roofing, siding, and insulation	5033	Roofing, siding, and insulation
	Other	5039	Construction materials, nec
5041	Sporting and recreational goods	5091	Sporting and recreational goods
5042	Toys and hobby goods and supplies	5092	Toys and hobby goods and supplies

1972/77		1987	
5063	Electrical apparatus and equipment		
	Communications equipment	* 5065	Electronic parts and equipment (See 5065)
	Measuring and testing equipment	* 5084	Industrial machinery and equipment (See 5084)
	Other	5063	Electrical apparatus and equipment
5065	Electronic parts and equipment	* 5065	Electronic parts and equipment (See 5063)
5081	Commercial machines and equipment		
	Computers and computer peripheral equipment and software	5045	Computers and computer peripheral equipment and software
	Office equipment	5044	Office equipment
	Other	5046	Commercial equipment, nec
5084	Industrial machinery and equipment	* 5084	Industrial machinery and equipment (See 5063)
5086	Professional equipment and supplies		
	Medical and hospital equipment	5047	Medical and hospital equipment
	Ophthalmic goods	5048	Ophthalmic goods
	Other	5049	Professional equipment, nec
5133	Piece goods	5131	Piece goods and notions
5134	Notions and other dry goods		
5152	Cotton	5159	Farm-product raw materials, nec
5159	Farm-product raw materials, nec		
5161	Chemicals and allied products		
	Plastics materials and basic shapes	5162	Plastics materials and basic shapes
	Other	5169	Chemicals and allied products, nec
5199	Nondurable goods, nec		
	Books, periodicals, and newspapers	5192	Books, periodicals, and newspapers
	Flowers and florists' supplies	5193	Flowers and florists' supplies
	Other	5199	Nondurable goods, nec

1972/77		1987	
	O. RETAIL TRADE		
5311	Department stores		
	Having fewer than 50 employees	* 5399	Misc. general merchandise stores (See 5399)
	Other	5311	Department stores
5399	Misc. general merchandise stores	* 5399	Misc. general merchandise stores (See 5311)
5422	Freezer and locker meat provisioners	5421	Meat and fish (seafood) markets
5423	Meat and fish (seafood) markets		
5462	Retail bakeries--baking and selling	5461	Retail bakeries
5463	Retail bakeries--selling only		
5561	Recreation and utility trailer dealers		
	Utility trailers	* 5599	Automotive dealers, nec (See 5599)
	Other	5561	Recreational vehicle dealers
5599	Automotive dealers, nec	* 5599	Automotive dealers, nec (See 5561)
5631	Women's accessory and specialty stores	5632	Women's accessory and specialty stores
5681	Furriers and fur shops		
5732	Radio and television stores		
	Computer and software stores	5734	Computer and software stores
	Radio, television, and electronics stores	5731	Radio, television, and electronics stores
5733	Music stores		
	Record and prerecorded tape stores	5735	Record and prerecorded tape stores
	Musical instrument stores	5736	Musical instrument stores
5931	Used merchandise stores		
	Automotive parts, used	* 5015	Motor vehicle parts, used (See 5013)
	Other	5932	Used merchandise stores

* part

1972/77		1987	
5982	Fuel and ice dealers, nec		
	Ice	* 5999	Miscellaneous retail stores, nec (See 5999)
	Other	5989	Fuel dealers, nec
5999	Miscellaneous retail stores, nec		
	Opticians stores	5995	Opticians stores
	Other	* 5999	Miscellaneous retail stores, nec (See 5982)
	H. FINANCE, INSURANCE, AND REAL ESTATE		
6022	State banks, Federal Reserve		
	Stock savings banks	* 6036	Savings institutions, Not Federally chartered (See 6023, 6024, 6032, 6033, 6034, 6123, 6124, 6125)
	Commercial banks	* 6022	State commercial banks (See 6023, 6024)
6023	State banks, not Federal Reserve, FDIC		
	Stock savings banks	* 6036	Savings institutions, Not Federally chartered (See 6022, 6024, 6032, 6033, 6034, 6123, 6124, 6125)
	Commercial banks	* 6022	State commercial banks, (See 6022, 6024)
6024	State banks, not Federal Reserve, not FDIC		
	Stock savings banks	* 6036	Savings institutions, Not Federally chartered (See 6022, 6023, 6032, 6033, 6034, 6123, 6124, 6125)
	Commercial banks	* 6022	State commercial banks (See 6022, 6023)
6025	National banks, Federal Reserve	6021	National banks
6026	National banks, not Federal Reserve, FDIC		
6027	National banks, not FDIC		
6028	Private banks, not incorp., not FDIC	6029	Commercial banks, nec
6032	State mutual savings banks, Federal Reserve	* 6036	Savings institutions, Not Federally chartered (See 6022, 6023, 6024, 6033, 6034, 6123, 6124, 6125)

* part

1972/77		1987	
1/	Federal savings banks, FDIC	* 6035	Savings institutions, Federally chartered (See Federal savings banks, FSLIC; 6122)
1/	Federal savings banks, FSLIC	* 6035	Savings institutions, Federally chartered (See Federal savings banks, FDIC; 6122)
6033	State mutual savings banks, not Federal Reserve, FDIC	* 6036	Savings institutions, Not Federally chartered (See 6022, 6023, 6024, 6032, 6034, 6123, 6124, 6125)
6034	State mutual savings banks, not FDIC	* 6036	Savings institutions, Not Federally chartered (See 6022, 6023, 6024, 6032, 6033, 6123, 6124, 6125)
6042	Nondeposit trust, Federal Reserve	6091	Nondeposit trust facilities
6044	Nondeposit trust, not FDIC		
6052	Foreign exchange establishments		
	Branches and agencies of foreign banks	6081	Branches and agencies of foreign banks
	Other	* 6099	Functions related to banking, nec (See 6054, 6055, 6056, 6059)
6054	Safe deposit companies	* 6099	Functions related to banking, nec (See 6052, 6055, 6056, 6059)
6055	Clearinghouse associations	* 6099	Functions related to banking, nec (See 6052, 6054, 6056, 6059)
6056	Corporations for banking abroad		
	Foreign trade and international banking institutions	6082	Foreign trade and international banking institutions
	Other	* 6099	Functions related to banking, nec (See 6052, 6054, 6055, 6059)
6059	Functions closely related to deposit banking, nec	* 6099	Functions related to banking, nec (See 6052, 6054, 6055, 6056)

1/ Federal savings banks did not exist prior to 1982.

1972/77		1987	
6112	Rediscounting, not for agricultural		
	Federal and Federally sponsored credit agencies	* 6111	Federal and Federally sponsored credit agencies (See 6113, 6131, 6159)
	Central reserve depository institutions	6019	Central reserve depository institutions, nec
6113	Rediscounting for agricultural	* 6111	Federal and Federally sponsored credit agencies (See 6112, 6131, 6159)
6122	Federal savings and loans	* 6035	Savings institutions, Federally chartered (See Federal savings banks, FDIC & FSLIC between 6032 and 6033)
6123	State savings and loan associations, insured	* 6036	Savings institutions, Not Federally chartered (See 6022, 6023, 6024, 6032, 6033, 6034, 6124, 6125)
6124	State savings and loan associations, noninsured, FHLB	* 6036	Savings institutions, Not Federally chartered (See 6022, 6023, 6024, 6032, 6033, 6034, 6123, 6125)
6125	State savings and loan associations, noninsured, nec	* 6036	Savings institutions, Not Federally chartered (See 6022, 6023, 6024, 6032, 6033, 6034, 6123, 6124)
6131	Agricultural credit institutions		
	Federal and Federally sponsored	* 6111	Federal and Federally sponsored credit agencies (See 6112, 6113, 6159)
	Other (i.e., private)	* 6159	Miscellaneous business credit institutions (See 6159, 6611)
6142	Federal credit unions	6061	Credit unions, Federally chartered
6143	State credit unions	6062	Credit unions, Not Federally chartered
6144	Nondeposit industrial loan companies		
6145	Licensed small loan lenders	* 6141	Personal credit institutions (See 6611)
6146	Installment sales finance companies		
6149	Miscellaneous personal credit institutions		

