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WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

NEW YORK, NY

WHEN: May 21, at 9:00 am
WHERE: 26 Federal Plaza
Room 305 B and C
New York, NY
RESERVATIONS: Federal Information Center
1–800–347–1997

WASHINGTON, DC

WHEN: May 23, at 9:00 am
WHERE: Office of the Federal Register
First Floor Conference Room
1100 L Street, NW, Washington, DC
RESERVATIONS: 202–523–5240 (voice); 202–523–5229 (TDD)

NOTE: There will be a sign language interpreter for hearing impaired persons at the May 23, Washington, DC briefing.

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Rules and Regulations

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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

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 (FmHA) amends its regulations to show that the functions under the Deputy Administrator for Management have been reorganized to more closely align organizational responsibilities under appropriate Assistant Administrators along with elevating specific functions within the Agency. The effect of this reorganization will create an administrative structure which will better enable FmHA to perform its mission in service to Rural America.

EFFECTIVE DATE: May 16, 1991.

FOR FURTHER INFORMATION CONTACT: Glorious Leatherwood, Personnel Management Specialist, Human Resources Program Staff, Farmers Home Administration, USDA, 14th and Independence Ave., SW., Washington, DC 20250, telephone (202) 245–5578.

SUPPLEMENTARY INFORMATION: This rule 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. It is the policy of this department to publish for comment rules relating to the public property, loans, grants, benefits, or contracts, notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This action, however, is not published for proposed rule making since it involves only internal agency management, making publication for comment unnecessary.

The Assistant Administrator for Administration, the Administrative Services Division, and the Personnel Division have been abolished. The Deputy Assistant Administrator for Management Information Systems and the Deputy Assistant Administrator for Financial Systems under the Assistant Administrator for Information Systems Management have been established to assure improved control and management of the Agency's automation program; to reallocate resources to maximize responsiveness to the FmHA user community nationwide; and to establish an organizational focus for improved management of software testing, technology, and systems life cycle planning.

The new Assistant Administrator for Human Resources position centralizes control over all training and personnel programs and staff resources by shifting reporting lines for personnel management programs from the Personnel Office (St. Louis) to the National Office. The three new staffs created will result in a more logical and functional alignment of personnel management policies, operations, and training activities. The new Assistant Administrator for Procurement and Administrative Support increases productivity and accountability by centralizing control over all FmHA contracting, procurement, property management, and administrative services functions by shifting reporting lines from the FmHA Finance Office (St. Louis) to the National Office. The Agency will have the ability to provide increased organizational attention to key procurement activities, including ADP acquisition, field program management, and operation responsiveness. The new Assistant Administrator for Budget, Finance and Management establishes a central point of authority for all FmHA budget and financial management policy, planning, and activities. FmHA also corrects an error in the previous publication, i.e., the omission of "07 02 00 0002 Executive Secretariat Staff" mission and functions statement.

Environmental Impact Statement

This document has been reviewed according to 7 CFR part 1940, subpart G, Environmental Program. It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

List of Subjects in 7 CFR Part 2003

Organizations and functions (government agencies).

Accordingly, part 2003, title 7, Code of Federal Regulations, is amended as follows:

PART 2003—ORGANIZATION

1. The authority citation for part 2003 continues to read as follows:

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

Subpart A—Functional Organization of Farmers Home Administration

2. Exhibit A to subpart A of part 2003 is amended by adding immediately preceding "07 02 01 Assistant Administrator—Housing" Item "07 02 00 0002 Executive Secretariat Staff" to read as follows:

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

* * * * *

07 02 00 0002 Executive Secretariat Staff

Assignment of Functions

1. Serves as advisor to the Deputy Administrator Program Operations on all controversial and sensitive communications from the White House, the Congress, State and local governments, other Federal agencies, USDA departmental officials, public interest groups, and the general public.

2. Has primary responsibility for ensuring effective and efficient correspondence management and coordination of Agency response within the Farmers Home Administration, the Program Operations areas, and the immediate Office of the Administrator.

3. Maintains effective coordination of written responses within the agency's program areas, assists in monitoring correspondence flow, tracks receipt of incoming correspondence, and follows up on official responses to meet agency deadlines.

4. Develops agency correspondence handling procedures, resolves problem issues pertaining to official responses, and develops

improvements for handling the Executive Secretariat Staff.

5. Maintains standards of consistent high quality for written material prepared for the approval of the Deputy Administrator Program Operations, the Administrator and the Secretary of Agriculture.

3. Exhibit A to subpart A of part 2003 is amended by revising the part of the exhibit from "07 06 01 Assistant Administrator—Finance Office" to the end to read as follows:

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

* * * * *

07 06 01 Assistant Administrator—Finance Office

Assignment of Functions

Responsible to the Administrator and the Deputy Administrator for Management for the development of policies that affect the operation of the accounting system, and for other activities the Deputy Administrator may prescribe from time to time.

1. Supports the National Office, State Offices and FmHA field offices nationwide in areas related to loan making and servicing, finance, collection accounting, and financial reporting. Establishes policies and standards for the Agency accounting program.

2. Manages the day-to-day operation of the fiscal and accounting system. Oversees the preparation of special and recurring financial reports to aid Agency management or to meet regulatory requirements (e.g., Office of Management and Budget, Treasury, etc. required reports). Also oversees the preparation of reports based on data in the accounting system which relates to the FmHA budget.

3. Carries out the provisions of the Federal Manager's Financial Integrity Act to assure that adequate internal controls exist to prevent fraud, waste, or abuse of government resources and to assure that the FmHA accounting system meets accounting principles and standards established by the Comptroller General.

4. Responsible for verifying and reconciling accounting data reflecting loan payments deposited by field offices nationwide through wholesale lock box and concentration banking processes. Performs detailed audits of loans and accounts receivable on a continuing basis, and for special purposes such as litigation, refunds, repayments and reconciliation of accounts between the Finance Office and field offices.

5. Participates in the design, evaluation, and implementation of new or revised financial and loan accounting, cash and credit management systems, methods and procedures to improve operations and meet changing legislation or program requirements.

6. Maintains liaison and working relationship with the Deputy Assistant Administrator for Financial Systems, which provides oversight for the Automated Data Processing operations which support the FmHA accounting operation. Also maintains liaison with the General Accounting Office on audit and financial matters relating to the accounting system and with the U.S. Department of the Treasury on matters relating to the deposit of collections from borrowers.

7. Serves as Deputy Equal Employment Opportunity Officer for the entire FmHA work force located in St. Louis, Missouri.

07 06 04 Assistant Administrator for Information Systems Management

Assignment of Functions

1. Responsible for developing, implementing, and evaluating Agency-wide plans, policies, regulations, standards, and guidelines for information processing activities in support of FmHA's missions consistent with Federal and Departmental requirements.

2. Reasonsible for identifying, evaluating, and applying emerging information management technology in support of FmHA program needs.

3. Assures the operation, maintenance, and support of existing financial and management information systems, and Agency hardware used to support FmHA's missions.

4. Responsible for the administration of Agency-wide information resources maintained in ADP systems.

5. Responsible for policy and planning for all ADP security functions.

6. Assures the development of new or enhanced financial and management information systems necessary to support FmHA's new or continuing missions.

7. Assures the development and implementation of systems in accordance with the Applications Portability Profile sponsored by the National Institute for Standards and Technology and assurance of FmHA compliance with all Federal Information Processing Standards.

8. Serves as FmHA's senior IRM Official (SIRMO) in accordance with USDA procedures, policies, and delegated authorities.

9. Assures a regular liaison and productive working relationship with officials of the Agency, Department, and other Federal and professional organizations concerning information processing activities.

07 06 04 0001 ADP Security Staff

Assignment of Functions

1. Responsible for development, coordination, implementation, and oversight of ADP Security policy and procedures.

2. Responsible for security coordination of the database, applications development, software and systems software development.

3. Responsible for telecommunications security.

07 06 04 0002 Management Support Staff

Assignment of Functions

1. Responsible for providing direction and oversight for all technical contract management activities.

2. Responsible for all ISM budget planning, development, support and execution, and oversight.

3. Responsible for personnel resource tracking.

4. Responsible for project tracking and reporting.

5. Responsible for administrative support for system prioritization process.

6. Consolidates and prepares the annual Information Resources Management (IRM) Budget package.

07 06 04 0003 Deputy Assistant Administrator for Management Information Systems

Assignment of Functions

1. Responsible for all Management Information Systems planning.

2. Responsible for ISM policy development and administration.

3. Responsible for operation of the ISM Information Center.

4. Responsible for direction and guidance of the Telecommunications Staff.

5. Responsible for development and maintenance of National Office support systems.

6. Responsible for development of Field Office Support Systems.

7. Responsible for serving as liaison with field users.

8. Responsbile for servicing all field needs.

9. Responsible for coordination of data administration function on all distributed systems.

07 06 04 0003 01 Telecommunications Staff Assignment of Functions

1. Responsible for identifying, evaluating, and applying emerging telecommunications technology to support FmHA program needs.

2. Responsible for assuring maintenance and implementation of state-of-the-art knowledge on telecommunications developments.

3. Responsible for providing technical leadership in the telecommunications discipline.

4. Responsible for developing, implementing, and maintaining voice communications policy.

5. Responsible for coordination with the National Computer Center at Fort Collins (NCC–FC) on the Departmental Protocols.

6. Responsible for providing technical support to assure user availability of the FmHA nationwide network of terminals and microprocessors.

7. Responsible for providing performance monitoring, maintenance, and enhancements to the on-line teleprocessing systems to assure optimal system efficiency and effectiveness.

8. Responsible for coordinating the Agency's telecommunications requirements, monitoring network performance, preparing cost/budget estimates and monitoring actual usage compared to budget to assure optimal system efficiency and effectiveness.

9. Responsible for coordinating with other ISM Divisions for the development of Agency long-range ADP planning on automated systems.

10. Responsible for coordinating with other ISM Divisions recommendations/justifications for major ADP expenditures.

11. Assures a regular liaison with officials of the Agency, Department, and other Federal and professional organizations on ADP matters affecting assigned programs.

12. Responsible for testing, evaluation, implementation, and administration of Local Area Network's (LAN's).

07 06 04 0003 02 Information Resources Management Division

Assignment of Functions

1. Responsible for developing FmHA policies, regulations, standards, and guidelines for ISM initiatives and assuring they are in accordance with Federal IRM policies and procedures, including OMB Circulars, GSA regulations, Departmental Standards, Congressional mandates, and other IRM-related requirements.

2. Coordinates development of Agency's short- and long-range ADP planning support of the Agency's mission and in conformance with USDA IRM planning guidance and directives.

3. Responsible for managing and coordinating Agency participation in support of Departmental cooperative processing initiatives and information-sharing initiatives.

4. Responsible for developing and maintaining FmHA reports, management policy and procedures, and for the design, production, and maintenance of regular and ad-hoc reports developed from management information systems in support of Agency and Departmental requirements.

5. Responsible for developing/administering the Agency productivity system in support of Agency requirements.

6. Responsible for developing policies and procedures which ensure the active participation by Agency Program Staff in ISM decision processes, e.g., technical IRM Review Boards and carrying out such policies.

7. Responsible for FmHA information economic activities, including providing technical assistance for the preparation of cost benefit analyses in accordance with internal and external requirements for Agency-wide initiatives.

8. Coordinates the ISM response to outside audits (Office of Inspector General (OIG) and General Accounting Office (GAO)) to assure timely and accurate responses.

9. Responsible for conducting analyses and preparing ad-hoc reports from management information systems and accounting systems in support of Agency internal and external requirements.

10. Establishes and maintains an Agency information center which supports Agency users of information. Assists users in analyzing data for the purpose of creating useful management information. Responsible for supporting management information needs to accommodate all internal and external reporting requirements.

11. Assures a regular liaison and productive working relationship with officials of the Agency, Department, and other Federal and professional organizations concerning information processing activities.

07 06 04 0003 03 Applications Management Division

Assignment of Functions

1. Responsible for planning, organizing, directing, and coordinating all activities related to the design, enhancement and testing of non-financial administrative, program, and management information systems (MIS) on multiple platforms ranging from microcomputers to mainframe computers in compliance with Agency, Federal and Departmental requirements.

2. Responsible for developing policies, methods, procedures, and strategies for ADP support systems for non-financial administrative and program systems and for office automation in support of the standard Agency multi-function workstation (MFWS).

3. Provides technical service and support to Agency managers relating to requirements analysis, systems design, software and documentation development, systems testing, implementation, monitoring, and control.

4. Responsible for coordinating with other ISM Divisions for the development of Agency long-range ADP planning on office automation and management systems.

5. Responsible for coordinating with other ISM Divisions recommendations/justifications for major ADP expenditures.

6. Applies systems life cycle management functions including systems analysis, systems design, systems construction and acquisition, acceptance, implementation, and maintenance for Agency computer systems which operate on multiple platforms ranging from microcomputers to mainframe computer.

7. Provides ADP support, as it relates to mainframe and micro management applications for Agency personnel. Support is in the form of vendor product review, problem resolution, task force participation, and requests from Agency users.

8. Responsible for participation with representatives from FmHA organizations to evaluate the impact on Agency non-financial computer systems of legislative initiatives, instructional or regulatory changes, adopted employee suggestions, and Departmental/Agency initiatives.

9. Maintains a Quality Assurance (QA) program to support "cradle to grave" development of non-financial systems.

10. Responsible for coordination of mainframe and micro data dictionaries. Assists in the development of Agency-wide data dictionary, listing data elements, sources, standards and data definitions of information contained in Agency ADP systems to assure consistency of data.

11. Assists in the development of data administration policies and procedures for non-financial systems.

12. Responsible for managing testing process, which includes verifying/documenting test findings, monitoring corrections of discrepancies/deviations, and facilitating additional development and retesting.

13. Responsible for the development and implementation of an Agency-wide configuration management process and change control procedure for distributed systems.

14. Assures a regular liaison and productive working relationship with managers from the Agency, Department, and other Federal and professional organizations on information processing activities affecting assigned program areas.

07 06 04 0004 Deputy Assistant Administrator for Financial Systems St. Louis

Assignment of Functions

1. Responsible for development, maintenance, and support of all financial systems which operate on multiple platforms ranging from mainframe to microcomputers.

2. Responsible for technology support (hardware, software) for all of ISM on all platforms.

3. Responsible for Agency data administration function.

4. Responsible for coordinating with ISM staff on ISM policy, and standards development and administration.

5. Responsible for coordinating time-sharing service needs with the Department support centers.

07 06 04 0004 01 Systems Requirements and Design Division

Assignment of Functions

1. Responsible for applications systems life cycle management including planning, organizing, directing, and coordinating all activities related to the functional and conceptual design of new or enhanced financial management information systems consistent with Federal and Departmental requirements to support program, financial, and management functions in carrying out FmHA's mission.

2. Participates in the development of the Agency's short- and long-range ADP plan, including ISM budgetary function, in support of the Agency mission and in the establishment of Agency-wide priorities on projects requiring automated systems.

3. Responsible for assuring that the practical application of accounting principles and standards and other requirements set forth by the central guidance agencies are adhered to in designing or enhancing systems. Participates in the formulation of automation and accounting policies, methods, and procedures to secure comprehensive, integrated, efficient, and cost effective operations in support of the Agency's mission.

4. Responsible for establishing and maintaining a quality assurance program for financial information systems to ensure conformance with the Agency's life cycle software standard and for providing management information and recommendations to assure improved project management practices and productivity.

5. Responsible for maintaining the configuration management process to assure control of application software releases to production for new or modified software.

6. Responsible for validating and certifying financial information system software to assure software functionality and system compatibility prior to implementation.

7. Responsible for coordinating with Systems Development Division and accounting, program, and management staffs on the final functional design for all new systems and proposed additions to the financial information systems.

8. Responsible for developing general and detailed functional system design specifications for projects resulting from such

actions as legislative and regulatory changes, new hardware or software technology, and employee suggestions.

9. Responsible for supporting the development/modification of appropriate instructions, administrative notices, and forms in support of Agency system changes.

10. Responsible for finalizing and coordinating user approval of documentation for financial information systems.

11. Responsible for supporting new system development, which includes providing functional expertise, recommending related instructions and forms, supporting related training, and maintaining a liaison between developers and users.

12. Assures user involvement from the accounting, program, and management staffs, and external agencies throughout the life-cycle process for new and enhanced financial, management information systems, and field office automation systems.

13. Responsible for preparing detailed user acceptance test criteria as part of system test plans for use in testing applications software to assure it meets user requirements and for drafting user manuals supporting the applications software.

14. Responsible for supporting Financial Systems Subboard activities in the prioritization of requests for system alteration in accordance with the Agency's cost-benefit and priority-setting mechanisms.

15. Responsible for providing all required functional support to the Agency's fiscal and calendar year-end processes which result in producing closing financial reports to OMB and Treasury, payments and statements to private sector investors, and annual financial statements to all borrowers of record.

16. Responsible for coordinating overall accounting needs and management information requirements with Agency contractors, which includes technical liaison, end-user coordination, and product review and approval.

17. Assures a regular liaison and productive working relationship with officials of the Agency, Department, and other Federal and professional organizations concerning information processing activities.

18. Responsible for developing and maintaining financial system user documentation. Documentation includes data input requirements, system edit criteria, processing methodologies, and discrepancy correction for each accounting process.

07 06 04 0004 02 Systems Development Division

Assignment of Functions

1. Assures the planning, development, testing and implementation of financial information systems to support policy implementation for loan making, servicing, cash and debt management, information management, and program accounting activities which operate on multiple platforms ranging from mainframe to microcomputers for the Agency in accordance with Federal and Departmental requirements.

2. Assures automated modifications are consistent with regulatory requirements, changes in law, and changes in technology, and are structured to provide maximum efficiency and effectiveness of Agency operations.

3. Responsible for planning, organizing, directing, and coordinating all activities related to the design or enhancement of financial information systems in compliance with Agency, Federal and Departmental requirements.

4. Responsible for coordinating with other ISM Divisions the development of Agency long-range ADP planning on automated systems.

5. Responsible for task level management of tasks issued to existing Agency development contractors; this includes task resource estimate reviews, technical liaison, end-user coordination, and product review and approval.

6. Responsible for coordinating with other ISM Divisions recommendations/justifications for major ADP expenditures.

7. Applies life cycle management functions, including systems analysis, systems design, systems construction and acquisition, acceptance, implementation, and maintenance for Agency computer systems which operate on multiple equipment platforms ranging from microcomputers to mainframe computers.

8. Participate in the development of the Agency's short- and long-range ADP plan, including ISM budgetary function, in support of the Agency's mission and in recommending Agencywide priorities on projects requiring automated systems.

9. Participates in the formulation of automation policies, methods, and procedures to secure comprehensive, integrated, efficient, and cost effective operations in support of the Agency's mission.

10. Assures the operation, maintenance, and support of existing financial information systems.

11. Responsible for coordinating requirements with the Systems Requirements and Design Division Staff on the final functional design for all proposed additions and modifications to the accounting and financial information systems.

12. Responsible for providing all required technical support to the Agency's fiscal and calendar year-end processes which result in producing closing financial reports to OMB and Treasury, payments and statements to private sector investors, and annual financial statements to all borrowers of record.

13. Responsible for providing technical support to National Office, Finance Office, State Office, and field office users for the ad hoc reporting system.

14. Assures a regular liaison and productive working relationship with officials of the Agency, Department, and other Federal and professional organizations concerning information processing activities.

07 06 04 004 03 Information Technology Division

Assignment of Functions

1. Responsible for assuring the coordination of purchases, establishment and maintenance of inventories, and for the initiation of maintenance contract orders for the Agency's computer and communications equipment in support of Agency requirements.

2. Responsible for assuring maintenance and implementation of state-of-the-art knowledge of microcomputer and mainframe hardware developments.

3. Responsible for assuring operational hardware and software liaisons with the National Computer Centers as Kansas City (NCC–KC) and Fort Collins (NCC–FCC).

4. Responsible for assuring the development/maintenance of special purpose software in support of Agency requirements for management and operation of equipment inventory.

5. Responsible for technical support to FmHA and contractor personnel.

6. Responsible for coordinating with other ISM Divisions for the development of Agency long-range ADP planning on automated systems.

7. Responsible for coordinating with other ISM Divisions recommendations/justifications for major ADP expenditures.

8. Responsible for analyzing, recommending, and implementing application development productivity tools to assure optimal developmental efforts.

9. Responsible for providing specialized systems development support to users and developers of the Agency's financial and program information database management systems.

10. Responsible for data dictionary administration listing sources and data definitions of information contained in Agency financial systems to assure standard systems development.

11. Assures a regular liaison with officials of the Agency, Department, and other Federal and professional organizations on ADP matters affecting assigned programs.

07 06 05 Assistant Administrator for Budget, Finance & Management

Assignment of Functions

This position reports directly to the Deputy Administrator for Management (DAM), providing executive leadership to the Budget Division and the Financial and Management Analysis Division.

1. Directs the coordination, development and implementation of plans and procedures for a variety of FmHA budgetary and financial programs, such as: travel, borrowing, interest rate management, debt management, cash and credit management initiatives, and management analysis.

2. Plans, controls, and directs all policy associated with budgetary, financial and credit management, ensuring that all Office of Management and Budget (OMB) Circulars are implemented.

3. Establishes systems and maintains control over program and administrative funds to assure compliance with overall policy, and applicable laws and regulations.

4. Directs the forecasting of budgets in all major programs involving revolving funds and the annual appropriations for various programs.

5. Provides leadership in the sale of Agency assets through secured trusts or discount repurchase programs with emphasis on modern cash management techniques such as

concentration banking and implementation of sound credit management techniques.

6. Serves as the representative for the DAM in all dealings with USDA Financial Council, Office of Finance and Management, OMB, Department of the Treasury, Congressional Committees, Department of Housing and Urban Development, and other agencies as needed.

07 06 05 0001 Budget Division

Assignment of Functions

Responsible to the Assistant Administrator for Budget, Finance and Management. Provides directives and guidance for FmHA's budget, travel, borrowing, and interest rate management, and provides other activities as the Assistant Administrator may prescribe from time to time.

1. 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 Assistant Administrator for Budget, Finance and Management 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.

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

3. Maintains liaison and working relationship with 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 programs with Congressional Committees and staff, OMB, GAO, the Secretary's office, OGC, OIG, and other USDA agencies, Department of Treasury, Department of Housing and Urban Development, and other agencies, news reporters, public and private interest groups and the general public.

4. 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.

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

07 06 05 0002 Financial and Management Analysis Division

Assignment of Functions

Responsible to the Assistant Administrator for Budget, Finance, and Management. Provides guidance in developing debt management initiatives, cash management initiatives, and management analysis, and provides management, financial and productivity improvement as needed, and such other activities as the Assistant Administrator may prescribe.

1. Develops and manages FmHA 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 offset account collection programs (e.g., IRS offset, salary offset, program benefit offsets, and joint cooperative action with the Department of Justice using private sector attorneys on foreclosure litigation). Initiates pilots or tests of new or innovative methods, techniques, and processes in debt management.

2. 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.

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

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

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

6. Manages the accounting system and oversees the development and submission of required financial reports.

07 06 06 Assistant Administrator for Human Resources

Assignment of Functions

This position reports to the Deputy Administrator for Management and provides executive guidance to the Human Resources Programs Staff, the Human Resources Development and Training Staff, and the Personnel and Employee Relations Staff. Serves as member of the management team participating in the Employment Review Board (ERB) and the Training Review Board (TRB) meetings.

1. Directs the development of human resources personnel programs and monitors the evaluation of field personnel programs through the Personnel Management Evaluation Review Team, and by providing oversight in the conduct of staff studies on human resources, personnel management and training issues.

2. Provides overall management for all human resources programs, such as the Suggestion Program, retirement, the Employee Benefit and Incentive Awards Program, the Health and Wellness Program, etc.

3. Develops and manages the implementation of Human Resources Development and Training programs, which includes developing and conducting training courses for specific needs. (Examples of the special needs include, but are not limited to, loan program training, ADP and accounting procedures, and administrative and supervisory functions.)

4. Provides leadership and oversight in operating services involving personnel management for the National Office, the Finance Office, and the State Offices.

5. Provides direction and oversight regarding employee/labor management relations, adverse actions, conduct, discipline, grievances, and appeals.

6. Maintains liaison and working relationship with key officials of the Agency, the Department of Agriculture, the Office of Personnel Management, and officials of other Federal agencies.

07 06 06 0001 Personnel and Employee Relations Staff

Assignment of Functions

1. Provides direct operating services involving personnel management for employees of the National Office, Finance Office, and field offices for all operating services not specifically delegated below National Office level.

2. Provides advisory and staff services to field Administrative Staffs for the full range of operating personnel services and employee relations functions.

3. Maintains a Special Examining Unit which provides recruitment for a variety of entry level and worker-trainee positions utilized in the field.

4. Plans, develops and implements programs and activities relating to employee and labor management relations, adverse action, conduct, discipline, grievances, and appeals. Represents the Agency before the Merit System Protection Board.

5. Maintains liaison and a working relationship with employee organizations and with supervisors and managers through intra-management communication and consultation.

6. Ensures fair and equitable handling of negotiations and arbitrations with various unions.

7. Maintains liaison and working relationship with key officials of the agency, the Department of Agriculture, the Office of Personnel Management, officials of other Federal agencies, and others, and collaborates on matters of mutual concern. Represents the Agency on departmental, interdepartmental, and interagency task forces on matters affecting assigned programs.

07 06 06 0002 Human Resources Development & Training Staff

Assignment of Functions

1. Plans, develops, and implements general and technical employee development and training programs and activities relating to FmHA loan programs, automated systems and processes, and general administrative and supervisory functions.

2. Responsible for long-range planning to assure effective training and career development of FmHA employees. Develops overall policy options for FmHA program and administrative training activities.

3. Develops and maintains independent training modules related to the FmHA loan and grant accounting system processes.

4. Schedules and conducts training seminars on FmHA accounting processes for FmHA Finance Office and field office personnel. The training includes computer-based, audio training techniques and on-line system training data bases.

5. Provides back-up training support for computer applications utilized by field ADP Coordinators.

6. Analyzes system alterations to FmHA accounting processes, modifying training modules as required. Reviews and evaluates training modules, ensuring compliance with FmHA loan program and related accounting guidelines.

7. Maintains liaison and working relationship with key officials of the agency, the Department of Agriculture, the Office of Personnel Management, officials of other Federal agencies, and others, and collaborates on matters of mutual concern. Represents the Agency on departmental, interdepartmental, and interagency task forces on matters affecting assigned programs.

07 06 07 Assistant Administrator for Procurement and Administrative Support

Assignment of Functions

Responsible to the Deputy Administrator for Management for the overall management of FmHA procurement, contracting, real and personal property, supply management, directives and administrative services activities.

1. Provides executive leadership, formulates and coordinates policies, and provides direction to three subordinate organizations in carrying out assigned programs.

2. Develops, implements and evaluates policies and procedures for the orderly management of the FmHA procurement and administrative services support activities and for the provision of procurement and administrative services to FmHA offices nationwide. These services include contracting, small purchases, mail management, leasehold acquisition, communications system operations, telephone operations, printing and reproduction requirements, and forms/records/directives management.

3. Provides a centralized point of control for all FmHA procurement policies, standards, plans and procedures. Directs all Agency ADP procurement activities, Federal Acquisition Regulation (FAR) contracting, and small purchasing acquisition. Provides guidance on program services contracting and utilization and management of office space.

4. Establishes and maintains systems for the review and clearance of Agency directives, issuances, and public participation functions, including publication of regulations and legal notices in the Federal Register.

5. Oversees and implements the Freedom of Information, Privacy Act and Tort Claims programs for the Agency.

6. Directs the Agency's supply, space management, and real and personal property management programs, formulating and evaluating necessary policy, standards and procedures.

7. Maintains liaison and working relationship with key officials of the Agency, the Department of Agriculture staff offices, officials of other Federal agencies, and others to collaborate on matters of mutual concern. Represents the Agency on departmental, interdepartmental and interagency task forces on matters affecting assigned programs.

8. Develops budget plans for procurement and administrative services support activities. Provides major input to FmHA's overall administrative budget, and coordinates that budget with the Assistant Administrator for Budget, Finance and Management.

9. Coordinates the Department Excess Personal Property Program which disposes of or affects utilization of the Property Management Information System.

10. Provides executive leadership for conducting reviews, formal training, and oversight of delegated authorities to State Directors to ensure conformance to Agency policies and Government regulations.

07 06 07 0001 Procurement Management Staff

Assignment of Functions

1. Formulates, evaluates, and recommends policy, standards, plans, and procedures for agency-wide procurement programs.

2. Provides procurement training for FmHA procurement and program personnel.

3. Provides direction and oversight on all procurement activities.

4. Performs procurement reviews, analyzes audit reports, advises of corrective action and oversees compliance.

5. Responsible for contracting and contract administration for services and supply items on the open market or through established Government sources. Works with the Small Business Administration on 8A contracts with minority enterprises and the Department of Labor in handling wage rate matters.

6. Solicits and administers complex technical contracts for the acquisition of automated data processing services, equipment and maintenance.

7. Performs studies and analysis of procurement procedures and policies and recommends new and/or revised policies, systems technology, and procedures.

8. Provides technical guidance to the National Office, Finance Office, and State Directors, and their staffs in the interpretation of laws, rules and regulations, and policy related to procurement programs.

9. Acts as a liaison with Federal and State agencies in coordinating procurement actions.

10. Interacts with the Department, GSA, Small Business Administration and Department of Labor on procurement issues.

07 06 07 0002 General Services Staff

Assignment of Functions

1. Formulates, evaluates, and recommends policy, standards, plans, and procedures for the management of records, forms and directives; mail; processing of computer data for mailing; review and processing of Freedom of Information/Privacy Act and Tort Claims; printing, duplication and telephone operations.

2. Responsible for developing and assuring that FmHA policies, regulations, standards, and guidelines established for Agency directives are in accordance with Federal policies and procedures including OMB circulars, GSA regulations, and Congressional policies; maintenance of formal regulations, administrative notices, and procedural announcements, including the publication of regulations and legal notices in the Federal Register.

3. Responsible for control of written communications by letters, memorandums, telegraph, and mailgrams.

4. Responsible for developing and administering systems and procedures for the creation, maintenance, and use of paper records. Identifies and preserves records to provide adequate documentation of functions and activities. Responsible for the security and disposition of records.

5. Maintains liaison and working relationship with other USDA agency administrative support service divisions. Works closely with the General Services Administration and the Office of Management and Budget. Provides policy direction and serves as liaison with the Finance Office for printing, telephone operations, records, files and mail services.

6. Prepares substantial input to administrative budget plans as required and administers administrative budgets for the National Office.

7. Responsible for developing and coordinating systems and procedures for the effective delivery, distribution, or dispatch of all types of written communication and other material, including the use of automated mailing lists, mechanical sorting devices, and metered mailing devices. Provides special messenger service and mail pickup and delivery.

8. Responsible for the distribution of mail nationwide. Provides printing and duplication liaison with the General Services Administration. Responsible for the maintenance, operation, and ultilization of a mini-computer with CRT and line printer to maintain all mailing addresses and cross-reference lists nationwide.

9. Responsible for the printing, storage, assembling, and distribution of Agency procedures to field offices nationwide.

10. Reviews Freedom of Information/ Privacy Act and Tort Claim requests from the private sector and prepares and coordinates Agency responses.

11. Plans and coordinates Agency records, mail and communication operations; develops and recommends new or revised policies, systems, technology, and procedures relating to Agency operation in the area of records and communication management.

12. Prepares and monitors the National Office budget for all non-personal service components. Performs analyses and reconciles all billing problems.

13. Provides assistance to the Finance Office and State Directors in the interpretation of laws, rules, regulations, and policies pertinent to records, forms, and communication management.

07 06 07 0003 Property and Supply Management Staff

Assignment of Functions

1. Formulates, evaluates, and recommends policy standards, plans, and procedures concerning personal and real property management, warehouse functions, furniture rehabilitation and repair, and inventory control.

2. Responsible for the acquisition and utilization of real and utilization of personal property. Prepares detailed technical analysis of need and cost benefit studies and develops new or revised policies, systems technology, and procedures to improve Agency operations.

3. Responsible for the storage and distribution of over 1200 forms and supply items to the National Office and field offices. Maintains an automated forms and supply inventory systems for proper monitoring and control of stock levels. Provides management information on stock levels, costs, and order status to interested parties.

4. Determines need for furniture rehabilitation and repair of office machines. Performs feasibility analysis of maintenance contracts as opposed to repair on an as needed basis.

5. Responsbile for property management, accountability, utilization, disposition, and inventory control of equipment/furniture, and the input interface, and utilization of the Property Management Information System.

6. Coordinates the Department Excess Personal Property Program which disposes of or affects utilization of all excess property within USDA.

7. Responsible for the acquisition, utilization, and management of office and other types of space in buildings acquired by leasehold, agreement, or inter-government assignments; providing for space requirements in proposed long-range federal construction; developing arrangements for consolidated housing of USDA agencies; and reviewing field office space reports and surveys.

8. Responsible for the planning, execution, and management of space assignment and layout of office space for State Offices and the Finance Office. Based on projected workload, equipment, and personnel acquisitions, makes long-range projections of space needs, assignments, and related costs. Recommends policies regarding space allowances and criteria. Provides information to GSA and USDA activities on the Agency's space inventory.

9. Responsible for the overall administration of an employee safety program in the FmHA St. Louis office. Provides leadership for investigating and reporting accidents involving personal injury or property damage. Conducts safety inspections to identify and remove hazards in the work place.

10. Assists the National Office, State Directors, and their staffs in the interpretation of laws, rules and regulations, and policies pertinent to supply management, personal and real property, and develops procedural issurances and correspondence.

11. Provides executive leadership for conducting review, formal training, and oversight of delegated authorities to State Directors to ensure conformance to Agency policies and Government regulations.

12. Responsible for providing staff leadership in coordinating execution of agreements and memoranda of understanding for copy service, printing and duplication, and employee health services.

13. Responsible for quality control methods and procedures to ensure forms and supply items stocked in the warehouse comply with specifications and are free from defects. Initiates claims against vendors supplying defective items and resolves claims in the interest of the Government.

14. Prepares budgetary and supporting information for such needs of the Finance Office and field offices as equipment, supplies, space, communications, etc., for the efficient use of resources of the Agency.

15. Responsible for directing, coordinating, and monitoring of the office services operating budget totaling over $40 million for field offices nationwide and a separate budget for the Finance Office. Recommends and adjusts allocations for State Offices and provides liaison with Finance Office, field, NFC, and National Office personnel on all budget matters. Develops, coordinates, and distributes reporting information for use by interested parties in budgetary control and forecasting.

16. Maintains liaison and working relationship with key officials of the Agency, the Department of Agriculture staff offices, officials of other Federal agencies, and others to collaborate on matters of mutual concern. Represents the Agency on departmental, interdepartmental and interagency task forces on matters affecting assigned programs.

Dated: April 16, 1991.

LaVerne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 91-11517 Filed 5-14-91; 8:45 am]

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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 216

[INS Number: 1423-91]

Conditional Basis of Lawful Permanent Residence for Certain Alien Spouses and Sons and Daughters; Battered and Abused Conditional Residents

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule implements section 701 of the Immigration Act of 1990 (IMMACT 90), Public Law 101-649, November 29, 1990, by amending the existing waiver provisions and providing a third basis for exempting a conditional resident from meeting the joint filing requirement of section 216 of the Act. This rule is necessary to establish procedures to allow a conditional resident alien who married in good faith but whose marriage was terminated by the United States citizen or permanent resident spouse, to seek a waiver of the joint filing requirement. This rule is also necessary to provide a method by which a battered conditional resident, or a conditional resident parent of an abused conditional resident child, may apply for removal of the conditional basis of resident status without filing a joint petition.

DATES: This interim rule is effective May 16, 1991. Written comments must be submitted on or before June 17, 1991.

ADDRESSES: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street NW., room 5304, Washington, DC 20536. To ensure proper handling, please reference INS number 1423-91 on your correspondence.

FOR FURTHER INFORMATION CONTACT: Rita A. Boie, Senior Immigration Examiner, Adjudications Branch, Immigration and Naturalization Service, 425 I Street NW., room 7223, Washington, DC 20536, telephone (202) 514-5014.

SUPPLEMENTARY INFORMATION: The Immigration Marriage Fraud Amendments of 1986 (IMFA) were enacted to combat fraud perpetrated by aliens who marry only for the purpose of obtaining immigration benefits. IMFA established a conditional resident status for aliens who obtained lawful permanent residence based upon a

marriage of less than two years' duration. Conditional status is granted for two years. A conditional resident is required to file a petition to remove the conditions during the 90-day period immediately preceding the second anniversary of the initial grant of conditional resident status. This petition must be filed jointly with the citizen or permanent resident spouse. A conditional resident who fails to file the joint petition has his or her status terminated and is subject to deportation.

The IMFA provided two waivers of the joint petitioning requirement. A conditional resident who establishes that his or her deportation would cause extreme hardship may be excused from fulfilling the joint petitioning requirement. The joint petitioning requirement may also be waived if the conditional resident establishes that he or she had entered into the marriage in good faith and terminated the marriage for good cause.

In order to comply with the terms of the IMFA, some conditional residents were forced to prematurely file for termination of the marriage, rather than attempting reconciliation. These conditional residents sought termination of the marriage because they could not qualify for the good faith/good cause waiver if the citizen or permanent resident spouses obtained the divorce. The increasing trend toward no-fault divorces also made it difficult for conditional residents to prove that they had terminated the marriage for good cause.

Concerns were raised that IMFA was also forcing aliens to remain in abusive relationships due to fear that they could not qualify for a waiver of the joint petition requirement. Further concerns were raised that conditional residents would be reluctant to reveal abuse due to fear of further harm if the abusers were informed of information contained in the applications.

Section 701 of IMMACT 90 was enacted to remedy these situations. The waiver available to a conditional resident whose bona fide marriage was terminated was amended to remove the requirement that the conditional resident obtain the divorce. An additional waiver of the joint filing requirement was established specifically for a conditional resident spouse or child who has been battered or abused. A confidentiality provision was included to ensure that the abuser would not become aware of the information contained in the waiver application.

Under these amendments to the IMFA, a conditional resident may file for a waiver of the joint filing requirement if the marriage was entered into in good faith, the marriage was terminated by either spouse, and the conditional resident was not at fault in failing to meet the joint petition filing requirements.

A conditional resident may also be granted a waiver of the joint filing requirement if the conditional resident or his or her child, was battered or subject to extreme abuse by the citizen or permanent resident spouse or parent during the marriage. This waiver is available to conditional residents regardless of the current legal status of the marriage.

Section 701 of IMMACT 90 also directs the Service to establish measures to protect the confidentiality of information concerning the abused alien spouse or child, including information regarding the whereabouts of such spouse or child.

During the preparation of this rule, the Service consulted with organizations and individuals involved with counselling and assisting victims of family violence. The Service also consulted organizations and publications concerning training, experience and licensing requirements for professionals in the field of mental health.

The Service also received unsolicited communications expressing concern about the regulations implementing the battered spouse and child waiver. Several expressed concern regarding the ability of Service officers to determine whether an applicant had been subject to extreme cruelty. These commenters encouraged the Service to provide specialized training to officers who adjudicate these applications. Others expressed concern that rigorous evidentiary requirements would prevent abused conditional residents from qualifying for the waiver. Several also suggested that the Service take very stringent measures to safeguard the confidentiality of the information provided by the battered conditional resident. Concerns regarding the potential for abuse of the waiver provision by conditional residents seeking to circumvent the provisions of the Act were also expressed.

This rule allows the waiver of the joint petition requirement to be granted to all conditional residents who establish that they and/or their children were battered by the citizen or lawful permanent resident spouse during the marriage. The Service has balanced the need to make compliance with the evidentiary requirements for the waiver as simple as possible against the need to ensure that unscrupulous aliens do not take advantage of the waiver to obtain immigration benefits to which they are not entitled. This rule allows battered conditional residents to establish eligibility, yet is stringent enough to prevent misuse of the benefit.

It further allows the applicant to present a wide range of documentary evidence to establish that the conditional resident or his or her child was battered. The applicant may submit any evidence which will establish that physical abuse took place.

While the aftermath of physical abuse is often visible and can be documented, the effects of mental and emotional abuse are difficult to observe and identify. The Service agrees with those commenters who have stated that most Service officers have not received training in this area and are not qualified to make reliable evaluations of an abused applicant's mental or emotional state. Therefore, it is necessary for the Service to rely upon the judgment of professionals trained in the area of evaluating an individual's emotional and mental condition. This rule requires that applicants for a waiver based upon extreme mental or emotional cruelty support the application with a professional evaluation of the claimed psychological abuse. The evaluation must have been completed by a professional recognized by the Service as an expert in the field of mental health.

The Service has consulted various sources to determine which professionals should be recognized as experts in the field. In order to avoid possible confusion by conditional resident applicants, it was necessary to eliminate those professions in which only some members might be qualified to make this determination. Therefore, the experts recognized by the Service are restricted to three groups of licensed professionals in the mental health field. These professionals are psychologists, psychiatrists and clinical social workers. Since not all states provide licensure for clinical social workers, this rule allows clinical social workers to submit evidence of certification or registration with certain national organizations in lieu of evidence of licensure.

The applicant is not required to enter into treatment with the mental health professional.

The confidentiality provision contained in this rule is designed to ensure that an abused alien need not fear that applying for the waiver could subject the applicant to further abuse. It effectively prevents disclosure of the information to the abuser without the

applicant's written consent or a court order.

A conditional resident parent may be granted a waiver based upon the abuse of his or her child by the citizen or permanent resident parent, regardless of the child's citizenship or immigration status. This is necessary to prevent separation of the abused child and conditional resident parent.

Both conditional residents and former conditional residents who have not yet departed the United States after termination of conditional resident status or under an order of deportation, may seek the benefits of the new waiver provisions. Since it is not possible to determine in advance which aliens will be eligible for these waivers, the Service cannot take affirmative action to reopen all prior terminations of conditional resident status. However, an alien may choose to file either an additional Application for Waiver of Requirement to File Joint Petition for Removal of Conditions (Form I–752) or a motion to reopen a prior denial of that application and request consideration for the new benefits.

The Service's implementation of this rule as an interim rule, with provision for post-promulgation public comment, is based upon the "good cause" exception found at 5 U.S.C. 553(d). The reasons and the necessity for immediate implementation of this interim rule are as follows:

Immediate implementation of this interim rule is necessary because the changes have been mandated by the passage of Public Law 101–649, (IMMACT 90), which amends the Immigration Marriage Fraud Amendments of 1986. Early implementation will allow qualified conditional residents to immediately apply for waivers of the joint petition requirement and avoid possible termination of conditional resident status and deportation.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not considered to be a major rule within the meaning of section 1(b) of Executive Order 12291, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612.

The information collection requirement contained in this rule has been cleared by the Office of Management and Budget (OMB), under the provisions of the Paperwork Reduction Act. The OMB control number for this collection is contained in 8 CFR 299.5.

List of Subjects in 8 CFR Part 216

Administrative practice and procedure, Aliens.

Accordingly, part 216 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 216—CONDITIONAL BASIS OF LAWFUL PERMANENT RESIDENCE STATUS FOR CERTAIN ALIEN SPOUSES AND SONS AND DAUGHTERS

1. The authority citation for part 216 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1154, 1184, 1186a and 8 CFR part 2.

2. Section 216.5 is amended by revising paragraphs (a)(1), (a)(2), (e)(2)(ii) and (e)(2)(iii), and by adding new paragraphs (a)(3) and (e)(3) to read as follows:

§ 216.5 Waiver of requirement to file petition to remove conditions.

(a) * * *

(1) Deportation from the United States would result in extreme hardship;

(2) The marriage upon which his or her status was based was entered into in good faith by the conditional resident alien, but the marriage was terminated other than by death, and the conditional resident was not at fault in failing to file a timely petition; or

(3) The qualifying marriage was entered into in good faith by the conditional resident but during the marriage the alien spouse or child was battered by or subjected to extreme cruelty committed by the citizen or permanent resident spouse or parent.

* * * * *

(e) * * *

(2) * * *

(ii) Documentation concerning the length of time during which the parties cohabited after the marriage and after the alien obtained permanent residence;

(iii) Birth certificates of children born to the marriage; and

* * * * *

(3) *Application for waiver based on alien's claim of having been battered or subjected to extreme mental cruelty.* A conditional resident who entered into the qualifying marriage in good faith, and who was battered or was the subject of extreme cruelty or whose child was battered by or was the subject of extreme cruelty perpetrated by the United States citizen or permanent resident spouse during the marriage, may request a waiver of the joint filing requirement. The conditional resident parent of a battered or abused child may apply for the waiver regardless of the child's citizenship or immigration status.

(i) For the purpose of this chapter the phrase "was battered by or was the subject of extreme cruelty" includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor) or forced prostitution shall be considered acts of violence.

(ii) A conditional resident or former conditional resident who has not departed the United States after termination of resident status or under an order of deportation may apply for the waiver. The conditional resident may apply for the waiver regardless of his or her present marital status. The conditional resident may still be residing with the citizen or permanent resident spouse, or may be divorced or separated.

(iii) Evidence of physical abuse may include, but is not limited to, expert testimony in the form of reports and affidavits from police, judges, medical personnel, school officials and social service agency personnel. The Service must be satisfied with the credibility of the sources of documentation submitted in support of the application.

(iv) The Service is not in a position to evaluate testimony regarding a claim of extreme mental cruelty provided by unlicensed or untrained individuals. Therefore, all waiver applications based upon claims of extreme mental cruelty must be supported by the evaluation of a professional recognized by the Service as an expert in the field. An evaluation which was obtained in the course of the divorce proceedings may be submitted if it was provided by a professional recognized by the Service as an expert in the field.

(v) The evaluation must contain the professional's full name, professional address and license number. It must also identify the licensing, certifying, or registering authority. The Service retains the right to verify the professional's license.

(vi) The Service's decision on extreme mental cruelty waivers will be based upon the evaluation of the recognized professional. The Service reserves the right to request additional evaluations from expert witnesses chosen by the Service. Requests for additional evaluations must be authorized by the Assistant Regional Commissioner for Adjudications.

(vii) Licensed clinical social workers, psychologists, and psychiatrists are professionals recognized by the Service for the purpose of this section. A clinical social worker who is not licensed only because the state in which he or she practices does not provide for licensing will be considered a licensed professional recognized by the Service if he or she is included in the Register of Clinical Social Workers published by the National Association of Social Workers or is certified by the American Board of Examiners in Clinical Social Work.

(viii) As directed by the statute, the information contained in the application and supporting documents shall not be released without a court order or the written consent of the applicant; or, in the case of a child, the written consent of the parent or legal guardian who filed the waiver application on the child's behalf. Information may be released only to the applicant, his or her authorized representative, an officer of the Department of Justice, or any federal or State law enforcement agency. Any information provided under this part may be used for the purposes of enforcement of the Act or in any criminal proceeding.

* * * * *

Dated: March 18, 1991.

Gene McNary,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 91-11601 Filed 5-15-91; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 317 and 381

[Docket No. 87-025F]

RIN 0583-AA69

Net Weight Labeling of Meat and Poultry Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule; delay of effective date.

SUMMARY: The Food Safety and Inspection Service (FSIS) has been requested to extend, and is extending, the effective date of the final rule published on November 30, 1990, titled "Net Weight Labeling of Meat and Poultry Products."

DATES: The original effective date was May 29, 1991. The new effective date is January 2, 1992. The new incorporation by reference approved date is also January 2, 1992.

FOR FURTHER INFORMATION CONTACT: William Smith, Director, Processed Products Inspection Division, Science and Technology, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-3640.

SUPPLEMENTARY INFORMATION: On November 30, 1990, FSIS published a rule titled "Net Weight Labeling of Meat and Poultry Products" (55 FR 49826, and corrected at 55 FR 50081, sec. 4, 1990). The effective date of the rule was May 29, 1991.

The final rule amends the Federal meat and poultry products inspection regulations to provide uniform net weight labeling requirements, including reasonable variations for label statements of net weight contents of containers of meat and poultry products. The rule incorporates by reference the National Bureau of Standards (NBS) Handbook 133, "Checking the Net Contents of Packaged Goods," Third Edition, September 1988, for compliance testing of net weight contents statements on packaged meat and poultry products. The rule also incorporates by reference the National Institute of Science and Technology (NIST) Handbook 44, "Specifications, Tolerances and Other Technical Requirements for Measuring Devices," 1990 Edition, September 1989. The rule establishes objective, numerical variations from the labeled net weight which are to be determined by prescribed procedures adopted by way of incorporation by reference of the Third Edition of NBS Handbook 133. The rule is designed to enhance the ability of Federal, State, and local agencies to enforce the industry-wide use of strict net weight standards at the packing, warehouse, and retail level, and will establish greater uniformity with regulations for net weight compliance used by the Food and Drug Administration for other types of foods.

Since the publication of this final rule, FSIS received a request from the American Meat Institute (AMI) to extend the effective date of the rule to January 1992. They believe that additional time is needed to resolve concerns that the National Conference on Weights and Measures has regarding adjustments to the NIST Handbook 133 procedures for checking weights for zero gray area on bacon and luncheon meats. Also, they believe time is needed to allow for the necessary training programs for industry and FSIS personnel, and to update and develop new net weight quality control programs.

FSIS has reviewed this matter and determined that in fact, more time is needed to allow for the necessary training programs for industry and FSIS personnel. Therefore, FSIS has decided that the effective date should be changed to allow more lead time for industry and the Agency. The new effective date for the final rule titled "Net Weight Labeling of Meat and Poultry Products" will be January 2, 1992.

Done at Washington, DC on May 9, 1991.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

[FR Doc. 91-11520 Filed 5-15-91; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 4 and 19

[Docket No. 91-2]

Rules of Practice and Procedure

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Interim rule with request for comment.

SUMMARY: In response to recently enacted legislation, the Office of the Comptroller of the Currency ("OCC") is revising its rules of practice and procedure to provide that formal administrative hearings are open to the public unless the Comptroller determines that an open hearing would be contrary to the public interest. The interim rule reverses the presumption embodied in prior law that an administrative hearing is to be conducted in private unless the Comptroller determines that a public hearing is necessary to protect the public interest. Under the interim rule, the OCC's interested division may file documents under seal if disclosure of such documents would be contrary to the public interest. The interim rule also states that, as a general rule, any documents filed during a proceeding shall be available to the public and amends 12 CFR part 4 to provide that transcripts of public hearings shall be available to the public.

DATES: This interim rule is effective May 16, 1991. Comments should be received on or before July 15, 1991.

ADDRESSES: Comments should be sent to Docket No. 91–2, Communications Division, Office of the Comptroller of the Currency, Washington, DC 20219. Attention: Jackie England. Comments will be available for inspection and photocopying at that address.

FOR FURTHER INFORMATION CONTACT: Lee Walzer, Attorney, Legislative and Regulatory Analysis Division, Telephone (202) 447–1632.

SUPPLEMENTARY INFORMATION: Section 2547 of the Crime Control Act of 1990, Public Law No. 101–647, amended section 8(u) of the Federal Deposit Insurance Act, 12 U.S.C. 1818(u), to provide that all hearings on the record with respect to any notice of charges issued by a Federal banking agency shall be open to the public, unless the agency, in its discretion, determines that holding an open hearing would be contrary to the public interest.

Section 2547 also repealed that portion of section 8(h)(1) of the Federal Deposit Insurance Act, 12 U.S.C. 1818(h)(1), which had provided that such a hearing be private unless the appropriate Federal banking agency, in its discretion, after fully considering the views of the party afforded the hearing, determined that a public hearing was necessary to protect the public interest.

Additionally, section 2547 permits a Federal banking agency to file any document or part thereof under seal if disclosure of the document would be contrary to the public interest.

To conform the OCC's rules of practice and procedure in 12 CFR part 19 to the mandate of section 2547, the OCC is issuing this interim rule with request for comment. The interim rule revises § 19.43 to state that formal administrative hearings conducted pursuant to subpart E of part 19 will be public unless the Comptroller determines that a public hearing would be contrary to the public interest. By motion filed with the Comptroller, a party to the proceeding may request a private hearing. The interim rule amends certain portions of § 19.43 conform that section to the new procedures being established. Furthermore, the revised § 19.43 authorizes the OCC's interested division to file documents under seal if disclosure of the documents would be contrary to the public interest. The interim rule also makes conforming changes to § 19.40(b) which governs attendance at a private hearing.

Finally, the interim rule revises § 19.44 to state that any documents filed in proceedings under § 19.43 shall be available to the public, unless the documents in question were filed under seal or the Comptroller orders a private hearing. Revised § 19.44 also entrusts the presiding officer with responsibility for preserving the confidentiality of documents during a private hearing or when documents are filed under seal.

In addition, the interim rule amends 12 CFR 4.15 to list transcripts of public hearings among the documents available to the public.

Other technical changes have been made in subpart E to conform the OCC's rules of practice and procedure to section 2547's mandates.

The OCC invites comment on any aspect of this interim rule. Any comments received will be considered in the preparation of the uniform rules of practice and procedure currently being developed by the Federal financial institutions regulators.

Regulatory Flexibility Act

Because the OCC has found that notice and public procedure concerning this rulemaking are not required under the Administrative Procedure Act, 5 U.S.C. 553, or any other law, the provisions of the Regulatory Flexibility Act, 5 U.S.C. 605(a), do not apply. This interim rule, issued pursuant to section 2547 of the Crime Control Act of 1990, merely conforms relevant portions of part 19 to the mandates of section 2547, and has no economic impact on small or large entities.

Executive Order 12291

The OCC has determined that this interim rule is not a "major rule" and therefore does not require a Regulatory Impact Analysis. This action, pursuant to section 2547 of the Crime Control Act of 1990, merely conforms relevant portions of part 19 to the mandates of section 2547, and has no economic impact.

Adoption Without Notice and Comment and Immediate Effective Date

This interim rule regarding agency practice and procedure implements section 2547 of the Crime Control Act which became effective upon the President's signature on November 29, 1990. This rule is effective immediately. This interim rule merely conforms the OCC's rules of practice and procedure to the mandates of the law. Therefore, notice and public comment and 30-day delayed effective date are not required under the Administrative Procedure Act, 5 U.S.C. 553 (b)(A) and (d)(3). All national banks were notified in Banking Bulletin 90–43 (December 21, 1990) that formal enforcement hearings that begin after January 1, 1991, will be public unless the Comptroller determines otherwise.

List of Subjects in 12 CFR Part 4

Freedom of information, Organization and sanctions (Government agencies), Public hearings, Reporting and recordkeeping requirements, Transcripts.

List of Subjects in 12 CFR Part 19

Administrative practice and procedure, Crime, Hearings, Investigations, National banks, Penalties, Securities.

Authority and Issuance

For the reasons set forth in the preamble, parts 4 and 19 of chapter I of title 12 of the Code of Federal Regulations are amended as set forth below:

PART 4—[REVISED]

1. The authority citation for part 4 is revised to read as follows:

Authority: 12 U.S.C. 1 *et seq.*; 5 U.S.C. 552.

2. In § 4.15 a new paragraph (a)(11) is added to read as follows:

§ 4.15 Orders, opinions, etc. available to the public.

(a) * * *

(11) Transcripts of public hearings, as set forth in 12 CFR part 19.

* * * * *

PART 19—[AMENDED]

3. The authority citation for part 19 is revised to read as follows:

Authority: 12 U.S.C. 1817(j), 1818, 1820 (secs. 7(j), 8 and 10 of the Federal Deposit Insurance Act); 15 U.S.C. 78*l* (h) and (i), 78o–4(c), 78o–5, 78q–1, 78u, 78w (secs. 12 (h) and (i), 15B(c), 15C, 17A, 21 and 23 of the Securities Exchange Act of 1934); 5 U.S.C. 554–557; 12 U.S.C. 504, 93b, 1818(b), 1972 (secs. 101, 103, 107 and 801 of the Financial Institutions Regulatory and Interest Rate Control Act of 1978); 12 U.S.C. 3102, 3108(a) (secs. 4 and 13(a) of the International Banking Act of 1978); 15 U.S.C. 78o–5 (sec. 101 of the Government Securities Act of 1986); 31 U.S.C. 330; 12 U.S.C. 1818(u) (sec. 2547 of the Crime Control Act of 1990, Pub. L. No. 101–647).

4. Paragraph (b) of § 19.40 is revised to read as follows:

§ 19.40 Conduct of formal hearing.

* * * * *

(b) *Attendance at private hearing.* If, pursuant to § 19.43, the Comptroller determines that a private hearing should be held, the hearing shall be attended only by the presiding officer, the parties, parties' representatives or counsel, limited participants and witnesses while testifying, and other persons determined by the presiding officer or the

Comptroller to have an official interest in the proceeding.

* * * * *

5. Section 19.43 is revised to read as follows:

§ 19.43 Public and private hearings.

(a) *General rule.* Any hearing conducted pursuant to this subpart shall be public, unless the Comptroller, in his or her discretion, determines that a public hearing would be contrary to the public interest.

(b) *Institution of private hearing through the issuance of a notice of charges.* The Comptroller, in his or her discretion, and after determining it to be in the public interest, may institute a private proceeding through or contemporaneously with the issuance of a notice of charges. Private proceedings instituted under this paragraph shall not be conducted pursuant to the procedures established under paragraphs (c) through (e) of this section.

(c) *Motion for private hearings.* Pursuant to the provisions of this section, a motion for a private hearing may be filed with the Comptroller in writing within 20 days of service of the notice. An opposing party may file an answer within 10 days of service of the motion. A party who does not file a motion or an answer to a motion for a private hearing shall be deemed to have waived any objections regarding whether the hearing shall be public or private.

(d) *Briefs, oral arguments.* Motions and answers filed pursuant to paragraph (c) of this section shall state the reasons therefor and may be supported by a brief, a written memorandum, or any other relevant documents. No oral arguments shall be allowed unless the Comptroller so directs.

(e) *Comptroller's decision.* After considering the views of the parties and such other pertinent information as the Comptroller deems necessary, the Comptroller shall issue an order granting or denying the motion for a private hearing, based on the criteria in paragraph (a) of this section. If a private hearing is granted, the Comptroller reserves the right to authorize at any time the release of the decision, transcript, or other documents contained in the record, or a summary or parts thereof.

(f) *Documents filed under seal in public hearings.* The OCC's interested division may file any document or part of a document under seal in any public formal administrative proceeding if disclosure of the document would be contrary to the public interest.

6. Section 19.44 is revised to read as follows:

§ 19.44 Confidentiality of proceeding.

(a) Except as otherwise provided in § 19.43(e)–(f), any documents filed during any proceeding described in § 19.43 will be available to the public.

(b) In the event of a private hearing or the filing of documents under seal pursuant to § 19.43, the presiding officer shall take all appropriate steps to preserve the confidentiality of such documents, including closing portions of the hearing to the public.

Dated: May 13, 1991.

Robert L. Clarke,

Comptroller of the Currency.

[FR Doc. 91–11680 Filed 5–15–91; 8:45 am]

BILLING CODE 4810–33–M

FEDERAL RESERVE SYSTEM

12 CFR Part 201

[Regulation A]

Extensions of Credit by Federal Reserve Banks; Change in Discount Rates

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors has amended its Regulation A—Extensions of Credit by Federal Reserve Banks to reflect its recent approval of a reduction in discount rates at each Federal Reserve Bank. The discount rate is the interest rate that is charged depository institutions when they borrow from their district Federal Reserve Banks. The Board took this action in light of continued weakness in economic activity. The Board acted on requests submitted by the Boards of Directors of the twelve Federal Reserve Banks. The amendents to Regulation A were effective April 30, 1991.

EFFECTIVE DATE: The discount rate changes were effective on the dates specified in § § 201.51 and 201.52.

FOR FURTHER INFORMATION CONTACT: William W. Wiles, Secretary of the Board (202/452-3257); for the hearing impaired *only*, Telecommunications Device for the Deaf (TTD) (202/452-3544), Dorothea Thompson, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Pursuant to the authority of sections 10(b), 13, 14, 19, *et al.*, of the Federal Reserve Act, the Board has amended its Regulation A (12 CFR part 201) to incorporate changes in discount rates on Reserve Bank extensions of credit. The discount rate is the interest rate that is charged depository institutions when they borrow from their district Federal Reserve Banks.

The Board acted on requests submitted by the Boards of Directors of the twelve Federal Reserve Banks effective on the dates specified below. The Board took this action in light of continued weakness in economic activity, especially in the industrial and capital goods areas, and evidence of abating inflationary pressures. The reduction, in part, realigns the discount rate with market interest rates.

The provisions of 5 U.S.C. 553(b) relating to notice and public participation were not followed in connection with the adoption of these amendments because the Board for the "good cause" stated above finds that delaying the changes in the discount rates listed in Regulation A to allow notice and public comment on the changes is impracticable, unnecessary, and contrary to the public interest.[1]

The provisions of 5 U.S.C. 553(d) generally prescribing 30 days' prior notice of the effective date of a rule have not been followed because section 553(d) provides that such prior notice is not necessary whenever there is good cause for finding that such notice is contrary to the public interest. As previously stated, the Board determined that delaying the changes in the discount rates listed in Regulation A is contrary to the public interest.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. No. 96-354, 5 U.S.C. 601 *et seq.*), the Board certifies that the changes will not have a significant adverse economic impact on a substantial number of small entities. The changes reduce rates of interest charged to borrowers from Reserve Banks, and the amendments will have no general effect on regulatory burdens for all depository institutions, no specific effect on such burdens for small depository institutions, and have no particular adverse effect on other small entities.

List of Subjects in 12 CFR Part 201

Banks, Banking, Credit, Federal Reserve System.

For the reasons outlined above, the Board of Governors amends 12 CFR part 201 as set forth below:

[1] The Board's Rules of Procedure provide that advance notice and deferred effective date will ordinarily be omitted in the public interest for changes in discount rates. 12 CFR 262.2(e).

1. The authority citation for 12 CFR part 201 continues to read as follows:

Authority: Secs. 10(a), 10(b), 13, 13a, 14(d) and 19 of the Federal Reserve Act (12 U.S.C. 347a, 347b, 343 *et seq.*, 347c, 348 *et seq.*, 357, 374, 374a and 461); and sec. 7(b) of the International Banking Act of 1978 (12 U.S.C. 347d).

2. Section 201.51 is revised to read as follows:

§ 201.51 Short-term adjustment credit for depository institutions.

The rates for short-term adjustment credit provided to depository institutions under § 201.3(a) of Regulation A are:

Federal Reserve Bank	Rate	Effective
Boston	5.5	Apr. 30, 1991
New York	5.5	Apr. 30, 1991
Philadelphia	5.5	Apr. 30, 1991
Cleveland	5.5	May 1, 1991
Richmond	5.5	Apr. 30, 1991
Atlanta	5.5	Apr. 30, 1991
Chicago	5.5	Apr. 30, 1991
St. Louis	5.5	May 2, 1991
Minneapolis	5.5	Apr. 30, 1991
Kansas City	5.5	Apr. 30, 1991
Dallas	5.5	Apr. 30, 1991
San Francisco	5.5	Apr. 30, 1991

3. Section 201.52 is revised to read as follows:

§ 201.52 Extended credit for depository institutions.

(a) *Seasonal credit.* The rates for seasonal credit extended to depository institutions under § 201.3(b)(1) of Regulation A are:

Federal Reserve Bank	Rate	Effective
Boston	5.5	Apr. 30, 1991
New York	5.5	Apr. 30, 1991
Philadelphia	5.5	Apr. 30, 1991
Cleveland	5.5	May 1, 1991
Richmond	5.5	Apr. 30, 1991
Atlanta	5.5	Apr. 30, 1991
Chicago	5.5	Apr. 30, 1991
St. Louis	5.5	May 2, 1991
Minneapolis	5.5	Apr. 30, 1991
Kansas City	5.5	Apr. 30, 1991
Dallas	5.5	Apr. 30, 1991
San Francisco	5.5	Apr. 30, 1991

(b) *Other extended credit.* The rates for other extended credit provided to depository institutions under sustained liquidity pressures or where there are exceptional circumstances or practices involving a particular institution under § 201.3(b)(2) of Regulation A are:

Federal Reserve Bank	Rate	Effective
Boston	5.5	Apr. 30, 1991
New York	5.5	Apr. 30, 1991
Philadelphia	5.5	Apr. 30, 1991
Cleveland	5.5	May 1, 1991
Richmond	5.5	Apr. 30, 1991
Atlanta	5.5	Apr. 30, 1991
Chicago	5.5	Apr. 30, 1991
St. Louis	5.5	May 2, 1991
Minneapolis	5.5	Apr. 30, 1991
Kansas City	5.5	Apr. 30, 1991
Dallas	5.5	Apr. 30, 1991
San Francisco	5.5	Apr. 30, 1991

These rates apply for the first 30 days of borrowing. For credit outstanding for more than 30 days, a flexible rate will be charged which takes into account rates on market sources of funds, but in no case will the rate charged be less than the basic discount rate plus one-half percentage point. Where extended credit provided to a particular depository institution is anticipated to be outstanding for an unusually prolonged period and in relatively large amounts, the 30-day time period may be shortened.

By order of the Board of Governors of the Federal Reserve System, May 7, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91-11264 Filed 5-15-91; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 101

[T.D. 91-47]

Changes in the Customs Service Field Organization; Apalachicola, Carrabelle, and Port St. Joe, FL

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by removing the ports of entry of Apalachicola and Carrabelle and redesignating Port St. Joe a Customs station. Even though these ports have been inactive for many years, Customs has had to provide full service there because of their designation. A review of requirements and available resources indicates that closing Apalachicola and Carrabelle as ports of entry and converting Port St. Joe to a Customs station is warranted.

EFFECTIVE DATE: July 15, 1991.

FOR FURTHER INFORMATION CONTACT: Joseph O'Gorman, Office of Inspection and Control, 202-566-9425.

SUPPLEMENTARY INFORMATION:

Background

The Customs organizational structure consists of regions, districts, ports of entry within districts, and stations supervised by ports. The list of designated Customs ports of entry is set forth in § 101.3(b), Customs Regulations (19 CFR 101.3(b)). Customs stations are listed in § 101.4(c), Customs Regulations (19 CFR 101.4(c)).

Customs ports of entry and stations are locations where Customs officers or employees are assigned to accept entries of merchandise, clear passengers, collect duties, and enforce the various provisions of Customs and related laws. The significant difference between ports of entry and stations is their operational cost to the government. At ports of entry, the government incurs the costs associated with the operation. At stations, the government is reimbursed for:

(1) The salaries and expenses of its officers or employees for services rendered in connection with the entry or clearance of vessels; and

(2) Except as otherwise provided by the Customs Regulations, the expenses (including any per diem allowed in lieu of subsistence), but not the salaries of its officers or employees, for service rendered in connection with the entry or delivery of merchandise.

As part of a continuing program to obtain more efficient use of its personnel, facilities, and resources, and to continue to provide better service to carriers, importers, and the public, Customs is closing the Apalachicola and Carrabelle ports of entry located in the Florida panhandle area, and, at the same time, redesignating Port St. Joe a Customs station. These ports of entry have been inactive and not manned for a number of years. Only six vessels were entered at Port St. Joe during a recent three-year period. This low level of activity does not warrant designation as ports of entry.

Adequate Customs service will continue to be provided to the Panhandle region of Florida through the ports of Panama City and Pensacola, as well as the Port St. Joe station. Pensacola, Panama City, and Port St. Joe are located along the coast in a linear pattern, and are thus able to provide convenient service to importers in that area. In addition, the port of Mobile is located in close proximity to Pensacola. Importers and brokers had indicated

their preference for using this larger port of entry to enter and clear merchandise. Since there appears to be no imminent increase in international activity in the Panhandle area closing these ports of entry will have little, if any, economic impact in this area.

Notice of this action was contained in a Notice of Proposed Rulemaking published in the **Federal Register** on October 24, 1990 (55 FR 42660), and interested parties were invited to comment on the action. No comments were received.

Drafting Information

The principal author of this document was Peter T. Lynch, Regulations and Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Executive Order 12291 and Regulatory Flexibility Act

Because this rule relates to agency organization and management, it is not subject to either Executive Order 12291 or the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Lists of Subjects in 19 CFR Part 101

Customs duties and inspection, Exports, Imports, organization and functions (Government agencies).

Amendment to the Regulations

Part 101, Customs Regulations (19 CFR part 101) is amended as set forth below:

PART 101—GENERAL PROVISIONS

1. The authority for part 101 continues to read as follows:

Authority: 5 U.S.C. 2, 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States) 1623, 1624.

§ 101.3 [Amended]

2. Section 101.3(b) is amended by removing the entries "Apalachicola, Fla.", "Carrabelle, Fla. (E.O. 7508, Dec. 11, 1936; 1 FR 2149)", and "Port St. Joe, Fla. (E.O. 7818, Feb. 17, 1983; 3 FR 503)", in the column headed "Ports of entry," in the Tampa, Florida District of the Southeast Region.

§ 101.4 [Amended]

3. Section 101.4(c) is amended by adding, in appropriate alphabetical order, in the listing for "Tampa, Fla." under the "District" column, "Port St. Joe" in the column headed "Customs stations" and "Panama City" in the column headed "Port of entry having supervision".

John B. O'Loughlin,
Acting Commissioner of Customs.

Approved: May 10, 1991.

Peter K. Nunez,
Assistant Secretary of the Treasury.

[FR Doc. 91-11634 Filed 5-15-91; 8:45 am]
BILLING CODE 4820-02-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary of Fair Housing and Equal Opportunity

24 CFR Part 111

[Docket No. R-91-1539; FR-2926-F-01]

Conforming Amendment to the Final Rule of the Fair Housing Assistance Program

AGENCY: Office of the Assistant Secretary for Equal Opportunity, HUD.

ACTION: Final rule.

SUMMARY: This final rule clarifies the eligibility criteria for participation in the Fair Housing Assistance Program (FHAP) at 24 CFR part 111 to make clear that agencies that entered into interim agreements or became contributions agencies prior to September 13, 1988, the date of enactment of the Fair Housing Amendments Act of 1988 (FHAA), maintain their pre-FHAA funding status.

EFFECTIVE DATE: This rule is effective June 17, 1991.

FOR FURTHER INFORMATION CONTACT: Marcella Brown, Director, Programs Division, or Lauretta Dixon, Branch Chief, FHAP Branch, Office of Fair Housing Enforcement and Section 3 Compliance, Room 5218, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708-0455. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: This final rule is a technical amendment to 24 CFR 111.107(a) to clarify a provision that may appear to limit all agencies seeking to participate in the Fair Housing Assistance Program (FHAP) to capacity building funds only.

Title VIII of the Civil Rights Act of 1968 (hereinafter, the Act) prohibits discrimination in the sale, rental and financing of dwellings based on race, color, religion, sex, or national origin. The Fair Housing Amendments Act of 1988 (hereinafter, the 1988 Amendments), enacted September 13, 1988, amended the Act by also prohibiting discriminatory housing practices based on handicap and familial status.

FHAP was established to further these fair housing goals by providing assistance to State and local fair housing enforcement agencies. However, before FHAP assistance can be provided, the State or local fair housing law administered by the agency must be recognized as providing rights and remedies that are substantially equivalent to those provided by the Act. If a State or local fair housing law on its face provides rights and remedies that are substantially equivalent to those provided in the Act, but the law has not been in effect, or the State or local agency in operation, for a sufficient time to demonstrate substantial equivalence to the Act, the agency may enter into an interim agreement with HUD. The interim agreement permits HUD to refer complaints to the agency and monitor the agency's administration and enforcement of its State or local fair housing law. Based on the agency's performance with interim referrals, HUD makes a determination of substantial equivalence to the Act.

During its first two years of participation in FHAP, an agency is eligible to receive only capacity building funds regardless of whether it administers a program recognized as substantially equivalent to the Act or receives funding under an interim agreement. After two years of satisfactory participation in FHAP, an agency is considered to be a contributions agency, rather than a capacity building agency, and is eligible to receive training funds, complaint processing funds and incentive funds.

Because of the 1988 Amendments to the Act, it became necessary for agencies to enter into interim agreements with respect to the amended law. The Department had determined that despite this reexamination, the funding status of agencies was to be "grandfathered," or maintained in the same status as existed before the 1988 Amendments, so that agencies would not revert to two years of capacity building funding even though they enter into new interim agreements for the 1988 amendments.

The rule makes it clear that FHAP funding received by an agency under any present or past agreement for the interim referral of complaints to the agency or other use of the services of the agency as described under 24 CFR 115.11, and FHAP funding received by a grandfathered agency prior to its certification for referrals under § 115.6(d) will be considered in determining whether the agency has received its two years of capacity funding.

The Department has determined that the conforming change covered by this rule should be adopted without the delay occasioned by requiring prior notice and comment. This change merely serves to clarify a possible ambiguity in an existing rule and is exempt, as an interpretive rule, under 24 CFR part 10 from notice and comment requirements. However, the effective date will be delayed for a period of 30 days following publication, in accordance with section 7(o)(3) of the Department of Housing and Urban Development Act.

Findings and Certifications

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in cost or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect 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.

This action is categorically excluded from the NEPA requirements at 24 CFR part 50 in accordance with 24 CFR 50.20(k) because it is an internal administrative procedure whose content does not constitute a development decision nor affect the physical condition of project areas or building sites.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule only revises a single section of title 24 of the Code of Federal Regulations to clarify its meaning and make it conform to other related sections.

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule do not have federalism implications, and, thus, are not subject to review under the Order. This rule merely effects a conforming change and will not have substantial, direct effects on States, on their political subdivisions, or on their relationships with the Federal government, or on the distribution of power and responsibilities between them and other levels of government.

The General Counsel, as the Designated Official under Executive Order 12606, the Family, has determined that this rule does not have a potentially significant impact on family formation, maintenance, and general well-being, and thus, is not subject to review under the Order.

This rule was not listed in the Department's Semiannual Agenda of Regulations published on April 22, 1991 (56 FR 17360) under Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 111

Fair housing, Grant programs—housing and community development, Reporting and recordkeeping requirements.

Accordingly, 24 CFR part 111 is amended as follows:

PART 111—FAIR HOUSING ASSISTANCE PROGRAM

1. The authority citation for 24 CFR part 111 continues to read as follows:

Authority: Fair Housing Act (42 U.S.C. 3601–20); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. Section 111.107(a) is revised and the introductory text is republished to read as follows:

§ 111.107 Agency threshold eligibility criteria.

To be eligible to participate in the FHAP, an agency first must meet the following criteria:

(a) The agency must administer a State or local fair housing law certified under 24 CFR 115.6 (including grandfathered agencies certified under 24 CFR 115.6(d)) and such certification must continue to be outstanding; or the agency must be a party to an agreement for interim referral of complaints to the agency or other use of the services of the agency, as described under 24 CFR 115.11. Agencies are eligible for capacity building funding during the first two years of FHAP funding, and for contributions funding during other years of FHAP funding. FHAP funding received by a agency under an agreement for the interim referral of complaints to the agency or other use of the services of the agency as described under 24 CFR 115.11, and FHAP funding received by a grandfathered agency prior to its certification for referrals under § 115.6(d), will be considered in determining whether the agency qualifies as a contributions agency.

* * * * *

Dated: May 9, 1991.

Gordon Mansfield,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 91–11603 Filed 5–15–91; 8:45 am]

BILLING CODE 4210–28–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD1 90–125]

Anchorage Grounds; Coast Guard COTP Providence, RI, Zone; Buzzards Bay

AGENCY: Coast Guard, Department of Transportation.

ACTION: Final rule.

SUMMARY: The Coast Guard is adding to the existing anchorage ground regulations in 33 CFR 110.140 for Buzzards Bay near the entrance to the Cleveland Ledge Channel approach to the Cape Cod Canal. The added regulations will allow the U.S. Coast Guard and the U.S. Army Corps of Engineers to provide additional safety measures for vessel movement within this immediate area, especially during times of limited visibility and/or temporary Cape Cod Canal closure.

EFFECTIVE DATE: This regulation is effective June 17, 1991.

FOR FURTHER INFORMATION CONTACT: Lieutenant Scot S. Graham, c/o U.S. Coast Guard Marine Safety Office (MSO) Providence, John O. Pastore Fed. Bldg, Providence, RI 02903–1790, telephone at (401) 528–5335. The comments and other materials referenced in this rule will be available for inspection and copying at the above address. Normal office hours are between 8 a.m. and 4 p.m., Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: On Wednesday, January 9, 1991, the Coast Guard published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** (Volume 56, No. 6). One comment letter was received. Other comments were reviewed at a meeting of concerned parties on March 11, 1991.

Drafting Information

The drafters of this regulation are Lieutenant S.S. Graham, Port Operations Officer for the Coast Guard Captain of the Port Providence, and Lieutenant R.R. Korroch, project attorney, First Coast Guard District Legal Office.

Discussion of Regulations

The Coast Guard Captain of the Port Providence, in coordination with the U.S. Army Corps of Engineers, is adding requirements to the existing anchorage ground regulations in 33 CFR 110.140. This regulation is issued pursuant to 33 U.S.C. 471 as set out in the authority citation for all of part 110. This action will mitigate the safety hazards associated with large vessels waiting for clearance to enter into the Cape Cod Canal, including Cleveland Ledge Channel, especially during closure of the canal due to limited visibility. Based upon the danger associated with vessel movement through these pilot waters and the fact that many vessels must anchor during limited visibility prior to entering Cleveland Ledge Channel a potential safety and environmental hazard to the Bay and vessels is created. These hazards include groundings and/or collision and resulting injury to persons, sinking of vessels and possible oil and chemical spills. The below listed regulations will better assist the U.S. Coast Guard and the U.S. Army Corps of Engineers in providing alternatives to vessels delayed by poor visibility from entering the channel.

Discussion of Comments and Amendments to the NPRM

Consultation with, and comments from, vessel agents, masters and the general public were sought. During this comment period, 3 comments in response to the NPRM were received: One from an environmental group, one from the U.S. Army Corps of Engineers, and one from internal Coast Guard staff review. These comments were addressed at a meeting of concerned parties on March 11, 1991. The comments received reflected the support for this new addition to the existing anchorage regulations. The three comments, addressing a total of four elements of the proposed rules, are summarized as follows:

1. A local environmental group endorsed the NPRM in spirit and in content.

2. The U.S. Army Corps of Engineers requested clarification of the procedures to utilize the existing anchorages "C" and "D" so that possible confusion regarding draft requirements for vessels to use those anchorages could be controlled by the U.S. Army Corps of Engineers Cape Cod Canal traffic controller.