1972/77		1987	
6159	Miscellaneous business credit institutions		
	Federal and Federally sponsored	* 6111	Federal and Federally sponsored credit agencies (See 6112, 6113, 6131)
	Other	* 6159	Miscellaneous business credit institutions (See 6131, 6611)
6281	Securities and commodity services		
	Investment advice and research	6282	Investment advice and research
	Other	6289	Services allied with the exchange of securities or commodities
6411	Insurance agents, brokers, and service	* 6411	Insurance agents, brokers, and service (See 6611)
6531	Real estate agents and managers	* 6531	Real estate agents and managers (See 6611)
6611	Combinations of real estate, insurance, loans, law offices		
	Loans, personal	* 6141	Personal credit institutions (See 6144, 6145, 6146, 6149)
	Loans, business	* 6159	Miscellaneous business credit institutions (See 6131,6159)
	Insurance	* 6411	Insurance agents, brokers and service (See 6411)
	Real estate	* 6531	Real estate agents and managers (See 6531)
	Law offices	* 8111	Legal services (See 8111)
6711	Holding companies		
	Bank holding companies	6712	Bank holding companies
	Other	6719	Holding companies, nec
6723	Management investment offices, closed-end	6726	Unit investment trust, face-amount certificate, and closed-end investment offices
6724	Unit investment trusts		
6725	Face-amount certificate offices		
6793	Commodity traders	6799	Investors, nec
6799	Investors, nec		

* part

1972/77		1987	
	I. SERVICES		
7214	Diaper services	* 7219	Laundry and garment services, nec (See 7219, 7299)
7219	Laundry & garment services, nec	* 7219	Laundry and garment services, nec (See 7214, 7299)
7299	Miscellaneous personal services		
	Tax return preparation services	7291	Tax return preparation services
	Medical equipment rental	7352	Medical equipment rental
	Health clubs and spas	* 7991	Physical fitness facilities (See 7997, 7999)
	Seamstress and dressmaking services, except custom	* 7219	Laundry and garment services, nec (See 7214, 7219)
	Other	7299	Miscellaneous personal services
7321	Credit reporting and collection		
	Adjustment and collection services	7322	Adjustment and collection services
	Other	7323	Credit reporting
7332	Blue printing and photocopying services	* 7334	Photocopying and duplicating services (See 7339)
7333	Commercial photography, art, and graphics		
	Commercial photography	7335	Commercial photography
	Other	7336	Commercial art and graphic design
7339	Stenographic and reproduction services, nec		
	Stenographic and court reporting services	7338	Stenographic and court reporting services
	Duplicating services	* 7334	Photocopying and duplicating services (See 7332)
7341	Window cleaning	7349	Building maintenance services, nec
7349	Building maintenance services, nec		
7351	News syndicates	7383	News syndicates
7362	Temporary help supply services	* 7363	Help supply services (See 7369)

* part

1972/77		1987	
7369	Personnel supply services, nec		
	Facilities support management services	8744	Facilities support management services
	Other	* 7363	Help supply services (See 7362)
7372	Computer programming and other software services		
	Custom computer programming services	7371	Custom computer programming services
	Prepackaged computer software	7372	Prepackaged computer software
	Computer integrated system design	7373	Computer integrated system design
7374	Data processing services		
	Electronic information retrieval services	7375	Electronic information retrieval services
	Computer facilities management services	7376	Computer facilities management services
	Other	7374	Computer processing and data preparation services
7379	Computer related services, nec		
	Computer rental and leasing	7377	Computer rental and leasing
	Computer maintenance and repair	7378	Computer maintenance and repair
	Other	7379	Computer related services, nec
7391	Research and development laboratories	8731	Commercial physical and biological research
7392	Management, consulting, and public relations		
	Management services	8741	Management services
	Management consulting services	8742	Management consulting services
	Public relations services	8743	Public relations services
	Commercial economic, sociological, and educational research	8732	Commercial economic, sociological, and educational research
	Other consulting services	8748	Business consulting services, nec

* part

1972/77		1987	
7393	Detective and protective services		
	Detective, guard, and armored car services	7381	Detective, guard, and armored car services
	Security systems services	7382	Security systems services
7394	Equipment rental and leasing		
	Heavy construction and earthmoving equipment rental and leasing	7353	Heavy construction and earthmoving equipment rental and leasing
	Video tape rental	7841	Video tape rental
	Other	7359	Equipment rental and leasing, nec
7395	Photofinishing laboratories	7384	Photofinishing laboratories
7396	Trading stamp services	* 7389	Business services, nec (See 7399)
7397	Commercial testing laboratories	8734	Testing laboratories
7399	Business services, nec	* 7389	Business services, nec (See 7396)
7512	Passenger car rental and leasing, without drivers		
	Passenger car rental	7514	Passenger car rental, without drivers
	Passenger car leasing	7515	Passenger car leasing, without drivers
7523	Parking lots	7521	Automobile parking
7525	Parking structures		
7531	Top and body repair shops	7532	Top, body, and upholstery repair and paint shops
7535	Paint shops		
7539	Automotive repair shops, nec		
	Motor vehicle exhaust systems repair shops	7533	Motor vehicle exhaust systems repair shops
	Motor vehicle glass replacement shops	7536	Motor vehicle glass replacement shops
	Motor vehicle transmission repair shops	7537	Motor vehicle transmission repair shops
	Other	7539	Automotive repair shops, nec
7813	Motion picture production, except for television	7812	Motion picture production
7814	Motion picture production for television		

* part

1972/77		1987	
7823	Motion picture film exchanges	7822	Motion picture and tape distribution
7824	Film or tape distribution services		
7932	Billiard and pool establishments	* 7999	Amusement and recreation services, nec (See 7999)
7997	Membership sports and recreation clubs		
	Physical fitness facilities	* 7991	Physical fitness facilities (See 7299, 7999)
	Other	7997	Membership sports and recreation clubs
7999	Amusement and recreation services, nec		
	Museums (commercial)	* 8412	Museums and art galleries (See 8411)
	Botanical and zoological gardens (commercial)	* 8422	Botanical and zoological gardens (See 8421)
	Nonmembership physical fitness facilities	* 7991	Physical fitness facilities (See 7299, 7997)
	Other	* 7999	Amusement and recreation services, nec (See 7932)
8011	Offices of physicians	* 8011	Offices and clinics of Doctors of Medicine (See 8081)
8021	Offices of dentists	* 8021	Offices and clinics of dentists (See 8081)
8049	Offices of health practitioners, nec		
	Offices of podiatrists	8043	Offices of podiatrists
	Other	8049	Offices of health practitioners, nec
8059	Nursing and personal care facilities, nec		
	Intermediate health care facilities	8052	Intermediate health care facilities
	Other	8059	Nursing and personal care facilities, nec
8081	Outpatient care facilities		
	Clinics of physicians	* 8011	Offices and clinics of Doctors of Medicine (See 8011)
	Clinics of dentists	* 8021	Offices and clinics of dentists (See 8021)
	Kidney dialysis centers	8092	Kidney dialysis centers
	Specialty outpatient clinics	8093	Specialty outpatient clinics, nec

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1972/77		1987	
8091	Health and allied services, nec		
	Home health care agencies	8082	Home health care agencies
	Other	8099	Health and allied services, nec
8111	Legal services	* 8111	Legal services (See 6611)
8241	Correspondence schools	* 8249	Vocational schools, nec (See 8249)
8249	Vocational schools, nec	* 8249	Vocational schools, nec (See 8241)
8321	Individual and family social services	* 8322	Individual and family social services (See 8399)
8399	Social services, nec		
	Services to individuals and families (e.g., self-help; agencies for retarded, blind, etc.)	* 8322	Individual and family social services (See 8321)
	Other	8399	Social services, nec
8411	Museums and art galleries, noncommercial	* 8412	Museums and art galleries (See 7999)
8421	Botanical and zoological gardens, noncommercial	* 8422	Botanical and zoological gardens (See 7999)
8911	Engineering, architectural, and surveying services		
	Engineering services	8711	Engineering services
	Architectural services	8712	Architectural services
	Surveying services	8713	Surveying services
8922	Noncommercial research organizations	8733	Noncommercial research organizations
8931	Accounting, auditing, and bookkeeping services	8721	Accounting, auditing, and bookkeeping services

nec = not elsewhere classified

Principles and Procedures for the Review of the SIC

A. Introduction

The Standard Industrial Classification (SIC) is a system for classifying establishments by type of economic activity. Its purposes are: (1) To facilitate the collection, tabulation, presentation, and analysis of data relating to establishments; and (2) to promote uniformity and comparability in the presentation of statistical data describing the economy. The SIC is used by agencies of the U.S. Government that collect or publish data by industry. It is also widely used by state agencies, trade associations, private businesses, and other organizations.

The SIC system is designed for statistical purposes. Although the classification is also used for various administrative purposes, the requirements of Government agencies that use it for nonstatistical purposes play no role in the development and revision of the SIC.

B. Principles of Classification

Following are the basic principles underlying the SIC classification (described more fully in the SIC Manual):

(1) The classification is organized to reflect the structure of the U.S. economy. It does not follow any single principle, such as end use, nature of raw materials, product, or market structure.

(2) The unit classified is the establishment. An establishment is an economic unit that produces goods or services—for example, a farm, mine, factory, or store. In most instances, the establishment is at a single physical location and is engaged in one, or predominantly one, type of economic activity. An establishment is not necessarily identical with a company or enterprise.

(3) Each establishment is classified according to its primary activity. Primary activity is determined by identifying the predominant product or group of products produced or handled, or service rendered.

(4) An industry (4-digit SIC) consists of a group of establishments primarily engaged in the same activity. To be recognized as an industry, such a group of establishments must meet certain criteria of economic significance, as described in Section D.

C. Purpose and Scope of Review

The SIC is reviewed and revised periodically to reflect the changing structure of the U.S. economy. Revisions take account of technological change and the economic growth and decline of individual industries. They may include changes in industry detail or coverage, improvements to industry definitions, or the clarification of the classification of individual activities.

Review and revision of the SIC are the responsibility of the Office of Management and Budget, which has developed these principles and procedures with the assistance of the Technical Committee on Industrial Classification. Committee members include the following agencies: Office of Management and Budget (Chair), Board of Governors of the Federal Reserve System, Bureau of Economic Analysis, Bureau of Labor Statistics, Bureau of Mines, Bureau of the Census, Department of Transportation, Economic Research Service (USDA), Federal Emergency Management Agency, Federal Trade Commission, Internal Revenue Service, International Trade Administration, Interstate Commerce Commission, National Center for Health Statistics, National Science Foundation, Small Business Administration, Social Security Administration, and U.S. International Trade Commission.

Proposals for revision are accepted from Federal agencies and the public and are reviewed by the Technical Committee on Industrial Classification. Final decisions on revisions will be made by the Office of Management and Budget based on the recommendations of the Technical Committee.

Persons considering submitting proposals should note that it is not always necessary to revise the SIC to obtain more detailed statistical information. If statistical information is needed for specific products rather than establishments, it may be more appropriate to seek changes in the level of detail of data collected and published by individual Government agencies than to change the SIC.

D. Guidelines for Reviewing Proposed Changes in the Classification

Proposals for revisions to the SIC will be reviewed based on the following considerations:

(1) Structure of the Classification. The overall structure is a general-purpose framework that can have its 4-digit detail rearranged for various analytical purposes. Proposed changes should be designed to fit within this structure with minimum disruption to the existing configuration.

For example, a change which consists of breaking one 4-digit industry into two or more within the same 3-digit industry group is easier and less expensive than a change which affects 3-digit groups, particularly if this in turn affects the 2-digit or Divisional groupings. Changes to the basic 2- or 3-digit structure require exceptionally strong justification showing that they reflect changes in the economy and not simply a different view of what the basic structure should be.

(2) Historical Continuity. Maintaining the continuity of major Federal statistical series will be an important consideration in evaluating proposed changes in the SIC. Changes that would result in weakening principal economic indicators or that would necessitate costly backward revision of time series will require very strong justification on other grounds in order to be acceptable.

(3) Economic Significance. To be recognized as an industry, a group of establishments must have economic significance measured in terms of numbers of establishments, employment, payroll, value added, and volume of business (value of shipments or receipts). The following scoring system is used to evaluate economic significance for SIC purposes. Values for the "average" industry are calculated by Division (manufacturing, construction, retail trade, etc.) for each of the five factors. These values are used in evaluating the economic significance of a proposed SIC industry by comparing the Division averages to the values for the proposed industry, as illustrated below. For each factor, a proposed industry is assigned points. The number of points is equal to the value of the factor for a proposed industry as a percentage of the value for the Division average. The number of employees and value added are considered more significant and reliable measures of industry importance and are therefore given double weight when calculating the final score. The table below presents calculations (based on 1977 data) for a proposed potato chip and similar snack industry in Division D (Manufacturing). The final score for this industry is 59 (column E total divided by column D total).

	Proposed industry (A)	Average industry (B)	Number of points (A as percent of B) (C)	Weights (D)	Weighted points (C×D) (E)
Number of establishments	230	796	29	1	29
Number of employees (thousands)	26.7	43.0	62	2	124
Payroll (million dollars)	301.3	584.0	52	1	52
Value added (million dollars)	934.5	1,295.0	72	2	144
Shipments (million dollars)	1,929.0	3,006.0	64	1	64

In general, a score of at least 20 is needed to warrant recognition as a new SIC industry. However, an existing SIC industry will be retained if it has a score of at least 10.

The 1987 review will be based on the most recent data available. In cases where data are not available for all five factors, scores will be weighted averages of those factors for which data are available.

(4) Specialization and Coverage. In order that an industry properly reflect the activity being measured, the output of the industry should: (1) Consist mainly of the goods or services defining the industry, and (2) account for the bulk of the specified goods and services provided by all establishments. For manufacturing industries these factors are measured by the primary product specialization ratio and the coverage ratio.

The primary product specialization ratio indicates how much the establishments in a given industry concentrate on the activities that define the industry. This ratio is calculated by dividing the value of the primary product shipments of the establishments classified in the industry by the value of all shipments (both primary and secondary) for the same establishments.

The coverage ratio indicates the volume of shipments of products which define the industry that are accounted for by establishments classified in the industry. The coverage ratio is the proportion of products defining the industry shipped by establishments classified in the industry to total shipments of these products by all manufacturing establishments. For example, establishments classified in 1977 as primarily producing transformers (SIC 3612) had shipments of $2051.1 million for transformers, total shipments for all products of $2160.6 million, and a resulting specialization ratio of 95. Total shipments of transformers by all industries were $2117.8 million, yielding a coverage ratio of 97.

A 4-digit SIC industry should have a minimum primary product specialization ratio of 80. The minimum for the coverage ratio is generally 70 for establishments producing for commercial sale. This may be reduced somewhat for industries having significant interplant transfers or production for use within the same establishment (e.g., Gray Iron Foundries, Iron and Steel Forgings) or for industries producing the same final product as another industry but made from materials that are at a more advanced stage of manufacture (e.g., Blended and Prepared Flour). Where existing industries have relatively few large plants producing a wide range of products, the coverage ratio criterion often precludes the establishment of further industry detail.

(5) Other Statistical Considerations. In general, proposed new industries should meet each of the criteria of economic significance, specialization and coverage. However, industries that substantially exceed one or two of the criteria and fall slightly short on the others also may be accepted in some cases. For example, industries which are not yet large enough, but are growing rapidly may be accepted based on current size and evidence of growth by a specified time. Proposed industries which meet the criteria only marginally should also show substantial current growth and likelihood of future growth. Special considerations will be given to new industries and industry changes that increase comparability of the SIC with the United Nation's International Standard Industrial Classification and that increase the capability for assessing the impact of international trade on domestic industries such as increasing possibilities for comparability with the Customs Cooperation Council's Harmonized System.

Proposed new industries will be evaluated to make sure they provide for relatively stable classification of individual establishments. In some fields of activity, it is normal for the primary activity, if defined restrictively, to fluctuate from year to year. For example, shipbuilding establishments may work on defense contracts one year and on civilian contracts the next. Or establishments may perform primarily new work one year and rebuilding another. Separate industries will not be created where the distinction would result in industry shifts for establishments that are still engaged in similar industrial activity.

In some cases a proposed industry may meet all previously stated criteria but be rejected because the remaining part of the existing industry is too small for separate industry status and cannot logically be merged into other industries.

(6) Administrative Considerations. Cost to the Government, as well as cost and burden to businesses that furnish data to the Government, will be major considerations in evaluating proposed changes in the SIC. Revisions that involve major changes in record-keeping by business or in Government agencies' procedures, records, and data series will require very strong justification to be considered.

The ability of Government agencies to classify, collect, and publish data on the proposed basis will also be taken into account. Proposed changes must be such that they can be applied by agencies within their normal processing operations.

Proposed industries must also include a sufficient number of companies so that industry data can be published without disclosing information about the operations of individual firms.