3. Internal Coast Guard staff review determined that it was not necessary to include the following section of the NPRM: "* * * (iv) When risk of collision exists, both vessels must communicate with each other and the traffic controller of the Cape Cod Canal." All parties agreed adherence to the Rules of the Road mandates this action on the part of the vessel operators.

4. Internal Coast Guard staff review determined that it was not necessary to include the following section of the NPRM: "* * * (vii) Each vessel in a 'dead ship' status must engage an adequate number of tugs alongside during tide changes. A tug alongside may assume the Channel 16 FM radio guard for the vessel after it notifies Coast Guard Group Woods Hole or the traffic controller for the Cape Cod Canal." All parties agreed that this type of requirement can be handled on a case-by-case basis when the Coast Guard Captain of the Port reviews a vessel's request to go into a "deadship" status.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulations and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation in unnecessary. The added requirements are for notification purposes and therefore add a minimal cost, if any, to the shipping industry or other persons involved. Since the impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Regulations

In consideration of the foregoing, the Coast Guard amends part 110 of title 33, Code of Federal Regulations, as follows:

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035, and 2071; 49 CFR 1.46; and 33 CFR 1.05(g). Section 110.1a and each section listed in 110.1a are also issued under 33 U.S.C. 1223 and 1231.

2. Section 110.140 is amended by adding a sentence to the endings of paragraphs (b)(1) and (b)(2) and adding (b)(3) through (b)(10).

§ 110.140 Buzzards Bay, Nantucket Sound, and adjacent waters, MA.

* * * * *

(b) * * *

(1) * * *

Each vessel must obtain permission to proceed to Anchorage C from the U.S. Army Corps of Engineers Cape Cod Canal Control traffic controller.

(2) * * *

Each vessel must obtain permission to proceed to Anchorage D from the U.S. Army Corps of Engineers Cape Cod Canal Control traffic controller.

(3) Anchorage L—(East side is preferred). The waters bounded by a line connecting the following points: 41–34–44N/70–72–42W to 41–35–16N/70–43–23W to 41–33–22N/70–46–02W to 41–32–50N/70–45–22W and thence to the beginning.

(4) Anchorage M—(west side). The waters bounded by a line connecting the following points: 41–35–35N/70–44–47W to 41–36–24N/70–45–53W to 41–35–00N/70–47–53W to 41–34–12N/70–46–47W and thence to the beginning

(5) Each vessel that anchors in these anchorages must notify the U.S. Army Corps of Engineers Cape Cod Canal Control traffic controller when it anchors, and provide the vessel's name, length, draft, cargo, and its position.

(6) Each vessel anchored in these anchorages must notify U.S. Army Corps of Engineers Cape Cod Canal Control traffic controller when it weighs anchor.

(7) No vessel may anchor unless it maintains a bridge watch, guards and answers Channel 16 FM, and maintains an accurate position plot.

(8) No vessel may anchor unless it maintains the capability to get underway within 30 minutes; except with prior approval of the Coast Guard Captain of the Port Providence.

(9) No vessel may anchor in a "dead ship" status (propulsion or control unavailable for normal operations) without the prior approval of the Coast Guard Captain of the Port Providence.

(10) No vessel may conduct lightering operations within these anchorages.

* * * * *

Dated: April 30, 1991.

R.I. Rybacki,

Commander, First Coast Guard District.

[FR Doc. 91–11544 Filed 5–15–91; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 9

Alaska Mineral Resource Assessment Program

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: The National Park Service (NPS) is adopting regulations at 36 CFR

part 9, subpart D to govern mineral resource assessment activities in Alaska units of the National Park System pursuant to section 1010 of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA), 16 U.S.C. 3150. These regulations ensure that such assessments are conducted in an environmentally sound manner that protects the natural systems of the units and are compatible with the purposes for which the units are established. The mineral resource assessments in parks are exclusively data collection in nature and may be conducted only by authorized Department of the Interior bureaus and their contractors.

The NPS published proposed rules for 36 CFR part 9, subpart D in Federal Register on March 8, 1991 (56 FR 9917). The public comment period for those rules ended on April 8, 1991. The NPS received 9 letters commenting on the proposed rules containing a total of 31 individual comments.

EFFECTIVE DATE: June 17, 1991.

FOR FURTHER INFORMATION CONTACT: Sharon Kliwinski, National Park Service, Mining and Minerals Branch, P.O. Box 37127, Washington, DC 20013–7127, telephone (202) or (FTS) 343–4964; or Judy Alderson, National Park Service, Alaska Regional Office, 2525 Gambell St., Anchorage, Alaska 99503, telephone (907) 257–2635.

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion of Final Rule and Response to Comments
III. Procedural Matters

I. Background

A. Overview of Alaska Mineral Resource Assessment Program

The Alaska Mineral Resource Assessment Program (AMRAP) is a Congressionally mandated program authorized by section 1010 of the Alaska National Interest Lands Conservation Act (ANILCA; 16 U.S.C. 3150). Section 1010(a) requires that "the Secretary of the Interior shall, to the full extent of his authority, assess the oil, gas, and other mineral potential on all public lands in the State of Alaska in order to expand the mineral resource data base of such lands." Public lands, as defined by section 102(3) of ANILCA (16 U.S.C. 3102), include all Federal lands in Alaska including those in units of the National Park System. The Secretary must consult with the State of Alaska, the Secretary of Energy and any other Federal agency on this and other mineral assessment programs and is authorized to contract with public or private entities to carry out the program. The Secretary is required to allow for access by air for mineral resource assessment activities. Section 1010(a) explicitly prohibits the use of core and test drilling as a mineral resource assessment technique that could be used on lands in units of the National Park System. This prohibition includes exploratory drilling of oil and gas test wells. AMRAP is an ongoing program and mineral resource assessment activities have been conducted on public lands in Alaska under AMRAP for 10 years.

Pursuant to section 1010(b) of ANILCA, mineral resource assessment activities carried out in conservation system units, which includes units of the National Park System, shall be subject to regulations promulgated by the Secretary. The regulations must ensure that such activities are carried out in an environmentally sound manner that (1) does not result in lasting environmental impacts that appreciably alter the natural character of the units or biological or ecological systems in the units; and (2) is compatible with the purposes for which the units are established.

While ANILCA section 1010(a) provides a Congressional mandate to the Secretary to conduct mineral resource assessment work and pursuant to section 1011 report the results to Congress, section 1010(b) is designed to ensure that the work is carried out in an environmentally sensitive manner. The intent of these regulations is to provide a process and guidelines for permitting access to National Park System lands for the conduct of mineral resource assessment work per section 1010 while at the same time ensuring that such work does not result in lasting impacts and is compatible with park purposes and values.

B. Objectives of AMRAP

AMRAP is a Federal program mandated by Congress for the collection of geologic, geochemical, geophysical, and mineral deposit data in order to assess the oil, gas, and other fuel and nonfuel mineral potential on public lands in Alaska. The program includes the prediction and/or determination of the location, type, amount, and extent of the mineral resources on these lands. The objective of the program is to provide Congress with baseline data about the occurrence of minerals in conservation system units to aid in future legislative land status decisions. Several Department of the Interior agencies are involved in carrying out the program.

The United States Geological Survey (USGS) is the primary agency responsible for AMRAP research. The goal of the USGS AMRAP is a systematic investigation of Alaska's mineral resources through four progressively more detailed levels of study. Level I studies are very broad State-wide studies; Level II studies address large parts of the State with resultant maps generally at a scale of 1:1,000,000; Level III studies generally produce mineral resource assessment maps at a scale of 1:250,000 (1 inch=6 miles) and 1:125,000 (1 inch=3 miles); and Level IV studies detail specific mining districts, mineral deposits or topics related to the genesis of mineral deposits. Currently, the USGS's major effort is at the Level III stage with studies in progress in 26 quadrangles. Out of a total of 153 quadrangles to be studied, 38 have been completed to date.

Mineral resource assessment work conducted by the Bureau of Mines (BOM) typically involves the collection of mineral data to determine the location, type, amount and physical extent of known mineral resources. Most of the work involves mapping and sampling to document the configuration and location of mines, prospects, claims and mineralized areas.

The Minerals Management Service (MMS) has no mandate to assess public lands under ANILCA, however, the agency has in the past and will probably continue to request access to park lands to conduct investigations involving sampling and taking measurements of the physical properties of rock. The results of this research are used in assessing the mineral potential and geologic characteristics of rock units underlying the Outer Continental Shelf.

Other Interior agencies, such as the Bureau of Land Management (BLM), may from time to time request access to NPS lands to conduct mineral resource assessment work necessary to meet the goals of their AMRAP responsibilities.

AMRAP encompasses the study of all public lands in Alaska, including those managed by the U.S. Fish and Wildlife Service, the U.S. Forest Service, the BLM and the NPS. Public lands, as defined in § 102(3) of ANILCA, means lands situated in Alaska which are Federal lands (including those lands in conservation system units), with exceptions provided for State and Native corporation selected or conveyed lands and lands referred to in section 19(b) of the Alaska Native Claims Settlement Act.

The various Federal agencies coordinate their AMRAP studies so that contiguous parcels of land under management by different agencies may be studied in an efficient and cost effective manner. The agencies convey

mineral resource and work plan information to the State of Alaska, and commonly promote cooperative projects with the State.

C. Technical Aspects of Mineral Resource Assessments Under AMRAP

Most mineral resource assessments conducted under AMRAP include first time studies of areas that may contain up to several million acres. Much of the work now, and for the foreseeable future, is reconnaissance in nature involving the systematic study of the mining districts and 1:250,000-scale quadrangle maps. AMRAP field work consists principally of: (1) Geologic mapping and hand sampling on foot traverses in combination with helicopter landings to fill in the gaps in data between traverses; (2) geochemical sampling requiring access by foot, boat, light trucks where roads exist, and fixed-wing or supplemental helicopter landings to complete the systematic collection of stream sediments, water, soils, rocks, and occasionally small samples of vegetation; and (3) systematic geophysical surveys.

Geophysical surveys typically include instrumental measurements made on the ground simultaneously with geologic and geochemical sampling, and occasionally require the excavation with hand tools of holes a few inches deep in order to implant temporary electrodes. Geophysical sampling also may include collection of paleomagnetic specimens by use of a hand-held drill to remove small cylindrical samples.

Geologic sample collection usually is restricted to fistsized samples although larger samples of several pounds occasionally are taken for certain analytical techniques such as radiometric dating, assaying, and mineral characterization and benefication studies. In park units, agencies conducting AMRAP activities do not use drilling, trenching, or other techniques that may result in lasting environmental impacts. Core and test drilling, including exploratory oil and gas test wells, are explicitly prohibited in park units pursuant to § 1010(a) of ANILCA.

The agencies must make overflights by helicopter and small fixed-wing aircraft to collect instrumental remote-sensing and other geophysical data. Minimum flight elevations above the ground range from 400 to 1,000 feet, and flight-line spacings are from one-fourth to 20 miles or may consist of a single line only.

In a typical quadrangle, the density of stations for gathering data, including sample sites, is about 1 station per 1–10 square miles. Although most of the work performed is of a general nature, the agencies often perform detailed field work to study critical geologic localities or critical and strategic mineral deposits. Completion of data collection for a quadrangle or a specific site can require 3 to 4 field seasons of 30–45 days duration each. Field work generally requires teams of 5 to 10 scientists and support staff.

The agencies typically conduct their field work from one or two fixed camps and utilize helicopters for movement within the study area. The field camps are relatively small, temporary, and unobtrusive. Field teams often work out of existing lodges or commercial facilities when practical and efficient.

In passing ANILCA, Congress recognized the logistic difficulties of working in Alaska and directed the Secretary to allow access by air for the accomplishment of AMRAP activities on public lands. AMRAP field work depends heavily on the use of helicopters. Most Alaska study areas are so large and remote that it is often inefficient and sometimes unsafe to access the areas otherwise.

D. AMRAP Studies in Units of the National Park System

Over the past several years, the NPS received numerous requests from the USGS, MMS, and BOM to allow entry onto park lands to conduct mineral resource assessment work. These requests included permission to conduct geologic mapping and reconnaissance, collection of mineral and rock samples, geochemical studies of streams, geophysical studies, and helicopter access and field camp support operation. In the absence of the regulations required by § 1010(b) of ANILCA to implement AMRAP in Alaska parks, the NPS permitted the mineral resource assessment work under the provisions of 36 CFR 1.6 (Permits) and 36 CFR 2.5 (Research specimens). The NPS used the general provisions of § 1.6 to permit AMRAP activities when requests for those activities could not meet the requirements of § 2.5. The requirements of § 2.5, and the NPS Management Policies, are very specific and limited in scope to the collection of research specimens. Under § 2.5, the NPS may allow reputable scientific or educational institutions or State or Federal agencies to collect rocks and minerals under a specimen collection permit for the purpose of research, baseline inventories, monitoring, impact analysis, group study or museum display. Such research must meet the management goals of the requesting agency, but it must also further park objectives as articulated in existing legislation and NPS planning documents.

Sections 1.6 and 2.5 were never intended to accommodate the long term program needs of the AMRAP agencies. In addition, § 1010(b) of ANILCA mandates that the Secretary promulgate regulations to ensure that mineral resource assessment activities conducted in conservation system units in Alaska are carried out in an environmentally sound manner. This mandate and the narrow scope of the Service's current regulations necessitate the current rulemaking.

E. AMRAP in Wilderness Areas

The NPS wilderness management policies are based on statutory provisions of the 1916 NPS Organic Act (16 U.S.C. 1 *et seq.*), the 1964 Wilderness Act (16 U.S.C. 1131 *et seq.*) and legislation establishing individual units of the national park system.

AMRAP activities conducted in NPS wilderness areas will be carried out in accordance with the applicable NPS wilderness management plan, and the applicable provisions of the Wilderness Act so as to preserve wilderness resources and character. The Wilderness Act generally prohibits motorized equipment or mechanized transport in designated wilderness areas. Assessment activities conducted by foot or in some instances by hand-propelled watercraft may be allowed. The use of aircraft in a park will be in accordance with the applicable wilderness management plan.

Since passage of the Wilderness Act of 1964 and the Federal Land Policy and Management Act of 1976, the USGS, the BOM, and the BLM have conducted mineral resource assessments and evaluations on U.S. Forest Service and BLM wilderness study areas.

F. Contracting of AMRAP Activities

Under section 1010, the Secretary is authorized to enter into contracts with public and private entities to carry out all or any portion of the mineral resource assessment program. Agencies conducting AMRAP studies periodically contract with other Federal or State agencies or private entities to perform work. The USGS rarely contracts geologic and geochemical work, but does contract some geophysical surveys and certain support functions including helicopter services and installation of camps and fuel caches. The BOM contracts some support functions including transportation, helicopter services, camp installation and operation, and fuel caches. Nearly all of MMS research projects have been

cooperative efforts, mostly with private industry and the State of Alaska. If MMS intends to use third party assistance in carrying out AMRAP activities in the parks in the future that assistance must be governed by a legally binding contract. All information or data of an AMRAP study recovered under contract is the property and under the control of the AMRAP agency.

II. Discussion of Final Rule and Response to Comments

The final rule establishes a new subpart D governing the conduct of mineral resource assessments in Alaska units of the National Park System.

The NPS received nine letters commenting on the proposed rule: five letters from Federal agencies, one from the State of Alaska, two from public interest groups, and one from an individual. The nine letters contained a total of 31 specific comments.

The State of Alaska and the National Parks and Conservation Association (NPCA) commented that the 30-day public review period was too short to provide for meaningful public involvement. In addition, NPCA specifically requested an extension of the public comment period. They noted that such an extension was further warranted because the timing of the proposed rule precludes AMRAP activities for this field season.

The proposed rule erroneously indicated that the final rule had to be published by April 15 to allow for AMRAP work in parks this season. Ongoing coordination between the NPS and the AMRAP agencies on planned and budgeted AMRAP work will allow that work to be conducted this field season pursuant to the permitting mechanism established in these regulations. The NPS recognizes the benefit of extensive public involvement in the rulemaking process. However, given the dual public policy objectives of providing for meaningful public involvement and allowing assessment field work this season, the Service believes that the 30-day review period was adequate given the nature of the rulemaking.

The State of Alaska commented that it presumes that subsistence analyses under ANILCA 810 will be conducted. The NPS will meet the subsistence analyses requirements during the permitting process.

Authority

The Alaska National Interest Lands Conservation Act of 1980 (ANILCA), 16 U.S.C. 3150, is the primary statutory authority for the promulgation of these regulations. The Organic Act of 1916 (16 U.S.C. 1 *et seq.*, as amended) that established the NPS provides additional authority. It mandates the Service to conserve the scenery, natural and historic objects, and wildlife of park units, and to provide for public enjoyment of the units in such manner and by such means as will leave them unimpaired for the enjoyment of future generations. Section 3 of the Act authorizes the Secretary of the Interior to promulgate rules and regulations necessary for the management of the National Park System. The Organic Act further provides that authorization of activities in units of the National Park System shall be construed in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of park values and purposes unless specifically and directly provided for by Congress. Legislation and proclamations establishing individual parks provide more specific direction about park purposes, resources, and appropriate use. The Wilderness Act of 1964 (16 U.S.C. 1131 *et seq.*) generally reinforces the resource protection mandate of the NPS Organic Act under which the NPS already operates.

The Service evaluates proposals for park uses in terms of their consistency with applicable legislation, executive orders, and regulations, as well as their actual and potential effects on park values, purposes, and resources.

Section 9.80 Purpose

The purpose of these regulations is to govern mineral resource assessment activities conducted pursuant to section 1010 of ANILCA in Alaska units of the National Park System. The regulations do not address the conduct of AMRAP activities on lands managed by the U.S. Fish and Wildlife Service, the Bureau of Land Management, or the U.S. Forest Service. The regulations ensure, consistent with section 1010(b) of ANILCA, that the agencies carry out AMRAP activities in an environmentally sound manner that does not result in lasting environmental impacts that appreciably alter the natural character of the units or biological or ecological systems in the units. Also consistent with section 1010(b), the regulations ensure that the activities are conducted in a manner that is compatible with the purposes for which the units are established. Consistent with the NPS Organic Act, the regulations ensure that AMRAP activities are conducted in a manner that leaves park resources and values unimpaired for the enjoyment of present and future generations.

Section 9.81 Scope and Applicability

All activities conducted under AMRAP authorized by section 1010 of ANILCA in Alaska units of the National Park System will be subject to the regulations of this Subpart.

This section requires that all AMRAP activities conducted in parks meet the requirements of ANILCA, these regulations, the terms and conditions of any permit approved under this Subpart, and any other applicable statutes and regulations and any amendments.

The State of Alaska commented that it finds the proposed regulations acceptable as long as they apply only to lands under NPS management. These regulations apply only to AMRAP activities conducted on public lands in units of the National Park System in Alaska.

Section 9.82 Definitions

This section defines certain terms and establishes particular meanings for those terms as used in this subpart.

The term AMRAP Activities defines the types of mineral resource assessment techniques, methods, and related activities that may be conducted in park units under the AMRAP program. Such activities may be conducted only by authorized AMRAP agencies and their contractors and are subject to the conditions and stipulations of a permit issued by the NPS.

The final rule differs from the proposal in that it states that AMRAP activities include access into, across, through or over a unit of the National Park System when such access is incidental to mineral resource assessments conducted under AMRAP. This change is made to clarify that all activities being conducted inside parks, including aerial observation, are regulated.

Only mineral resource assessment methods or techniques that do not result in appreciable lasting environmental impacts on park resources and values may be permitted by the NPS as AMRAP activities. These techniques may include hand sampling of geologic materials, and instrumental remote-sensing measurement. Certain geophysical techniques also may be allowed. Paleomagnetic specimens may be collected by using a hand held drill to remove small cylindrical samples.

Mineral resource assessment techniques and geophysical methods will be permitted only when (1) No explosives are used, (2) they are consistent with the standards set out in § 9.86 of this Subpart, and (3) they are

consistent with the applicable provisions of the Wilderness Act and NPS policies for wilderness management. The use of motorized equipment or mechanical transport, including motorboats and aircraft, in wilderness areas may be restricted by the NPS and will be authorized only in accordance with each park's wilderness management plan. Pursuant to section 1010(a) of ANILCA, core and test drilling are explicitly prohibited in park units. This prohibition includes exploratory drilling of oil and gas wells. Under these regulations, the use of explosives is specifically prohibited as an AMRAP activity because of the nature of impacts associated with that technique.

The NPCA stated that, under this section, the NPS will have the burden of assessing whether a particular technology will or will not result in an appreciable lasting impact. The NPCA also questioned whether AMRAP is meant to allow the testing of new mineral assessment methods and technologies and if new technologies are used, additional time must be allowed in the processing of such proposals.

The NPS believes it appropriate that it makes AMRAP permitting decisions based on the information submitted by the AMRAP agency in the permit application and other information available to the NPS, such as general management plans, wilderness management plans, and other published or unpublished environmental documents or information.

The NPS agrees with the comment that the evaluation of new or untested technologies may require more extensive information then existing technologies, and in some cases site specific studies may be needed to evaluate the effects of such technologies prior to their use in parks. The NPS will not permit any AMRAP activities that do not meet the criteria of § 9.86(c).

An individual questioned being able to ascertain the economic value of a placer deposit associated with a mining claim for claim validation or condemnation purposes without a core drilling sample. The purpose of AMRAP is not to provide claim validation or specific mineral appraisal information, but rather to provide data to Congress on the mineral potential of public, not private, lands in Alaska. Additionally, core and test drilling in units of the National Park System for the purposes of AMRAP is specifically prohibited by Congress in section 1010(a) of ANILCA.

AMRAP Agencies are defined as those agencies in the Department of the Interior that are authorized by the Secretary to perform mineral resource assessment work under § 1010 of ANILCA on Federal lands in Alaska. This work is primarily conducted by the USGS, BOM, and MMS. Other Interior agencies may in the future request access to park lands to conduct mineral resource assessments. Mineral resource assessment work is subject to the conditions and stipulations of permits issued by the NPS. An AMRAP agency may enter into a legally-binding contract with a third party for conducting work under AMRAP. Any State or Federal agency, university, or private entity under a contract with an AMRAP agency must conduct the contracted AMRAP work in accord with the NPS permit issued to the AMRAP agency. The AMRAP agency will be responsible for all contractor activities on park lands.

The NPCA commented that while the USGS is the primary agency responsible for AMRAP research, it should also be the only agency authorized to conduct AMRAP activities in parks. They commented that an agency with science as its mission ought to be the primary investigator and collector of geologic, geochemical, geophysical and mineral deposit data. They suggested that the definition of AMRAP agency be changed to read "as only those agencies in the Department of the Interior whose primary mission is scientific investigation that are authorized * * *"

The NPS agrees that park units contain valuable scientific baseline information that may warrant investigation by science-oriented agencies. However, it may be necessary for those agencies whose primary mission is not solely scientific to evaluate geologic or other information inside parks to extrapolate data on the mineral resource potential of lands under their jurisdiction for AMRAP purposes. For example, exposed geologic formations inside parks may yield data which reveals characteristics similar to unexposed formations on adjacent lands.

A definition of the term Superintendent has been added at § 9.82(e) to provide clarity of the NPS permitting process for AMRAP activities.

The USGS suggested that a definition of the term "minerals" that mentions both fuel and nonfuel mineral resources be added to § 9.82. The NPS believes that defining "minerals" in this regulatory program is not appropriate. ANILCA, and specifically § 1010, does not define what constitutes a mineral resource assessment. Section 1010 authorizes the Secretary to assess oil, gas and "other" mineral potential on public lands in Alaska. The broad programmatic goals of AMRAP as identified by the Secretary is a more appropriate vehicle for defining the extent of this mineral resource assessment program.

Section 9.83 Coordination of AMRAP Activities in National Park System Units

This section establishes the basic process for coordinating AMRAP activities among AMRAP agencies and the NPS. The final rule contains minor editorial changes from the proposal.

Section 9.83(a). This subsection requires each AMRAP agency to designate a lead official who will be responsible for working and coordinating with the NPS thereby ensuring compliance with these regulations. This individual is intended to act as a focal point for that agency, assimilating all AMRAP activities for a particular year rather than each investigator submitting separate proposals to the NPS.

Section 9.83(b). Under this subsection, by January 1 of each year, AMRAP agencies will coordinate and, in consultation with the NPS Regional Director, set a date for an interagency coordination meeting. The coordination meeting, consisting of representatives from the AMRAP agencies and the NPS, will be held by January 31. The purpose of the meeting is to review annual and long-term work plans of all AMRAP agencies. The NPS and the AMRAP agencies will seek to eliminate duplication of overlapping mineral resource assessment activities and to encourage coordination of access and logistics where agency operations occur in close proximity to each other. This coordinated review process will help ensure that impacts to park resources and values from AMRAP activities are minimized.

The BLM commented that this section would be more precise by requiring that the date for setting the coordination meeting be no later than the last working day of the previous year. The NPS does not believe there is a substantive difference between the BLM recommendation and the language of the proposed rule; therefore, this section of the final rule is unchanged.

Section 9.84 Application Requirements

This section establishes the minimum application requirements and timeframes for the AMRAP agencies to provide the NPS with mineral resource assessment information. Such information is necessary for the NPS to ensure that AMRAP activities are carried out in an environmentally sound manner. Processing of permit

applications by the NPS within established timeframes is essential to enable the AMRAP agencies to timely and efficiently complete logistical, contracting, and staffing arrangements. Normally helicopter and other support contracts must be negotiated, advertised, or obligated well in advance of the field season to assure availability.

Section 9.84(a). The proposed rule required that prior to each field season, but no later than March 1 of each year, each AMRAP agency submit to the NPS a complete application for proposed AMRAP activities to be conducted in Alaska park units. Proposed § 9.86(a) required that, by April 15, the Regional Director take action on applications submitted pursuant to § 9.84. This established a 1½ month review period for the NPS. The preamble to the proposed rule was in error by stating that AMRAP agencies must have their applications submitted to the NPS no later than January 31, thereby establishing a 2½ month review period for the NPS.

The EPA commented that the 1½ month review time established in the proposed rule may not be adequate for the NPS to complete analyses necessary for compliance with NEPA and other environmental laws. The NPCA also suggested that the NPS review time be extended to 2½ months.

Upon additional consideration by the NPS, the NPS agrees that a longer review period is necessary to ensure adequate compliance with pertinent environmental laws during the permitting process. Therefore, final § 9.84(a) requires that AMRAP agencies submit permit applications to the NPS no later than February 15 of each year. This establishes a 2-month review period for the NPS with final action on the applications to be taken by April 15. This change should not present a burden to the AMRAP agencies because most project proposals should be well established and identified for discussion at the annual coordination meeting to be held by January 31. AMRAP agencies will prepare specific program information and may prepare permit applications for discussion at that meeting. Following the coordination meeting, AMRAP agencies will have a minimum of 2 weeks to revise, update or develop additional permit applications based on agreements reached at the meeting.

Applications may cover proposed activities to be conducted only in the current field season or may include activities for subsequent field seasons if adequate information is available about future field work. Applications that do not meet the requirements of § 9.84(b) will be returned to the AMRAP agency for revision or additional information.

Section 9.84(b). This subsection establishes the minimum requirements for information to be submitted to the NPS for issuance of a permit for proposed AMRAP activities. The information required includes the names of the AMRAP agency organizational office(s) that will actually conduct AMRAP activities and the names of any contractual representative that may be involved in the activities.

The application must include the overall project objectives, maps showing the areas where the activities are proposed to be conducted, and the estimated dates on which the activities are proposed to begin and end. A description of the mineral resource assessment techniques or methods and equipment to be used on each project is also required.

The BLM requested clarification of § 9.84(b)(4) regarding the overall project objectives. Although Congress set forth the broad purpose for AMRAP in § 1010, each AMRAP agency has a specific role and defines the purpose of its AMRAP role with greater specificity. Overall project objectives is intended to describe how the proposed data collection activities fit into the broad project goals and the agency AMRAP program. Due to the multiyear nature of many AMRAP projects, the NPS needs an overall understanding of the agency's program and project goals. It also needs to have annual activity descriptions to issue AMRAP permits with appropriate resource protection stipulations and to conduct environmental compliance. In addition, the NPS receives many requests for other types of research permits, including requests from other departments of these AMRAP agencies. The NPS needs a way to separate AMRAP requests from other research requests.

Agencies must provide NPS with a description of the method to be used to access each area of proposed activity. This subsection requires a description of support requirements necessary for each project, including a description of base camps, fuel storage, or any other equipment.

The application must include a discussion which demonstrates that the methods used to conduct the activities can be carried out in an environmentally sound manner using the best available and least impacting technology. The AMRAP agency must also describe the environmental and physical effects of AMRAP activities to allow for adequate environmental analysis. The Regional Director may require additional information on the proposed activities if such information is necessary to fully assess the nature, extent, location, or effects of the activities.

The NPCA suggested that the phrase "in an environmentally sound manner" as used in § 9.84(b)(10) and elsewhere in the final rule be changed to "in a manner that leaves units unimpaired and does not provide for derogation of park values and purposes" to be consistent with the NPS Organic Act. The NPCA also commented that the least impacting technology could impair park values. The purpose of this section is for the NPS to obtain adequate information from the AMRAP agency on its proposed activities to allow the NPS to achieve appropriate environmental compliance. In considering the approval of AMRAP activities, the NPS will apply the standards set forth in § 9.87(c). The NPS will consider the effects of the proposed activities on wilderness areas, visitor use, endangered species and other wildlife, cultural resources, and other park resources and values.

Section 9.85 Environmental Compliance

This section establishes a firm responsibility for each AMRAP agency to provide the NPS with sufficient information on proposed projects to allow the NPS to meet its responsibilities under all applicable environmental compliance requirements. This section also affirms the responsibility of each AMRAP agency to independently research and secure all appropriate Federal, State and local permits for their activities.

All NEPA compliance will be conducted by the NPS in accordance with applicable regulations, standards, and guidance, including NPS 12: NEPA Compliance Guideline. The National Historic Preservation Act of 1966, 16 U.S.C. 470–470w–6, is specifically identified in the final rule for clarification of the NPS responsibility for compliance with this statute.

The Sierra Club Legal Defense Fund questioned whether a two-stage environmental assessment process would be necessary to examine the long range effects of the program as well as the park specific effects of each individual project. As discussed above, NPS environmental compliance will be conducted in accordance with applicable environmental laws and regulations.

Section 9.86 Application Review Process and Approval Standards

This section establishes the NPS Regional Director as the approving authority for AMRAP activities and

provides timeframes consistent with assuring compliance with applicable laws and regulations. It also codifies approval standards to be applied by the NPS in evaluating proposed AMRAP activities.

Section 9.86(a). The language of this subsection is slightly changed from the proposal to reflect that the Regional Director will make a decision on permit applications so that final action can be taken by April 15. This change is necessary because under final § 9.87(a), the appropriate park superintendents will issue the specific AMRAP permits.

Section 9.86(b). The Regional Director is responsible for approving permit applications for AMRAP activities assuring coordination and consistency among requested AMRAP activities in various parks. Park superintendents will review and make recommendations to the Regional Director on projects proposed in their parks. Under final § 9.87(a), park superintendents will issue permits for AMRAP activities approved by the Regional Director.

Section 9.86(c). This subsection sets out the specific standards by which the Regional Director may approve AMRAP activities. Consistent with section 1010(b) of ANILCA, the proposed activities may not be approved if they will not be carried out in an environmentally sound manner, or will result in lasting impacts to the environment. Additionally, AMRAP activities may not be approved if they are incompatible with the purposes and values for which the unit was established, or if the activities would adversely affect the resources of the area. There may be some proposed activities where the standards for approval do not allow the Regional Director to approve the activities. Denial of a permit for AMRAP activities means the project design or other features of the proposal has not met the standards set forth in this subsection.

The NPCA suggested the addition of language to this section that allows the Regional Director to not approve activities when the absence of data does not allow for an adequate assessment of whether or not the proposed activity will impair park values and resources. Final § 9.84 sets the minimum information requirements for AMRAP permit applications. The Regional Director may request additional information on a specific project as is needed for compliance with these regulations or for compliance with other applicable laws or regulations. The Regional Director's decision to approve, disapprove or require modification of a permit application will be made in accordance with the standards set forth in § 9.86(c) as supported by appropriate environmental compliance documentation.

The BLM commented that the phrase "adversely affect" in § 9.86(c)(3) should be changed to "significantly impair" or some other wording that would "indicate a degree of impact." The NPS does not agree. Both phrases indicate a degree of impact with the former more reflective of the NPS mission and Congressional intent. Adverse effects to visitors, wildlife, cultural resources and wilderness values, among others, must be considered by the NPS when permitting AMRAP activities in parks. This is more in keeping with the intent of § 1010(b) which restricts activities to those which don't result in lasting environmental impacts that appreciably alter the character or resources of the units. The NPS does not believe that Congress intended to allow AMRAP activities to occur in parks right up to the threshold of "significance" before they are curtailed or modified. The NPS further believes that a measure of impact based on significant impairment could result in resource impacts beyond that which is environmentally sound, and therefore goes beyond the intent of § 1010(b).

Section 9.87 Permitting Requirements and Standards

This section sets forth specific permit standards and requirements to be applied to all approved permits.

Section 9.87(a). No AMRAP activities may be conducted in park units without a permit approved by the NPS. Final § 9.87(a) differs from the proposal in that it specifically gives park superintendents, instead of the Regional Director, the authority to issue permits for approved AMRAP activities. This will ensure that park specific concerns are incorporated into the permits and that AMRAP agencies work with park staff who will actually monitor the projects. All permits will be issued in accordance with this Subpart, 36 CFR 1.6 (NPS regulatory authority to issue Special Use Permits), and other applicable regulations, guidelines, and policies, including NPS–53: Special Park Uses Guideline. Permit issuance by the Superintendents will be in accordance with the timeframes established under § 9.86(a).

Section 9.87(b). The Sierra Club Legal Defense Fund suggested that the regulations explicitly require that, whenever possible, base camps be located outside of park boundaries and fixed wing aircraft be used instead of helicopters. The NPS agrees that base camps should be located outside of parks when possible. During permit review, NPS will evaluate and approve base camp locations on a case-by-case basis. Base camps will be required to be located outside of park boundaries where it is necessary to minimize resource impacts and where such suitable alternatives exist. Access to park areas will be evaluated for each permit. If helicopter use is necessary, it will be required to comply with existing policies, directives and wilderness management plans. Certain types or times of access may be restricted.

The BLM suggested that the language in proposed § 9.87(b) be changed by deleting the word "and" from the phrase "certain areas and during sensitive periods." The BLM believes that § 1010 requires all Federal lands be available for AMRAP, at least to aerial observation, at some time when the mineralization is visible and assessments are possible, while still allowing NPS ultimate control over all of the park resources. The NPS must retain the option to control AMRAP activities, including aerial observation, in areas during periods when those areas are restricted or closed to use by the NPS. Such areas may include wildlife breeding areas, areas of cultural or historic significance, or other types of highly sensitive areas. Helicopter or other types of aircraft access must be in accordance with existing NPS policies and restrictions. Other types of access will be evaluated based on the areas to be accessed, seasonal conditions, and any applicable restrictions or closures. The NPS does not intend to permanently close areas to AMRAP activities. The regulatory language in final § 9.87(b) is therefore unchanged.

Section 9.87(c). The BLM suggested that this subsection be expanded to (1) explain how and by whom the determination will be made that an area needs to be further cleaned or restored, (2) give examples of why the NPS would consider an AMRAP agency's reclamation work inadequate, and (3) provide for AMRAP agency input or an appeals process.

Section 9.87(c) requires that the AMRAP agency or its contractors leave an area in an unimpaired state. The determination of whether an area has been left in an unimpaired condition will be made by the NPS and based on a review of the AMRAP agency's compliance with approved permit stipulations. For example, any holes resulting from hand tool sampling will be required to be backfilled to eliminate all signs of disturbance. Where samples are taken under a thick vegetative cover, all attempts will be made to salvage and replace the vegetation after the sample

is taken and the hole backfilled. Support camp sites or other land disturbing activities associated with the mineral resource assessments will be restored and abandoned so as to leave the area in its natural condition. If it becomes necessary for the NPS to restore an area affected by AMRAP activities, the costs for such restoration will be recoverable from the AMRAP agency. Any appeal by an AMRAP agency of a final decision concerning reclamation or abandonment of a site is permissible under § 9.89.

Section 9.87(d). The Bureau of Mines commented that the preamble discussion on § 9.87(d) be clarified to state that non-proprietary data obtained from private lands is not available to the public. Section I.B. of the preamble for the proposed rule was confusing in that it discussed the collection of data from private lands pursuant to AMRAP. It is important to clarify that AMRAP authorized by § 1010 of ANILCA applies only to the collection of mineral resource data from public lands in Alaska. The regulations adopted here today by the NPS apply only to the collection of information from public lands in park units in Alaska.

The BLM commented that any unpublished information would not be "public information", and should therefore be available to the public only under guidelines of the Freedom of Information Act. The NPS believes that AMRAP information gathered on public lands in parks, including unpublished information, should be made available to the public. Therefore, all AMRAP information will be available to the public through the normal procedures for disseminating information used by the various agencies, including procedures implementing the Freedom of Information Act.

The BLM also suggested that § 9.87(d) be changed to read "Copies of all pertinent public information provided to Congress resulting from AMRAP activities conducted in units of the National Park System shall be provided to the Regional Director by the AMRAP agency conducting the inventory." The BLM believes that since no mineral extraction can occur on park lands, proposed § 9.87(d) would result in the production of written reports that are of no use to NPS and would be a waste of time, materials, storage space and funds.

The NPS disagrees that the section 1011 ANILCA report to Congress contains adequate information for NPS management purposes. That document consists of a summary of the mineral resource assessment work conducted under AMRAP and other programs and contains a bibliography of completed studies but not a complete discussion of final results and findings of specific studies in parks. Published scientific documents and written reports are important for NPS managers for their use in interpretation, resource management, and in determining future research needs. Final § 9.87(d) continues to require that the NPS receive copies of all published or written reports resulting from AMRAP activities conducted in parks.

Section 9.87(e). This subsection acknowledges the authority of the NPS to monitor ongoing AMRAP activities to ensure that they are conducted pursuant to these regulations and the terms and conditions of the approved permit.

Section 9.88 Permit Modification, Suspension, and Cancellation

This section sets forth the procedures and requirements for modifying, suspending, or canceling an approved permit. This section differs from the proposal in that it gives park superintendents the authority to suspend or cancel, and in certain cases modify, approved permits. This change allows for a more efficient permitting process.

Section 9.88(a). Under this subsection, an AMRAP agency may submit a written proposal to the Regional Director to modify an approved permit. Modifications may be necessary in order to allow for changes in sampling methods or techniques or to make adjustments due to changes in weather, staffing, transportation or budget. The Regional Director must review and act upon the modification within a reasonable timeframe so scheduling of that field season's activities can proceed. The appropriate park superintendent will amend the approved permit based on the Regional Director's approval of the AMRAP agency's requested modification.