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Part VII

Environmental Protection Agency

40 CFR Part 262

Hazardous Waste Management System; Standards for Generators of Hazardous Waste; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 262

[SWH-FRL 3074-6)

Hazardous Waste Management System; Standards for Generators of Hazardous Waste

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On March 24, 1986, the U.S. Environmental Protection Agency (EPA) promulgated final regulations for generators of between 100 kg and 1000 kg of hazardous waste in a calendar month (i.e., generators of 100–1000 kg/mo) under the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA). At that time, the Agency also requested public comment on whether these generators should be subject to the waste minimization certification contained on the Uniform Hazardous Waste Manifest. Today's action explains the Agency's decision to modify the waste minimization certification for small quantity generators of 100-1000 kg/mo and revises the Uniform Hazardous Waste Manifest to reflect this modification. In addition, today's notice makes a technical correction to the July 15, 1985 Final Codification Rule affecting the waste minimization provisions. Finally, this notice extends the OMB expiration date on the manifest form and stipulates a new OMB form number.

EFFECTIVE DATE: September 22, 1986.

ADDRESSES: The public docket for this rulemaking is located in Room S–212–C, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The EPA RCRA Docket is open from 9:30 a.m. to 3:30 p.m., Monday through Friday, excluding Federal holidays. To review docket materials, the public must make an appointment by calling Mia Zmud at 475–9327 or Kate Blow at 382–4675. A maximum of 50 pages of material may be copied from any regulatory docket at no cost. Additional copies cost $.20/page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/Superfund Hotline, (800) 424–9346, (in Washington, DC, call 382–3000), or the Small Business Hotline, (800) 368–5888. For information on specific aspects to today's notice, contact Robert Axelrad, (202) 382–4761, Office of Solid Waste (WH–562B), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

I. Waste Minimization Manifest Certification

A. Final Codification Rule

EPA amended its existing hazardous waste regulations on July 15, 1985, to incorporate a number of provisions contained in the HSWA of 1984 which had immediate or short term effects on the regulated community (50 FR 28720). Among the requirements for generators of hazardous waste contained in this 'Final Codification Rule' were the provisions of section 3002(b) of HSWA that a generator certify to the following on the Uniform Hazardous Waste Manifest:

> I have a program in place to reduce the volume and toxicity of waste generated to the degree I have determined to be economically practicable and I have selected the method of treatment, storage, or disposal currently available to me which minimizes the present and future threat to human health and the environment.

This certification statement was contained on a revised Uniform Hazardous Waste Manifest Form and instructions published as the Appendix to Part 262. The preamble to the codification rule explained that the certification statement did not apply to small quantity generators at that time because they were not yet subject to the section 3002 generator requirements, including the waste minimization certification requirement. With respect to large quantity generators, (*i.e.*, those persons who generate greater than 1000 kg of hazardous waste in a calendar month or who accumulate greater than 1000 kg at any time), the preamble emphasized the self-implementing nature of the certification requirement and the fact that the Agency would not second guess generators' determinations of what a waste minimization 'program' should consist of or what methods of waste minimization or management were ultimately determined by the generator to be 'economically practicable'. (50 FR 28733)

B. Small Quantity Generator Rules

In a **Federal Register** notice accompanying the March 24, 1986 small quantity generator final regulations (51 *FR* 10146), the Agency explained that since it had not specifically addressed the issue of waste minimization in the August 1, 1985 proposed rules for small quantity generators, it was requesting public comment on whether generators of 100-1000 kg/mo should be required to certify to waste minimization on the Uniform Hazardous Waste Manifest. As explained in the March 24, 1986 proposal, the requirement that generators of 100–1000 kg/mo certify to waste minimization would automatically go into effect on September 22, 1986, the date these generators become subject to the section 3002 generator standards, unless the Agency acted to exempt them.

At the time, EPA proposed that generators of 100–1000 kg/mo be required to certify to waste minmization since the Agency did not believe that the requirement posed an unreasonable burden and because the Agency believed that protection of human health and the environment would be enhanced. The Agency requested public comment as to whether the waste minimization certification requirement would pose undue administrative burden and whether generators of 100–1000 kg/mo should be exempted from the requirement. Congress has directed EPA to consider the impacts on small business in developing regulations for this group of generator and to specifically consider reducing the administrative and paperwork burdens whenever possible, consistent with protection of human health and the environment. In addition, the legislative history accompanying the waste minimization provisions indicates that Congress did not intend the manifest certification to result in significant paperwork burdens for small quantity generators. See S. Rep. No. 284, 98th Cong., 1st sess. 67 (1983).

As explained in the following section, EPA has decided not to exempt the small quantity generators of 100–1000 kg/mo from the waste minimization manifest requirements. However, for the reasons discussed below, the Agency is modifying the certification statement as it applies to these generators to require only a good faith effort to minimize waste generation and selection of what they believe to be the best available and affordable treatment, storage, or disposal alternative.

C. Response to Comments

In the March 24, 1986 proposal, EPA indicated that it believed it appropriate to allow the waste minimization certification requirement to take effect on September 22, 1986, along with the other requirements for small quantity generators, since the requirement, in the Agency's view, would impose a negligible burden. As explained at that time, the certification provision does not impose any specific regimen; rather, it directs the generator to review his waste generation and management practices and decide whether they are the most environmentally protective, given his

individual economic and waste management circumstances. The Agency explicitly stated that it would not expect generators to maintain any records related to the minimization certification, and that no civil or criminal penalties, nor other Agency action, would be imposed under RCRA on generators for failing to take a specific action related to waste minimization.

Nevertheless, a number of commenters on the waste minimization proposal objected to application of the requirement to small quantity generators and asserted that an exemption was warranted for a veriety of reasons. Many commenters argued that the certification requirement imposed greater burden on small businesses than indicated in the proposal. Specifically, some commenters were concerned that a small business was being asked to certify that they had minimized their waste generation without actually having taken any substantive steps to do so. Other commenters expressed concern over the use of the phrase "a program in place" in the certification statement as indicating a need for far more substantive and formal actions than indicated in the preamble. Failure to be able to demonstrate that such a program was "in place" it was reasoned, would subject these generators to significant potential obligations and liabilities. Other commenters advanced the argument that small quantity generators could do little to minimize their waste generation and that they lacked the financial and technical capability to implement a meaningful waste minimization program. Several commenters also argued that economic necessity would dictate that these generators minimize the amount of hazardous waste requiring disposal and that the certification statement would only serve to confuse them.

The Agency appreciates the concern expressed with respect to the wording of the waste minimization statement to require that generators "have a program in place to minimize waste generation. This statement appears to direct generators to establish a formal system for waste minimization, and from many commenters' perspective, such a requirement would be burdensome because of the attendent need to be able to demonstrate that such a program exists. Some commenters were further concerned that their waste generation did not lend itself to substantial minimization and thus, they would be certifying to having a 'program' in place where none was truly present. The Agency's statements that it would not mandate what a 'program' must consist of only served to heighten commenters' uncertainty as to what is expected of them.

The Agency strongly supports the concept of waste minimization and believes that attention to opportunities for minimizing waste generation is in everyone's interest. Therefore, the Agency is not exempting small quantity generators from the waste minimization statement. However, the Agency also believes that the same purpose can be accomplished with a modified certification statement that is clearer and less intimidating to small businesses. Therefore, the Agency is modifying the waste minimization certification to read as follows:

> If I am a large quantity generator, I certify that I have a program in place to reduce the volume and toxicity of waste generated to the degree I have determined to be economically practicable and I have selected the practicable method of treatment, storage, or disposal currently available to me which minimizes the present and future threat to human health and the environment OR if I am a small quantity generator, I have made a good faith effort to minimize my waste generation and select the best waste management method available to me and which I can afford.