Section 9.88(b). This subsection establishes the conditions under which a Superintendent may modify, suspend or cancel an agency's permit to conduct AMRAP activities. A permit may be modified, suspended or canceled when the Superintendent finds that there is an imminent threat to public health and safety or natural and cultural resources of the unit; or the AMRAP agency or its contractors are in violation of applicable laws or the approved permit.

Section 9.88(c). This subsection sets the procedural requirements for dealing with modifications, suspensions and cancellations of approved permits. The final rule clarifies that this subsection applies to modifications, suspensions and cancellations pursuant to § 9.88(b).

Section 9.88(d). This subsection establishes that permit suspension or cancellation does not relieve the AMRAP agency or its contractors of the obligation to restore any location in accordance with these regulations and to meet all other requirements of the approved permit.

Section 9.89 Appeals

Any final action taken by the Regional Director pursuant to these regulations may be appealed by an AMRAP agency to the Director of the National Park Service. If resolution of the issue cannot be reached, the issue will be elevated to the Department for resolution.

The BLM suggested that this section be changed to state that the 30 day appeals process begin with the AMRAP agency's receipt of the Regional Director's final decision, not the actual date of the final decision. The NPS acknowledges that there may be some delays in notification and therefore has made the requested change in the final rule. However, the time period between the Regional Director's final decision and notification to the AMRAP agency should be minimal especially with current day reliance on FAX machines and telephones.

III. Procedural Matters

Federal 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.* The subject rules apply only to Federal agencies and their contractors.

National Environmental Policy Act

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4331 *et seq.*) the NPS has prepared an environmental assessment (EA) of these regulations. The analysis in the EA shows that implementation of the regulations will not be a major Federal action that would have a significant effect on the quality of the human environment requiring the preparation of an environmental impact statement. The EA is on file in the following NPS offices: Mining and Minerals Branch, Land Resources Division, room 3223, 1100 L Street NW., Washington, DC (P.O. Box 37127, Washington, DC 20013–7127); and the NPS Alaska Regional Office, room 206, 2525 Gambell Street, Anchorage, Alaska 99503.

Regulatory Flexibility Act and Executive Orders 12291 and 12630

The NPS has determined and the Department of the Interior has certified that this action will not have a

significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This rule has been reviewed in conformity with Executive Order 12291 and has been classified as not major. This action does not constitute a major rule since its implementation will not result in: (i) An annual effect on the economy of $100 million or more; (ii) major increases in costs or prices for consumers, individual industries, Federal, State or local governments, or a geographic region; or (iii) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of the U.S. based enterprises to compete with foreign based enterprises in domestic or export markets.

These regulations do not require the preparation of a Takings Implication Assessment pursuant to Executive Order 12630 because the rules will not affect the use or value of private property.

Author

The principal author of this regulation is Sharon P. Kliwinski, Mining and Minerals Branch, National Park Service.

List of Subjects in 36 CFR Part 9

Environmental protection, Mines, National parks, Oil and gas exploration, Public lands—mineral resources, Public lands—rights-of-way.

For the reasons discussed in the preamble, Chapter I of title 36 of the Code of Federal Regulations is amended by adding subpart D to part 9 to read as follows:

PART 9—MINERALS MANAGEMENT

Subpart D—Alaska Mineral Resource Assessment Program

Sec.

9.80 Purpose.
9.81 Scope and applicability.
9.82 Definitions.
9.83 Coordination of AMRAP activities in National Park System units.
9.84 Application requirements.
9.85 Environmental compliance.
9.86 Application review and approval standards.
9.87 Permitting requirements and standards.
9.88 Permit modification, suspension, and cancellation.
9.89 Appeals.

Subpart D—Alaska Mineral Resource Assessment Program

Authority: 16 U.S.C. 410hh; 16 U.S.C. 3101, *et seq.*; 16 U.S.C. 1, *et seq.*; 16 U.S.C. 347; 16 U.S.C. 410bb; 16 U.S.C. 431; 16 U.S.C. 1131 *et seq.*

§ 9.80 Purpose.

These regulations govern the conduct of the mineral resource assessment activities authorized under § 1010 of the Alaska National Interest Lands Conservation Act (ANILCA), 16 U.S.C. 3101, *et seq.*, in units of the National Park System in Alaska. The regulations are designed to ensure that authorized Federal agencies and their contractors carry out mineral resource assessment activities in an environmentally sound manner that does not result in lasting environmental impacts that appreciably alter the natural character of the units, or biological or ecological systems in the units; is compatible with the purposes for which the units are established; and ensures that all units are left unimpaired and preserved for the enjoyment of present and future generations.

§ 9.81 Scope and applicability.

These regulations apply to all activities conducted by authorized agencies and their contractors on public lands in units of the National Park System in Alaska under the Alaska Mineral Resource Assessment program (AMRAP) as authorized by section 1010 of ANILCA. AMRAP activities conducted under this subpart shall be performed in accordance with ANILCA, the regulations in this subpart, the terms and conditions of an approved permit, and other applicable statutes and regulations, and amendments thereto.

§ 9.82 Definitions.

The terms used in this subpart shall have the following meaning:

(a) *AMRAP* means the Alaska Mineral Resource Assessment Program authorized by section 1010 of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA), 16 U.S.C. 3150.

(b) *AMRAP Activities* means any project, method, technique or other activity incidental to mineral resource assessments conducted by authorized AMRAP agencies or their contractors in units of the National Park System in Alaska pursuant to section 1010 of ANILCA under an approved permit. AMRAP activities include access into, across, through, or over a unit of the National Park System for the conduct of those activities. Only mineral resource assessment methods or techniques that do not result in lasting impacts on park resources and values may be permitted as AMRAP activities. Mineral resource assessment techniques may include aerial photography; remote sensing; hand-sampling of geologic materials; hand-sampling or hand-augering methods for geochemical analyses; and geophysical techniques such as magnetic, electrical, electromagnetic, chemical, radioactive, and gravitational methods. Mineral resource assessment activities may be permitted as long as:

(1) No explosives are used,

(2) They are consistent with § 9.86 of this subpart, and

(3) They are consistent with the provisions of the Wilderness Act of 1964 (16 U.S.C. 1131 *et seq.*) and National Park Service policies concerning wilderness management and the use of motorized equipment in wilderness areas.

Core and test drilling, including exploratory drilling of oil and gas test wells, are explicitly prohibited as AMRAP activities in units of the National Park System.

(c) *AMRAP agencies* means those agencies of the U.S. Department of the Interior that are authorized by the Secretary to perform mineral resource assessment activities pursuant to section 1010 of ANILCA.

(d) *Regional Director* means the Regional Director of the Alaska Regional Office of the National Park Service (NPS), or the Regional Director's designee.

(e) *Superintendent* means the Superintendent, or his/her designee, of the unit of the National Park System in Alaska where AMRAP activities are conducted or proposed to be conducted.

§ 9.83 Coordination of AMRAP activities in National Park System units.

(a) To facilitate compliance with this Subpart, each AMRAP agency will designate a coordinator for AMRAP activities in Alaska who will be the central point of communications with the NPS. The AMRAP agency is responsible for notifying the Regional Director of such designation.

(b) By January 1 of each year, the designated coordinators for the AMRAP agencies will, in consultation with the Regional Director, schedule an interagency meeting to be held by January 31 of each year. Representatives of the AMRAP agencies and the NPS will meet to develop a mutually agreeable schedule of AMRAP projects and activities in Alaska units of the National Park System. Where practicable, AMRAP agencies will consolidate their field activities, including access and field camps, to minimize disturbance to park resources and values.

§ 9.84 Application requirements.

(a) By February 15 of each year, the designated coordinator of each AMRAP agency will forward to the Regional Director an application pursuant to § 9.84(b) for proposed AMRAP projects

and activities discussed and reviewed at the annual coordination meeting held under § 9.83(b). Applications requiring additional information will be promptly returned to, or discussed with, the coordinator of the involved AMRAP agency to resolve any deficiencies.

(b) Applications will be submitted in a form and manner prescribed by the Regional Director and will contain at a minimum:

(1) The name of the AMRAP agency and responsible office and, where applicable, its designated contractual representative that will conduct the proposed activities;

(2) The name, office address and telephone numbers of the AMRAP agency persons or contractor persons who will supervise the proposed activities, and a list of all individual's names, addresses and telephone numbers who will be present at field activities;

(3) A list of any previous AMRAP activities or prior geologic and mineral resource assessments that have occurred in the proposed study area;

(4) A discussion of overall project objectives, schedules and products, and how the proposed activities for the current application relate to those objectives;

(5) A description of the activities proposed for approval, including a detailed description of the collection techniques, sampling methods and equipment to be used in each area;

(6) Topographic maps identifying the specific areas in units of the National Park System where the agency proposes to conduct each AMRAP activity;

(7) The approximate dates on which the AMRAP activities for each area are proposed to be commenced and completed;

(8) A description of access means and routes for each area in which work is proposed including an estimate of the number of flights or number of vehicle trips;

(9) A description of the field support requirements proposed for locations on lands within units of the National Park System, including camp sites, fuel storage areas, and any other requirements;

(10) A discussion which documents that proposed activities will be carried out in an environmentally sound manner utilizing the least impacting technology suitable for the purposes of the project; and

(11) A description of how any disturbed areas, such as camp sites, will be reclaimed.

§ 9.85 Environmental compliance.

Each AMRAP agency is responsible for obtaining all required Federal, State, and local permits and must provide sufficient information to the NPS to ensure appropriate compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), the National Historic Preservation Act of 1966 (16 U.S.C. 470 *et seq.*), and other applicable statutes.

§ 9.86 Application review process and approval standards.

(a) The Regional Director will review applications submitted pursuant to § 9.84 and will ensure that final action is taken on such applications by April 15 of each year. If additional review time is necessary to ensure compliance with this Subpart or with other applicable laws, Executive Orders and regulations, the Regional Director will promptly notify the AMRAP agency coordinator of the anticipated date of a final decision.

(b) The Regional Director is responsible for approving AMRAP activities in units of the National Park System in Alaska.

(c) To be approved, proposed AMRAP activities must be designed to be carried out in an environmentally sound manner, as determined in appropriate environmental documentation, that:

(1) Does not result in lasting environmental impacts that appreciably alter the natural character of the units or the integrity of the biological or ecological systems in the units; and

(2) Is compatible with the purposes and values for which the units are established; and

(3) Does not adversely affect the natural and cultural resources, visitor use, or administration of the area.

§ 9.87 Permitting requirements and standards.

(a) AMRAP activities approved by the Regional Director may be conducted in units of the National Park System pursuant to a permit issued by the Superintendent in accordance with this subpart, 36 CFR 1.6, and other applicable regulations, guidelines and policies.

(b) The NPS may restrict the conduct of AMRAP activities in certain areas and during sensitive periods, such as nesting, calving and spawning seasons, to minimize impacts to fish and wildlife or to comply with existing policies or directives.

(c) All project areas affected by AMRAP activities shall be left in an unimpaired state by the AMRAP agency and its contractors. All costs borne by the NPS in cleaning or restoring an area affected by AMRAP activities will be recoverable from the AMRAP agency.

(d) Copies of all published information or written reports resulting from AMRAP activities conducted in units of the National Park System shall be provided to the Regional Director.

(e) The NPS reserves the right, without prior notice to the AMRAP agency or its contractors, to observe or inspect AMRAP activities to determine whether such activities are being conducted pursuant to this subpart and the terms and conditions of the approved permit.

§ 9.88 Permit modification, suspension, and cancellation.

(a) A proposal to modify, supplement, or otherwise amend an approved permit shall be made by an AMRAP agency by written request to the Regional Director. The Regional Director shall review and promptly act on the proposed modification pursuant to the standards set forth in § 9.86. An AMRAP agency may not undertake any of the activities proposed in the modification until the Regional Director approves the modification and the Superintendent amends the approved permit.

(b) The Superintendent may modify, suspend or cancel an AMRAP agency's permit by notifying the agency in writing, or orally in an emergency situation, when the Superintendent determines that:

(1) Changes to the permit are necessary to address conditions not previously anticipated; or

(2) There is imminent threat of serious, irreparable, or immediate harm or danger to public health and safety, or the natural and cultural resources and values of the unit; or

(3) The AMRAP agency or its contractors fails to comply with the provisions of ANILCA or of any other applicable law or regulation, the provisions and conditions of the approved permit and any modification thereto, or any written or field orders issued by the Superintendent.

(c) Modification, suspension, or cancellation of an approved permit pursuant to paragraph (b) of this section shall be effective immediately upon receipt of oral or written notice from the Regional Director or the Superintendent. Notices issued orally shall be followed by written notice sent by certified mail within three (3) working days confirming and explaining the action. Suspensions shall remain in effect until the basis for the suspension has been corrected to the satisfaction of the Superintendent. Cancellation notices shall state the reason for cancellation and shall be sent

by the Superintendent to the AMRAP agency at least fourteen (14) days in advance of the date the cancellation will become effective.

(d) Suspension or cancellation of a permit to conduct AMRAP activities shall not relieve the AMRAP agency or its contractors of the obligation to restore any location in accordance with the requirements of this subpart and to comply with all other obligations specified in this subpart and in the permit.

§ 9.89 Appeals.

Written appeals made within 30 days of notification of a final decision by the Regional Director pursuant to this subpart shall be reviewed by the Director of the National Park Service. Resolution of any outstanding issues shall follow current Department of the Interior procedures for resolving interagency disputes.

Dated: April 24, 1991.

J.F. Spagnole,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 91–11554 Filed 5–15–91; 8:45 am]

BILLING CODE 4310–70–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below.

These modified elevations will be used in calculating flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.

DATES: The effective dates for these modified base flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Mr. William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2754.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of modified base flood elevations for each community listed. These modified elevations have been published in newspaper(s) of local circulation and ninety (90) days have elapsed since that publication. The Administrator has resolved any appeals resulting from this notification.

Numerous changes made in the base (100-year) flood elevations on the FIRMs for each community make it administratively infeasible to publish, in this notice, all of the changes contained on the maps. However, this rule includes the address of the Chief Executive Officer of the community, where the modified base flood elevation determinations are made available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234) and are in accordance with the National Flood Insurance Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management measures required by 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

These modified base flood elevations shall be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical revisions made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains.

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

§ 65.4 [Amended]

2. Section 65.4 is amended by adding, in alphabetic sequence, new entries to the table.

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Alabama: Jefferson (Docket No. FEMA–7014).	City of Adamsville	Jan. 18, 1991, Jan. 25, 1991, *The Birmingham News.*	The Honorable Leland C. Adams, Jr., Mayor, City of Adamsville, 4828 Main Street, P.O. Box 309, Adamsville, Alabama 35005–0309.	Jan. 8, 1991	010267
Arizona: Coconino	City of Flagstaff (Docket No. 7011).	Jan. 11, 1991, Jan. 18, 1991, *The Arizona Daily Sun.*	The Honorable Christopher Bavasi, Mayor, City of Flagstaff, City Hall, 211 West Aspen Avenue, Flagstaff, Arizona 86001.	Dec. 28, 1990	040020

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Colorado: Adams and Arapahoe.	City of Aurora (FEMA Docket No. 7014).	Jan. 23, 1991, Jan. 30, 1991, *Aurora Sentinel.*	The Honorable Paul E. Tauer, Mayor, City of Aurora, 1470 South Havana Street, Aurora, Colorado 80012.	Jan. 10, 1991	080002
Colorado: El Paso	City of Colorado Springs (Docket No. 7011).	Jan. 4, 1990, Jan. 11, 1990, *Gazette Telegraph.*	The Honorable Robert M. Isaac, Mayor, City of Colorado Springs, P.O. Box 1575, Colorado Springs, Colorado 80901.	Dec. 20, 1990	080060
Colorado: El Paso	Unincorporated areas (FEMA Docket No. 7014).	Jan. 23, 1991, Jan. 30, 1991, *Fountain Valley News.*	The Honorable Gary Shupp, Chairman, El Paso County, Board of Commissioners, 27 East Vermijo Street, Colorado Springs, Colorado 80903.	Jan. 16, 1991	080059
Kentucky: Jefferson (Docket No. FEMA-7011).	Unincorporated areas	Jan. 17, 1991, Jan. 24, 1991, *The Courier Journal.*	The Honorable David L. Armstrong, County Judge/Executive, Jefferson County, 527 West Jefferson, Louisville, Kentucky 40202.	Jan. 4, 1991	210120
Nebraska: Dakota	City of South Sioux City (FEMA Docket No. 7011).	Dec. 13, 1990, and Dec. 20, 1990, *South Sioux City Star.*	The Honorable Vernie A. Larson, Mayor, City of South Sioux City, 1615 First Avenue, South Sioux City, Nebraska 68776.	Nov. 28, 1990	310054
Washington: Clallam	City of Port Angeles (FEMA Docket No. 7009).	Nov. 16, 1990, Nov. 23, 1990, *Peninsula Daily News.*	The Honorable Joan Sargent, Mayor, City of Port Angeles, City Hall, 321 East Fifth Street, Port Angeles, Washington 98362.	Nov. 9, 1990	530023
Wisconsin: Waukesha (Docket No. FEMA-7011.	City of Muskego	Jan. 3, 1991, Jan. 10, 1991, *Muskego Sun.*	The Honorable Wayne Salentine, Mayor, City of Muskego, W182 S. 8200 Racine Avenue, Box 903, Muskego, Wisconsin 53150-0903.	Dec. 20, 1990	550486

Issued: May 1, 1991.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 91-11656 Filed 5-15-91; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 65

[Docket No. FEMA-7021]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Interim rule.

SUMMARY: This rule lists communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) elevations for new buildings and their contents and for second layer coverage on existing buildings and their contents.

DATES: These modified base flood elevations are currently in effect and revise the Flood Insurance Rate Map(s) (FIRMs) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which he can request through the community that the Administrator reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Mr. William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2754.

SUPPLEMENTARY INFORMATION: Numerous changes made in the base (100-year) flood elevations on the FIRMs for each community make it administratively infeasible to publish, in this notice, all of the changes contained on the maps. However, this rule includes the address of the Chief Executive Officer of the community, where the modified base flood elevation determinations are made available for inspection.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) and are in accordance with the National Flood Insurance Act of 1968, as amended, (title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 65.4.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management measures required by 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

This rule provides routine legal notice of technical revisions made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains.

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

§ 65.4 [Amended]

2. Section 65.4 is amended by adding, in alphabetic sequence, new entries to the table.

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
California: Alameda	City of Fremont	Apr. 12, 1991, Apr. 19, 1991, *The Argus.*	The Honorable William Ball, Mayor, City of Fremont, City Government Building, 39700 Civic Center Drive, Fremont, California 94538.	Mar. 1, 1991	065028
California: Sacramento	Unincorporated Areas	Apr. 19, 1991, Apr. 26, 1991, *Sacramento Bee.*	Mr. Douglas M. Fraleigh, Director, Sacramento County, Department of Public Works, 827 Seventh Street, Room 301, Sacramento, California 95814.	Apr. 5, 1991	060262
California: Santa Clara	City of Gilroy	May 1, 1991, May 8, 1991, *The Dispatch.*	The Honorable Roberta Hughan, Mayor, City of Gilroy, 7351 Rosanna Street, Gilroy, California 95020.	Apr. 18, 1991	060340
California: Santa Clara	Unincorporated Areas	May 1, 1991, May 8, 1991, *San Jose Mercury News.*	The Honorable Dianne McKenna, Chairperson, Santa Clara County, Board of Supervisors, 70 West Hedding Street, San Jose, California 95110.	Apr. 18, 1991	060337
Colorado: Pueblo	City of Pueblo	May 10, 1991, May 17, 1991, *The Pueblo Chieftain and Star Journal.*	The Honorable Michael A. Occhiato, President of the Council, City of Pueblo, P.O. Box 1427, Pueblo, Colorado 81002.	Apr. 25, 1991	085077
Connecticut: Fairfield	Town of Darien	Apr. 18, 1991, Apr. 25, 1991, *The Darien News Review.*	Mr. Fred Sammis, First Electman of the Town of Darien, Fairfield County, 2 Renshaw Road, Darien, Connecticut 06820.	Mar. 29, 1991	090005 D
Connecticut: Fairfield	City of Norwalk	May 10, 1991, May 17, 1991, *The Norwalk News.*	The Honorable Frank Esposito, Mayor of the City of Norwalk, Fairfield County, 125 East Avenue, Norwalk, Connecticut 06851.	May 2, 1991	090012 C
Illinois: Lake	Village of Vernon Hills	Apr. 18, 1991, Apr. 25, 1991, *The Vernon Review.*	The Honorable Larry Laschen, Village Manager, Village of Vernon Hills, 290 Evergreen Drive, Vernon Hills, Illinois 60061.	Apr. 5, 1991	170394
Nebraska: Unincorporated Areas.	Dakota County (FEMA Docket No. 7009).	Dec. 6, 1990, Dec. 13, 1990, *South Sioux City Star.*	The Honorable James Huggenberger, Chairman, Dakota County Board of Commissioners, P.O. Box 38, Dakota City, Nebraska 68731.	Nov. 21, 1990	310429
Nevada: Elko Co.	City of Elko	Feb. 7, 1991, Feb. 14, 1991, *Elko Daily Free Press.*	The Honorable D. George Corner, Mayor, City of Elko, 1751 College Avenue, Elko, Nevada 89801.	Jan. 31, 1991	320010
New York: Dutchess	Town of LaGrange	Apr. 25, 1991, May 2, 1991, *The LaGrange Ledger.*	Mr. Arthur McCluskey, Town Supervisor, 120 Stringham Road, LaGrangeville, New York 12540-9412.	Apr. 11, 1991	361011 B&C
North Carolina: Alamance	Unincorporated Areas	Apr. 29, 1991, May 6, 1991, *The Daily Times News.*	The Honorable Robert C. Smith, Alamance County Manager, Alamance County Office Building, 124 West Elm Street, Graham, North Carolina 27253.	Apr. 19, 1991	370001
Virginia: Arlington	Unincorporated areas	May 1, 1991, May 8, 1991, *The Arlington Journal.*	Mr. Albert C. Eisenberg, Chairman of the Arlington County Board of Supervisors, 2100 Clarendon Boulevard, Suite 300, Arlington, Virginia 22201.	Apr. 24, 1991	515520 B

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Virginia: Independent City	City of Falls Church	May 1, 1991, May 8, 1991, *The Fairfax Journal.*	The Honorable Elizabeth Blystone, Mayor of the City of Falls Church, Harry E. Wells Building, 300 Park Avenue, Falls Church, Virginia 22046.	Apr. 23, 1991	510054 B
Wisconsin: Calumet	City of Chilton	Apr. 18, 1991, Apr. 25, 1991, *Chilton Times Journal.*	The Honorable John Ronk, Mayor, City of Chilton, 42 School Street, P.O. Box 183, Chilton, Wisconsin 53014.	Apr. 5, 1991	550037
Wisconsin: Calumet	Unincorporated Areas	Apr. 18, 1991, Apr. 25, 1991, *Chilton Times Journal.*	The Honorable John Keuler, Administrative Coordinator, Calumet County, 206 Court Street, Chilton, Wisconsin 53014.	Apr. 5, 1991	550035

Issued: May 1, 1991.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 91–11657 Filed 5–15–91; 8:45 am]

BILLING CODE 6718–03–M

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below.

These modified elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

DATES: The date of issuance of the revised Flood Insurance Rate Map (FIRM) showing modified based flood elevations for the community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2754.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of modified base flood elevations for each community listed. These modified elevations have been published in newspaper(s) of local circulation and an opportunity for the community or individuals to appeal the proposed determination to or through the community for a period of ninety (90) days has been provided. The proposed modified elevations were also published in the **Federal Register.** The Administrator has resolved any appeals resulting from these notifications.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR part 67.

Pusuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies, for reasons set out in the proposed rule, that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 12291, so no regulatory analyses have been prepared. It does not involve any collection of information for purposes of the Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

The modified base flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited for each community.

State, city/town/county, source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD) modified
ARKANSAS	
Clinton (city), Van Buren County (FEMA Docket No. 7012)	
Archey Creek Fork:	
Approximately 1.35 river miles upstream of confluence with South Fork Little Red River	*518
Approximately 1.79 river miles upstream of confluence with South Fork Little Red River	*527
Airport Branch:	
Approximately 0.8 river mile upstream of confluence with South Fork Little Red River	*510
Approximately .99 river mile upstream of confluence with South Fork Little Red River	*517
Town Branch:	
Approximately .34 river mile upstream of confluence with Archey Creek Fork	*511
Approximately .54 river mile upstream of confluence with Archey Creek Fork	*512
Maps available for inspection at the City Hall, 404 E. Main Street, Clinton, Arkansas.	
CALIFORNIA	
Corning (city), Tehama County (Docket No. 7015)	
Jewett Creek:	
At Woodson Avenue	*273
Approximately 300 feet downstream of Toomes Avenue	*278
Approximately 200 feet downstream of Interstate Highway 5 northbound lane	*283
Maps available for review at Department of Public Works, City Hall, 794 Third Street, Corning, California.	
MISSOURI	
Springfield (city), Greene County (FEMA Docket No. 7012)	
South Creek:	
About 1050 feet downstream of Campbell Avenue	*1265
Just downstream of National Avenue	*1295
Just downstream of Kickapoo Avenue	*1305
James River:	
About 0.4 mile downstream of Burlington Northern railroad	*1151
About 0.6 mile upstream of U.S. Highway 60	*1160
Maps available for inspection at the Department of Public Works, 830 Boonville Avenue, Springfield, Missouri.	
NEW JERSEY	
Cinnaminson (township), Burlington County (FEMA Docket No. 7011)	
Pompeston Creek:	
At the confluence with the Delaware River	*10
At upstream corporate limits	*34

State, city/town/county, source of flooding and location	# Depth in feet above ground. ^ Elevation in feet (NGVD) modified
Maps available for inspection at the Municipal Building, 1621 Riverton Road, Cinnaminson, New Jersey.	
Monroe (township) Middlesex County (FEMA Docket No. 7012)	
Clear Brook:	
Approximately 250 feet upstream of Union Valley-Half Acre Road	*127
Approximately 900 feet upstream of Union Valley-Half Acre Road	*127
Maps available for inspection at the Township Municipal Complex, Perrineville Road, Jamesburg, New Jersey.	
NEW YORK	
Easton (town), Washington County (FEMA Docket No. 7015)	
Batten Kill:	
Approximately 1,300 feet downstream of Batten Kill Railroad	*157
Approximately 150 feet upstream of Ray Road	*376
Maps available for inspection at the Town Hall, Route 40, North Easton, New York.	
OKLAHOMA	
Anadarko (city), Caddo County (FEMA Docket No. 7012)	
Washita River:	
Approximately 3 miles downstream of U.S. Route 281	*1,166
Approximately 0.6 mile upstream of Central Boulevard	*1,189
Tributary 1:	
Approximately 1.0 mile upstream of confluence with Tonkawa Creek	*1,176
Approximately 2.4 miles upstream of confluence with Tonkawa Creek	*1,176
Tonkawa Creek:	
Approximately 0.5 mile downstream of State Route 8	*1,176
Approximately 0.4 mile upstream of Section Line Road	*1,194
Maps available for inspection at the City Hall, 501 West Virginia, Anadarko, Oklahoma.	
Durant (city), Bryan County (FEMA Docket No. 7008)	
Mineral Bayou:	
Approximately 140 feet upstream of Chuckwa Creek	*596
Approximately 120 feet upstream of confluence of Mineral Bayou Tributary 6	*654
Mineral Bayou Tributary 5:	
At the confluence with Mineral Bayou	*622
At U.S. Routes 69 and 75	*671
Mineral Bayou Tributary 5 South Branch:	
At the confluence with Mineral Bayou	*621
Approximately 100 feet northwest of Missouri-Kansas-Texas Railroad	*639
Mineral Bayou Tributary 6:	
At the confluence with Mineral Bayou	*654
Approximately 120 feet upstream of confluence with Mineral Bayou	*654
Chuckwa Creek:	
Approximately 125 feet upstream of confluence with Mineral Bayou	*596
Approximately 25 feet upstream of Missouri-Kansas-Texas Railroad	*597
Chuckwa Creek Tributary 2:	
At the confluence with Chuckwa Creek	*625
Approximately 0.4 mile upstream of confluence	*641
Maps available for inspection at the City Hall, Durant, Oklahoma.	
Tulsa (city), Tulsa, Osage, and Rogers Counties (FEMA Docket No. 7012)	
Brookhollow Creek:	
Approximately 180 feet downstream of South 121st East Avenue	*674
Approximately 270 feet downstream of South 136th East Avenue	*702
Maps available for inspection at the City Hall, 200 Civic Center, Tulsa, Oklahoma.	
PENNSYLVANIA	
Bensalem (township) Bucks County (FEMA Docket No. 7015)	
Poquessing Creek:	
Approximately 100 feet upstream of State Road	*11
Approximately 0.6 mile upstream of CONRAIL	*135
Maps available for inspection at the Municipal Building, 3800 Hulmeville Road, Bensalem, Pennsylvania.	
Coolbaugh (township), Monroe County (FEMA Docket No. 7008)	
Dresser Lake: For entire shoreline within community	*2,093
Lake Carobeth: For entire shoreline within community	*1,999
Maps available for inspection at the Coolbaugh Municipal Center, 5550 Memorial Boulevard, Tobyhanna, Pennsylvania.	
Somerset, Borough, Somerset County	
East Branch Coxes Creek:	
Approximately 0.7 mile downstream of Musselman Avenue	*2,097 *2,096
At confluence with Unnamed Tributary to East Branch Coxes Creek	*2,104 *2,105
Unnamed Tributary to East Coxes Creek (formerly East Branch Coxes Creek):	
At confluence with East Branch Coxes Creek	*2,104 *2,105
At upstream corporate limits	*2,109 *2,108
Maps available for inspection at the Borough Hall, 340 West Union Street, Somerset, Pennsylvania.	
Send comments to Mr. Benedict G. Vinzani, Jr., Somerset Borough Manager, Somerset County, P.O. Box 71, Somerset, Pennsylvania 15501.	
TEXAS	
Conroe (city), Montgomery County (FEMA Docket No. 7015)	
North Fork of Stewarts Creek:	
Approximately 900 feet upstream of confluence with Stewarts Creek	*188
Approximately 340 feet upstream of Hilbig Road	*219
Maps available at the Community Development Office, 505 West Davis, Conroe, Texas.	
Coppell (city), Dallas County (FEMA Docket No. 6948)	
Grapevine Creek:	
Confluence with Elm Fork of the Trinity River	*439
Approximately 750 feet downstream of Beltline Road	*455
Denton Creek:	
Confluence with Elm Fork of the Trinity River	*446
Approximately 2,800 feet upstream of Denton Tap Road	*462
Elm Fork of the Trinity River:	
At the confluence of Grapevine Creek	*439
At Interstate Highway 35E	*452
Cottonwood Branch:	
Confluence with Denton Creek	*458
Upstream side of Denton Tap Road	*461
Maps available for inspection at the City Hall Engineering Division, 255 Parkway Boulevard, Coppell, Texas.	
Jefferson County (unincorporated areas) (FEMA Docket No. 7015)	
Walker Branch Tributary:	
Approximately 150 feet upstream of Tram Road	*23
Approximately 0.8 mile upstream of Tram Road	*24
Maps available for inspection at the County Courthouse, 1149 Pearl Street, Beaumont, Texas.	
Mission (city), Hidalgo County (FEMA Docket No. 7015)	
Shallow Flooding Area:	
At intersection of Melba Carter Street and State Route 1016	*108
West of Mission Main Canal and south of 1 Mile Road	*118
Maps available for inspection at the City Hall, 900 Doherty, Mission, Texas.	
West Virginia	
Kanawha County (unincorporated areas) (FEMA Docket No. 7008)	
Big Coal River:	
Approximately 1.4 miles downstream of confluence of Dry Branch	*644
Approximately 1,650 feet upstream of confluence of Dry Branch	*648
Maps available for inspection at the Kanawha County Courthouse, 409 Virginia Street East, Charleston, West Virginia.	
Raleigh County (unincorporated area) (FEMA Docket No. 7012)	
Soak Creek:	
Town of Sophia upstream corporate limits	*2,331
Approximately 200 feet upstream of corporate limits	*2,332
Maps available for inspection at the Office of Planning and Zoning, 106½ N. Heber, Beckley, West Virginia.	

Issued: May 1, 1991.

C.M. "Bud" Schauerte,

Administrator Federal Insurance Administration.

[FR Doc. 91–11658 Filed 5–15–91; 8:45 am]

BILLING CODE 6718–03–M

44 CFR Part 326

RIN 3067–AB79

Policy Guidance for a National Emergency Blood Program (DMO–7)

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This final rule amends subchapter E, chapter I, Title 44, Code of Federal Regulations (CFR) by removing part 326. Although, the Director of FEMA, under sections 104 and 1701 of Executive Order (E.O.) 12656 of November 18, 1988, assists the National Security Council in the implementation of national security emergency preparedness policy and has the lead responsibility for coordinating and supporting the initiation, development, and implementation of national security emergency preparedness programs and plans among the Federal departments

and agencies, the Department of Health and Human Services under the provisions of section 801 of E.O. 12656 is responsible for the development of national plans and programs to mobilize the health industry and health resources for the provision of health services in national security emergencies. This responsibility includes a National Emergency Blood Program. Consequently, this Part is being removed from Title 44 of the CFR so that the Department of Health and Human Services may fulfill its responsibilities by publishing a rule on the Blood Program under its own Title to the CFR.

EFFECTIVE DATE: May 16, 1991.

FOR FURTHER INFORMATION CONTACT: Richard F. Marilley, Senior Planning Officer (Policy), Mobilization Policy and Plans Division, Office of Mobilization Preparedness, Federal Emergency Management Agency, room 509, 500 C Street, SW., Washington, DC 20472, Telephone (202) 646–3003.

SUPPLEMENTARY INFORMATION:

List of Subjects in 44 CFR 326

Blood program, Civil defense.

Accordingly, under 5 U.S.C. 551–553, subchapter E, chapter I, Title 44, Code of Federal Regulations is amended by removing part 326.

Dated: April 6, 1991.

Antonio Lopez,

Associate Director, National Preparedness Directorate, Federal Emergency Management Agency.

[FR Doc. 91–11643 Filed 5–15–91; 8:45 am]

BILLING CODE 6718–01–M

FEDERAL MARITIME COMMISSION

46 CFR Part 550

[Petition No. P4–90, Docket No. 91–21]

Application of Tropical Shipping & Construction Co., Ltd. Under Section 35 of the Shipping Act, 1916

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission amends its regulations governing the publishing, filing and posting of tariffs in domestic offshore commerce pursuant to the Shipping Act, 1916. This amendment of part 550 adds a new exemption for carriers providing port-to-port service in the U.S. Virgin Islands domestic offshore trade. Such carriers now are permitted to publish on one day's notice reductions in existing individual commodity rates, and rates on new tariff items.

DATES: This action is effective May 16, 1991.

FOR FURTHER INFORMATION CONTACT:

Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573, (202) 523–5740.

Bryant L. VanBrakle, Deputy Director, Bureau of Domestic Regulation, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573, (202) 523–5796.

SUPPLEMENTARY INFORMATION: On October 29, 1990, Tropical Shipping & Construction Co., Ltd. ("Tropical") filed an Application for Exemption ("Application") under section 35 of the Shipping Act, 1916 ("1916 Act"),[1] that sought relief from the thirty-day tariff-filing requirement of section 2 of the Intercoastal Shipping Act, 1933 ("1933 Act"), 46 U.S.C. app. 844. The exemption would permit carriers in the trade between the U.S. (including Puerto Rico) and the U.S. Virgin Islands ("U.S. Virgin Islands Trade" or "Trade") that are regulated by the Federal Maritime Commission ("FMC" or "Commission") to publish new individual commodity rates, or a reduction in existing individual rates, on one day's notice.

A notice of the filing of the Application was published in the **Federal Register** (55 FR 46720) and a comment supporting the Application was submitted by Trailer Marine Transport Corporation ("TMT"). A comment opposing the Application was filed by the Caribbean Shippers Association, Inc. ("CSA").[2] On March 1, 1991, the Commission issued an Order Denying Application ("March Order").

The March Order emphasized that Tropical had yet to file a tariff in the FMC-regulated Florida-U.S. Virgin Islands Trade and further noted it was unclear whether Tropical was going to file such a tariff. The Commission observed that if Tropical did enter the FMC-regulated Florida-U.S. Virgin Islands Trade, the question remained whether Tropical would be competing with carriers regulated by the Interstate Commerce Commission ("ICC") for the sort of cargo that lends itself to port-to-port carriage. The March Order further stated that even if Tropical competed with ICC-regulated carriers for such cargo it was not apparent that it would be disadvantaged by the thirty-day notice requirement of the 1933 Act. The Commission refused to grant the Application on the mere supposition that it met the requirements of section 35. The March Order also noted that it would have been particularly inappropriate to grant the application given CSA's allegation that a similar exemption in the U.S.-Puerto Rico Trade had created difficulties for shippers.

Tropical has now filed a Petition for Reconsideration ("Petition"). TMT and CSA each filed a Reply thereto.

The Petition for Reconsideration

Tropical's Petition states that on February 28, 1991, one day before the March Order was served, Tropical filed a tariff with the FMC covering port-to-port transportation in the Florida-U.S. Virgin Islands Trade. The filing of a tariff, Tropical argues, removes one of the Commission's major objections to the granting of its original Application. Petition at 2.

Tropical's FMC tariff has specific commodity rates for boats, machinery, motor vehicles-passenger, and trailers. Petition at 2. The Petition for Reconsideration, which is dated March 29, 1991, states that effective March 31, 1991, the corresponding rate items would be deleted from Tropical's ICC tariff. *Id.* As of that date, Tropical allegedly would be in direct competition with TMT, which is said to have lower rates for the same four commodities in its ICC tariff. *Id.* Tropical asserts that its ability to compete for these commodities is hampered because any rate reductions on these commodities must be filed on thirty days' notice while TMT can file rate reduction on one day's notice. *Id.*

Addressing CSA's earlier comments regarding Tropical's Application, Tropical points out that the focus of CSA's comments is on the U.S.-Puerto Rico Trade. Petition at 4. Tropical contends that the Florida-U.S. Virgin Islands Trade, which is open to foreign flag competition, cannot be equated to the U.S.-Puerto Rico Trade that is subject to the Jones Act restrictions. *Id.* Tropical observes that in the absence of the full play of market competition, the 1916 Act substitutes other restrictions, such as rate notices, to control the market. *Id.* However, Tropical believes that such regulatory restrictions have no place in the trades to and from the U.S. Virgin Islands where vessels of any flag may operate, just as they do in the

[1] Section 35 of the 1916 Act provides in pertinent part: The Federal Maritime Commission, upon application or on its own motion, may by order or rule exempt for the future any class of agreements between persons subject to this Act or any specified activity of such persons from any requirement of the Shipping Act, 1916, or Intercoastal Shipping Act, 1933, where it finds that such exemption will not substantially impair effective regulation by the Federal Maritime Commission, be unjustly discriminatory, or be detrimental to commerce. 46 U.S.C. app. 833a.

[2] CSA claims to represent a number of shippers and receivers involved in the Caribbean trades, both to Puerto Rico and to the U.S. Virgin Islands.

foreign trades. *Id.* Tropical submits that CSA's comments regarding the U.S.-Puerto Rico Trade should therefore play no role in the Commission's decision. *Id.*

Tropical also addresses the contention in CSA's previous comments that a carrier may abuse the exemption in the Puerto Rico Trade by maintaining a high "Cargo N.O.S." rate in its FMC tariff so that any commodity rate may be filed on one day's notice as a reduction from the "Cargo N.O.S." rate, even though the commodity rate may represent an increase over the corresponding ICC rate. Tropical points out that its FMC tariff has no "Cargo N.O.S." rate. Petition at 5.

Finally, Tropical attacks CSA's failure to identify its membership. Tropical believes that CSA may only represent one shipper in the U.S. Virgin Islands. Under the circumstances, Tropical believes that CSA's comments are entitled to little or no weight. Petition at 6.

Replies to the Petition for Reconsideration

A. TMT

In support of Tropical's Petition for Reconsideration, TMT points out that it has filed an extensive FMC-regulated tariff in the U.S.—U.S. Virgin Islands Trade which will become effective May 1, 1991. TMT Reply at 2. This, it is alleged, is a change in material fact which further supports the need for the exemption. *Id.* TMT urges the Commission to grant the exemption and confirm that it embraces the trade between Puerto Rico and the U.S. Virgin Islands. *Id.* It is also requested that the Commission extend the exemption to cover any reduction in accessorial charges as well as rates.[3] *Id.* TMT points out that the exemption in the U.S.-Puerto Rico Trade did not specifically mention accessorial charges, and the FMC staff has refused to construe the exemption broadly to cover them. *Id.* at 3.

Finally, TMT urges the Commission not to lose sight of the fact that the principal beneficiaries of one-day notice rate reductions are shippers. TMT Reply at 4. The requested exemption allegedly will not result in shippers losing their rights to protest a rate which they believe is unjust or unreasonable.

B. CSA

CSA claims that Tropical's comparison of its rates with those of TMT is invalid because Tropical's rates apply southbound while TMT's rates apply northbound. CSA Reply at 4. The northbound rates of Tropical and TMT are alleged to be identical. *Id.* CSA has attached the relevant tariff pages in support of its contention. CSA also alleges that Tropical has not submitted a notice to the ICC that it is cancelling its ICC-regulated northbound rates. *Id.* at 6. This, it is claimed, will result in Tropical having FMC-regulated rates southbound and ICC-regulated rates northbound. *Id.* This is the sort of bifurcation of activities which CSA finds objectionable. *Id.* CSA also believes that it is not clear whether Tropical has, in fact, cancelled its ICC-regulated southbound rates on the commodities in question. *Id.*

CSA also believes that the rates in Tropical's new FMC-regulated tariff represent a *de facto* rate increase. CSA Reply at 6–7. The rates are alleged to be the same as those previously filed with the ICC. *Id.* at 7. However, the FMC-regulated rates, unlike the ICC-regulated rates, do not include any inland transportation. *Id.* Thus, it is argued, the shipper is paying the same rate but is receiving less service. *Id.*

In sum, CSA argues that the Petition should be denied because it is "seriously flawed and misleading". CSA Reply at 7. CSA submits that Tropical cannot be harmed by denial of the Petition because it can control "when, where and under what circumstances it chooses to offer what type of rates/services". *Id.* Any problems which Tropical envisions are said to be hypothetical.

Discussion

Rule 261 of the Commission's Rules of Practice and Procedure, 46 CFR 502.261, governing petitions for reconsideration, limits the grounds for such petitions. That Rule provides in relevant part that:

> A petition will be subject to summary rejection unless it:
>
> (1) Specifies that there has been a change in material fact or in applicable law, which change has occurred after issuance of the decision or order;
>
> (2) Identifies a substantive error in material fact contained in the decision or order;
>
> (3) Addresses a finding, conclusion or other matter upon which the party has not previously had the opportunity to comment or which was not addressed in the briefs or arguments of any party. Petitions which merely elaborate upon or repeat arguments made prior to the decision or order will not be received.

Tropical's Petition complies with Rule 261. At the time the Commission decided Tropical's Application for Exemption, Tropical had not filed a tariff in the Florida—U.S. Virgin Islands Trade. In denying the Application, the Commission attached considerable importance to the fact that Tropical had not yet filed such a tariff. Thus, the filing of a tariff by Tropical is a "change in material fact", as that phrase is used in Rule 261.

The Petition for Reconsideration also addresses the arguments of CSA regarding the effect of one day's notice for rate reductions in the Puerto Rico Trade. Due to the procedural schedule followed, Tropical had no opportunity to rebut CSA's arguments prior to the Commission's decision. Thus, the Petition "[a]ddresses a finding, conclusion or other matter upon which the party has not previously had the opportunity to comment * * *."

CSA appears to be correct in its contention that the comparison of rates shown in Tropical's Petition is in error. The tariff pages attached to CSA's Reply show that the rates of TMT and Tropical for the commodities in question are identical. Nevertheless, there is no question that TMT and Tropical are competing for the same commodities. Thus, Tropical is in much the same position as the carriers that have been granted similar exemptions in other trades. *Matson Navigation Co., Inc.—Application for Section 35 Exemption*, _____ F.M.C. _____, 24 S.R.R. 1518 (1989) ("*Matson Exemption*") and *Application of Sea-Land Service, Inc. for Exemption Under Section 35 of the Shipping Act, 1916*, _____ F.M.C. _____, 25 S.R.R. 660 (1990) ("*Sea-Land Exemption*").

CSA also may be correct in arguing that the rates in Tropical's new FMC-regulated tariff represent a *de facto* increase over the rates previously filed in its ICC-regulated tariff. The level of rates is the same in both tariffs but the FMC-regulated rates, unlike the ICC-regulated joint through rates, do not include inland transportation. Thus, the shipper may be receiving less service for the same price. However, even if CSA's argument is correct, it does not necessarily require the denial of the Application. The rates were filed on thirty days' notice and were not protested by CSA or any other shipper. More importantly, CSA has not shown how the requested one day's notice would prevent shippers from protesting such rates.

As Tropical correctly points out, the U.S.-U.S. Virgin Islands Trade is open to foreign flag competition. Clearly, the Trade represents a contestable market. Carriers can enter and exit the Trade with relative ease, free from governmental interference. Thus, competition, both actual and potential,

[3] This request is beyond the scope of Tropical's original Application and, accordingly, will not be further considered here.

may be expected to curtail the sort of problems CSA envisions.

We are now satisfied that the exemption will not substantially impair effective regulation by the Commission, be unjustly discriminatory or detrimental to commerce. Indeed, Tropical is now in much the same position as the carriers that have been granted similar exemptions in other trades. See *Matson Exemption* and *Sea-Land Exemption*. Accordingly, the Commission will reconsider its March Order and grant Tropical's Application for Exemption.

Although the Commission, as an independent regulatory agency is not subject to Executive order 12291, dated February 17, 1981, it has nonetheless reviewed the rule in terms of this Order and has determined that this rule is not a major rule as defined in Executive Order 12291 because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Federal Maritime Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that this rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units and small government jurisdictions.

List of Subjects in 46 CFR Part 550

Maritime carriers; Reporting and recordkeeping requirements.

Therefore, pursuant to 5 U.S.C. 553, sections 18, 35, and 43 of the Shipping Act , 1916, 46 U.S.C. app. 817, 833a, and 841a, and section 2 of the Intercoastal Shipping Act, 1933, 46 U.S.C. app. 844, part 550 of title 46, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 550 continues to read as follows:

Authority: 5 U.S.C. 553, 46 U.S.C. app. 812, 814, 815, 817, 820, 833a, 841a, 843, 844, 845, 845a, 845b, and 847.

2. In § 550.1, a new paragraph (d) is added reading as follows:

§ 550.1 Exemptions.

* * * * *

(d) Carriers providing port-to-port transportation between the United States, including Puerto Rico, and the U.S. Virgin Islands may publish new individual commodity rates, or reductions in existing individual rates, on one day's notice, and to that extent are exempted from the notice requirements of the Act and the rules of this part.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91-11562 Filed 5-15-91; 8:45 am]

BILLING CODE 6730-01-M

UNITED STATES INFORMATION AGENCY

48 CFR Chapter 19

Foreign Acquisitions; Waiver of CBD Notices

AGENCY: U.S. Information Agency.

ACTION: Temporary waiver of requirement; request for comments.

SUMMARY: The U.S. Information Agency (USIA) has issued a policy to waive the requirement to publish a notice in the Commerce Business Daily (CBD) when soliciting bids or proposals for the acquisition of property or services by USIA overseas establishments and the acquisition actions are to be made and performed outside the United States, its possessions, or Puerto Rico.

DATES: Effective date of waiver April 16, 1991. Comments on this document will be accepted until June 1, 1991. All written communications received on or before the closing date will be considered by the Agency before taking final action.

ADDRESSES: Comments should be addressed to Mr. Darwin Roberts, U.S. Information Agency, Office of Contracts, 330 C Street SW., room 1611, Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Interested parties may obtain a copy of this waiver by contacting Ms. Gloria Sweetney, U.S. Information Agency, Office of Contracts, 330 C Street SW., room 1611, Washington, DC 20547, (202) 485-6404.

Subject: Foreign Acquisitions—Waiver of requirement to publish a notice in the Commerce Business Daily (CBD) soliciting bids or proposals for acquisition of property or services expected to exceed $25,000, but less than $500,000; or a noncompetitive acquisition over $10,000; or before placing an order, expected to exceed $25,000, under a basic agreement, basic ordering agreement or similar arrangement.

Purpose. This document sets forth the procedures necessary to determine the reasonableness or appropriateness of all United States Information Service (USIS) overseas posts and Voice of America (VOA) relay stations of applying a waiver to publishing notices for acquisition actions to be made and performed outside the United States, its possessions, or Puerto Rico when only local sources will be solicited, as authorized by section 18(c)(3) of the Office of Federal Procurement Policy Act (41 USC 401 to. seq.) and section 8(g)(3) of the Small Business Act (15 USC 637 to. seq.). Consultation with the Administrator for Federal Procurement Policy and the Administrator of the Small Business Administration has obtained their concurrence that USIS posts and overseas VOA relay stations may use the FAR exception found in FAR 5.202(a)(12).

Effective Date. April 16, 1991.

Background. The U.S. Information Agency maintains approximately 205 overseas posts and 14 VOA relay stations, (hereinafter called establishments), in 128 countries. The purchasing function for local requirements is managed individually by each establishment utilizing resources; competitively selected, where possible; that are available and in proximity to the establishment. The majority of USIA contracts are executed by Department of State (DOS) contracting officers. Although the DOS has a similar waiver included in its acquisition regulations, which it has been using for the overseas procurement it performed on behalf of USIA, DOS has recently decided that its waiver is limited to DOS acquisitions. The purpose of this policy is to maintain the status quo for local overseas procurement by the establishments. For all USIA acquisitions, the USIA establishment utilizes and adheres to the U.S. Information Agency Acquisition Regulation (IAAR) which is in conformance with the Federal Acquisition Regulation (FAR).

Rationale. Because of the diverse geographic locations of the overseas establishments, the urgency of carrying out the Agency's foreign public diplomacy mission, the nature of the procurements and vastly different market conditions; the practicality of applying the U.S. procedural requirements to all foreign purchases is determined to be unreasonable and in most cases inappropriate. The reasons for this determination are as follows:

(1) The constant changing circumstances of public diplomacy make unreasonable any delays due to posting of notices, the issuance of solicitations

within the U.S. and the response time for receipt of bids or proposals.

(2) The need to have the supplier within reasonable proximity to the overseas establishment to assure complete understanding of the requirement and subsequently to monitor quality performance. Most contracts are for services which must be performed locally.

(3) The difficulty of communication and coordination outside of the country of post or relay station residence.

(4) The cost in both time and money of the conduct of negotiations between the U.S. and a foreign location, which, except in unusual circumstances, would be prohibitive.

(5) The ability of an overseas establishment to amend or clarify solicitations on a timely basis to reflect changes is threatened by the circumstances of distance and time zone differences, even with advanced communication technology.

(6) Consistency with DOS acquisition regulations.

Policy and Procedures. a. In many cases it is inconsistent with the Agency's foreign public diplomacy mission to comply with the notice requirements in FAR subparts 5.2 and 5.3 concerning synopsis and response time requirements. The Agency hereby determines, after consultation with OFPP and SBA, that the exception to the synopsis requirement given in FAR 5.202 (a)(12) shall apply to acquisition actions made and performed outside the United States, its possessions, or Puerto Rico, when only local sources will be solicited. The synopsis and response time requirements shall be waived, unless the Contracting Officer can make an affirmative determination that compliance with the requirements will not have an adverse impact on the establishment's mission.

b. When an overseas establishment develops a purchase request for supplies or services, the request shall be furnished to an authorized Contracting Officer accompanied by a memorandum identifying all established sources of supply known to the requirements office, including all local suppliers of U.S. end products; critical dates for delivery; installation and operational dates; estimated cost; an estimate of the total time lapse between date of order and final contractor performance; the urgency of the requirement; and, any other factors that may be unique, but nonetheless mandatory.

c. The Contracting Officer shall review the information submitted by the program office and take the action required under FAR subparts 5.2 and 5.3 to publish a synopsis, only if appropriate, based on the following criteria:

(1) It can be determined that publication of a notice in the CBD will not delay or otherwise adversely impact on the post's ability to satisfy its overseas requirement in a timely and cost effective manner.

(2) The determination is to be made in writing, taking into account overseas delivery, installation, operation, maintenance or replacement requirements, in addition to special product or performance specifications; and, where necessary, security clearance requirements for suppliers. Unless it can be determined that an overseas requirement will not be delayed, or otherwise adversely affected by publication of a notice in the CBD, the Contracting Officer may waive the requirement and shall conduct a competitive (to the extent feasible, given the market conditions in-country) negotiated procurement with locally known and qualified sources of supply. If there are known to be U.S. firms, local firms with U.S. affiliations or firms that furnish U.S. produced items, the Contracting Officer shall ensure that these firms are included in the source list to receive the solicitation. Competition is a policy goal in all such procurements.

d. This policy does not affect decisions concerning compliance with the Balance of Payments Program (FAR subpart 25.3) or the Trade Agreements Act (FAR subpart 25.4).

Documentation. a. In accordance with FAR 1.404, this waiver is a class deviation and may be used without separate written documentation for local overseas procurements up to $500,000 per transaction.

b. For procurement actions in excess of $500,000, the approval of the Agency Procurement Executive or his/her designee is necessary.

Dated: May 6, 1991.

Philip R. Rogers,

Procurement Executive.

[FR Doc. 91–11339 Filed 5–15–91; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 658

[Docket No. 80349–8098]

Shrimp Fishery of the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of Texas closure adjustment.

SUMMARY: NOAA announces an adjustment of the dates of the annual closure of the shrimp fishery in the exclusive economic zone (EEZ) off Texas. The closure, normally between June 1 and July 15 each year, will commence at 12:01 a.m., May 17, 1991, and will terminate 30 minutes after sunset on July 6, 1991. The adjustment is a response to biological data that indicate early migration of brown shrimp from Texas estuaries and is intended to protect small shrimp from capture by trawls.

EFFECTIVE DATES: The EEZ off Texas is closed to trawl fishing from 12:01 a.m., May 17, 1991, to 30 minutes after sunset on July 6, 1991.

FOR FURTHER INFORMATION CONTACT: Michael E. Justen, 813–893–3722.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico shrimp fishery is managed under the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico, as provided by the Magnuson Fishery Conservation and Management Act. The implementing regulations at 50 CFR 658.25 describe the Texas closure and provide for adjustments to the closing and opening dates by the Director, Southeast Region, NMFS, under specified criteria.

Available information meeting the criteria specified in 50 CFR 658.25(b)(1) indicates that an early closure is warranted and desirable. Biological data collected by the Texas Parks and Wildlife Department indicate an early migration of small brown shrimp from the Texas bay systems. An average predicted total length of brown shrimp of 80 to 90 millimeters in the central and northern bays of Texas and the predicted strength of the outgoing tides on and after May 15, 1991, indicate that the closure should commence on May 15, 1991, and terminate on July 6, 1991. However, NOAA is limited by 50 CFR 658.25(b) to an adjustment to the normal closing date of June 1 of no more than 15 days. Therefore, the earliest the EEZ off Texas can be closed to trawl fishing is May 17.

From 12:01 a.m., May 17, 1991, to 30 minutes after sunset on July 6, 1991, the area described at 50 CFR 658.25(a) is closed to all trawl fishing, except that a vessel may fish for royal red shrimp beyond the 100-fathom depth contour. The waters of Texas will also be closed during this period.

Other Matters

This action is authorized by 50 CFR 658.25 and complies with E.O. 12291.

List of Subjects in 50 CFR Part 658

Fisheries, Fishing, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 10, 1991.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91–11590 Filed 5–10–91; 4:45 pm]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 56, No. 95
Thursday, May 16, 1991

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

[TB-91-007]

RIN 0581-AA19

Tobacco Fees and Charges for Mandatory Inspection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Tobacco Inspection Act requires the Secretary to fix and collect fees and charges for inspection and certification, the establishment of standards, and other services, including administrative and supervisory costs, at designated tobacco auction markets in all tobacco producing areas. The fees collected must, as nearly as possible, cover the Department's costs of performing these services. The proposed rule would increase the fee from $.0067 per pound to $.0070 to reflect the increased cost of operating the tobacco inspection program.

DATES: Comments are due on or before June 17, 1991.

ADDRESSES: Send comments to the Director, Tobacco Division, Agricultural marketing Service (AMS), United States Department of Agriculture (USDA), room 502 Annex Building, P.O. Box 96456, Washington, DC 20090–6456. Comments will be available for public inspection at this location during regular business hours.

FOR FURTHER INFORMATION CONTACT: Director, Tobacco Division, AMS, USDA, room 502 Annex Building, P.O. Box 96456, Washington, DC 20090–6456. Telephone (202) 447–2567.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Department proposes to amend the regulations governing the mandatory inspection and certification of producer tobacco sold at designated auction markets throughout tobacco producing areas. The proposed amendment would increase the fees and charges assessed by the Department for providing inspection and certification of quota tobacco, the establishment of standards, and other services. The fee would cover the increased cost of operating the program, including administrative and supervisory costs. Authority for these regulations is contained in the Tobacco Inspection Act (7 U.S.C. 511–511q).

The current fee of $.0067 per pound has been in effect since July 1, 1989, as published in the **Federal Register** (54 FR 27855).

The Department conducts a yearly review of the financial status of this program to determine whether the fee is sufficient. Receipts for the 1990–91 marketing season were approximately $11,302,000. Anticipated expenses for the period are approximately $11,526,000. At the current fee level insufficient revenue is generated to meet the costs of the inspection program and to replenish funds that had to be used from the program's reserve account. The major factors causing the need for additional funding are increases in Federal salaries, benefits, travel allowances and overall administrative costs since 1989. An analysis of data available to the Department indicates that a fee of $.0070 per pound would cover expenses and maintain a reserve that would meet any reasonable contingency. Information on program income and expenses was presented to the National Advisory Committee for Tobacco inspection Services at its meeting on March 26, 1991, in Raleigh, North Carolina. The National Advisory Committee, which is made up of 14 representatives from tobacco producer interest groups, was established under the Tobacco Inspection Act to advise the Secretary of Agriculture on the fees to be assessed, level of inspection service, and other related matters. By a majority vote, the Committee adopted a motion to recommend to the Secretary an increase in the fee to $.0070 per pound.

The marketing season for tobacco does not coincide with the Federal fiscal year. Therefore, it is contemplated that the increased rate would be made effective on July 1, 1991, so as to treat all types of tobacco on an equal basis.

This rule has been reviewed under USDA procedures established to implement Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "nonmajor rule" because it does not meet any of the criteria established for major rules under the Executive Order.

Additionally, in conformance with the provisions of Public Law 96–354, the Regulatory Flexibility Act, full consideration has been given to the potential economic impact upon small business. Most of the firms which would be affected by this rule are small businesses. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The Administrator, Agricultural Marketing Service, has determined that this action would not have a significant economic impact on a substantial number of small entities. this proposed rule would not substantially affect the normal movement of the commodity in the marketplace. Compliance with this proposed rule would not impose substantial direct economic costs, recordkeeping, or personnel workload changes on small entities, and would not alter the market share or competitive positions of small entities relative to the large entities and would in no way effect normal competition in the marketplace. Furthermore, the Department is required by law to fix and collect fees and charges to cover the Department's cost in operating the tobacco inspection program.

In addition, one technical change of a non-substantive nature is being made in § 29.75a, (b), to correct a typographical error. The second sentence is being amended to state that if the inspector determines that requirements have not been followed, the inspector shall return to the noncomplying warehouse on the next regularly scheduled sale day. The text incorrectly read that the inspector would return to the noncomplying warehouse "or" the next sales day.

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, United States Department of Agriculture, room 502 Annex Building, P.O. Box 96456,

Washington, DC 20090–6456, not later than June 17, 1991.

List of Subjects in 7 CFR Part 29

Administrative practice and procedure, Advisory committee, Government publications, Imports, Pesticides and pests, Reporting and recordkeeping requirements, Tobacco.

Accordingly, the Department proposes to amend the regulations under the Tobacco Inspection Act contained in 7 CFR part 29 as follows:

PART 29—TOBACCO INSPECTION

Subpart B—Regulations

1. The authority citation for subpart B continues to read as follows:

Authority: 7 U.S.C. 511m and 511r.

§ 29.75a [Amended]

2. The second sentence of § 29.75a, (b) Display of burley tobacco on auction warehouse floors in designated markets is revised to read:

If he determines that the prescribed requirements have not been followed, the inspector shall proceed to the next sale or sales as originally scheduled for that day and grade the number of lots of tobacco scheduled for such sale or sales, and shall return to the noncomplying warehouse on the next regularly scheduled sales day for such warehouse, at which time the Set Work Leader or Circuit Supervisor shall again determine if the prescribed system has been followed before starting the inspection.

§ 29.123 [Amended]

3. In § 29.123(a) Mandatory inspection, change $.0067 per pound to $.0070 per pound.

Dated: May 13, 1991.

Daniel Haley,

Administrator.

[FR Doc. 91–11687 Filed 5–15–91; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 29

[TB–91–006]

RIN 0581–AA19

Tobacco Fees and Charges for Permissive Inspection and Certification

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Tobacco Inspection Act requires the Secretary to fix and collect fees and charges for the voluntary inspection and certification of tobacco upon request. This proposed rule would increase the fees and charges currently in force for permissive grading of quota and nonquota tobacco to reflect increased costs of operating the program. Under the Act, fees collected must cover, as nearly as practicable, the Department's costs for performing the inspection service, including administrative and supervisory costs. This increase does not affect the fee for the mandatory inspection of tobacco sold at designated auction markets or permissive export certification.

DATES: Comments are due on or before June 17, 1991.

ADDRESSES: Send comments to the Director, Tobacco Division, Agricultural Marketing Service (AMS), United States Department of Agriculture (USDA), room 502 Annex Building, PO Box 96456, Washington, DC 20090–6456. Comments will be available for public inspection at this location during regular business hours.

FOR FURTHER INFORMATION CONTACT: Director, Tobacco Division, AMS, USDA, room 502 Annex Building, PO Box 96456, Washington, DC 20090–6456. Telephone (202) 447–2567.

SUPPLEMENTARY INFORMATION: This proposed rule would increase the fees and charges under which permissive tobacco inspection and grading services are provided to those requesting the services. The Tobacco Inspection Act requires that permissive inspection be made available to interested parties on a fee basis sufficient to cover the costs incurred by the Department for the inspection and certification, the establishment of standards, and other services, including administrative and supervisory costs. Authority for these regulations is contained in the Tobacco Inspection Act (7 U.S.C. 511–511q).

The current hourly fee schedule for domestic permissive inspection has been in effect since December 18, 1989, as published in the **Federal Register** (54 FR 47755) on November 17, 1989.

The Department conducts an annual review of the financial status of this program to determine whether the fee is sufficient. As a result of this review, it has been determined that at the current fees insufficient revenue is generated to meet the costs of the program and to maintain an adequate reserve fund. The major factors causing the need for additional funds are increases in Government salaries and benefits, travel allowances and overall administrative costs since 1989. Therefore, the Department is proposing that the base hourly rate of $29.45 be revised to read hourly rate of $32.40, the overtime rate of $35.15 shall be $38.70, and the Sunday and holiday rate of $44.05 be $48.45. These fees would cover expenses and maintain a reserve that would meet any reasonable contingency.

This rule has been reviewed under USDA procedures established to implement Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "nonmajor rule" because it does not meet any of the criteria established for major rules under the Executive Order.

Additionally, in conformance with the provisions of Public Law 96–354, the Regulatory Flexibility Act, full consideration has been given to the potential economic impact upon small businesses. Few of the entities which would be affected by this rule are small business. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having gross annual revenues for the last 3 years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The Administrator, Agricultural Marketing Service, has determined that this action would not have a significant economic impact on a substantial number of small entities. This proposed rule would not substantially affect the normal movement of the commodity in the marketplace. Compliance with this proposed rule would not impose substantial direct economic costs, recordkeeping, or personnel workload changes on small entities, and would not alter the market share or competitive positions of small entities relative to the large entities and would in no way affect normal competition in the marketplace. Furthermore, the Department is required by law to fix and collect fees and charges to cover the Department's cost in operating the tobacco inspection program.

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, United States Department of Agriculture, room 502 Annex Building, PO Box 96456, Washington, DC 20090–6456, not later than June 17, 1991.

List of Subjects in 7 CFR Part 29

Administrative practice and procedure, Advisory committee,

Government publications, Imports, Pesticides and pests, Reporting and recordkeeping requirements, Tobacco.

Accordingly, the Department proposes to amend the regulations under the Tobacco Inspection Act contained in 7 CFR part 29 as follows:

PART 29—TOBACCO INSPECTION

Subpart B—Regulations

1. The authority citation for subpart B continues to read as follows:

Authority: 7 U.S.C. 511m and 511r.

2. Section 29.123(b) is revised to read as follows:

§ 29.123 Fees and charges.

* * * * *

(b) *Domestic permissive inspection and certification.* Fees and charges for inspection at redrying plants and receiving points shall comprise the cost of salaries, travel, per diem, and related expenses to cover the cost of performing the service. Fees shall be for actual time required to render the service calculated to the nearest 30-minute period. The hourly rate shall be $32.40. The overtime rate for service performed outside the inspector's regularly scheduled tour of duty shall be $38.70. The rate of $48.45 shall be charged for work performed on Sundays and holidays. These same fees or charges shall be applicable for hogshead, bale, cases, or sample inspections.

* * * * *

3. Section 29.9251 is revised to read as follows:

§ 29.9251 Fees and charges.

Fees and charges for inspection and certification services shall comprise the cost of salaries, travel, per diem, and related expenses to cover the costs of performing the service. Fees shall be for actual time required to render the service calculated to the nearest 30-minute period. The hourly rate shall be $32.40. The overtime rate for service performed outside the inspector's regularly scheduled tour of duty shall be $38.70. The rate of $48.45 shall be charged for work performed on Sundays and holidays.

Dated: May 13, 1991.

Daniel Haley,

Administrator.

[FR Doc. 91-11688 Filed 5-15-91; 8:45 am]

BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Parts 1943, 1951, 1955, and 1980

Requirement of a 10 Percent Downpayment From any Applicant in Conjunction With Insured and Guaranteed Farm Ownership Loans, Including Credit Sales, to Purchase Farm Real Estate

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to amend its regulations to require a 10 percent downpayment, based on the option/sales contract price, in conjunction with insured and guaranteed farm ownership loans, including credit sales, to purchase farm real estate. This action is necessary to improve the applicant's/borrower's chance for success by providing credit only to those applicants/borrowers who are in a position to meet the 10 percent downpayment requirement. Such a requirement will result in the applicant/borrower having a vested interest in the farm property, and will provide additional incentive to become a successful farm operator. In addition, the applicant's/borrower's equity position will increase their chance for success. The intended effect is to reduce losses to farmers and FmHA and strengthen the farmer programs loan portfolio.

DATES: Written comments must be submitted on or before June 17, 1991.

ADDRESSES: Submit written comments, in duplicate, to the Office of the Chief, Regulations Analysis and Control Branch, Farmers Home Administration, USDA, room 6348, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250. All written comments will be available for public inspection during regular working hours at the above address.

FOR FURTHER INFORMATION CONTACT: David R. Smith, Senior Loan Officer, Farmer Programs Loan Making Division, Farmers Home Administration, USDA, South Agriculture Building, room 5430, 14th and Independence Avenue, SW., Washington, DC 20250, Telephone (202) 382-1645.

SUPPLEMENTARY INFORMATION:

Classification

This action was reviewed under USDA procedures established in Departmental Regulation 1512-1, which implements Executive Order 12991, and has been determined to be nonmajor because it will not result in an annual effect on the economy of $100 million or more.

Intergovernmental Consultation

For the reasons set forth in the final rule related to Notice 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983) and FmHA Instruction 1940-J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23, 1983), Farm Ownership Loans are excluded with the exeption of nonfarm enterprise activity from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Programs Affected

These changes affect the following FmHA programs as listed in the Catalog of Federal Domestic Assistance:

10.407—Farm Ownership Loans

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

Discussion of the Proposed Rule

Farm loans made to FmHA applicants are governed by the Consolidated Farm and Rural Development Act (CONACT) (7 U.S.C. 1921 et seq.). FmHA, unlike commercial lenders, has historically loaned up to 100 percent of the appraised market value of farm real estate, leaving the Agency in a precarious security position and the borrower with no equity cushion to withstand any unforeseen emergency. Present FmHA farm ownership loan and inventory property regulations do not require any downpayment from the applicant when purchasing farm real estate or suitable inventory farm property. Only sales of surplus inventory farm property are subject to a downpayment requirement.

The House Committee on Appropriations (H.R. Report 101-598) expressed concern that inventory farm property was being sold and financed under the farm ownership program with no required downpayment by the purchaser. The committee did not concur in this approach and stated that it expected an amount equal to at least one year's rent be required as a

downpayment on such property. The Agency feels that the value of one year's rent could be difficult to calculate. Therefore, FmHA is proposing a 10 percent downpayment be required from any applicant in conjunction with insured and guaranteed farm ownership (FO) loans, including credit sales, for the purchase of farm real estate. The Agency believes the requirement is in the best interest of the borrower from the standpoint of borrower success and graduation to commercial credit sources. In the case of guaranteed loans, this requirement would also be in the lender's best interest because the lender's security position would be strengthened. From the Government's viewpoint the requirement would strengthen its insured loan portfolio and hopefully reduce the amount of loss claims it would pay on its guaranteed loans.

FmHA is proposing to amend the FO insured and guaranteed loan regulations by requiring a 10 percent downpayment, based on the purchase price, from any applicant in conjunction with insured and guaranteed loans to purchase farm real estate. A downpayment is based on 10 percent of the purchase price of the real estate, unless the purchase price is greater than the appraised value. If the purchase price is greater than the appraised value, the downpayment will be 10 percent of the appraised value plus the difference between the appraised value and the purchase price. A downpayment based on the purchase/option price takes into consideration both the sale from parent to child, in which the option price is less than the market value, and the situation in which the buyer is willing and able to pay more than the appraised value for property that is being sold in excess of the insured or guaranteed FO loan limits.

FmHA is proposing to amend the farmer program account servicing, property management and disposal of inventory property regulations by requiring that the sales contract will reflect a 10 percent downpayment, based on the sales contract price, from any applicant in conjunction with a credit sale of farm real estate.

The 30-day comment period is established to enable the Agency to comply with the legislative requirement to publish final rules within 150 days.

List of Subjects

7 CFR Part 1943

Credit Loan Program—Agriculture, Recreation, Water resources.

7 CFR Part 1951

Account servicing, Credit, Loan programs,—Agriculture, Loan programs—Housing and community development, Low and moderate income housing loans—Servicing, Debt restructuring.

7 CFR Part 1955

Foreclosure, Government acquired property, Government property management, Sale of government acquired property, Surplus government property.

7 CFR Part 1980

Agriculture Loan programs—Business and industry—Rural development assistance, Loan programs—Housing and community development.

Therefore, as proposed, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1943—FARM OWNERSHIP, SOIL AND WATER AND RECREATION

1. The authority citation for part 1943 continues to read as follows:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart A—Insured Farm Ownership Loan Policies, Procedures and Authorizations

2. Section 1943.17 is amended by adding a new paragraph (c) to read as follows:

§ 1943.17 Loan limitations.

* * * * *

(c) When loan funds will be used to purchase real estate, a loan may not be approved unless there will be a 10 percent downpayment. The downpayment will be 10 percent of the purchase price of the real estate, unless the purchase price is greater than the appraised value. If the purchase price is greater than the appraised value, the downpayment will be 10 percent of the appraised value PLUS the difference between the appraised value and the purchase price.

PART 1951—SERVICING AND COLLECTIONS

3. The authority citation for part 1951 continues to read as follows:

Authority: 7 U.S.C. 1989, 42 U.S.C. 1480, 5 U.S.C. 301, 7 CFR 2.23 and 7 CFR 2.70.

Subpart S—Farmer Programs Account Servicing Policies

4. Section 1951.911 is amended by revising paragraph (a)(5)(i)(B), the introductory text of paragraph (a)(5)(ii), and paragraphs (a)(7)(iii) and (a)(7)(iv) to read as follows:

§ 1951.911 Preservation loan service programs.

(a) * * *

(5) * * *

(i) * * *

(B) If the owner has requested buyback of the property as a credit sale on eligible rates and terms, the County Committee will determine the owner's eligibility in accordance with subpart A of part 1943 of this chapter, and the County Supervisor will determine the feasibility of the proposed operation before entering into the leaseback/buyback agreement. If the County Committee determines that the owner is not eligible or the County Supervisor determines that the owner's proposed operation and purchase is not feasible, and/or the owner fails to submit the information requested on Exhibit K of this subpart within 15 days of the date which appears on Exhibit K, appeal rights will be given in accordance with subpart B of part 1900 of this chapter. If the County Committee determines the owner is eligible for a credit sale on eligible rates and terms and the County Supervisor determines that the owner's proposed operation and purchase is feasible, the County Supervisor will enter into a conditional credit sale with the owner. The following conditions will be inserted on Form FmHA 1955–45, "Standard Sales Contract—Sale of Real Property by the United States."

FmHA's obligation to close the sale is contingent on its acquiring title to the security within 2 years from the date of the agreement. FmHA's obligations are contingent on the owner meeting FmHA's credit sale criteria for eligible rates and terms, creditworthiness and repayment ability at the time the credit sale is ready to close. A 10 percent downpayment, based on the sales contract price, is required from any eligible applicant at the time of closing the credit sale.

* * * * *

(ii) If the owner has requested leaseback/buyback of the real property, FmHA may, as a part of an agreement, permit the owner to voluntarily convey the real property and chattels to FmHA and immediately lease, or approve a credit sale of, the real property back to the farmer owner. A 10 percent downpayment, based on the sales contract price, is required when a credit sale is involved. FmHA may approve a credit sale of all the chattel property back to the former owner. These agreements are subject to the following

items being included before completing the transaction.

* * * * *

(7) * * *

(iii) The property will be offered either on eligible terms (if the purchaser is eligible in accordance with subpart A of part 1943 of this chapter) and a credit sale, less the required 10 percent downpayment, processed in accordance with subpart C of part 1955 of this chapter, or on ineligible terms of not less than a 10 percent downpayment with the remaining balance amortized over a period not to exceed 25 years. The interest rate will be the current rate set forth in Exhibit B of FmHA Instruction 440.1 (available in any FmHA office).

(iv) If the purchaser is an eligible applicant (in accordance with subpart A of part 1943 of this chapter) and the value of the property is greater than $200,000, the property may be financed with a $200,000 credit sale on eligible terms and the remainder with the applicant's own resources and/or with participating credit set forth in subpart A of part 1943 of this chapter. A 10 percent cash downpayment, based on the lesser of the appraised value or the contract sales price, is required from the eligible applicant. If the value of the property is greater than $200,000 and the eligible applicant is NOT able to arrange the necessary financing for the balance over $200,000, FmHA may finance the purchase of the property with a credit sale on ineligible terms of not less than a 10 percent downpayment with the remaining balance amortized over a period not to exceed 25 years. A credit sale on eligible terms and the remaining balance on ineligible terms will NOT be made to the same applicant to purchase farm property.

* * * * *

PART 1955—PROPERTY MANAGEMENT

5. The authority citation for Part 1955 continues to read as follows:

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

Subpart B—Management of Property

6. Section 1955.66(h) is amended to add a new sentence after the second sentence as follows:

§ 1955.66 Lease of real property.

* * * * *

(h) *Lease of farm property with option to purchase.* * * * A 10 percent downpayment, based on the option/sales contract price, is required from any applicant when FmHA is financing the credit sale. * * *

* * * * *

Subpart C—Disposal of Inventory Property

7. Section 1955.107 is amended by revising the introductory text and paragraph (d)(1) to read as follows:

§ 1955.107 Sale of suitable property (CONACT).

Except as provided in § 1955.105(c) of this subpart for farm property, CONACT real property which has been declared suitable for sale to eligible applicants will be offered for regular sale to program applicants in accordance with FmHA regulations that apply to the appropriate loan program. A 10 percent downpayment is required from any eligible or ineligible applicant. Real property will be managed in accordance with the provisions of subpart B of this part until sold under this section or reclassified as surplus and sold under § 1955.108 of this subpart.

* * * * *

(d) * * *

(1) Form FmHA 1955–45, "Standard Sales Contract—Sale of Real Property by the United States," will be used to document the offer and acceptance for regular FmHA sales. The sales contract will reflect the 10 percent downpayment that is required from any applicant.

* * * * *

PART 1980—GENERAL

8. The authority citation for Part 1980 continues to read as follows:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70

Subpart B—Farmer Programs Loans

9. Section 1980.180 is amended by adding a new paragraph (d)(4) to read as follows:

§ 1980.180 Farm ownership loans.

* * * * *

(d) * * *

(4) The applicant does not have the required 10 percent downpayment when loan funds will be used to purchase real estate. The downpayment will be 10 percent of the purchase price of the real estate, unless the purchase price is greater than the appraised value. If the purchase price is greater than the appraised value, the downpayment will be 10 percent of the appraised value PLUS the difference between the appraised value and the purchase price.

* * * * *

Dated: April 16, 1991.

La Verne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 91–11637 Filed 5–15–91; 8:45 am]

BILLING CODE 3410–07–M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 718 Re; Notice Nos. 693 and 702]

Revision of the Boundary of the Chalk Hill Viticultural Area (88F283P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Petition for rulemaking: withdrawal.

SUMMARY: ATF is withdrawing from further consideration the notice of proposed rulemaking regarding the revision of the Chalk Hill viticultural area, as proposed in Notice No. 693, published in the **Federal Register** on December 12, 1989 (54 FR 51039). After considering the comments received in response to the notice, ATF has concluded that the petitioner failed to meet the burden of showing that the present boundaries of the Chalk Hill viticultural area should be amended. The boundaries of the Chalk Hill viticultural area will therefore remain unchanged.

DATES: This withdrawal is effective May 16, 1991.