The Agency recognizes that the certification requirement may impose some short term costs on generators as they seek to identify waste minimization options and perhaps modify their waste management practices, if appropriate. However, the Agency does not agree that the waste minimization certification imposes an unreasonable burden for small quantity generators and that an exemption from the requirement is warranted. First, the certification only asks that generators make a good faith effort to minimize their hazardous wastes. In this regard, the Agency intends only for generators to consider the waste minimization options available to them. In addition, the Agency intends to make information available to improve generators' understanding of waste minimization opportunities. For example, EPA is sponsoring, in cooperation with the Public Broadcasting Service (PBS), a national teleconference on the new small quantity generator regulations which will devote a full half hour to the practical benefits and concepts of waste minimization. (The teleconference is scheduled to be telecast October 22, 1986.) EPA is also completing work on a Report to Congress that will describe a variety of waste minimization techniques and options. Second, as discussed in both of the Agency's public notices on this issue (50 FR 28733, July 15, 1985 and 51 FR 10177, March 24, 1986), no specific actions either with respect to process or management changes or the keeping of records demonstrating waste minimization are required of small quantity generators of 100–1000 kg/mo. Furthermore, generators are only expected to take actions which they deem to be affordable. Thus, a generator is not expected to take any actions to minimize waste generation or modify their waste management practices where it is not economically practicable to do so, particularly where the firms' economic viability may be damaged. Finally, many small quantity generators that take steps to minimize their waste generation are likely to benefit from such efforts since minimizing their waste generation could reduce their waste management costs as well as future liability. It should also be noted that EPA recognizes that many small businesses have already taken those actions which are available to them to reduce their waste generation and move to ward better waste management practices. For these generators, waste minimization has already been accomplished and the signatory requirement on the manifest should, therefore, be of no consequence.

Some commenters argued that the Agency had not gone far enough in its waste minimization requirements, and that small quantity generators should be required to develop and implement a 'program' for waste minimization. The Agency agrees that all regulated generators of hazardous waste should be subject to the requirement to minimize their waste generation; however, EPA believes that modifying the certification for small quantity generators in this manner is consistent with the statutory requirements, including the Congressional directive to minimize impacts on small business while still providing the necessary degree of protection of human health and the environment. See HSWA section 3001(d). Today's modification will achieve this goal by reducing the perceived impacts of the minimization statement on small quantity generators while furthering the national policy of minimizing hazardous waste generation by requiring these generators to consider waste minimization options.

II. Technical Corrections to the Uniform Hazardous Waste Manifest Form

A. Wording Change

In establishing the language for the manifest waste minimization certification in the July 15, 1986, codification rule, the Agency

inadvertently omitted wording contained in the statute which allows the generator to select the *practicable* (emphasis added) method of treatment, storage, or disposal currently available to them. Since the Agency never intended to covey a meaning different from the statutory language, this amendment is simply intended to bring the waste minimization certification statement for large quantity generators into conformance with the statute.

B. Extension of OMB Manifest Form Number

The Agency is also revising the Uniform Hazardous Waste Manifest (EPA Form 8700–22) to include a new OMB Number (2050–0039) and expiration date (9–30–88).

C. Manifest Certification Signature

Members of the regulated community have asked whether it is permissable for officers or employees of generator companies to sign the manifest certification "on behalf of" the company or other entity that is deemed to be the generator. EPA regulations require that the generator sign the generator certification by hand (40 CFR 262.23(a)(1)), but do not specify who must sign the certification if the generator is not an individual. The regulations define a generator as "any *person* (emphasis added), by site, whose act or process produces hazardous waste . . . or whose act first causes a hazardous waste to become subject to regulation". (40 CFR 260.10) The term 'person' includes corporations, partnerships, and other legal entities for which some individual must sign the certification. EPA did not intend by the § 262.23(a)(1) handwritten signature requirement to impose personal liability on the individual who actually signs the certification. The question of whether an officer or employee is held responsible for the generator requirements will depend on the facts and circumstances of individual cases and not solely on whether such person signed the manifest.

In order to clarify that employees or other individuals may sign the manifest certification for a generator who is a legal entity, such as a corporation, EPA is revising Item 16 of the manifest instructions to state that the handwritten signature may be made "on behalf of" the generator.

III. Executive Order 12291—Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement to perform a Regulatory Impact Analysis. Since today's notice makes only minor modifications to the Uniform Hazardous Waste Manifest and does not impose any substantive regulatory requirements on the regulated community, I have determined that this notice is not a major rule subject to the Regulatory Impact Analysis requirements of Executive Order 12291.

IV. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., EPA must consider the paperwork burden imposed by any information collection request in a proposed or final rule. This final rule will not impose any information collection requirements.

V. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., EPA must prepare a regulatory flexibility analysis for all final rules unless the Administrator certifies that the rule will not have a significant impact on a substantial number of small entities. Today's final rule will not result in significantly increased compliance costs for 100–1000 kg/mo generators. This rule only asks these generators to make a good faith effort to minimize their waste generation, and under no circumstances requires them to incur costs which may in any way impair their economic viability.

Therefore, I hereby certify, pursuant to 5 U.S.C. 601(b), that this final rule will not have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 262

Hazardous materials transportation, Hazardous waste, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Waste minimization.

Dated: September 22, 1986.

Lee M. Thomas,

Administrator.

PART 262—[AMENDED]

For the reasons set forth in the preamble, Title 40 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 262 continues to read as follows:

Authority: Secs. 1006, 2002, 3002, 3003, 3004, 3005, and 3017 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1986, as amended (42 U.S.C. 6906, 6912, 6922, 6923, 6924, 6925, and 6937).

2. The Uniform Hazardous Waste Manifest Form in the Appendix to Part 262 is revised as follows:

3. The Appendix to Part 262 is further amended by adding the following paragraph to Item 16 of the instructions after the first paragraph and preceeding the Note:

* * * * *

Item 16: Generator's Certification

* * * * *

Generators may preprint the words, "On behalf of" in the signature block or may hand write this statement in the signature block prior to signing the generator certifications.

* * * * *

BILLING CODE 6560-50-M

Please print or type. *(Form designed for use on elite (12-pitch) typewriter.)*

Form Approved. OMB No. 2050-0039. Expires 9-30-88

UNIFORM HAZARDOUS WASTE MANIFEST

1. Generator's US EPA ID No. | Manifest Document No.

2. Page 1 of

Information in the shaded areas is not required by Federal law.

GENERATOR

3. Generator's Name and Mailing Address

4. Generator's Phone ( )

A. State Manifest Document Number

B. State Generator's ID

5. Transporter 1 Company Name | 6. US EPA ID Number

C. State Transporter's ID

D. Transporter's Phone

7. Transporter 2 Company Name | 8. US EPA ID Number

E. State Transporter's ID

F. Transporter's Phone

9. Designated Facility Name and Site Address | 10. US EPA ID Number

G. State Facility's ID

H. Facility's Phone

11. US DOT Description *(Including Proper Shipping Name, Hazard Class, and ID Number)*	12. Containers No.	12. Containers Type	13. Total Quantity	14. Unit Wt/Vol	I. Waste No.
a.					
b.					
c.					
d.					

J. Additional Descriptions for Materials Listed Above

K. Handling Codes for Wastes Listed Above

15. Special Handling Instructions and Additional Information

16. **GENERATOR'S CERTIFICATION:** I hereby declare that the contents of this consignment are fully and accurately described above by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highway according to applicable international and national government regulations

If I am a large quantity generator, I certify that I have a program in place to reduce the volume and toxicity of waste generated to the degree I have determined to be economically practicable and that I have selected the practicable method of treatment, storage, or disposal currently available to me which minimizes the present and future threat to human health and the environment; **OR**, if I am a small quantity generator, I have made a good faith effort to minimize my waste generation and select the best waste management method that is available to me and that I can afford.

Printed/Typed Name | Signature | Month Day Year

TRANSPORTER

17. Transporter 1 Acknowledgement of Receipt of Materials

Printed/Typed Name | Signature | Month Day Year

18. Transporter 2 Acknowledgement of Receipt of Materials

Printed/Typed Name | Signature | Month Day Year

FACILITY

19. Discrepancy Indication Space

20. Facility Owner or Operator: Certification of receipt of hazardous materials covered by this manifest except as noted in Item 19.

Printed/Typed Name | Signature | Month Day Year

EPA Form 8700-22 (Rev. 9-86) Previous editions are obsolete.

Please print or type. (Form designed for use on elite (12-pitch) typewriter.)

Form Approved. OMB No. 2050-0039. Expires 9-30-88

UNIFORM HAZARDOUS WASTE MANIFEST *(Continuation Sheet)*

21. Generator's US EPA ID No. | Manifest Document No.

22. Page | Information in the shaded areas is not required by Federal law.

GENERATOR

23. Generator's Name

L. State Manifest Document Number

M. State Generator's ID

24. Transporter ____ Company Name | 25. US EPA ID Number

N. State Transporter's ID

O. Transporter's Phone

26. Transporter ____ Company Name | 27. US EPA ID Number

P. State Transporter's ID

Q. Transporter's Phone

28. US DOT Description *(Including Proper Shipping Name, Hazard Class, and ID Number)*	29. Containers No.	Type	30. Total Quantity	31. Unit Wt/Vol	R. Waste No.
a.					
b.					
c.					
d.					
e.					
f.					
g.					
h.					
i.					