FOR FURTHER INFORMATION CONTACT: David W. Brokaw, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Ave. NW., Washington, DC 20226, (202) 566–7626.

SUPPLEMENTARY INFORMATION:

Background

On December 12, 1989, ATF published Notice No. 693 in response to a petition submitted by T. Clifford Melim, Jr., of Chalk Hill Vineyards. Mr. Melim requested that the northern boundary of Chalk Hill viticultural area be revised to include the portion of Chalk Hill Road north of Chalk Hill. The proposed amendment to the boundaries of the Chalk Hill viticultural area would have created a new area of overlap with the Alexander Valley viticultural area. The comment period for Notice No. 693 closed on January 26, 1990. No comments were received during the 45-day comment period. After the close of the comment period, ATF received a

written request from Frederick P. Furth of the Chalk Hill Winery to reopen the comment period. Mr. Furth stated that he intended to submit a comment in opposition to the proposed revision of the boundary of the Chalk Hill viticultural area, and he requested additional time to gather data and formulate his comments. Since the Chalk Hill Winery was located within the viticultural area which would be affected by the proposed boundary change, ATF considered Mr. Furth's request to be a valid reason for reopening the comment period. Therefore, ATF published Notice No. 702 (55 FR 20168) on May 15, 1990, and reopened the comment period until June 29, 1990.

Comments Received in Response to Notice No. 702

During the reopening of the comment period, ATF received ten comments, including a comment from Mr. Furth. Eight of the ten comments were opposed to the proposed boundary revision. The two comments received in favor of the proposed revision generally supported the petitioner's claim that the proposed overlap area was an area of transition between the Alexander Valley viticultural area and the Chalk Hill viticultural area, with characteristics common to both areas.

Evaluation of Evidence

Section 4.25a(e)(1), title 27, CFR defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been recognized and defined in subpart C of part 9. Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical characteristics (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey [U.S.G.S.] Maps of the largest applicable scale; and

(e) A copy or copies of the appropriate U.S.G.S. map(s) with the proposed boundaries prominently marked.

Evidence of Name

The petitioner submitted evidence that the area in question was known among local residents as the "Chalk Hill area of Alexander Valley." As an example, he referred to a residential subdivision located within the Alexander Valley viticultural area which is known as "Chalk Hill Estates." The petitioner submitted an affidavit from Mr. Byrd of Balverne winery, who stated that the original Chalk Hill appellation committee believed that the natural boundaries of the Chalk Hill viticultural area extended the entire length of Chalk Hill Road, but excluded the portion north of Chalk Hill from their original proposal because of doubts as to whether it would be aceptable to ATF. The petitioner submitted a copy of a map entitled "Franz Valley Study Planning Units," prepared in September 1978 by a study team of the Sonoma County Community and Environmental Services, which shows a "Chalk Hill" planning area that extends along Chalk Hill Road all the way to Highway 128. Finally, the petitioner submitted a real estate brochure which lists the first notable feature of a ranch adjacent to an Alexander Valley vineyard as "95 acres of premiere property located in Sonoma County's most prestigious wine country—the Chalk Hill region of Alexander Valley."

Mr. Furth disputed the petitioner's contention that the proposed area of overlap with Alexander Valley is known locally or nationally as the Chalk Hill area of Alexander Valley. Mr. Furth conceded that the residential real estate market may use that descriptive phrase, but he argued that the phrase had no meaning in a viticultural sense. He argued that while Chalk Hill Road is a major connecting road between Santa Rosa and Highway 128, that does not mean that the entire length of the road is viticulturally similar. Mr. Furth stated that the proposed area of overlap had never been known within the wine industry as the Chalk Hill area of Alexander Valley. Instead, Mr. Furth pointed to the U.S. Geological Survey Map known as the Healdsburg quadrangle, which clearly identifies this area as Alexander Valley.

Mr. Furth also disputed Mr. Byrd's declaration, in which it is stated that the original Chalk Hill appellation committee believed that the boundaries of the area should extend the entire length of Chalk Hill Road. Mr. Furth stated that there was fierce opposition on the part of a majority of the growers in that part of Alexander Valley to their vineyards being included in the Chalk Hill viticultural area, and that such opposition still exists today.

Evidence of Geographical Characteristics

The petitioner stated that the climate of the proposed overlap area was transitional between the climate of Chalk Hill viticultural area and the increasingly warmer climate of the rest of Alexander Valley. The petitioner also contended that the geology of the proposed overlap area represented a transitional area between the two viticultural areas, with the Huichica formation, which is the most dominant geological feature of the Chalk Hill viticultural area, also being present in the proposed overlap area, but not eslewhere in Alexander Valley.

The petitioner also described the topography of the proposed overlap area as being transitional to both areas, with the terrain of the area characterized by steep to gentle hills of low elevation, similar to several places along Chalk Hill Road, south of Chalk Hill, where the terrain levels out. Finally, the petitioner claimed that in the area of the proposed overlap, the most prevalent soils are Haire gravelly loam, Laniger loam, and Arbuckle gravelly sandy loam. In Chalk Hill, the most common soil types are the Arbuckle gravelly sandy loam, Haire gravelly loam, Huichica loam, Spreckels loam, Felta very gravelly loam, Laniger loam and Dibble clay loam. However, in Alexander Valley the most widespread soils are Cole clay loam, Cortina very gravelly loam, Pleasanton gravelly loam, Yolo sandy loam, Manzanita gravelly silt loam, and Zamora silty clay loam.

Mr. Furth disputed much of the petitioner's geographical evidence as well. With regard to climate, he stated that the climate of the Chalk Hill viticultural area was significantly cooler than the southern portion of the Alexander Valley, including the proposed area of overlap. Mr. Furth contended that the range of hills northeast of Brooks Creek formed a natural barrier to the ocean breezes which influenced the Chalk Hill viticultural area, cutting the proposed overlap area off from the cooling influence which gives Chalk Hill part of its distinctive character. Mr. Furth argued that the thermographic studies included in the petition were inconclusive at best, because of their limited scope.

Mr. Furth contended that much of the topography of the proposed overlap differed dramatically from the adjacent lands within the current Chalk Hill

viticultural area. In contrast to the predominantly steep and hilly Chalk Hill area, the proposed overlap area includes large areas of relatively flat land and expanses of alluvium along Franz and Maacama Creeks. Over, Mr. Furth contended that this area has significant similarities with the Alexander viticultural area and significant differences from the Chalk Hill area.

Mr. Furth also contended that much of the planted or plantable acreage within the proposed overlap consists of soils of the Yolo-Cortina-Pleasanton association, specifically Clough gravelly loam or Arbuckle gravelly loam. Mr. Furth stated that Clough gravelly loam is the most prevalent vineyard soil of the southern end of Alexander Valley, but does not occur anywhere within the current Chalk Hill viticultural area. Mr. Furth stated that while the proposed overlap area contains some Spreckles-Felta soils, which are the most predominant soil association in Chalk Hill, most of this area is unplanted or unplantable.

T.D. ATF-272 (53 FR 17022, dated May 13, 1988). In T.D. ATF-272, ATF realigned the boundary common to the Alexander Valley and Chalk Hill viticultural areas. This realignment extended the southern leg of the boundary for the Alexander Valley viticultural area and curtailed the north-central leg of the boundary for the Chalk Hill viticultural area.

In realigning this boundary, ATF accepted evidence that the land area within the realignment enjoyed name recognition and shared similar geological history, topographical features, soils and climatic conditions as adjoining land within the boundary of the Alexander Valley viticultural area. Mr. Melim's petition, requesting the realignment of the northern boundary of the Chalk Hill viticultural area, would place land back into the Chalk Hill viticultural area.

Decision

After carefully studying the issues and analyzing the comments, ATF has found no basis for amending the current boundaries of the Chalk Hill viticultural area. The petitioner has failed to show that the proposed area of overlap is known locally or nationally as part of the Chalk Hill area. ATF finds that while there is evidence in support of both positions, the weight of the evidence supports the finding that the current boundaries of the Chalk Hill viticultural area reflect geographical characteristics which distinguish the viticultural features of the Chalk Hill viticultural area from the viticultural features of the Alexander Valley viticultural area. For these reasons, ATF is withdrawing Notice No. 693.

Drafting Information

The author of this document is David W. Brokaw, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

Authority and Issuance. This document is issued under the authority in 27 U.S.C. 205.

Signed: April 26, 1991.

Stephen E. Higgins,

Director.

[FR Doc. 91-11575 Filed 5-15-91; 8:45 am]

BILLING CODE 4810-31-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 62

RIN 3067-AB68

National Flood Insurance Program; Assistance to Private Sector Property Insurers

AGENCY: Federal Insurance Administration (FIA), Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the National Flood Insurance Program (NFIP) regulations for the "Write Your Own" (WYO) Program under which private sector insurers may issue and service policies of flood insurance backed by the Government. The proposed amendments involve addition of a paragraph on the new Mortgage Portfolio Protection Program (MPPP), revision of the commission allowance provisions, revision to the loss adjustment fee schedule, revision to the membership of the WYO Standards Committee, and other technical and/or editorial changes to the Financial Assistance/Subsidy Arrangement and the Financial Control Plan. This proposed rule is necessary to (1) clarify that abiding by the MPPP guidelines and requirements is part of a WYO company's responsibility under the Financial Assistance/Subsidy Arrangement if it elects to utilize the MPPP, (2) eliminate the administrative burden experienced by WYO companies due to the paperwork and record-keeping required by use of the current variable commission allowance provision, (3) make permanent the loss adjustment fee schedule which most WYO companies elected as an option for Arrangement Year 1990–1991, and (4) increase the size and change the composition of the WYO Standards Committee to meet changing demands. The intended effect of this proposed rule is to achieve a greater administrative and fiscal effectiveness in the operation of the NFIP and lessen the burdens on those private sector companies who participate in the WYO Program.

DATES: All comments must be received on or before June 17, 1991.

ADDRESSES: Comments should be sent to the Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, 500 C Street, SW., room 840, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Donald L. Collins, Federal Emergency Management Agency, Federal Insurance Administration, 500 C Street, SW., Washington, DC 20472; telephone (202) 646–3419.

SUPPLEMENTARY INFORMATION: This proposed rule would amend the National Flood Insurance Program (NFIP) regulations dealing with the "Write Your Own" (WYO) Program (44 CFR 62, subpart C) which are authorized pursuant to section 1345 of the National Flood Insurance Act of 1968, as amended (Pub. L. 90–448, 42 U.S.C. 4001, *et seq.*). The proposed rule would add a paragraph on the Mortgage Portfolio Protection Program (MPPP) under which WYO companies electing to do so can provide flood insurance coverage for properties which are part of a lending institution's mortgage portfolio without obtaining the full underwriting information normally required, would revise the commission allowance provisions and the loss adjustment fee schedule established by the Federal Insurance Administrator (the Administrator) in the Financial Assistance/Subsidy Arrangement, and would revise the WYO Financial Control Plan by updating the information on the number of—and the composition of—members of the WYO Standards Committee.

The Mortgage Portfolio Protection Program (MPPP) was developed by the Federal Insurance Administration (FIA) for use by lending institutions, mortgage servicing companies, and others servicing mortgage loan portfolios in bringing those mortgage loan portfolios into compliance with the flood insurance purchase requirements of the Flood Disaster Protection Act of 1973. The MPPP has been in operation since January 1, 1991, and may be utilized by WYO Companies which, by signing a special agreement to abide by the MPPP guidelines and requirements, can write flood insurance policies at special high rates sufficient to recover the full costs of this program, in recognition of the risk

a given building presents due to the lack of complete underwriting information, for those properties which (1) are part of a lending institution's mortgage portfolio, (2) are located within a special flood hazard area of a community participating in the NFIP, and (3) are not covered by a flood insurance policy even after required notices have been given to the property owner (mortgagor) by the lending institution of the requirement for obtaining and maintaining such coverage. Notices to property owners (mortgagors) will inform them that the special high rates charged in the MPPP may be considerably higher than the rates charged for policies that can be obtained from a local insurance agent, which would be based on full underwriting information. This will operate as an incentive for the purchase of a fully underwritten policy, and it is expected that the vast majority of property owners (mortgagors) will in fact switch to such fully underwritten policies obtained from their local insurance agents.

A task force consisting of lenders, WYO companies, and insurance agents worked with the FIA for approximately two and a half years on the development of the MPPP, and the MPPP, as described above, reflects the input of a number of interested parties from both the lending industry and the WYO companies.

To clarify that, for those WYO companies electing to utilize the MPPP, abiding by the guidelines and requirements is part of the WYO companies' responsibility under the Arrangement, we are proposing to add a new paragraph on the Mortgage Portfolio Protection Program to part 62. A detailed discussion of the MPPP was published in the **Federal Register** (Vol. 56, pages 8883) on March 1, 1991, and a copy of the **Federal Register** Notice has been provided to all of the WYO companies which signed an agreement for participation in the MPPP. As spelled out in that agreement, the WYO companies must provide any lending institution for which they are writing MPPP policies with an MPPP Implementation Package which includes the criteria and requirements that must be adhered to when participating in the MPPP.

FIA will be making refinements to the MPPP as experience is gained from its use. In this regard, FIA would welcome comments, and these will be considered along with the experiences FIA gains regarding ways to improve the program.

Under the WYO Program, the Standard Flood Insurance Policy (the form and substance of which is approved by the Administrator) may be issued in their own names by insurers signatory to the Arrangement. Insurers then are responsible for all aspects of service, including policy issuance; endorsement and renewal of policies; and the adjustment of claims brought under the policies. The insurers retain a specified amount of the premium for their operating expenses, including the commissions of agents. Under the Arrangement (appendix A to part 62 of 44 CFR), the Government provides such additional funds as may be required for the settlement of claims and for the payment of claims.

The proposed revision to Article III.B. of the Arrangement would return to the previous flat commission allowance of 15% of the company's written premiums in place of the base commission allowance of 14% and additional percentage increases based on a company's growth in policies in force. The commission allowance provision to be replaced was originally put in place on October 1, 1988, in the hope that it would provide an added incentive for the production of new business. (Effective on that same date, FIA also revised the commission allowance for agents writing business directly with the Government through its servicing agent contractor, essentially to provide a commission of 17% for new business and 14% for renewal business.)

These changes were established with the expressed intent of reviewing their impact after a two-year period. That period has now passed and FIA has completed an evaluation of the changes.

There is general agreement that the commission paid to agents for "NFIP direct" business and that in the expense allowance for WYO companies should be the same, with individual WYO companies retaining the latitude to establish their own remuneration rates and methods. Moreover, analysis of the system now in effect revealed that the planning, tracking, accounting, and annual adjustment required to determine the additional commission percentage earned by a WYO company is a major administrative burden to the company and to the NFIP servicing agent contractor. While the increase in the policy base over the last seven to eight months has been at a greater rate than the months prior to that, this appears to be due in large measure to other factors such as the introduction of new products (e.g., the Condominium Master and the Preferred Risk Policies), increased enforcement of the mandatory purchase requirement by the lending community, and the public's increased awareness of flooding as a result of the devastation caused by Hurricane Hugo and other flooding events. Further, implicit in the ability to go from 14% to 15% of written premium for the commission allowance is a 10% growth in the company's policy in force base. This is a sustained annual growth rate that is regarded as unrealistic by many companies.

For Arrangement Year 1989, a total of $241,000 had to be repaid by WYO companies because the percentage of written premium that they withheld during the Arrangement Year was greater than they were entitled to retain, based on their growth in policies in force for the Arrangement Year. The paperwork and recordkeeping which the companies had to contend with in order to ensure the return of these monies was an administrative burden which will be eliminated by the return to the flat commission allowance.

With respect to the NFIP Direct business, the analysis also revealed: (1) That the accounting system for dual rates was an administrative burden for individual agents and the NFIP servicing agent contractor and (2) that the 17% new business commission rate for the past two years did not result in an influx of new business. Hence, in a separate rulemaking, FEMA will also be proposing a revision to the commission allowance paid to property insurance agents and brokers for policies issued by the NFIP through its servicing agent to return to the flat 15% on the first $2,000 of premium and 5% on the amount of premium in excess of $2,000, subject to a minimum commission of $10.00.

Regarding the loss adjustment fee schedule, in an interim rule published in the **Federal Register** on August 10, 1990 (55 FR 32627), FIA set forth the reasons why an upward adjustment in the fee schedule had been determined to be necessary. FIA offered that adjustment to WYO companies as an option package also containing an option relating to the commission allowance for Arrangement Year 1990–1991. Virtually all WYO companies elected that option, in effect making it the operational fee schedule. That fee schedule was also applied to the claims paid on the "Direct" side. Therefore, this proposed rule will remove the current Fee Schedule included as Exhibit A of appendix A and incorporate in its place the Fee Schedule which was included as Optional Exhibit A in the interim rule. With this proposed change and the proposed change in the commission allowance provisions already described, there will no longer be a need for the optimal addendum containing Optional Exhibit A and the option relating to the commission allowance, so this proposed

rule would remove that addendum from appendix A.

The proposed revision to the introductory section of the Financial Control Plan would increase the membership from 10 to 12 members and change the composition of the membership. The increase in membership is being proposed in recognition of the increase in the number of companies writing policies under the WYO Program (over 85 companies today compared with 13 companies in the first year of the program) and in recognition of the increase in the number of WYO policies in force (over 2 million today compared with approximately 100,000 at the end of the first year of the WYO Progam). It is also felt that a greater array of functional area expertise will be achieved by increasing the membership. Regarding the change in the composition of the membership, the member from the FEMA Inspector General's staff is being removed at the request of the Inspector General, who became statutory in 1988 and whose responsibilities require him to be an independent entity within FEMA. Instead, the Inspector General or his staff attends committee meetings and participates on an *ex officio* basis. The proposed rule adds a committee member to be designated by the Administrator. The intent is to bring in an individual who has expertise in the field of insurance but who is not an employee of FEMA or any WYO Company and who can therefore bring an outside perspective by an individual not directly involved with the WYO Programs.

A few other changes of a technical or editorial nature are contained in this proposed rule such as updating references to existing procedural documents to conform to name changes (e.g., the Statistical Plan to the Transaction Record Reporting and Processing Plan), adding a category to the monthly reconciliation report to cover the new policy service fee required by the Omnibus Budget Reconciliation Act of 1990 (Public Law 101–508), etc.

A 30-day comment period is provided for this proposed rule rather than a 60-day period because of the need to finalize the rule before publishing the terms for the re-subscription of the Arrangement for the next Arrangement Year which, in accordance with Article V—Commencement and Termination, must be published in the **Federal Register** by June 1, 1991. This shortened period for comment should not present a problem, however, because the affected companies have already been advised of these proposed changes and have had an opportunity for input prior to the preparation of this proposed rule.

FEMA has determined that this proposed rule will have no effect on environmental quality and therefore, in accordance with 44 CFR 10.8(c)(2)(i), is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

This proposed rule will not have a significant economic impact on a substantial number of small entities and has not undergone a regulatory flexibility analysis.

This proposed rule is not a "major rule" as defined in Executive Order 12291, dated February 27, 1981, and, hence, no regulatory analysis has been prepared.

The information collection requirement contained in section 4i of this proposed rule has been submitted to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act of 1980, as amended, 44 U.S.C. 3501 et seq. This collection is in addition to the currently approved collections under OMB control number 3067–0169.

Public reporting and recordkeeping burden for the new collection, Monthly Reconciliation—Net Policy Service Fees, is estimated to average three minutes per response. Burden for the currently approved reporting and recordkeeping requirements, under the WYO Financial Control Plan and the WYO Accounting Procedures, averages 30 minutes per WYO Company per monthly report. The burden estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing, reviewing, and submitting the reports.

FEMA estimates the recordkeeping and reporting burden under the MPPP as follows: A one-time burden estimated to be in a range of 120 man hours to 640 man hours for WYO Companies to set up an initial operation under the MPPP; 30 minutes per lender to sign an agreement with a WYO Company to participate in the program; 30 minutes per WYO Company to send notices to each mortgagor (10 minutes per notice); and 30 minutes for each mortgagor to respond to the notices and ask any questions. A small number of insurance companies were contacted to get estimates of the burden imposed by the MPPP guidelines. Because of the absence of experience by the WYO Companies, lenders, and mortgagors in working with the MPPP guidelines, these estimates for such recordkeeping and reporting may be inaccurate; therefore, public comment is requested to assist FEMA under the Paperwork Reduction Act in accurately estimating the burden of this information collection. Specifically, comments are requested on (1) predictions from the insurance industry, in particular the WYO Companies, of the estimated number of companies that will be participating in the MPPP, (2) an estimate of the number of policies lenders have in their portfolios that would be affected by the MPPP, and (3) an estimate of the amount of time required of mortgagors to respond to the notices they receive.

FEMA requests that commenters address these estimates as part of their comments submitted to the rulemaking record at the address indicated at the beginning of this notice. Comments on the paperwork issues including the burden estimates and any aspects of the information collection requirements may also be addressed to the Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472 and to the Office of Management and Budget, Paperwork Reduction Project (3067–0169), 3235 New Executive Office Building, Washington, DC 20503. The final rule will respond to any OMB or public comments on these information collection requirements.

List of Subjects in 44 CFR Part 62

Flood insurance.

Accordingly, it is proposed to amend 44 CFR chapter 1, subchapter B, as follows:

PART 62—SALE OF INSURANCE AND ADJUSTMENT OF CLAIMS

1. The authority citation for part 62 will continue to read as follows:

Authority: 42 U.S.C. 4001; *et seq.*; Reorganization Plan No. 3 of 1978; E.O. 12127.

§ 62.23 [Amended]

2. Section 62.23 is proposed to be amended as follows:

a. By removing in paragraph (a) the phrase "section 1310" and adding in place thereof, the phrase "section 1345"

b. By removing in paragraph (h)(4) (both times that it appears) the phrase "Statistical Plan" and adding in place thereof the phrase "Transaction Record Reporting and Processing Plan".

c. By removing in paragraph (i)(1) the word "its" and adding in its place the word "is".

d. By removing in paragraph (j)(5) (both times that it appears) the phrase "Statistical Plan" and adding in place thereof the phrase "Transaction Record Reporting and Processing Plan."

e. By adding a new paragraph (1) as follows:

* * * * *

(l)(1) WYO Companies may, on a voluntary basis, elect to participate in the Mortgage Portfolio Protection Program (MPPP), under which they can offer, as a last resort, flood insurance at special high rates, sufficient to recover the full cost of this program in recognition of the uncertainty as to the degree of risk a given building presents due to the limited underwriting data required, to properties in a lending institution's mortgage portfolio to achieve compliance with the flood insurance purchase requirements of the Flood Disaster Protection Act of 1973. Flood insurance policies under the MPPP may only be issued for those properties which:

(i) Are determined to be located within special flood hazard areas of communities that are participating in the NFIP, and

(ii) Are not covered by a flood insurance policy even after a required series of notices has been given to the property owner (mortgagor) by the lending institution of the requirement for obtaining and maintaining such coverage, but the mortgagor has failed to respond.

(2) WYO Companies participating in the MPPP must provide a detailed implementation package to any lending institution which, on a voluntary basis, chooses to participate in the MPPP to ensure the lending institution has full knowledge of the criteria in that program and must obtain a signed receipt for that package from the lending institution. Participating WYO Companies must also maintain evidence of compliance with (3) below for review during the audits and reviews required by the WYO Financial Control Plan contained in Appendix B of this part.

(3) The mortgagor must be protected against the lending institution's arbitrary placing of flood insurance for which the mortgagor will be billed by being sent three notification letters as described in (4) through (6) below.

(4) The initial notification letter must:

(i) State the requirements of the Flood Disaster Protection Act of 1973,

(ii) Announce the determination that the mortgagor's property is in a special flood hazard area as delineated on the appropriate FEMA map, necessitating flood insurance coverage for the duration of the loan,

(iii) Describe the procedure to follow should the mortgagor wish to challenge the determination,

(iv) Request evidence of a valid flood insurance policy or, if there is none, encourage the mortgagor to promptly obtain a Standard Flood Insurance Policy (SFIP), from a local insurance agent (or WYO Company),

(v) Advise that the premium for an MPPP policy is significantly higher than a conventional SFIP policy and advise as to the option for obtaining less costly flood insurance, and

(vi) Advise that an MPPP policy will be purchased by the lender if evidence of flood insurance coverage is not receive by a date certain.

(5) The second notification letter must remind the mortgagor of the previous notice and provide essentially the same information.

(6) The final notification letter must:

(i) Enclose a copy of the flood insurance policy purchased under the MPPP on the mortgagor's (insured's) behalf, together with the Declarations Page,

(ii) Advise that the policy was purchased because of the failure to respond to the previous notices, and

(iii) Remind the insured that similar coverage may be available at significantly lower cost and advise that the policy can be cancelled at any time during the policy year and a pro rata refund provided for the unearned portion of the premium in the event the insured purchases another policy that is acceptable to satisfy the requirements of the 1973 Act.

Appendix A to Part 62—[Amended]

3. Appendix A to part 62, Financial Assistance/Subsidy Arrangement, is proposed to be amended as follows:

a. In the second introductory paragraph, which discusses the Accounting Data, delete the phrase "under Treasury Department Circular No. 1075, Revised,".

b. Article II—Undertakings of the company, section A., paragraph 2.0, is proposed to be revised to read as follows:

* * * * *

2.0 Claims processing in accordance with general Company standards and the Financial Control Plan. The Write Your Own Claims Manual, the Federal Emergency Management Agency Adjuster Manual, the FIA National Flood Insurance Program Policy Issuance Handbook, the Write Your Own Operational Overview, and other instructional material also provide guidance to the Company.

* * * * *

c. Article II—Undertakings of the Company, section A., paragraph 3.1, is proposed to be amended by removing the phrase "Statistical Plan" and adding in place thereof the phrase "Transaction Record Reporting and Processing Plan"

d. Article II—Undertakings of the Company, section B., paragraph 1.9, the last paragraph is proposed to be amended by adding after the word "Program" and before the period the following: "or other action, e.g., limiting the Company's authority to write new business".

e. Article II—Undertakings of the Company, section G. is proposed to be amended by adding after the word "operation" and before the period the following: ", provided that there is adherence to Program statutes, regulations and explicit guidelines, e.g., for the Mortgage Portfolio Protection Program".

f. Article III—Loss Costs, Expenses, Expense Reimbursement, and Premium Refunds, section B. is proposed to be amended by removing in the second paragraph the figure "14.0 percent" and adding in its place the figure "15%", by deleting in the second paragraph the word "basic," by deleting all of the second paragraph after the first sentence, and by deleting the third and fourth paragraphs.

g. Article IV—Undertakings of the Government, the first paragraph of section A is proposed to be amended in the first sentence by deleting the phrases "Treasury Financial Communication System", and "Federal Reserve Letter of Credit" and by removing in the last sentence the word "costs" and adding in its place the word "expenses".

h. Article IV—Undertakings of the Government, the second paragraph of section A is proposed to be amended by removing the word "against" and adding in its place the word "by".

i. Article V—Commencement and Termination, section E. is proposed to be amended by deleting the word "their" the second time it appears.

j. Article XI—Offset, the first paragraph is proposed to be amended in the last sentence by deleting the word "or" the second time it appears and adding in its place the word "of".

k. Article XI—Offset, the second paragraph is proposed to be amended in the first sentence by deleting the word "of" the first time it appears and adding in its place the word "or".

l. Exhibit A is proposed to be revised as follows:

EXHIBIT A.—FEE SCHEDULE

Range (by covered loss)	Fee
Erroneous Assignment	$40.00
Closed Without Payment	125.00

EXHIBIT A.—FEE SCHEDULE—Continued

Range (by covered loss)	Fee
Minimum for Upton-Jones Claims	800.00
$0.01 to $600.00	150.00
$600.01 to $1,000.00	175.00
$1,000.01 to $2,000.00	225.00
$2,000.01 to $3,500.00	275.00
$3,500.01 to $5,000.00	350.00
$5,000.01 to $7,000.00	425.00
$7,000.01 to $10,000.00	500.00
$10,000.01 to $15,000.00	550.00
$15,000.01 to $25,000.00	600.00
$25,000.01 to $35,000.00	675.00
$35,000.01 to $50,000.00	750.00
$50,000.01 to $100,000.00	1,000.00
$100,000.01 to $150,000.00	1,300.00
$150,000.01 to $200,000.00	1,600.00
$200,000.01 to limits	2,000.00

Allocated fee schedule entry value is the covered loss under the policy based on the standard deductibles ($500 and $500) and limited to the amount of insurance purchased.

m. Appendix A is proposed to be amended by deleting in its entirety the Optional Addendum Amending the Commission Allowance and Adjuster Fee Schedule Provisions of the Financial Assistance/Subsidy Arrangement.

Appendix B to Part 62—[Amended]

4. Appendix B to part 62, A Plan to Maintain Financial Control for Business Written Under the Write Your Own Program, is proposed to be amended as follows:

a. The introductory section at the beginning of appendix B is proposed to be amended in the first paragraph by removing the phrase "§§ 61.13 and 62.23" and adding in place thereof the phrase "§§ 61.13 and 62.63".

b. The introductory section at the beginning of appendix B is proposed to be amended in the fourth paragraph by removing the second sentence and adding in place thereof the following: "The Standards Committee consists of four (4) members from FIA, one (1) member from the Federal Emergency Management Agency's (FEMA's) Office of the Comptroller, one (1) member designated by the Administrator who is not directly involved in the WYO Program, and one (1) membr from each of six (6) designated WYO Companies, pools or other entities."

c. The introductory section at the beginning of appendix B is proposed to be amended in the fifth paragraph by removing, in subparagraphs numbered 4 and 8 (each time it appears), the phrase "Statistical Plan" and adding in place thereof the phrase "Transaction Record Reporting and Processing Plan".

d. In the introductory paragraph to part 62, appendix B, in the listing of parts 1 through 10, the entry for Part 2 is revised to read "Transaction Record Reporting and Processing Plan Reconciliation Procedures" and the entry for part 9 is revised to read "Transaction Record Reporting and Processing Plan (Incorporated by Reference)".

e. Part 1—Model Self-Audit Program's Minimum Standards is proposed to be amended in numbered paragraph 3 of the Self-Audit Program Objectives by deleting the misspelled word "goverment" and adding in its place the word "government".

f. Part 1—Model Self-Audit Program's Minimum Standards is proposed to be amended in numbered paragraph 4 of the Underwriting Audit Outline by deleting the word "Through" and adding in its place the word "Thorough".

g. Part 1—Model Self-Audit Program's Minimum Standards is proposed to be amended by removing the title "Statistical Plan Audit Outline" and adding in place thereof the title "Transaction Record Reporting and Processing Plan Audit Outline".

h. Part 2—Statistical Plan Reconciliation Procedures is proposed to be amended by removing, in the title, the phrase "Statistical Plan" and adding in place thereof the phrase "Transaction Record Reporting and Processing Plan" and by removing the title "Statistical Plan Reconciliation Objectives" and adding in place thereof the title "Transaction Record Reporting and Processing Plan Reconciliation Objectives".

i. Part 2—Statistical Plan Reconciliation Procedures is proposed to be amended by adding, at the end of Exhibit "A" and before the beginning of part 3, the following report:

Monthly Reconciliation—Net Policy Service Fees

Company Name _____
Co. NAIC Number _____
Month/Year Ending _____
Date Submitted _____

Monthly financial report	Monthly statistical transaction report	
	Record count	Fee amount
Net Policy Service Fees $_____ (Income Statement—Line 170)		
Unprocessed statistical:		
(+) Prior Month's		
(−) Current Month's		
Other—Explain:		
(1)		
(2)		
Total:	Total:	
Comments:		

(Approved by the Office of Management and Budget under OMB control number 3067-0169.)

j. Part 3—Underwriting/Policy Administration Operation Review Procedures is proposed to be amended by removing in the first paragraph of the Notice section the misspelled word "profide" and adding in its place the word "provide", and by removing in subparagraph numbered 2 of the Notice section the phrase "Statistical Plan" and adding in place thereof the phrase "Transaction Record Reporting and Processing Plan".

k. Part 4—Claims Operation Review Procedures is proposed to be amended by removing in subparagraph numbered 2 of the Claims Operation Review Objectives section the phrase "Statistical Plan" and adding in place thereof the phrase "Transaction Record Reporting and Processing Plan".

l. Part 4—Claims Operation Review Procedures is proposed to be amended in the first paragraph of the Notice section by deleting the word "and" and adding in its place the word "an".

m. Part 4—Claims Operation Review Procedures is proposed to be amended in numbered paragraph 2 of the WYO-FIA Claims Operation Review Outline by deleting the word "inquiries" and adding in its place the word "inquires".

n. Part 4—Claims Operation Review Procedures is proposed to be amended in the first section of exhibit D by deleting the title, "Analysis of Losses by Size of Loss", and adding in place thereof, the title "Analysis of Claims by Size of Claim", and in the contents coverage column of both "Analysis" sections of exhibit D by deleting, in the heading of the last column, the word "losses" and adding in place thereof the word "claims".

o. Part 5—Claims Reinspection Program is proposed to be amended in numbered paragraph 2 by adding after the word "loss," and before the word "class" and word "or".

p. Part 7—Reports Certifications is proposed to be amended at A. Certification Statement for Monthly Financial and Statistical Reconciliation Reports by deleting in the first paragraph the misspelled word "accompaning" and adding in place thereof the word "accompanying".

Dated: May 9, 1991.

C.M. "Bud" Schauerte,

Federal Insurance Administrator.

[FR Doc. 91-11642 Filed 5-15-91; 8:45 am]

BILLING CODE 6718-05-M

44 CFR Part 67

[Docket Number FEMA-7022]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed modified base (100-year) flood elevations listed below for selected locations in the nation. The base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

DATES: The period for comment will be ninety (90) days following the second publication of the proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2754.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of modified base flood elevations for selected locations in the nation, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Title XIII of the Housing and Urban Development Act of 1968, (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a).

These elevations, together with the floodplain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, state of regional entities. These proposed modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance coverage on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed modified flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under Section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the floodplain area. The local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with minimum Federal standards, the elevations prescribe how high to build in the floodplain and do not prescribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirements; of itself has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

The proposed modified base flood elevations for selected locations are:

PROPOSED MODIFIED BASE FLOOD ELEVATIONS

State	City/town/country	Flooding source	Location	# Depth in feet above ground * Elevation in feet (NGVD)	Modified
				Existing	
Connecticut	Bloomfield, Town, Hartford County.	Tumbledown Brook Channel	Approximately 50 feet upstream of confluence with Tumbledown Brook.	*134	*133
			Approximately 500 feet upstream of the upstream corporate limits.	*158	*157
Maps available for inspection at the Bloomfield Town Engineering Department, 12 Southwind Road, Bloomfield, Connecticut.					
Send comments to Mr. R. Gary Stenhouse, Bloomfield Town Manager, Hartford County, P.O. Box 337, Bloomfield, Connecticut 06002.					
Delaware	New Castle, City, Wilmington County.	Delaware River	For its entire shoreline within the community	*11	*10
Maps available for inspection at the City/County Building, 800 French Street, Wilmington, Delaware.					
Send comments to The Honorable Daniel S. Frawley, Mayor of the City of Wilmington, New Castle County, City/County Building, 800 French Street, Wilmington, Delaware 19801-3537.					
Kentucky	Clay City, City, Powell County.	Red River	At the downstream corporate limits	None	*624
			Approximately 1.6 river miles upstream of 9th Street.	*630	*633
			Brush Creek At confluence with Red River	*628	*626
			Approximately 60 feet downstream of 6th Avenue.	*629	*628
Maps available for inspection at the Municipal Building, 4651 Main Street, Clay City, Kentucky.					
Send comments to The Honorable Pat Ashley, Mayor of the City of Clay City, Powell County, P.O. Box 147, Clay City, Kentucky 40312.					
Minnesota	Elk River, City, Sherburne County.	Trott Brook	Downstream corporate limits	None	*898
			Approximately .5 mile upstream of 221st Avenue.	None	*943

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/country	Flooding source	Location	# Depth in feet above ground * Elevation in feet (NGVD) Existing	Modified
Maps available for inspection at the City Hall, 720 Dodge Avenue N.W., Elk River, Minnesota.					
Send comments to The Honorable Jim Tralle, Mayor of the City of Elk River, Sherburne, County, 720 Dodge Avenue, N.W., Elk River, Minnesota 55330.					
Mississippi	Pearl River, Unincorporated Areas.	Mill Creek	Approximately 3,550 feet upstream of the confluence with the Pearl River.	None	*29
			At the City of Picayune corporate limits	*51	*49
Maps available for inspection at the County Courthouse, 200 Main Street, Courthouse Square, Poplarville, Mississippi.					
Send comments to Mr. Gary Beech, Pearl River County Administrator, County Courthouse, P.O. Box 569, Poplarville, Mississippi 39470					
Mississippi	Picayune, City, Pearl River County.	Mill Creek	At the downstream corporate limits	*51	*49
			Approximately 100 feet upstream of Rosa Street.	None	*59
Maps available for inspection at the City Hall, 203 Goodyear Boulevard, Picayune, Mississippi.					
Send comments to The Honorable Woody Spiers, Mayor of the City of Picayune, Pearl River County, 203 Goodyear Boulebard, Picayune, Mississippi 39466.					
Nevada	City of Carlin, Elko County.	Maggie Creek	At confluence with Humboldt River	None	*4,895
			Between Southern Pacific Railroad and U.S. Highway 10.	None	*4,910
			Just above Interstate 80	None	*4,917
Maps are available for review at City Hall, 101 South Eighth Street, Carlin, Nevada.					
Send comments to The Honorable Lee Griswold, Mayor, City of Carlin, P.O. Box 787, Carlin, Nevada 89822.					
New Jersey	Carteret, Borough, Middlesex County.	Arthur Kill	At Noe Street extended near CONRAIL	None	*9
			At Salem Avenue extended	None	*10
			At intersection of Beverly Street and Lefferts Street.	*12	*9
			At the downstream corporate limits	*12	*10
Maps available for inspection at the Borough Hall, 61 Cooke Avenue, Carteret, New Jersey.					
Send comments to The Honorable Peter Sica, Mayor of the Borough of Carteret, Middlesex County, 61 Cooke Avenue, Carteret, New Jersey 07008.					
New Jersey	Clinton, Town, Hunterdon County.	Beaver Brook	Approximately 170 feet upstream of Leigh Street.	*194	*195
			Approximately 900 feet upstream of Leigh Street.	*197	*198
Maps available for inspection at the Municipal Building, 43 Leigh Street, Clinton, New Jersey.					
Send comments to The Honorable Robert A. Nulman, Mayor of the Town of Clinton, Hunterdon Country, P.O. Box 5194, 43 Leigh Street, Clinton, New Jersey 08809.					
New York	Avoca, Town, Steuben County.	Cohocton River	At upstream side of State Route 415	*1,172	*1,173
			Approximately 1,700 feet upstream of confluence of Goff Creek.	*1,174	*1,175
		Goff Creek	At confluence with the Cohocton River	*1,173	*1,174
			Approximately 1,050 feet upstream of the confluence with the Cohocton River.	*1,173	*1,174
Maps available for inspection at the Town Hall, 3 Chase Street, Avoca, New York.					
Send comments to Mr. Nelson Eaton, Avoca Town Supervisor, Steuben County, 3 Chase Street, Avoca, New York, 14809.					
New York	Livonia, Town, Livingston County.	Conesus Lake	Shoreline in the vicinity of Conesus Lake outlet	*823	*821
			Shoreline approximately 640 feet north of intersection of East Lake Road and Densmore Road.	*826	*821
		Conesus Creek	At State Route 256	*814	*817
			At confluence of Conesus Lake	*823	*821
Maps available for inspection at the Town Hall, 35 Commercial Street, Livonia, New York.					
Send comments to Mr. Francis E. Kosakowski, Livonia Town Supervisor, Livingston County, P.O. Box 43, 35 Commercial Street, Livonia, New York 14487.					
New York	Lockport, Town, Niagara County.	Tonawanda Creek	At upstream corporate limits	None	*590
			At downstream corporate limits	None	*584

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/country	Flooding source	Location	# Depth in feet above ground * Elevation in feet (NGVD) Existing	Modified
Maps available for inspection at the Town Supervisor's Office and Building Inspector's Office, Harrington Road, Lockport, New York.					
Send comments to Mr. Floyd D. Snyder, Supervisor of the Town of Lockport, Niagara County, Harrington Road, Lockport, New York 14094.					
Ohio	City of Reynoldsburg, Fairfield, Franklin, and Licking Counties.	Blacklick Creek	Just upstream of Main Street	*860	*860
			About 1.17 miles upstream of confluence of Lateral F.	*882	*880
Maps available for inspection at the Building and Zoning Office, 7332 East Main Street, Reynoldsburg, Ohio.					
Send comments to The Honorable Robert L. McPherson, Mayor, City of Reynoldsburg, 7332 East Main Street, Reynoldsburg, Ohio 43068.					
Pennsylvania	Abington, Township Montgomery County.	Sandy Run	At downstream corporate limits	*220	*223
			Approximately 1,400 feet upstream of Easton Road.	*258	*260
		Tributary No. 1	At confluence with Sandy Run	*232	*237
			Approximately 450 feet upstream of Johnston Avenue.	*237	*238
Maps available for inspection at the Engineering Office, 1176 Old York Road, Abington, Pennsylvania.					
Send comments to Mr. Richard E. Fluge, President of the Township of Abington Board of Supervisors, Montgomery County, 1176 Old York Road, Abington, Pennsylvania 19001.					
Pennsylvania	Green, Township Pike County.	Wallenpaupack Creek	Approximately 50 feet upstream of the confluence of East Branch Wallenpaupack Creek.	*1,302	*1,301
			Approximately 550 feet downstream of Pine Grove Road.	*1,458	*1,457
Maps available for inspection at the Township Building, Brinkhill Road, Greentown, Pennsylvania.					
Send comments to Ms. MaryAnn Hubbard, Chairman of the Township of Green Board of Supervisors, Pike County, P.O. Box 243, Greentown, Pennsylvania 18426.					
Pennsylvania	Philadelphia, City Philadelphia County.	Poquessing Creek	Approximately 300 feet upstream of State Road.	*13	*14
			Approximately 0.6 mile upstream of CONRAIL	*132	*135
Maps available for inspection at the Philadelphia City Planning Commission, 1515 Market Street, 17th Floor, Philadelphia, Pennsylvania.					
Send comments to The Honorable W. Wilson Goode, Mayor of the City of Philadelphia, Philadelphia County, Cith Hall, Room 215, Philadelphia, Pennsylvania 19107.					
Texas	Abilene, City Taylor and Jones Counties.	Elm Creek	Approximately 1,700 feet upstream of U.S. Route 83.	*1,,684	*1,685
			At U.S. Route 83	*1,705	*1,706
		Elm Creek Overflow Path 1	Approximately 800 feet upstream of the confluence with Elm Creek.	*1,683	*1,684
			At divergence from Elm Creek	*1,698	*1,703
		Elm Creek Overflow Path 2	Approximately 1,500 feet upstream of confluence with Elm Creek.	*1,682	*1,683
			Approximately 1,500 downstream of divergence from Elm Creek Overflow Path 1.	*1,693	*1,692
		Little Elm Creek	At confluence with Elm Creek	*1,698	*1,702
			Approximately .85 mile upstream of confluence with Elm Creek.	*1,704	*1,705
		Swale A	Upstream side of Interstate Route 20	*1,683	*1,681
			Approximately 120 feet downstream of Vogel Avenue.	*1,690	*1,689
Maps available for inspection at theCity Hall, 555 Walnut, Abilene, Texas.					
Send comments to The Honorable Gary McCaleb, Mayor of the City of Abilene, Taylor and Jones Counties, P.O. Box 60, Abilene, Texas 79604.					
Texas	Tyler, City Smith County	West Mud Creek	Approximately 1.3 miles downstream of U.S. Route 69.	*436	*438
			Approximately 1,325 feet upstream of Easy Street.	None	*496
		West Mud Creek Diversion Channel.	At divergence from West Mud Creek	None	*439
			At divergence from West Mud Creek Tributary A.	None	*444
		West Mud Creek Tributary A	Approximately 200 feet upstream of confluence with West Mud Creek.	*444	*445
			Approximately 1,500 feet upstream of Loop 323.	None	*510
		West Mud Creek Tributary A-1.	At the confluence with West Mud Creek Tributary A.	None	*472

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/country	Flooding source	Location	# Depth in feet above ground * Elevation in feet (NGVD) Existing	Modified
			Approximately 1,500 feet upstream of Rice Road.	None	*487
		West Mud Creek Tributary B	At the confluence with West Mud Creek Downstream side of Paluxy Drive.	None	*467
			Downstream side of Paluxy Drive	*503	*504
		West Mud Creek Tributary C	Approximately 500 feet upstream of confluence with West Mud Creek.	*479	*478
			At the Jacksonville Drive	*520	*525
		West Mud Creek Tributary C-1.	At the confluence with West Mud Creek Tributary C.	None	*488
			Approximately 650 feet upstream of New Copeland Road.	None	*491
		West Mud Creek Tributary M-1.	At the confluence with West Mud Creek Diversion Channel.	None	*442
			At the Jacksonville Road	None	*487
		West Mud Creek Tributary M-2.	At the confluence with West Mud Creek	None	*463
			Approximately .4 mile upstream of Barbee Drive.	None	*481
		West Mud Creek Tributary M-3.	At the confluence with West Mud Creek	None	*465
			Approximately 1,000 feet upstream of Rieck Road.	None	*481
		Black Fork Creek	Approximately 500 feet upstream of U.S. Route 271.	*466	*467
			Approximately .7 mile upstream of East Fifth Street.	None	*531
		Black Fork Creek Tributary D	At the confluence with Black Fork Creek	*467	*468
			Approximately 100 feet upstream of Douglas Boulevard.	None	*509
		Black Fork Creek Tributary D-3.	At the confluence with Black Fork Creek Tributary D.	None	*492
			At the East Elm Street	None	*494
		Black Fork Creek Tributary M-1.	At the confluence with Black Fork Creek	None	*495
			Approximately 1,300 feet upstream of Devine Street.	None	*524
		Willow Creek	Approximately 200 feet downstream of downstream corporate limits.	*452	*451
			Approximately 400 feet downstream of Parkdale Drive.	*480	*481

Maps available for inspection at the City Hall, 212 North Bonner, Tyler, Texas.

Send comments to The Honorable James R. Montgomery, Mayor of the City of Tyler, Smith County, P.O. Box 2039, Tyler, Texas 75710.

Virginia	Alleghany County, Unincorporated Areas.	Wilson Creek	At confluence with Jackson River	None	*1,034
			Approximately 2.3 miles upstream of Interstate Route 64.	None	*1,182

Maps available for inspection at the County Administrative Offices, 110 Rosedale Avenue, Covington, Virginia.

Send comments to Mr. Macon C. Sammons, Jr., Alleghany County Administrator, P.O. Box 917, Covington, Virginia 24426.

Virginia	Stafford County Unincorporated Areas.	Austin Run	Approximately 620 feet downstream of northbound U.S. Route 1.	None	*22
			Approximately 130 feet upstream of northbound Interstate Route 95.	None	*40
		Tributary 3 to Austin Run	At confluence with Austin Run	None	*30
			Approximately .4 mile upstream of its confluence with Austin Run.	None	*38

Maps available for inspection at the County Administration Center, 1739 Jefferson Davis Highway, Stafford, Virginia.

Send comments to Mr. C. M. Williams, Jr., Stafford County Administrator, P.O. Box 339, Stafford, Virginia 22554-0339.

West Virginia	Marshall County, Unincorporated Areas.	Middle Grave Creek	At confluence with Grave Creek	None	*651
			Approximately 2,000 feet upstream of confluence of Wetzel Run.	None	*958
		Toms Run	At confluence with Middle Grave Creek	None	*692
			Approximately 1 mile upstream of confluence with Middle Grave Creek.	None	*752

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/country	Flooding source	Location	# Depth in feet above ground * Elevation in feet (NGVD) Existing	Modified
		Wheeling Creek	At downstream corporate limits	*699	*691
			At Burch Road (County Route 5)	*771	*763

Maps available for inspection at the County Courthouse, 7th Street and Tomlinson Avenue, Moundsville, West Virginia.

Send comments to Mr. Howard Byard, President of the Marshall County Commission, P.O. Box 459, Moundsville, West Virginia 26041.

Issued: May 1, 1991.

C. M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 91–11659 Filed 5–15–91; 8:45 am]

BILLING CODE 6718–03–M

44 CFR Part 67

[Docket No. FEMA–7020]

Michigan et al.; Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations and proposed base flood elevation modifications listed below for selected locations in the nation. These base (100-year) flood elevation are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2754.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of base (100-year) flood elevations and modified base flood elevations for selected locations in the nation, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a).

These elevations, together with the floodplain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the floodplain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the floodplain and do not prohibit development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. The proposed base (100-year) flood elevations for selected locations are:

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
MICHIGAN	
Clare (city), Clare County	
Tobacco River:	
At confluence with Lake Shamrock	*826
About 1,900 feet upstream of Woodlawn Avenue	*834
Little Tobacco Drain:	
About 2,650 feet downstream of Sixth Street	*820
Just downstream of Dunlop Road	*833
Maps available for inspection at the Clerk's Office, City Hall, 202 W. 5th Street, Clare, Michigan.	
Send comments to The Honorable Donald Zinser, Mayor, City of Clare, 202 W. 5th Street, Clare, Michigan 48617.	
NEW JERSEY	
Beverly (city), Burlington County	
Delaware River:	
At downstream corporate limits	*11
At upstream corporate limits	*11
Maps available for inspection at the Code Official's Office, 446 Broad Street, Beverly, New Jersey.	
Send comments to The Honorable Frank Costello, Mayor of the City of Beverly, Burlington County, 75 Church Street, Beverly, New Jersey 08046.	
NEW YORK	
Barker (town), Broome County	
Tioughnioga River:	
At downstream corporate limits	*898
Approximately 2.2 miles upstream of State Route 12	*913
Chenango River:	
At downstream corporate limits	*898
At upstream corporate limits	*900
Maps available for inspection at the Town Hall, Route 79 Itasca, Chenango, New York.	
Send comments to Mr. Thomas Grems, Supervisor of the Town of Barker, Broome County, P.O. Box 5, Chenango Forks, New York 13765.	
LeRay (town), Jefferson County	
Black River:	
At downstream corporate limits	*510
At upstream corporate limits (approximately 0.5 mile upstream of State Route 3)	*549
Pleasant Creek:	
At downstream corporate limits	*433
At upstream side of Simonet Road	*476

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
MICHIGAN	
Clare (city), Clare County	
Tobacco River:	
At confluence with Lake Shamrock	*826
About 1,900 feet upstream of Woodlawn Avenue	*834
Little Tobacco Drain:	
About 2,650 feet downstream of Sixth Street	*820
Just downstream of Dunlop Road	*833
Maps available for inspection at the Clerk's Office, City Hall, 202 W. 5th Street, Clare, Michigan.	
Send comments to The Honorable Donald Zinser, Mayor, City of Clare, 202 W. 5th Street, Clare, Michigan 48617.	
NEW JERSEY	
Beverly (city), Burlington County	
Delaware River:	
At downstream corporate limits	*11
At upstream corporate limits	*11
Maps available for inspection at the Code Official's Office, 446 Broad Street, Beverly, New Jersey.	
Send comments to The Honorable Frank Costello, Mayor of the City of Beverly, Burlington County, 75 Church Street, Beverly, New Jersey 08046.	
NEW YORK	
Barker (town), Broome County	
Tioughnioga River:	
At downstream corporate limits	*898
Approximately 2.2 miles upstream of State Route 12	*913
Chenango River:	
At downstream corporate limits	*898
At upstream corporate limits	*900
Maps available for inspection at the Town Hall, Route 79 Itasca, Chenango, New York.	
Send comments to Mr. Thomas Grems, Supervisor of the Town of Barker, Broome County, P.O. Box 5, Chenango Forks, New York 13765.	
LeRay (town), Jefferson County	
Black River:	
At downstream corporate limits	*510
At upstream corporate limits (approximately 0.5 mile upstream of State Route 3)	*549
Pleasant Creek:	
At downstream corporate limits	*433
At upstream side of Simonet Road	*476
Maps available for inspection at the LeRay Town Hall, Willow Street, Evans Mills, New York.	
Send comments to Mr. Ronald Taylor, Acting Chairman of the Town of LeRay Board of Directors, Jefferson County, R.D. 1, Box 98, Evans Mills, New York 13637.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maine (town), Broome County	
Nanticoke Creek:	
At downstream corporate limits	*870
At State Route 26	*917
Maps available for inspection at the Town Hall, Lewis Street, Maine, New York.	
Send comments to Mr. Ted Woodward, Supervisor of the Town of Maine, Broome County, P.O. Box 336, Lewis Street, Maine, New York 13802.	
OKLAHOMA	
Delaware Tribe of Western Oklahoma, Caddo County	
Cobb Creek:	
At confluence with Washita River	*1,249
Approximately 1.8 miles upstream of East Konner Avenue	*1,256
Sugar Creek:	
Approximately 8 miles upstream of confluence with Washita River	*1,212
Approximately .5 mile downstream of Wichita Avenue	*1,337
Washita River:	
Approximately 3 miles downstream of U.S. Route 281	*1,166
Approximately 1.87 miles upstream of Central Boulevard	*1,193
At the confluence of Two Hatchet Creek	*1,240
Approximately 0.8 mile upstream of Oklahoma-Kansas-Texas Railroad	*1,256
Maps available for inspection at the Delaware Tribal Complex, Anadarko, Oklahoma.	
Send comments to Mr. Charles Keochi, President of the Delaware Tribe of Western Oklahoma, P.O. Box 825, Anadarko, Oklahoma 73005.	
Payne County (unincorporated areas)	
Stillwater Creek:	
Approximately 2.0 miles downstream of Fairgrounds Road	*841
At Lake Carl Blackwell	*906
Harrington Creek:	
At the confluence with Stillwater Creek	*895
Approximately 0.9 mile upstream of State Route 51	*913
Dry Creek:	
At the confluence with Stillwater Creek	*889
Approximately 3.1 miles upstream of confluence with Stillwater Creek	*916
North Stillwater Creek:	
At the confluence with Stillwater Creek	*893
Approximately 3.25 miles upstream of confluence with Stillwater Creek	*906
Cow Creek:	
Approximately 0.5 mile downstream of West McElroy Road	*882
At Lake McMurtry Road	*962

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Stream B:	
Approximately 1,840 feet downstream of confluence of Stream B-1	*891
Approximately 80 feet upstream of Country Club Road	*906
Stream B-1:	
At the confluence with Stream B	*897
Approximately 0.4 mile upstream of confluence with Stream B	*908
Boomer Creek:	
At the confluence with Stillwater Creek	*857
At East 19th Avenue	*859
Brush Creek:	
At the confluence with Stillwater Creek	*853
At the confluence with East and West Brush Creeks	*863
East Brush Creek:	
At the confluence with Brush Creek	*863
Approximately 300 feet upstream of East Airport Road	*902
West Branch Creek:	
At the confluence with Brush Creek	*863
Approximately 0.5 mile upstream of Airport Road	*905
Little Stillwater Creek:	
Approximately 5 miles downstream of State Route 51	*835
Approximately 4.9 miles upstream of State Route 51	*921
Council Creek:	
Approximately 370 feet downstream of confluence of Unnamed Tributary	*851
Approximately 0.5 mile upstream of Old State Route 51	*869
Feather Creek:	
At the confluence with Council Creek	*867
Approximately 1,400 feet upstream of Old State Route 51	*872
Cottonwood Creek:	
Approximately 0.8 mile downstream of confluence of Jones Creek	*835
Approximately 0.4 mile upstream of confluence of Jones Creek	*850
Jones Creek:	
At the confluence with Cottonwood Creek	*842
Approximately 0.4 mile upstream of confluence with Cottonwood Creek	*854
Skull Creek:	
Approximately 1.0 mile downstream of City of Cushing corporate limits	*830
At City of Cushing corporate limits	*855
Maps available for inspection at the Payne Conservation District, 800 E. Sixth, Stillwater, Oklahoma.	
Send comments to Mr. Jimmy B. Cook, Chairman of the Payne County Board of Commissioners, 606 S. Husband, Room 101, Stillwater, Oklahoma 74074.	

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	# Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
California	City of San Clemente, Orange County.	Cascadita Creek	Approximately 200 feet downstream of Via Cascadita.	None	*29
			Just upstream of Via Cascadita	None	*40
			Approximately 1,700 feet upstream of Via Cascadita.	None	*63
			Approximately 250 feet downstream of the San Diego Freeway.	None	*77
Maps are available for review at the Department of Community Development, 910 Negocio, San Clemente, California.					
Send comments to The Honorable Scott Diehl, Mayor, City of San Clemente, 100 Avenida Presidio, San Clemente, California 92672.					
Florida	City of Clearwater, Pinellas County.	Alligator Creek Channel A	At mouth	*10	*10
			Just downstream of Sunset Point	None	*54
		Alligator Creek Channel B	At mouth	None	*20
			Just downstream of State Road 590	None	*41
			Just upstream of State Road 590	None	*51
			Just downstream of 4th Avenue South	None	*89
		Alligator Creek Channel C	About 100 feet upstream of mouth	None	*38
			Just downstream of Sunset Point Road	None	*60
			Just upstream of Sunset Point Road	None	*65
		Alligator Creek Channel E	Within community	None	*21
		Alligator Creek Channel G	At mouth	None	*20
			Just downstream of Drew Street	None	*21
		Alligator Creek Channel H	At mouth	None	*26
			Just downstream of weir structure	None	30
			Just upstream of weir structure	None	*35
			Just downstream of Drew Street	None	*40
		Stevenson Creek	Just upstream of Palmetto Street	*11	*12
			Just downstream of Belleair Road	None	*40
Maps available for inspection at the Planning and Development Department, City Hall Annex, 10 South Missouri Avenue, Clearwater, Florida.					
Send comments to The Honorable Ron Rabun, City Manager, City of Clearwater, P.O. Box 4748, Clearwater, Florida 34618–4748.					
Florida	Unincorporated Areas of Sarasota County.	Phillippi Creek	At mouth	*11	*11
			Just downstream of Proctor Road	None	None
		Matheny Creek	About 500 feet upstream of mouth	*11	*11
			About 700 feet upstream of weir structure	None	*17
		Hatchett Creek	At mouth	*11	*11
			Just downstream of Jacaranda Boulevard	None	*14
		Woodmere Creek	At mouth	*11	*11
			Just downstream of State Road 775	None	*17
Maps available for inspection at the Zoning Department, 1301 Cattleman Road, Sarasota, Florida.					
Send comments to The Honorable John Wesley White, County Administrator, Sarasota County, P.O. Box 8, Sarasota, Floriada 34230.					
Georgia	Unincorporated Areas of Cobb County.	Rottenwood Creek	About 1400 feet upstream of Franklin Road	*946	*946
			About 2200 feet upstream of Barclay Circle	*1012	*1015
			About 2300 feet upstream of second dirt road upstream of Barclay Circle.	None	*1051
		Olley Creek	About 2500 feet upstream of mouth	*891	*891
			Just downstream of Hurt Road	*917	*918
		Just upstream of Hurt Road	*919	*920	
			Just downstream of Sandtown Road	*1002	*1006
			Just upstream of Sandtown Road	*1006	*1011
			Just downstream of parking lot	*1045	*1043
			Just upstream of parking lot	*1048	*1056
			Just downstream of Hill Street	*1066	*1072
		Noonday Creek	At county boundary	*894	*897
			Just downstream of Shallowford Road	*899	*902
			Just upstream of Shallowford Road	*900	*907
			Just downstream of New Chastain Road	*911	*914
			Just upstream of New Chastain Road	*912	*920
			Just downstream of Roberts Road	*961	*966
			Just upstream of Roberts Road	*962	*971
			Just downstream of CSX Railroad	*996	*1001
			Just upstream of CSX Railroad	None	*1017
			Just downstream of New Salem Road	None	*1018
		Little Noonday Creek	At mouth	*901	*908
			Just downstream of Blackwell Road	*927	*929
			Just upstream of Blackwell Road	*928	*934
			About 2000 feet upstream of Liberty Hill Road	None	*1008
		Noonday Creek Tributary No. 1.	At mouth	*900	*907
		Noonday Creek Tributary No. 3.	At mouth	*919	*924

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	# Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			Just downstream of Piedmont Road	*942	*943
			Just upstream of Piedmont Road	*943	*949
			Just downstream of Interstate 75	*1032	*1035
			Just upstream of Interstate 75	*1033	*1056
			Just downstream of Dickson Paris Lane	*1043	*1056
		Noonday Creek Tributary No. 4.	At mouth	*922	*930
			Just downstream of Laurel Lake Dam	*951	*956
			Just upstream of Laurel Lake Dam	None	*977
			Just downstream of Interstate 75	None	*979
			Just upstream of Interstate 75	None	*1002
			Just downstream of U.S. Route 41	None	*1077
		Noonday Creek Tributary No. 6.	At mouth	*937	*943
		Noonday Creek Tributary No. 7.	At mouth	*946	*955
			Just downstream of Big Shanty Road	*971	*973
			Just upstream of Big Shanty Road	*974	*980
			Just downstream of dam	*995	*997
			Just upstream of dam	*1016	*1018
		Rubes Creek	At county boundary	*901	*898
			Just downstream of Jamerson Road	*905	*910
			Just upstream of Jamerson Road	*909	*916
			Just downstream of Downing Street	*995	*997
			Just upstream of Downing Street	*996	*1007
			Just downstream of Trickum Road	*1028	*1030
			Just upstream of Trickum Road	*1037	*1038
			Just downstream of Access Drive	*1037	*1038
			Just upstream of Access Drive	*1038	*1046
			About 2100 feet upstream of Access Drive	None	*1070
		Trickum Creek	At mouth	*905	*911
			Just downstream of Willow Creek Drive	*906	*911
			Just upstream of Willow Creek Drive	*909	*917
			Just downstream of Steinhauer Road	*984	*984
			Just upstream of Steinhauer Road	*988	*993
			Just downstream of Pete Shaw Road	*1050	*1050
		Tributary to Trickum Creek	At mouth	None	*934
			Just downstream of Steinhauer Road	None	*934
			Just upstream of Steinhauer Road	None	*939
			Just downstream of unnamed road	None	*940
			Just upstream of unnamed road	None	*951
			Just downstream of Netherstock Drive	None	*964
			Just upstream of Netherstock Drive	None	*971
			About 1.1 miles upstream of Netherstock Drive	None	*1116
		Tate Creek	At confluence with Noonday Creek	*895	*897
			Just downstream of SCS No. 17 Dam	*910	*909
			Just upstream of SCS No. 17 Dam	*940	*943
			Just downstream of Bells Ferry Road	*951	*947
			Just upstream of Bells Ferry Road	*952	*963
			Just downstream of first dam upstream of Bells Ferry Road.	*967	*965
			Just upstream of first dam upstream of Bells Ferry Road.	*967	*984
			Just upstream of second dam upstream of Bells Ferry Road.	*974	*993
			Just downstream of Parkwood Chase Road	*1011	*1008
			Just upstream of Parkwood Chase Road	*1012	*1022
			Just downstream of Wooten Lake Road	*1031	*1031
		Morgan Lake Tributary	At mouth	None	*943
			Just downstream of Morgan Lake Road	None	*975
			Just upstream of Morgan Lake Road	None	*984
			About 1100 feet upstream of Morgan Lake Road.	None	*988
		Tributary to Rubes Creek	At mouth	None	*921
			Just downstream of Keheley Drive	None	*935
			Just upstream of Keheley Drive	None	*947
			About 750 feet downstream of Keheley Road	None	*967
			About 700 feet downstream of Keheley Road	None	*980
			About 800 feet upstream of Keheley Road	None	*990

Maps available for inspection at the Development and Inspection Department, 100 Cherokee Street, Marietta, Georgia.

Send comments to The Honorable Philip Seorist, Chairman, Board of Commissioners, Cobb County, 10 East Park Square, suite 510, Marietta, Georgia 30090–9602.

Georgia	City of Kennesaw, Cobb County.	Noonday Creek	About 1100 feet upstrem of Roberts Road	*964	*972
			About 1000 feet upstream of U.S. Route 41	*967	*976

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	# Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Building Inspector's Office, City Hall, 2529 J.O. Stephenson Avenue, Kennesaw, Georgia.					
Send comments to The Honorable J.O. Stephenson, Mayor, City of Kennesaw, 2529 J.O. Stephenson Avenue, Kennesaw, Georgia 30144.					
Georgia	City of Marietta, Cobb County.	Rottenwood Creek	Just upstream of Interstate 75	*944	*942
			Just downstream of Rock Dam	*981	*989
			Just upstream of Rock Dam	*1000	*997
			Just downstream of Barclay Circle	*1004	*1006
			Just upstream of Barclay Circle	*1009	*1014
			About 2300 feet upstream of second dirt road upstream of Barclay Circle.	None	*1051
		Olley Creek	About 2000 feet downstream of Bellmeade Drive.	*979	*979
			About 500 feet downstream of Sandtown Road	*1001	*1003
		Noonday Creek Tributary No. 3.	About 350 feet upstream of Mark Avenue	*1000	*1005
			About 700 feet upsteam of Interstate 75	None	*1056
		Noonday Creek Tributary No. 4.	About 1000 feet downstream of White Circle Road.	None	*1022
			Just upstream of White Circle Road	None	*1045
Maps available for inspection at the Public Works Department, City Hall, 205 Lawrence Street, Marietta, Georgia.					
Send comments to The Honorable Ken Vanderslice, City Manager, City of Marietta, 205 Lawrence Street, Marietta, Georgia 30061.					
Kentucky	City of Cumberland, Harlan County.	Poor Fork Cumberland River	About 1.31 miles downstream of crossing of U.S. Route 19.	None	*1393
			About 950 feet upstream of upstream crossing of U.S. Route 119.	None	*1450
		Cloverlick Creek	At mouth	*1427	*1427
			About .82 miles upstream of mouth	*1458	*1458
		Looney Creek	At mouth	*1441	*1437
			About 650 feet upstream of Blair Street	*1444	*1444
			About 3600 feet upstream of Blair Street	*1473	*1473
Maps available for inspection at the City Hall, 402 West Main Street, Cumberland, Kentucky.					
Send comments to The Honorable Darrell Roberts, Mayor, City of Cumberland, 402 West Main Street, Cumberland, Kentucky 40823.					
Massachusetts	Chatham, Town, Barnstable County.	Muddy Creek	At Countryside Drive extended	*8	*12
		Pleasant Bay	At Salt Marsh Way extended	*10	*14
			South side of Strong Island	*11	*13
			At confluence with Muddy Creek	*11	*16
			At Strong Island Road extended	*12	*14
		Chatham Harbor	At eastern edge of Tern Island	*9	*13
			At Allen Point	*10	*13
			At Wikis Way extended	*11	*13
			At Andrew Hardings Landing	*12	*15
		Atlantic Ocean	Western shoreline of Nauset Beach	*7	*13
		Crows Pond	Entire shoreline within community	*8	*11
		Ryder Cove	Entire shoreline within community	*8	*11
		Stillwater Pond	Entire shoreline within community	*8	*11
Maps available for inspection at the Town Office, 549 Main Street, Chatham, Massachusetts.					
Send comments to Mr. Andrew Young, Chairman of the Town of Chetham Board of Selectmen, Barnstable County, Town Office, 549 Main Street, Chatham, Massachusetts 02633.					
Michigan	Charter Township of Georgetown, Ottawa County.	Lowing-Comstock Drain	At mouth	603	603
			About 800 feet upstream of 28th Avenue	None	*638
		Lowing-Comstock Drain Tributary.	626	*629	
			At mouth	None	*648
			About 1800 feet upstream of 28th Avenue		
		Huizenga Drain	At mouth	*605	*605
			Just downstream of Ravenswood Drive	*608	*608
		Bliss Drain	At mouth	*607	*607
			Just downstream of Jackson Street	None	*648
		Bliss Drain Diversion Channel	At mouth	None	*626
			At divergence from Bliss Drain	None	*632
		Cedar Lake	Along entire shoreline	None	*608
Maps available for inspection at the Township Office, 263 Church Street, Jenison, Michigan.					
Send comments to The Honorable Larry Bruursema, Supervisor, Georgetown Charter Township, 263 Church Street, Jenison, Michigan 49428.					
Michigan	City of Wyoming, Kent County.	Buck Creek	About 4500 feet downstream of abandoned railroad.	*629	*629
			Just upstream of Byron Center Avenue	*641	*642

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	# Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			About 3200 feet upstream of Conrail railroad	*667	*667
Maps available for inspection at the Community Development Department, City Hall, 1155 28th Street, SW., Wyoming, Michigan.					
Send comments to The Honorable Harold Voorhees, Mayor, City of Wyoming, 1155 28th Street, SW., Wyoming, Michigan 49509.					
New Hampshire	Charlestown, town, Sullivan County.	Ox Brook	Approximately 1,150 feet upstream of confluence with the Connecticut River.	*307	*306
			Just upstream of State Routes 11 and 12	*439	*431
		Beaver Brook	At confluence with the Connecticut River	None	*304
			At David Street	None	*475
Maps available for inspection at the Town Offices, Charlestown, New Hampshire.					
Send comments to Mr. Robert Metcalf, Chairman of the Town of Charlestown Board of Selectmen, Sullivan County, P.O. Box 385, Charlestown, New Hampshire 03603.					
New York	Henrietta, town, Monroe County.	East Branch Tributary Red Creek.	At its confluence with East Branch Red Creek	None	*530
			Approximately 200 feet upstream of State Route 15A.	None	*571
		South Stem East Branch Tributary Red Creek.	From its confluence with East Branch Tributary Red Creek.	None	*551
			At the State Route 15A	None	*573
		Main Stem Allen Creek	At downstream corporate limits	None	*499
			At the State Route 252	None	*511
		West Branch Allen Creek	At its confluence with Main Stem Allen Creek	None	*500
			At the State Route 252	None	*500
		West Stem Middle Branch Red Creek.	At the Interstate Route 90 upstream side of State Route 253 (Lehigh Station Road).	*532	*533
			Approximately 25 feet upstream of Erie	None	*560
		East Stem Middle Branch Red Creek.	At State Route 253 (Lehigh Station Road)	None	*537
			At Erie Station Road	None	*575
Maps available for inspection at the Town Hall, 475 Calkins Road, Henrietta, New York.					
Send comments to Mr. James R. Breeze, Supervisor of the Town of Henrietta, Monroe County, 475 Calkins Road, Henrietta, New York 14467.					
Pennsylvania	Clarksburg, city, Harrison County.	West Fork River	At downstream corporate limits	*940	*941
			At upstream corporate limits	None	*950
		Elk Creek	At confluence with West Fork River	*944	*945
Maps available for inspection at the City Hall, 227 W. Pike Street, Clarksburg, West Virginia.					
Send comments to The Honorable E. James Olean, Mayor of the City of Clarksburg, Harrison County, 227 W. Pike Street, Clarksburg, West Virginia 26301.					
Tennessee	Town of Spring, city, Rhea County.	Piney River	At mouth	*745	*746
			About 850 feet upstream of Piccadilly Avenue	*806	*807
		Town Creek	At mouth	*745	*746
			Just downstream of County Road	None	*771
		Tennessee River	Upstream of Watts Bar Dam (Watts Bar Lake—along shoreline).	None	746
Maps available for inspection at the Town Hall, Spring City, Tennessee.					
Send comments to The Honorable John Landreth, Mayor, Town of Spring City, P.O. Box 369, Spring City, Tennessee 37381.					
West Virginia	Shinnston (city), Harrison County.	West Fork River	Approximately 1.2 miles downstream of Bridge Street.	*906	*908
			Approximately .9 mile upstream of Bridge Street.	*913	*915
		Shinns Run	At confluence with West Fork River	*911	*914
			At upstream corporate limits	*911	*914
Maps available for inspection at the City Building, 43 Bridge Street, Shinnston, West Virginia.					
Send comments to Mr. James Jackson, Mayor of the City of Shinnston, Harrison County, P.O. Box 1865, 43 Bridge Street, Shinnston, West Virginia 26531.					

Dated: May 7, 1991.

C. M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 91-11660 Filed 5-15-91; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL MARITIME COMMISSION

46 CFR Part 586

[Petition No. P5-90; Docket No. 91-22]

Petition of Total Ocean Marine Services, Inc. and Actions to Adjust or Meet Conditions Unfavorable to Shipping in the United States/ Venezuela Trade

AGENCY: Federal Maritime Commission.

ACTION: Notice of Proposed rulemaking.

SUMMARY: The Federal Maritime Commission, in response to a petition alleging the existence of conditions unfavorable to shipping in the foreign oceanborne trade between the United States and Venezuela, hereby initiates a proceeding pursuant to section 19 of the Merchant Marine Act, 1920. It appears from the petition, and comments on the petition, that the laws, policies and practices of the Government of Venezuela reserve a substantial portion of general export and import cargo to carriage by national-flag lines to the exclusion of third-flag operators. In addition, it appears that agencies of the Government of Venezuela have withheld from the petitioner authorization to undertake operation as a common carrier by chartering third-flag vessels. The proposed rule would adjust or meet the apparent unfavorable conditions by imposing a per voyage fee in the amount of $100,000 upon certain named Venezuelan-flag carriers. Failure to pay the fee will result in suspension of that carrier's tariffs, or denial of access to or clearance from U.S. ports. The effect of the Proposed Rule would be to meet unfavorable shipping conditions by imposing burdens upon Venezuelan carriers which approximately those imposed upon the petitioner, a potential operator of third-flag vessels, by Venezuelan law, regulation, policy and practice.

DATES: Comments (original and 15 copies) due on or before July 1, 1991.

ADDRESSES: Send comments to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523-5725.

FOR FURTHER INFORMATION CONTACT: Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523-5740.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 19 of the Merchant Marine Act, 1920, 46 U.S.C. app. 876, as amended by Public Law No. 101-595, 104 Stat. 2979 ("section 19"), authorizes the Federal Maritime Commission ("Commission" or "FMC") to take regulatory action to correct unfavorable shipping conditions in U.S foreign oceanborne commerce. Specifically, paragraph (1)(b) of section 19 directs the Commission—

> [t]o make rules and regulations affecting shipping in the foreign trade not in conflict with law in order to adjust or meet general or special conditions unfavorable to shipping in the foreign trade, whether in any particular trade or upon any particular route or in commerce generally, * * * and which arise out of or result from foreign laws, rules, or regulations or from competitive methods or practices employed by owners, operators, agents or masters of vessels of a foreign country.
>
> 46 U.S.C. app. 876(1)(b).

Section 19 further provides that the Commission may initiate a rule on its own motion or pursuant to a petition for section 19 relief. Paragraph (5) states:

> (5) The Commission may initiate a rule or regulation under paragraph (1)(b) of this section either on its own motion or pursuant to a petition. Any person, including a common carrier, tramp operator, bulk operator, shipper, shippers' association, ocean freight forwarder, marine terminal operator, or any component of the Government of the United States, may file a petition for relief under paragraph (1)(b) of this section.
>
> 46 U.S.C. app. 876(5).

The Commission's rules governing section 19 proceedings are set forth at 46 CFR Part 585—Regulations To Adjust or Meet Conditions Unfavorable to Shipping in the Foreign Commerce of the United States ("Section 19 Regulations"). The section 19 Regulations describe who may file petitions, 46 CFR 585.4, how such petitions are filed, 46 CFR 585.5, the contents of petitions, 46 CFR 585.6, and how petitions may be amended or dismissed, 46 CFR 585.7.

The Section 19 Regulations also set forth the types of conditions which the Commission generally presumes to be unfavorable to shipping. These include those which: Impose upon vessels in the foreign trade of the United States fees, charges, requirements or restrictions different from those imposed on other vessels competing in the trade; preclude or tend to preclude vessels in the foreign trade of the United States from competing in the trade on the same basis as any other vessel; reserve substantial cargoes to the national-flag or other vessels and fail to provide, on reasonable terms, for effective and equal access to such cargo by vessels in U.S. foreign trades; are discriminatory or unfair as between carriers, shippers, exporters, importers, or ports or between exporters from the United States and their foreign competitors; and are otherwise unfavorable to shipping in the foreign trade of the United States. 46 CFR 585.3(a), (b), (c), (d).

Paragraph (9) of Section 19 provides for specific remedial actions which the Commission may take upon a finding that unreasonable shipping conditions exist. These include: Limitations upon sailings to and from United States ports or of the amount or type of cargo carried; suspension, in whole or in part, of any or all tariffs filed with the Commission for carriage to or from United States ports; suspension in whole or in part of an ocean common carrier's right to operate under an agreement filed with the Commission; imposition of fees up to $1,000,000 per voyage; or any other action the Commission finds necessary and appropriate to correct unfavorable shipping conditions in the U.S. foreign trade. 46 U.S.C. app. 876(9)(a)-(e). See also 46 CFR 585.9.

Paragraph (10)(a) of section 19 provides that upon request by the Commission the collector of customs at the port or place of destination in the United States shall refuse to clear a vessel of a country that is named in a section 19 regulation and shall collect any per voyage fees imposed by the Commission. Paragraph (10)(b) of section 19 provides that upon request by the Commission the Secretary of the Department in which the Coast Guard is operating shall deny entry to or detain at a U.S. port the vessel of a country that is named in a Section 19 regulation.

II. Background

Total Ocean Marine Services, Inc. ("Total Ocean" or "Petitioner") has filed Petition No. P5-90—*Petition of Total Ocean Marine Services, Inc, for Relief From Conditions Unfavorable to Shipping in the United States/ Venezuela Trade* ("Petition") requesting relief under section 19 from alleged unfavorable shipping conditions in the United States/Venezuela trade ("Trade") created by the Government of Venezuela ("GOV"). The Commission published a notice of the filing of the Petition in the Federal Register, 55 FR 50588 (December 7, 1990), and invited interested persons to comment on the Petition by January 7, 1991. Pursuant to a

request for any extension of time, the Commission, by a subsequent notice, 56 FR 1015 (January 10, 1991), extended the time for comment to January 22 1991.

Replies supporting the Petition were received for the Council of European and Japanese National Shipowners Associations ("CENSA"); Shippers for Competitive Ocean Transportation ("SCOT)"; Continental Materials, Inc. ("Continental"); Valls Shipping Company ("Valls"); and Alan L. Grant Rubber Division of Imperial Commodities Corp. ("Grant"). The Commission also received a letter from the U.S. Department of State ("DOS") which supports the effort of Total Ocean to enter the Trade.