S. Additional Descriptions for Materials Listed Above

T. Handling Codes for Wastes Listed Above

32. Special Handling Instructions and Additional Information

TRANSPORTER

33. Transporter ____ Acknowledgement of Receipt of Materials | Printed/Typed Name | Signature | Date (Month / Day / Year)

34. Transporter ____ Acknowledgement of Receipt of Materials | Printed/Typed Name | Signature | Date (Month / Day / Year)

FACILITY

35. Discrepancy Indication Space

EPA Form 8700-22A (Rev. 9-86) Previous edition is obsolete.

federal register

Wednesday
October 1, 1986

Part VIII

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 1260
Beef Promotion and Research; Interim Final Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1260

Beef Promotion and Research

AGENCY: Agricultural Marketing Service.

ACTION: Interim Final Rule with request for comments.

SUMMARY: This rule implements the Beef Promotion and Research Order, which established a national, industry-funded and -operated beef promotion and research program. This rule: (1) Identifies those States in which State brand inspectors will collect assessments; (2) simplifies the collection and remittance process; (3) establishes a form of certification for exempt transactions; (4) identifies the qualified State Beef Councils certified by the Cattlemen's Beef Promotion and Research Board; and (5) effectuates the recordkeeping requirements of the Beef Promotion and Research Order as approved by the Office of Management and Budget.

DATES: Effective September 29, 1986. Comments must be received by October 31, 1986.

ADDRESS: Ralph L. Tapp, Chief; Marketing Programs and Procurement Branch; Livestock and Seed Division; Agricultural Marketing Service, USDA, Room 2610–S, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Ralph Tapp, Chief, Marketing Programs and Procurement Branch, (202) 447–2650.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Final Rule-Beef Promotion and Research Order (published July 18, 1986), (51 FR 26132).

This action was reviewed under USDA procedures established to implement Executive Order No. 12291 and Departmental Regulation No. 1512–1, and is hereby classified as a nonmajor rule because the annual impact will be less than $100 million. Accordingly, a regulatory impact analysis is not required. This action was also reviewed under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.).

The Beef Promotion and Research Act of 1985 (Act) (7 U.S.C. 2901 et seq.) provides for the establishment of a coordinated program of promotion and research designed to strengthen the beef industry's position in the marketplace and to maintain and expand foreign and domestic markets and uses for beef and beef products. This program will be financed by assessments on domestic and imported cattle and on imported beef and beef products. Pursuant to the Act, a Beef Promotion and Research Order has been issued and assessments will begin on October 1, 1986. The Act and the order require that persons making payments to producers for cattle shall collect an assessment from those producers and remit such assessment to the Board or the qualified State beef council within the collecting person's State. It is also provided that each importer of cattle, beef or beef products shall pay an assessment in the manner prescribed by the order issued by the Secretary.

This rule: (1) Identifies those States in which State brand inspectors will collect assessments; (2) clarifies and simplifies the collection and remittance process; (3) establishes a form of certification for exempt transactions; (4) identifies qualified State beef councils certified by the Cattlemen's Beef Promotion and Research Board, and (5) effectuates the recordkeeping requirements of the order.

The effect of the order upon small entities was discussed in the July 18, 1986, issue of the **Federal Register** (51 FR 26132) and its was determined that the order would not have a significant effect on a substantial number of small entities. This rule merely implements the order provisions in the manner provided for therein. No new additional requirements are imposed. Accordingly, the Administrator of AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction

The Paperwork Reduction Act of 1980 (Title 44, U.S.C. Chapter 35) seeks to minimize the paperwork burden imposed by the Federal Government while maximizing the utility of the information requested. In March 1983, the Office of Management and Budget (OMB) implemented this Act by adopting procedures contained in Part 1230 of 5 CFR Chapter III. In accordance with these procedures, the information collection request in this Part has been approved by OMB and has been assigned OMB Control No. 0581–0152.

Background

The Beef Promotion and Research Act (Title XVI, Subtitle A, of the Food Security Act of 1985) approved December 23, 1985, authorizes the establishment of a national beef promotion and research program. The program will be funded by an assessment of one dollar ($1) per head of cattle sold in the United States, and an equivalent assessment on imported cattle, beef, and beef products.

The final order establishing a beef promotion and research program was published in the July 18, 1986, issue of the **Federal Register.** The order requires that the collecting person remit assessments to qualified State beef councils or to the Board if the State does not have a qualified State beef council. The order further provides that producers participating in such qualified State beef promotion and research programs shall be entitled to a credit of up to 50 cents per head for participating in such a program. At its initial meeting, the Board reviewed 40 applications from State beef promotion entities and certified as qualified all 40 State beef promotion entities pursuant to § 1260.181 of the order. These qualified State beef councils are listed in § 1260.315 of these rules and regulations. The addresses of the qualified State beef councils will be as published in a separate notice which will be updated from time to time as necessary. The addresses of Qualified State Beef Councils may be obtained from the Board. In the 10 States which do not have qualified State beef councils, collecting persons in those States are required by the order to remit the assessments collected to the Board.

During its meeting the Board developed and recommended the adoption of rules and regulations to implement the collection of assessments pursuant to the order. Those recommendations are adopted herein.

The order defines a collecting person as the person making payment to a producer for cattle, or any other person who is responsible for collecting and remitting an assessment pursuant to the Act, the order and regulations prescribed by the Board and approved by the Secretary. There are marketing situations in which the collection and remittance process would be facilitated if a person other than the person making payment to the producer were deemed the collecting person. Therefore, the Board has determined that the use of brand inspectors in those States and parts of States where brand inspectors are authorizes by State law to collect assessments under existing State beef promotion and research programs would be an appropriate and expeditious means of collecting and remitting assessments. These regulations authorize the brand inspectors in the States listed herein to serve as the collecting person in those transactions where assessments are due under the order.

Another marketing situation addressed by the Board involved deliveries on futures contracts. In these transactions there are several persons

who could be considered as making payment to the producer within the meaning of the order. The Board has determined that the collection and remittance process would be most effective and efficient if the commission firm or market agency representing the seller in the delivery were deemed the collecting person. Such persons will already be involved and familiar with the collection procedure. Accordingly, that recommendation is adopted.

The Board also recommended a clarification of § 1260.172(a)(2) of the order, which specifies that "any producer marketing cattle of that producer's own production in the form of beef or beef products to consumers, either directly or through retail or wholesale outlets, or for export purposes, shall remit to a qualified State beef council or to the Board an assessment on such cattle at the rate of one dollar ($1) per head of cattle or the equivalent thereof." The order did not specify when the assessment was due. It was the intent of the order that the assessment on such cattle shall be due upon the slaughter of such cattle and that procedure is specified herein.

Section 1260.172 of the order provides that collecting persons shall remit assessments to the qualified State beef councils in the State where the cattle originated prior to sale, or to the Board if there is no qualified State beef council in that State, unless the Board recommends and the Secretary approves a modification of that process. The Board has recommended that collecting persons be required to remit assessments to the qualified State beef council in the State in which the collecting person resides or to the Board if the collecting person resides in a State which does not have a qualified State beef council. This method of handling assessment remittance was recommended because the qualified State beef councils are in a better position to ensure effective coordination and distribution of assessments to the appropriate qualified State beef council. Consequently, collecting persons will be required to remit assessments to the council of the State within which they reside and will not be required to remit assessments separately to each State in which the cattle originated prior to sale.

The Board also recommended the form of the certification which must be used to claim that a transaction is exempt from an assessment under the order because ownership of such cattle was acquired merely to facilitate the transfer of such ownership to a third party. This certification will relieve the seller of such cattle of the responsibility for paying an additional $1 per head assessment upon the resale of such cattle and would provide the collecting person with documented evidence that an assessment is not due.

It is hereby found and determined that it is impractical, unnecessary and contrary to the public interest to delay the effective date of the issuance of these rules for 30 days after their publication in the **Federal Register.** In order to carry out the timetable for implementation of the order, it is necessary that this interim final rule be effective on September 29, 1986.

List of Subjects in 7 CFR Part 1260

Administrative practice and procedure, Marketing agreements, Meat and meat products, Beef and beef products.

Title 7 of the CFR, Part 1260 is amended as follows:

PART 1260—BEEF PROMOTION AND RESEARCH

1. The authority citation for Part 1260 continues to read as follows:

Authority: 7 U.S.C. 2901 *et seq.*

Subpart B [Redesignated as Subpart C]

2. Present Subpart B is redesignated Subpart C.

3. A new Subpart B is added as follows:

Subpart B—Rules and Regulations

Sec.

1260.301 Terms defined.
1260.310 Domestic assessments.
1260.311 Collecting persons for purposes of collection of assessments.
1260.312 Remittance to the Cattleman's Board or qualified state beef council.
1260.313 Document evidencing payment of assessments.
1260.314 Certification of non-producer status for certain transactions.
1260.315 Qualified state beef councils.
1260.316 Paperwork Reduction Act assigned number.

Subpart B—Rules and Regulations

§ 1260.301 Terms defined.

As used throughout this subpart, unless the context otherwise requires, term shall have the same meaning as the definition of such terms as appears in Subpart A of this part.

§ 1260.310 Domestic assessments.

(a) A $1.00 per head assessment on cattle sold shall be paid by the producer of the cattle in the manner designated in § 1260.311.

(b) If more than one producer shares the proceeds received for the cattle sold, each such producer is obligated to pay that portion of the assessments which are equivalent to his proportionate share of the proceeds.

(c) Failure of the collecting person to collect the assessment on each head of cattle sold as designated in § 1260.311 shall not relieve the producer of his obligation to pay the assessment to the appropriate qualified State beef council or the Cattlemen's Board as required in § 1260.312.

§ 1260.311 Collecting persons for purposes of collection of assessments.

Collecting persons for purposes of collecting and remitting the $1.00 per head assessment shall be:

(a) Except as provided in paragraphs (b) and (c) of this section, each person making payment to a producer for cattle purchased in the United States shall collect from the producer an assessment at the rate of $1.00 per head of cattle purchased and shall be responsible for remitting assessments to the qualified State beef council or the Cattlemen's Board as provided in § 1260.312. The collecting person shall collect the assessment at the time the collecting person makes payment or any credit to the producer's account for the cattle purchased. The person paying the producer shall give the producer a receipt indicating payment of the assessment.

(b) Any producer marketing cattle of that producer's own production in the form of beef or beef products to consumers, either directly or through retail or wholesale outlets, shall be responsible for remitting to the qualified State beef council or the Cattlemen's Board pursuant to § 1260.312, an assessment on such cattle at the rate of $1.00 per head of cattle or the equivalent thereof. The obligation to remit the assessment shall attach upon slaughter of the cattle, and the producer responsible for remitting the assessment shall remit the assessment in the manner provided in § 1260.312. For the purpose of this subpart, a producer marketing cattle of his own production in the form of beef or beef products shall be considered a collecting person.

(c) In the States listed below there exists a requirement that cattle be brand inspected by State authorized inspectors prior to sale. In addition when cattle are sold in certain sales transactions in those States, these State authorized inspectors are authorized to, and shall, collect assessments due pursuant to this subpart as a result of the sale of cattle. In those transactions in which inspectors are responsible for collecting assessments, the person paying the

producer shall not be responsible for the collection and remittance of such assessments. The following chart establishes the party responsible for collecting and remitting assessments in these States:

State	Sales through auction market	Sales to a slaughter/packer	Sales to a feedlot	Sales to an order buyer/dealer	Country sales*
Arizona	CP	CP	CP	B	B
California	CP	CP	B	B-CP	B
Colorado	CP	B	B	B	B
Idaho	CP	CP	B	B	B
Montana	CP	B	B	B	B
Nebraska	CP	CP	B-CP	B-CP	B-CP
Oregon	CP	B-CP	B	B	B
New Mexico	CP	B-CP	B-CP	B-CP	B-CP
Utah	CP	B-CP	B	B	B
Washington	CP	CP	B	B-CP	B
Wyoming	CP	B	B	B	B

Key:
B—Brand inspector has responsibility to collect and remit assessments due.
CP—The person paying the producer shall be the collecting person and has responsibility to collect and remit the assessments due.
B-CP—Brand inspector has responsibility to collect, however when there has not been a physical brand inspection the person paying the producer shall be the collecting person and has the responsibility to collect and remit assessments due.
*—For the purpose of this subpart, the term "country sales" shall include any sales not conducted at an auction or livestock market and which is not a sale to a slaughter/packer, feedlot or an order buyer or dealer.

(d) For cattle delivered on futures contracts, the commission firm or the market agency representing the seller in the delivery of cattle shall be the collecting person.

(e) In a case where a producer sells cattle as part of a custom slaughter operation, the producer shall be the collecting person in the same manner as if the cattle were slaughtered for sale.

§ 1260.312 Remittance to the Cattlemen's Board or qualified state beef council.

Each person responsible for the collection and remittance of assessments shall transmit assessments and a report of assessments to the qualified State beef council of the State in which such person resides or if there is no qualified State beef council in such State, then to the Cattlemen's Board as follows:

(a) *Reports.* Each collecting person shall make reports on forms made available or approved by the Cattlemen's Board. Each collecting person shall prepare a separate report for each reporting period. Each report shall be mailed to the qualified State beef council of the State in which the collecting person resides, or its designee, or if there exists no qualified State beef council in such State, to the Cattlemen's Board. Each report shall contain the following information:

(1) The number of cattle purchased, initially transferred or which, in any other manner, is subject to the collection of assessment, and the dates of such transactions;

(2) The amount of assessment remitted;

(3) The basis, if necessary, to show why the remittance is less than the number of head of cattle multiplied by one dollar; and

(4) The date any assessment was paid.

(b) *Reporting periods.* Each calendar month shall be a reporting period and the period shall end at the close of business on the last business day of the month.

(c) *Remittances.* The remitting person shall remit all assessments to the qualified State beef council or its designee, or, if there is no qualified State been council, to the Cattlemen's Board at P.O. Box 27–275, Kansas City, Missouri 64180–0001, with the report required in paragraph (a) of this section not later than the 15th day of the following month. All remittances sent to a qualified State beef council or the Cattleman's Board by the remitting persons shall be by check or money order payable to the order of the qualified State beef council or the Cattlemen's Board. All remittances shall be received subject to collection and payment at par.

§ 1260.313 Document evidencing payment of assessments.

Each collecting person responsible for remitting an assessment to a qualified State beef council or the Board, other than a producer slaughtering cattle of his own production for sale, is required to give the producer from whom he collected an assessment written evidence of payment of the Beef Promotion and Research Assessments. Such written evidence serving as a receipt shall contain the following information:

(a) Name and address of the collecting person.

(b) Name of producer who paid assessment.

(c) Number of head of cattle sold.

(d) Total assessments paid by the producer.

(e) Date.

§ 1260.314 Certification of non-producer status for certain transactions.

(a) The assessment levied on each head of cattle sold shall not apply to cattle owned by a person

(1) If the person certifies that the person's only share in the proceeds of a sale of cattle or beef is a sales commission, handling fee or other service fee; or

(2) If the person:

(i) Certifies that the person acquired ownership of cattle to facilitate the transfer of ownership of such cattle from the seller to a third party,

(ii) Establishes that such cattle were resold not later than 10 days from the date on which the person acquired ownership; and

(iii) Certifies that the assessment levied upon the person from whom the person purchased the cattle, if an assessment was due, has been collected and has been remitted, or will be remitted in a timely fashion.

(b) Each person seeking non-producer status pursuant to § 1260.116 of this part shall provide the collecting person with a Statement of Certification of Non-Producer Status on a form approved by the Board and the Secretary.

(c) A copy of the Statement of Certification of Non-Producer Status shall be forwarded, upon request, by the collecting person to the qualified State beef council or the Cattlemen's Board.

§ 1260.315 Qualified State beef councils.

The following State beef promotion entities have been certified by the Board as qualified State beef councils:

(a) Alabama Cattlemen's Association
(b) Arizona Beef Council
(c) Arkansas Beef Council
(d) California Beef Council
(e) Colorado Beef Council
(f) Florida Beef Council, Inc.
(g) Georgia Beef Board, Inc.
(h) Idaho Beef Council
(i) Illinois Beef Council
(j) Indiana Beef Council
(k) Iowa Beef Cattle Producers Assoc.
(l) Kansas Beef Council
(m) Kentucky Beef Cattle Assoc.
(n) Louisiana Beef Industry Council
(o) Maryland Beef Council
(p) Michigan Beef Industry Commission
(q) Minnesota Beef Council
(r) Mississippi Cattle Industry Board
(s) Missouri Beef Industry Council
(t) Montana Beef Council
(u) Nebraska Beef Industry Development Board
(v) Nevada Beef Council
(w) New Mexico Beef Council
(x) New York Beef Industry Council
(y) North Carolina Cattlemen's Assoc.
(z) North Dakota Beef Commission

(aa) Ohio Beef Council
(bb) Oklahoma Beef Commission
(cc) Oregon Beef Council
(dd) Pennsylvania Beef Council, Inc.
(ee) South Carolina Cattle and Beef Board
(ff) South Dakota Beef Industry Council
(gg) Tennessee Beef Industry Council
(hh) Texas Beef Industry Council
(ii) Utah Beef Council
(jj) Virginia Cattle Industry Board
(kk) Washington State Beef Commission
(ll) West Virginia Beef Industry
(mm) Wisconsin Beef Council
(nn) Wyoming Beef Council

§ 1260.316 Paperwork Reduction Act assigned number.

The information collection and recordkeeping requirements contained in this part have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB control number 0851–0152.

Done at Washington, DC, on September 29, 1986.

James C. Handley,
Administrator, Agricultural Marketing Service.

[FR Doc. 86–22303 Filed 9–30–86; 8:45 am]
BILLING CODE 3410–08–M

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Federal Register

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Wednesday, October 1, 1986

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FEDERAL REGISTER PAGES AND DATES, OCTOBER

34945-35200.....1

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List September 30, 1986

TABLE OF EFFECTIVE DATES AND TIME PERIODS—OCTOBER 1986

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
October 1	October 16	October 31	November 17	December 1	December 30
October 2	October 17	November 3	November 17	December 1	December 31
October 3	October 20	November 3	November 17	December 2	January 2
October 6	October 21	November 5	November 20	December 5	January 5
October 7	October 22	November 6	November 21	December 8	January 5
October 8	October 23	November 7	November 24	December 8	January 6
October 9	October 24	November 10	November 24	December 8	January 7
October 10	October 27	November 10	November 24	December 9	January 8
October 14	October 29	November 13	November 28	December 15	January 12
October 15	October 30	November 14	December 1	December 15	January 13
October 16	October 31	November 17	December 1	December 15	January 14
October 17	November 3	November 17	December 1	December 16	January 15
October 20	November 4	November 19	December 4	December 19	January 20
October 21	November 5	November 20	December 5	December 22	January 20
October 22	November 6	November 21	December 8	December 22	January 20
October 23	November 7	November 24	December 8	December 22	January 21
October 24	November 10	November 24	December 8	December 23	January 22
October 27	November 12	November 26	December 11	December 26	January 26
October 28	November 12	November 28	December 12	December 29	January 26
October 29	November 13	November 28	December 15	December 29	January 27
October 30	November 14	December 1	December 15	December 29	January 28
October 31	November 17	December 1	December 15	December 30	January 29

CFR ISSUANCES 1986
January–July 1986 Editions and Projected October, 1986 Editions

This list sets out the CFR issuances for the January–July 1986 editions and projects the publication plans for the **October, 1986** quarter. A projected schedule that will include the **January, 1987** quarter will appear in the first **Federal Register** issue of January.

For pricing information on available 1985–1986 volumes consult the CFR checklist which appears every Monday in the Federal Register.

Pricing information is not available on projected issuances. Individual announcements of the actual release of volumes will continue to be printed in the **Federal Register** and will provide the price and ordering information. The weekly CFR checklist or the monthly List of CFR Sections Affected will continue to provide a cumulative list of CFR volumes actually printed.

Normally, CFR volumes are revised according to the following schedule:

Titles 1–16—January 1
Titles 17–27—April 1
Titles 28–41—July 1
Titles 42–50—October 1

All volumes listed below will adhere to these scheduled revision dates unless a notation in the listing indicates a different revision date for a particular volume.

*Indicates volume is still in production.

Titles revised as of January 1, 1986:

Title

CFR Index
1–2
3 (Compilation)
4
5 Parts:
1–1199
1200–End
6 [Reserved]
7 Parts:
0–45
46–51
52
53–209
210–299
300–399
400–699
700–899
900–999
1000–1059
1060–1119
1120–1199
1200–1499
1500–1899
1900–1944
1945–End
8
9 Parts:
1–199
200–End
10 Parts:
0–199
200–399
400–499
500–End
11
12 Parts:
1–199
200–299
300–499
500–End
13
14 Parts:
1–59
60–139
140–199
200–1199
1200–End
15 Parts:
0–299
300–399
400–End
16 Parts:
0–149
150–999
1000–End

Titles revised as of April 1, 1986:

Title

17 Parts:
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240–End
18 Parts:
1–149
150–399
400–End
19
20 Parts:
1–399
400–499
500–End
21 Parts:
1–99
100–169
170–199
200–299
300–499
500–599
600–799
800–1299
1300–End
22
23
24 Parts:
0–199
200–499
500–699
700–1699
1700–End
25
26 Parts:
1 (§§ 1.0–1–1.169)
1 (§§ 1.170–1.300)
1 (§§ 1.301–1.400)
1 (§§ 1.401–1.500)
1 (§§ 1.501–1.640)
1 (§§ 1.641–1.850)
1 (§§ 1.851–1.1200)
1 (§ 1.1201–End)
2–29
30–39
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500–599 (Cover only)
600–End
27 Parts:
1–199
200–End

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Title

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900–1899
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1920–End*
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33 Parts:
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34 Parts:
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400–End*
35*
36 Parts:
1–199*
200–End*
37
38 Parts:
0–17*
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52
53–60*
61–80
81–99*
100–149
150–189
190–399*
400–424
425–699*
700–End*
41 Parts:
Chs. 1–100
Ch. 101
Chs. 102–200
Chs. 201–End

Projected October 1, 1986 editions:

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61–399
400–429
430–End
43 Parts:
1–999
1000–3999
4000–End

44

45 Parts:
1–199
200–499
500–1199
1200–End

46 Parts:
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156–165
166–199
200–499
500–End

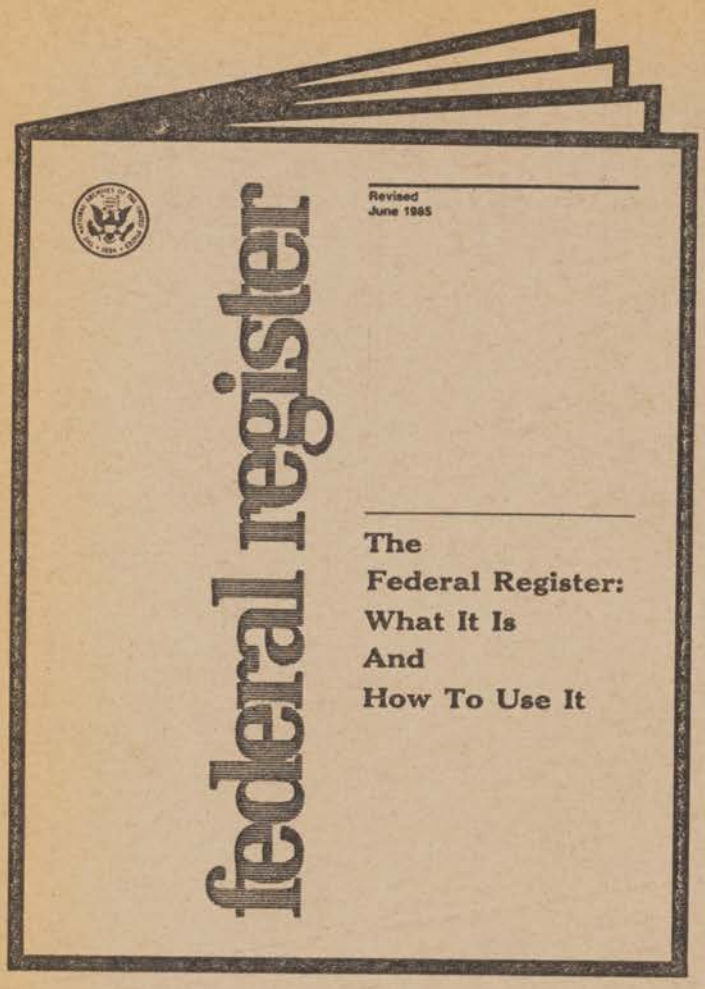
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