Replies opposing the Petition were received from Venezuelan Container Line, C.A. ("VCL"); Naviera Pacifico C.A. ("Naviera Pacifico"); Compania Anonima Venezolana de Navigacion ("CAVN"); Maritima Aragua, S.A. ("Maragua Line"); King Ocean Service de Venezuela, S.A. ("King Ocean"); and American Transport Lines, Inc. ("Am Trans"), a subsidiary of Crowley Maritime Corporation.

Total Ocean made an additional submission date January 19, 1991, and received by the Commission on January 22, 1991, which it requested the commission to accept and consider. Total Ocean submitted further additional information in a letter to the FMC Secretary dated January 29, 1991 which it also requested the commission to accept.

Separate motions to strike the submissions of Total Ocean dated January 19, 1991 and January 29, 1991 were submitted by King Ocean of February 11, 1991, CAVN on February 13, 1991 and Maragua Line on February 20, 1991.

A. The Petition

Total Ocean indentifies itself as a Florida corporation organized for the purpose of operating a common carrier service in the trade between the United States and Venezuela. Petitioner states that it has a tariff on file with the Commission but acknowledges that it is not currently engaged in common carrier operations in any U.S. trade. Total Ocean seeks to enter the Trade by operating chartered vessels of third-flag registry.

Petitioner indicates that on April 25, 1990, it applied to the Venezuelan Ministry of Transport & Communications ("MTC") for authorization to operate a common carrier service in the Trade. By letter dated July 8, 1990, the MTC informed Total Ocean that the matter of its application was being referred to the MTC's Judiciary Bureau and to the Venezuelan Chamber of Ship Owners for consideration of certain legal issues arising under Venezuelan law. MTC apparently has not formally denied Petitioner's application. Total Ocean reports that it received a letter from MTC dated January 4, 1991 indicating that Total ocean had not exhausted the administrative procedures available to it under Venezuelan law. However, Total Ocean further reports that on January 17, 1991 it was advised by its Venezuelan counsel that it was "unnecessary to exercise any recourse" under Venezuelan law.

Total Ocean alleges that it has suffered continuing loss of operation revenue, as well as continuing legal, communications and administrative expenses as a result of MTC's delay in making a final determination on its application. Petitioner speculates that shippers may be able to provide evidence showing increased costs, inferior service or other harm resulting from the exclusion of Total Ocean from the Trade.

Total Ocean cites chapter II, Article 14 (requiring prior authorization to operate) and chapter IV, Article 20, section (E) (imposing fines for violations of chapter II) of the Venezuelan "Law For the Protection and Development of the National Merchant Marine" ("Cargo Reservation Law"), enacted on July 18, 1973, as the operative law applicable to its application.

Total Ocean requests Commission action under section 19. Total Ocean suggests that sanctions similar to those recently invoked by the Commission in the U.S./Peru trade the applied against the following Venezuelan carriers: CAVN, King Ocean, Naviera Pacifico, Maragua Line, VCL, C.A. Maritima Oceanica Granelera ("Camogra"), and Inagua Line-Naviprobo ("Inagua"), as well as any other Venezuelan carriers operating in the Trade.

B. Replies Supporting the Petition

CENSA states that the Petitioner has shown that it has been excluded from operating third-flag vessels in the Trade. CENSA notes that the commission has used Section 19 to protect operators of third-flag vessels in U.S. trades, most recently in Ecuador and Peru. Censa calls attention to a statement in a Memorandum of Consultations dated September 9, 1983 in which the Venezuelan authorities invoke the United National Code of Conduct for Liner Conferences ("U.N. Liner Code"). CENSA contends that the U.N. Liner Code is inapplicable in the Trade and that any reliance on U.N. Liner Code guidelines is inappropriate. CENSA urges the Commission to protect all carriers from GOV restrictions.

SCOT asserts that the Trade is not competitive and that consequently rates are high and service is not satisfactory. SCOT contends that there is a lack of effective third-flag competition. SCOT provides various data on the Trade and concludes that the exclusion of Total Ocean does constitute a condition unfavorable to shipping.

Further support for Petitioner was received from several individual shippers. Continental claims that the lack of competition in the Trade has lead to a 40 percent increase in freight costs over the past year. Valls asserts that there is not enough service in the Trade. Grant alleges that the Trade is becoming increasingly uncompetitive.

The Department of State commented on the Petition in a letter to the Commission secretary. Dos advises that embassy officials have raised the issue of Total Ocean's application with GOV authorities on numerous occasions. DOS further indicates that while Total Ocean's application has not been rejected, Total Ocean nevertheless has not been granted access to the Trade. DOS concludes tht GOV authorities have in effect denied Total Ocean an opportunity to serve the Trade. DOS views approval of Total Ocean's application as consistent with certain governmental understandings reached in 1983, and notes that in these documents "both sides acknowledged as desirable the continued active presence of third-flag carriers in the U.S.-Venezuelan trade". DOS states that it will continue to seek a diplomatic solution.

C. Replies Opposing the Petition

VCL contends that the treatment of Total Ocean's application by MTC reflects the Ministry's legitimate regulatory concerns and does not constitute a condition unfavorable to shipping. VCL argues that Total Ocean has not presented any evidence of harm to shipping. Moreover, VCL contends that under Venezuelan law, U.S.-flag, as well as third-flag carriers are permitted to compete for authorization to trade reserved cargo. VCL contends it would be inappropriate for the Commission to use section 19 to "pressure" the administrative process of GOV's maritime agencies.

CAVN argues that Total Ocean is not a U.S.-flag carrier and therefore is not entitled to participate in cargo reserved to U.S.-flag carriers whether the cargo originates in the United States or Venezuela. CAVN claims that as a potential third-flag carrier, Total Ocean may enter the Trade without any

governmental approvals and compete for the 50 percent of Venezuela's cargo that is not reserved for national-flag carriers. The reply filed by Maragua Line is substantially the same as that filed by CAVN.

King Ocean contends that the Petition is premature because the GOV is still considering Total Ocean's application and there has been no denial. It also argues that this is an isolated case that does not rise to the level of a trade condition unfavorable to shipping. Finally, King Ocean contends that the Petition is defective under the FMC's regulations.

Naviera Pacifico claims that Total Ocean has made "only the sketchiest allegations of harm to oceanborne commerce." It states that the facts would show that the Trade is adequately served, that no shippers are being harmed and that the Trade would be disrupted by the action which Total Ocean is seeking.

Am Trans asserts that the Trade is open to third-flag carriers to compete for non-reserved cargo without having to obtain government approval. Am Trans contends that certain government agreements concluded in 1983 are working well and these executive agreements "* * * should be looked to guide the trade today, rather than a section 19 proceeding."

III. Discussion

Opponents of the Petition raise a number of procedural and substantive objections. These include arguments that certain filings by Total Ocean should be stricken, that the Petition is premature and technically deficient, that Total Ocean lacks the wherewithal to provide a service, that third-flag carriers are not excluded from the Trade, that the Petition fails to show the existence of any condition unfavorable to shipping, and that certain government agreements should not be disturbed. The Commission has considered the Petition and the comments thereon, including the arguments in opposition to the Petition, and has determined to grant Total Ocean's Petition and initiate a proceeding.

A. Motions to Strike

King Ocean, CAVN and Maragua Line have filed motions to strike the submissions by Total Ocean dated January 19, 1991 and January 29, 1991. They filed their motions pursuant to Rule 73 of the Commission's rules of practice and procedure, 46 CFR 502.73, arguing that these submissions are not permitted under the Commission's rules.

They also argue that the January 19 submission is not authorized under the Commission's Section 19 Regulations, and that the January 29 submission constitutes a reply to a reply which is prohibited under Rule 74, 46 CFR 502.74. They argue that these submissions are prejudicial in that they have not had an opportunity to respond. King Ocean requests alternatively that if the January submissions are not stricken that interested parties be given the opportunity to reply to these submisions.

Total Ocean has not submitted a response to the motions to strike.

Initially, it should be noted that the Commission's Rules of Practice and Procedure contained in part 502 are not applicable to petitions filed pursuant to section 19 unless the Commission expressly determines that all or some part of those rules shall govern in a particular matter or proceeding. That determination has not been made here. Therefore, Rule 73, 46 CFR 502.73, which concerns motions in other formal proceedings cannot technically be invoked in connection with this Petition. Nor can Rule 74 which concerns replies to pleadings and motions. However, the fact that these rules of practice and procedure cannot be utilized in this instance is not necessarily dispositive of the merits of the relief requested in these motions inasmuch as they also contend that under the section 19 Regulations there is no express authorization for a petitioner to supplement its petition and that the Commission has not solicited such a submission.

The Commission's section 19 Regulations allow a petitioner to amend its petition. Section 585.7 states:

> Upon failure of a petitioner to comply with the provisions of this part, the petitioner will be notified by the Secretary and afforded reasonable opportunity to amend its petition. Failure to timely amend the petition will result in its dismissal. For good cause shown additional time for amendment may be granted.
>
> 46 CFR 585.7.

The point of the motions to strike appears to be that the Commission has not notified Total Ocean of any deficiency in its Petition and that the January submissions are therefore not authorized. It should be noted, however, that § 585.7 does not expressly prohibit supplemental submissions to a Petition. Moreover, the section 19 Regulations clearly contemplate that a petitioner will be notified of any deficiency and given an opportunity to amend a petition prior to its dismissal. Thus, even if the Commission were to refuse to consider the January submissions it would nevertheless allow an opportunity to amend the Petition pursuant to its rules.

The Commission therefore has determined to accept the January submissions of Total Ocean and to treat them as amendments to its Petition. While the Commission certainly does not favor piecemeal submissions of section 19 petitions, there would appear to be no purpose served in requiring Total Ocean to resubmit these filings. Contrary to the assertions of King Ocean, CAVN, and Maragua Line, acceptance of these filings would not deprive these carriers of an opportunity to be heard. They will certainly have the opportunity to respond fully to these submissions in this rulemaking proceeding. Accordingly, the motions to strike are denied and Total Ocean's January filings are accepted.

B. Sufficiency of the Petition

King Ocean asserts that the Petition fails to fulfill the requirements of the Commission's Section 19 Regulations in several respects: (1) The Petition does not provide a copy of the relevant law which is a "certified" copy, the English translation is not "certified," and the translation is of poor quality; (2) the Petition fails to give a clear description of harm inasmuch as the alleged cargo loss is not supported by evidence that Total Ocean could have carried cargo; (3) the statistics provided by Total Ocean are not representative, are not adequately explained and there is no explanation as to why more recent statistics are not provided; and (4) the Petition fails to submit a recommended regulation that will meet the alleged unfavorable condition. King Ocean concludes that the Petition must therefore be amended or dismissed.

The section 19 Regulations state that a certified copy of any law and translation should be provided. Section 585.6(b) states that a petition shall set forth:

> (b) A certified copy of any law, rule, regulation or other document involved and, if not English, a certified English translation thereof.
>
> 46 CFR 585.6(b). Total Ocean states in its original Petition that:
>
> Exhibit "G" is a telecopier transmitted copy of the original Spanish version of the Venezuelan *Law For the Protection and Development of the National Merchant Marine* together with a certified English translation thereof.

Petition at 2. No certification appears at the conclusion of the Spanish text. In addition, the date of enactment shown at the conclusion of the English translation appears to be incomplete. See Petition at Exhibit G. However, there is a signature of a translator and the signature of a public notary in Florida with the date November 15, 1990

following the text of the English translation.

When the Commission issued its original section 19 Regulations, it stated the purpose of the certification requirement as follows:

> Because of possible disputes concerning the accuracy of translations, certified copies in the original language are required in addition to a certified English translation.

See Docket No. 72–62, *Regulations To Adjust or Meet Conditions Unfavorable to Shipping in the Foreign Trade of the United States*, 14 S.R.R. 1138, 1141 (1974). King Ocean objects to the quality of the translation and the lack of certification but does not point out any specific issues that would call into question the basic text of the law. Rather, any differences in the comments are those of interpretation of the law or its application.

King Ocean also objects that Total Ocean has not provided a clear description of the loss it has, or expects to suffer, and that the statistics which are furnished are deficient. Section 585.6(d) of section 19 Regulations states that petitions shall set forth:

> (d) A clear description, in detail, of the harm already caused or which may reasonably be expected to be caused petitioner, including:
> (1) Statistics for the representative period showing a present or prospective cargo loss if harm is alleged on that basis. Such statistics shall include figures for the total cargo carried or projected in the Trade for the period;
> (2) Statistics or other evidence for the representative period showing increased costs, inferior services or other harm to cargo interest if injury is claimed on that basis; and
> (3) A statement as to why the period is representative.
>
> 46 CFR 585.6(d).

Total Ocean does address the above-referenced requirements. Petition at 2–3. Total Ocean provides Journal of Commerce PIERS date for cargo in the Trade shipped between February 1988 and January 1989. See Petition at Exhibit I. Moreover, it is not clear what more Total Ocean could present in the way of injury since Total Ocean's claim is that of a potential competitor in the Trade. In this regard, Total Ocean in its January 29 submission, represented that it has the "wherewithal" to operate in the Trade.

Finally, there is the issue of the Petition's alleged failure to submit a recommended regulation. Section 585.6(e) states that a petition shall set forth:

> (e) A recommended regulation, the promulgation of which will, in the view of the petitioner, adjust or meet the alleged conditions unfavorable to shipping in the foreign trade of the United States
>
> 46 CFR 585.6(e).

In its Petition, Total Ocean requests the Commission's assistance in obtaining

> prompt confirmation from the MTC of their (Total Ocean's) authorization to operate third flag vessels in a common carrier service in the Trade * * *.

Petition at 3. However, in its January 19 submission, Total Ocean supplements its requests for relief as follows:

> * * * Petitioner recommends consideration be given to the imposition of actions in form and scope similar to those detailed (in the case of Peru), affecting the following named Venezuelan carriers participating in the Trade: (CAVN, Camogra, King Ocean, Maragua, Inagua, Naviera, VCL and any other Venezuelan carriers operating in the Trade).

Total Ocean's January 19 submission cures any deficiency in this regard and brings the Petition into conformity with the Commission's rules.

Thus while there may be some technical imperfections in the Petition, it does substantively comply with the requirements for relief under the section 19 Regulations.

C. Ripeness of the Petition

Opponents of the Petition object that Total Ocean's application to serve the Trade has not been denied and that it is therefore premature to consider Total Ocean's request for relief. In short, they contend that Total Ocean's claim is not "ripe." They claim that Total Ocean's application to serve the Trade through chartered third-flag vessels raises novel legal questions and that the regulatory process in Venezuela should not be interfered with.

Total Ocean states in its Petition that if filed its application with the Ministry of Transport and Communications on April 25, 1990, and has retained local counsel in Venezuela to assist in and expedite its application. Total Ocean also advises that it subsequently had frequent contact with GOV authorities and has sought the assistance of the U.S. Department of State.

In its January 19, 1991 submission, Total Ocean addresses the question of whether its Petition is premature. It includes an MTC letter to the U.S. Embassy dated January 4, 1991, stating that not all procedures under Venezuelan law had been exhausted. However, a letter from Total Ocean's Venezuelan counsel dated January 17, 1991 states that it is unnecessary to exercise recourse under the Venezuelan administrative procedures act.

DOS' letter dated January 22, 1991 outlines diplomatic efforts made on behalf of Total Ocean. The letter states that

> While the Government of Venezuela has not to date rejected TOMS' application, neither has it permitted TOMS' (sic) to operate in the trade
>
> DOS Letter at 1.

The letter further states that:

> Based upon these meetings, the Departments of State and Transportation believe that the Government of Venezuela is interpreting its Law for the Protection of National Merchant Marine Shipping as well as a Memorandum of Understanding between the United States Government and the Government of Venezuela in a manner that denies TOMS the Opportunity to participate in the bilateral trades using third-country flag chartered vessels.
>
> DOS Letter at 2.

Total Ocean's application has been pending for one year. Moreover, Total Ocean has pressed its request with GOV authorities and the Department of State. Given this background, the treatment of Total Ocean's application appears to amount to a de facto denial. This view is supported by the evaluation in the DOS letter. The Commission need not wait for a formal rejection of Total Ocean's application by GOV authorities before taking action under Section 19.

D. Ability to Provide Service

Opponents of the Petition object that Total Ocean has not demonstrated any ability to provide a common carrier service in the Trade. They point out that Total Ocean currently provides no service in any trade and questions whether Total Ocean has the experience and "wherewithal" to enter the Trade. From this, they conclude that there is no unfavorable condition to shipping resulting from the exclusion of Total Ocean from the Trade.

Total Ocean addresses the "wherewithal" issue in its January 29, 1991 submission to the Commission. Total Ocean asserts that no other carriers are required to demonstrate wherewithal in order to enter the Trade. Total Ocean represents that it is prepared to demonstrate that it has the financial resources, experience and expertise, access to vessels, and shipper commitments of potential future business.

This objection of the opponents of the Petition does not disqualify the Petition. While it is true that Total Ocean does not presently operate as an ocean common carrier, having in place an existing service is not a prerequisite to section 19 relief. Moreover, Total Ocean does seem to have demonstrated a

serious commitment to enter the Trade by filing a tariff with the Commission and expending financial resources in pursuing its application. Certainly section 19 relief is available to protect enterprising companies or individuals who might seek to start up new services and bring greater competition to U.S. trades.

E. Conditions Unfavorable to Shipping

The Venezuelan carriers objecting to the Petition argue that there is no unfavorable shipping condition because third-flag carriers are permitted to, and in fact do, serve the Trade. They contend that Total Ocean would be free to enter the Trade without prior approval by Venezuelan authorities and is not excluded for competing from those cargoes which are not reserved to national-flag carriers.

Access to Venezuelan cargo is subject to Venezuela's Cargo Reservation Law. Article 9 of that law sets aside 50 percent of import and export general cargo for carriage by Venezuelan-flag carriers. Status as a Venezuelan-flag carrier is determined under the criteria set forth in Article 7, the chief requirement being that vessels must be 80 percent owned by Venezuelan nationals. Under Article 8, Venezuelan carriers may operate non-Venezuelan-flag vessels up to 50 percent of their Venezuelan-flag tonnage. Under Article 14, a national-flag carrier of a trading partner may be allowed to participate in the transport of this reserved cargo on the basis of reciprocity. Article 20 provides for the assessment of a fine equivalent to the value of the cargo lost by the national-flag vessel for violations of the cargo reserve system.

Even under a liberal interpretation of the Cargo Reservation Law, third-flag carriers appear to be excluded from competing for at least 50 percent of the general cargoes. This in itself would appear to constitute a condition unfavorable to shipping. Section 585.3(b) states that an unfavorable shipping condition exists where government actions

> Reserve *substantial* cargoes to the national flag or other vessels and fail to provide, on reasonable terms, for effective and equal access to such cargo by vessels in the foreign trade of the United States. (Emphasis added).

46 CFR 585.3(b). There is no indication in the record of any mechanism by which third-flag operators may gain access to the reserved 50 percent.

In Docket No. 87–11, *Actions to adjust or Meet Conditions Unfavorable to Shipping in the Untied States/Colombia Trade,* the Commission indicated that a law which reserved 50 percent of the liquid bulk trade to national-flag carriers would constitute a condition unfavorable to shipping. Moreover, in Docket No. 87–6, *Actions to Adjust or Meet Conditions Unfavorable to Shipping in the United States/Peru Trade,* one of the matters in issue was a Peruvian decree which reserved 50 percent of the cargo to national-flag lines. Although not addressed directly, the Peru case suggests that a 50 percent reservation of cargo could be seen as a condition unfavorable to shipping.

Nevertheless, opponents of the Petition argue that even if Total Ocean were to have a valid complaint, this is an isolated case that does not rise to the level of a claim for relief under section 19. King Ocean cites as analogous cases two instances in which section 19 petitions were dismissed, *Petition of ACE Lines, Ltd.,* 19 S.R.R. 481 (FMC 1979) ("*ACE Lines*") and *Petition of Refrigerated Express Lines (A/Asia) Pty. Ltd.,* 19 S.R.R. 1403 (FMC 1980) ("*Refrigerated Express*"). The situations in those cases are, however, distinguisheable from that exisitng here.

In *ACE Lines,* the petitioner sought relief from an action of the New Zealand Wool Board which required that only members of rate agreements be permitted to carry wool from New Zealand to the United States, thereby excluding ACE Lines, an independent operator. The Commission denied the petition because the action affected only the wool trade and had not resulted in inadequate service to American exporters or importers. 19 S.R.R. 482.

The Commission subsequently described the narrow basis for its ruling in *ACE Lines:*

> Ace Lines involved foreign-imposed restrictions on a *single carrier* affecting a *particular commodity*—wool—in the New Zealand-United States *import* trade.

(Emphasis in original). *Actions to Adjust or Meet Conditions Unfavorable to Shipping in the United States/ Venezuela Trade,* 21 S.R.R. 1621, 1926 (FMC 1983).

In *Refrigerated Express,* the petitioner sought relief from an action of the Australian Meat and Livestock Corporation's failure to reauthorize Refrigerated Express to transport refrigerated meat from Australia to the United States. The Commission denied the petition because the meat board's action was based on sound transportation factors.

Again the Commission subsequently explained the limited scope of its denial in *Refrigerated Express* as follows:

> REL involved the failure of a single carrier to obtain foreign authorization to engage in the transportation of a single commodity—refrigerated meat—in the Australia-United States import trade. The Commission concluded that the foreign entity met its burden of establishing acceptable transportation factors to justify its decision not to authorize the complaining carrier. It had acted on the basis of "sound economic and trade considerations," including the advantages of containerization over breakbulk carriage and the preference of Australian exporters and U.S. importers.

21 S.R.R. at 1629.

The circumstances of Total Ocean's Petition are different from those of the *ACE Lines* and *Refrigerated Express* cases. Total Ocean would be excluded from carriage of at least 50 percent of all general cargo in both import and export trade, not just a single commodity in a single trade. Moreover, denial of Total Ocean's application would not appear to be based on transportation factors as in *Refrigerated Express.* In short, there is nothing in *Ace Lines* or *Refrigerated Express* which would favor dismissal of the Petition in this case.

Opponents of the Petition also contend that service in the Trade is adequate and that there is therefore no unfavorable shipping condition. The Commission, however, has clearly indicated that adequacy of service is not a defense to allegations of unfavorable shipping conditions. Thus, in its earlier section 19 case dealing with Venezuela, the Commission stated:

> Adequacy of service was relevant in Ace Lines and REL because of the nature of the activity in issue in those proceedings. There was no intention in those cases to establish adequacy of service as the primary criterion in all section 19 proceedings. The issue is not critical here because of the breadth of the Venezuelan cargo restrictions. Nevertheless, the Venezuelan carriers apply far too narrow an interpretation of what factors affect "adequacy of service". As discussed herein, the documented concerns of shippers that they may be denied their carrrier of choice and that competition in the trade would be severely restricted are also relevant to the issue.

21 S.R.R. 1626–1627.

Moreover, most recently in its proceeding involving the United States trade with Peru the Commission addressed the defense of adequacy of service as follows:

> Nor do the allegations made regarding adequacy of service dispose of the matter before us. Adequacy of service is not necessarily the primary consideration in section 19 proceedings. The issue, while important, is not determinative here, given the scope of the Peruvian cargo reservation decrees. Nevertheless, the fact that the Peruvian cargo reservation decrees impose burdens and restrictions on non-Peruvian-flag carrier participation in the Trade and may, as a result, deny shippers their preferred choice

of carrier, tends to call into question the adequacy of service in the Trade.

Actions to Adjust or Meet Conditions Unfavorable to Shipping in the United States/Peru Trade, Notice of Proposed Rulemaking, 52 FR 11832, 11835 (April 13, 1987). Here there is an indication that at least 50 percent of general cargo is reserved to national-flag carriers. Moreover, the Petition is supported by shippper submissions which claim inadequate service in the Trade.

F. Government Agreements

Finally, the opponents of the Petition argue that the present situation should not be disturbed because of certain government agreements between the United States and Venezuela. They argue that the Trade has functioned smoothly under these agreements and should not be disrupted by section 19 action. The agreements referred to are three documents issued by the two governments following a series of consultations in 1983. These documents are: (1) A Memorandum of Understanding of January 14, 1983; (2) an Agreed Minute of June 3, 1983; and (3) a Memorandum of Consultations of September 9, 1983.

In its letter, the Department of State notes that "* * * in each of these documents, both sides acknowledged as desirable the continued active presence of third-flag carriers in the U.S.-Venezuela trade." Moreover, DOS does not regard the 1983 staements "* * * as freezing third-flag entrants to some historical point, but rather intending to encourage their participation in the trade." DOS concludes that approval of Total Ocean's application "* * * would be consonant with the 1983 statements, including the Memorandum of Understanding, and not necessarily inconsistent with Venezuelan law." [1] The Commission concurs that these 1983 agreements and understandings may not be invoked in order to exclude Total Ocean from equal competitive access to the Trade.

[1] DOS further states that the provisions of Venezuela's law do not correspond to modern shipping practices and that Trade conditions have changed significantly since the Cargo Reservation Law was enacted in 1973. DOS advises:

Conditions in the trade have changed significantly since the 1973 passage of this law, and the law does not address the issue of third-flag vessels engaged by shipping services of a trading partner or the other charter arrangements common today. Moreover, denial of access to competitive shipping through cargo reserve practices typically results in imposition of higher rates on shippers than would otherwise be the case—in apparent violation of the Law's own requirement in Article 16 that the reserve policy not "mean the charging of freight charges in excess of those pevailing in the international market for the traffic concerned."

IV. Conclusion

The Venezuelan Cargo Reservation Law as it is currently interpreted and enforced is clear, at least in broad outline. At a minimum, it reserves 50 percent of general import and export cargo ot national-flag carriers. A U.S. company which proposes to utilize vessels of third-flag registry appears to be excluded from access to the reserved portion of the Trade. Moreover, it appears that Venezuelan authorities have withheld from the Petitioner authorization to undertake operation as a common carrier by chartering third-flag vessels. While there is some question as to whether a U.S. company which proposes to use third-flag vessels may have access to the unreserved portion of general import and export cargoes without obtaining government approval, it appears that as a practical, commercial matter shippers would be discouraged from utilizing the services of a non-Venezuelan-flag carrier that has not obtained express government authorization to serve the Trade. The Cargo Reservation Law thus appears to restrict shippers in their selection of a carrier.

As set forth in total Ocean's Petition, it would appear that unfavorable shipping conditions may exist in the foreign oceanborne trades between the United States and Venezuela, under § 585.3(a), (b), (c) and (d) of the section 19 Regulations and section 19 of the Merchant Marine Act, 1920. As a direct result of Venezuelan laws, regulations, policies and practices, indications are that conditions exist which: (1) Impose restrictions upon third-flag vessels different from those imposed on Venezuelan-flag vessels competing in the Trade or preclude or tend to preclude third-flag carriers from competing in the Trade on the same basis as Venezuelan-flag carriers; (2) reserve substantial cargoes to the national-flag or other vessels and fail to provide for effective and equal access to cargo by third-flag vessels; (3) discriminate between third-flag carriers and shippers and their competitors; and (4) are otherwise unfavorable to shipping in the foreign trade of the United States.

Therefore, pursuant to section 19 the of the Merchant Marine Act, 1920, as amended, and the Commission's regulations at 46 CFR part 585, the Commission hereby grants the Petition of Total Ocean Marine Services, Inc. and issues a proposed rule to address the apparent existence of unfavorable shipping conditions in the foreign oceanborne trade between the United States and Venezuela, and prescribes an appropriate remedy or remedies to adjust or meet those conditions. The proposed rule states a primary remedy of a $100,000 per voyage fee. In the event that such fees are not paid, the rule provides for suspension of tariffs and denial of clearance from or access to U.S. ports.

The remedies of the proposed rule would be imposed upon the seven named carriers in Total Ocean's Petition. In addition, a review of current tariffs on file at the Commission indicates that the following may also be Venezuelan carriers serving the Trade: Consorcio Naviero de Occidente C.A.; Naviera Lavinel C.A.; Naviera Transpapel, C.A.; Vencaribe C.A.; Naviera Caribana C.A.; Zade, C.A.; and Naviera Naviprobo C.A.[2] These carriers are also included in the list of carriers subject to the sanctions in the proposed rule.

The Commission notes that recent reports in the trade press indicate that a number of South American countries, including Venezuela, may be considering a liberalization of their cargo reservation policies. The Commission invites comment on any such developments in the U.S.-Venezuela Trade. The Commission also seeks updated information concerning the impact of the Cargo Reservation Law as well as any additional information concerning its implementation which would be useful to the Commission in assessing current conditions in the Trade. In particular, the Commission invites interested persons to provide additional information and comment concerning the following.

1. Whether there is any procedure by which a U.S. company which utilizes exclusively vessels of third-flag registry may have access to the reserved portion of general import and export cargoes;

2. Whether a U.S. company which utilizes exclusively vessels of third-flag registry may have access to the unreserved portion of general import and export cargoes without obtaining government approval;

3. Whether waivers or other administrative procedures are involved for both Venezuelan importers and non-Venezuelan-carriers in obtaining access to reserved or unreserved portions of cargo;

[2] The tariff of Naviera Naviprobo C.A. indicates that it was issued by Inagua Lines, Inc. The Commission is unable to determine whether the company identified in the Petition as "Inagua-Naviprobo" is the same or distinct from Naviera Naviprobo C.A. Accordingly Naviera Naviprobo C.A. ad Inagua-Naviprobo are listed as separate and distinct carriers in the proposed rule.

4. Whether there are methods or procedures for differentiating between reserved and non-reserved cargoes, for crediting and accounting for such cargoes, and for providing notice of carrier eligibility to shippers;

5. Whether importers may be discouraged from utilizing the services of a non-Venezuelan-flag carrier that has not obtained express government authorization to serve the Trade; and

6. Whether there are other implementing regulations or policies which may apply to access to unreserved cargoes.

Interested persons also are invited to comment generally on the proposed rule including the remedies, and to provide any other updated, additional, or clarifying information including information on any changes in GOV policy with respect to cargo reservation as noted above. Factual submissions relating to conditions in the United States/Venezuela trade, where relevant, should include evidence or statistics showing commercial loss. To the extent possible, factual submissions should be supported by sworn documents and affidavits.

Finally, the Commission has determined that the Petition and supplementary submissions of Total Ocean as well as the comments and other filings concerning the Petition are hereby made a part of the record in this proceeding.

List of Subjects in 46 CFR Part 586

Cargo vessels; Exports; Foreign relations; Imports; Maritime carriers; Penalties; Rates and fares; Tarriffs.

Therefore, pursuant to section 19(1)(b) of the Merchant Marine Act, 1920, 46 U.S.C. app. 876(1)(b), as amended, Reorganization Plan No. 7 of 1961, 75 Stat. 840, and 46 CFR part 585, it is proposed to amend part 586 of title 46 of the Code of Federal Regulations as follows:

PART 586—[AMENDED]

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

Authority: 46 U.S.C. app. 876(1)(b); 46 U.S.C. app. 876(5) through (12); 46 U.S.C. app. 1710a; 46 CFR part 585; Reorganization Plan No. 7 of 1961, 26 FR 7315 (August 12, 1961).

2. A new § 586.4 is added reading as follows:

§ 586.4 Conditions unfavorable to shipping in the United States/Venezuela trade ("Trade").

(a) *Conditions unfavorable to shipping in the trade.* (1) The Federal Maritime Commission has determined that the Government of Venezuela ("GOV") has created conditions unfavorable to shipping in the foreign trade of the United States by enacting, implementing and enforcing laws and regulations which unreasonably restrict non-Venezuelan-flag carriers from competing for general import and export cargoes, in the trade between the United States and Venezuela on the same basis as Venezuelan-flag carriers.

(2) Venezuelan law unilaterally reserves 50 percent of import and export general cargoes, between the United States and Venezuela for carriage by Venezuelan-flag carriers who utilize Venezuelan-flag vessels or charter third-flag vessels, or U.S.-flag carriers who utilize U.S.-flag vessels or charter third-flag vessels. The enforcement of this system discriminates against U.S. maritime companies desirous of participating in the Trade through the exclusive charter of third-flag vessels and denies to these carriers effective and equal access to import and export general cargoes in the Trade. It also discriminates against shippers whose opportunities to select a carrier of their choice are restricted and whose ability to compete in international markets is hampered.

(b) *Venezuelan-flag carries—assessment of fees.* (1) Voyage means an inbound or outbound movement between a foreign country and the United States by a vessel engaged in the United States trade. Each inbound or outbound movement constitutes a separate voyage. For purposes of this section, the transportation of cargo by water aboard a single vessel inbound or outbound between ports in Venezuela and ports in the United States under one or more bills of lading issued by or on behalf of the Venezuelan-flag carriers named in paragraph (b)(2) of this section, whether on board vessels owned or operated by the named carriers or in space chartered by the named carriers or in space chartered by the named carriers on vessels owned or operated by others, or carried for the account of the named carriers pursuant to agreements on file with the Federal Maritime Commission, under any of the tariffs enumerated in paragraph (b)(4) of this section, shall be deemed to constitute a voyage.

(2) For each voyage completed after the effective date of this section, the following carriers shall pay to the Federal Maritime Commission a fee in the amount of $100,000: Venezuelan Container Line, C.A. ("VCL"); Naviera Pacifico C.A. ("Naviera Pacifico"); Compania Anonima Venezolana de Navigacion ("CAVN"); Maritima Aragua, S.A. ("Maragua Line"); King Ocean Service de Venezuela, S.A. ("King Ocean"); C.A. Maritima Oceanica Granelera ("Camogra"); Inagua Line-Naviprobo ("Inagua"); Consorcio Naviero de Occidente C.A.; Naviera Lavinel C.A.; Naviera Transpapel, C.A.; Vencaribe C.A: Naviera Caribana C.A.; Zade, C.A.; and Naviera Naviprobo, C.A. The fee for each voyage shall be paid by certified or cashiers check made payable to the Federal Maritime Commission within 7 calendar days of the completion of the voyage for which it is assessed.

(3) Each Venezuelan-flag carrier named in paragraph (b)(2) of this section shall file with the Federal Maritime Commission a report setting forth the date of each voyage completed, amount of cargo carried, and amount of fees assessed pursuant to paragraph (b)(2) of this section during the preceding calendar quarter. Each such report shall include a certification that all applicable fees assessed pursuant to paragraph (b)(2) of this section have been paid, and shall be executed by the Chief Executive Officer under oath. Such reports shall be filed within 15 days of the end of each calendar quarter.

(4) If any Venezuelan-flag carrier shall fail to pay any fee assessed by paragraph (b)(2) of this section within the prescribed time for payment, or fail to file any quarterly report required by paragraph (b)(3) of this section within the prescribed period for filing, the tariffs identified below, as applicable to such carrier, shall be suspended effective 30 calendar days after the expiration of the calendar quarter in which such fees or report were due:

(i)(A) *Naviera Pacifico C.A. (Naviera Pacifico).*

FMC No. 1—Applicable Between Ports in Washington, Oregon, Idaho & California and Inland Points and Ports in Venezuela, Panama, Mexico, El Salvador, Costa Rica, Nicaragua and the Caribbean.

(B) *Compania Anonima Venezolana de Navigacion (Venezuelan Line).*

FMC No. 9—Applicable Between Ports in the United States and Puerto Rico and Ports Worldwide.

(C) *Maritima Aragua, S.A. (Maragua Line).*

FMC No. 8—Applicable From United States Gulf Ports to Ports in Curacao.

FMC No. 7—Equipment Interchange Tariff Naming Rules, Regulations and Charges Covering the Use of Carriers Provided Equipment.

(D) *C.A. Maritima Oceanica Granelera (Camogra).*

FMC No. 1—Applicable Between United States Atlantic and Gulf Coast Ports and Ports in the Caribbean, Central and South America.

(E) *Naviera Naviprobo C.A. Inc. (Naviera Naviprobo).*

FMC No. 2—Applicable Between Florida East Coast Ports and Ports in Venezuela.

(F) *Naviera Lavinel C.A.*

FMC No. 1—Applicable Between Ports in Mexico, Central America and South America and United States Pacific Coast Ports.

(G) *Naviera Transpapel, C.A.*

FMC No. 1—Applicable Between U.S. East Coast, Gulf, West Coast and Great Lakes Ports and Ports in the Caribbean Sea, Central America and South America.

(H) *Vencaribe C.A.*

FMC No. 1—Applicable Between U.S. Atlantic and Gulf Coast Ports and Ports in South America.

(I) *Naviera Caribana C.A.*

FMC No. 1—Applicable Between United States Ports and Points and Worldwide Ports and Points.

(J) *Zade, C.A.*

FMC No. 2—Applicable Between Ports in Puerto Rico and Ports in Venezuela.

(ii) The following conference tariffs, or any other conference tariff covering the Trade, including intermodal tariffs covering service from interior U.S. points:

United States Atlantic and Gulf/Venezuela Steamship Conference.

FMC No. 14—Applicable Between Atlantic and Gulf Coast Ports of the United States (Except Florida Ports South of Jacksonville to and including Miami) and Inland or Coastal Points and Ports in Venezuela.

(iii) Any other tariff which may be filed by or on behalf of the carriers listed in paragraph (b) of this section.

(iv) In the event of suspension of tariffs pursuant to this paragraph, all affected conference or rate agreement tariffs shall be amended to reflect said suspensions. Operation by any carrier under suspended, cancelled or rejected tariffs shall subject said carrier to all applicable remedies and penalties provided by law.

(c) *Source of fees.* Any fees assessed by paragraph (b)(2) of this section against Venezuelan-flag carriers operating pursuant to any agreement filed with the Federal Maritime Commission providing for revenue pooling, joint service, space-chartering or other joint operations shall be paid by such Venezuelan-flag carriers without affecting the revenue shares or amount of revenue earned by non-Venezuelan carriers operating pursuant to such agreements.

(d) *Refusal of Clearance by the Collector of Customs.* If a named Venezuelan-flag carrier shall fail to pay any fee assessed by paragraph (b)(2) of this section, or fail to file any quarterly report required by paragraph (b)(3) of this section within the prescribed period for filing, the Secretary of the Commission shall request the Chief, Carrier Rulings Branch of the U.S. Customs Service to direct the collectors of customs at the affected U.S. port or ports, to refuse the clearance required by section 4197 of the Revised Statutes (46 U.S.C. app. 91) to any vessel owned or operated by such Venezuelan-flag carrier.

(e) Denial of Entry to or Detention at United States Ports by the Secretary of Transportation. If a named Venezuelan-flag carrier shall fail to pay any fee assessed by paragraph (b)(2) of this section, or fail to file any quarterly report required by paragraph (b)(3) of this section within the prescribed period for filing, the Secretary of the Commission shall request the Secretary, U.S. Department of Transportation, to direct the Coast Guard to: (1) Deny entry for purpose of coeanborne trade, of a vessel of that carrier to any port or place in the United States or the navigable waters of the United States; or (2) detain a vessel of that carrier at the port or place in the United States from which it is about to depart for another port or place in the United States.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91-11670 Filed 5-15-91; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Chapter VI

Shark Fishery of the Atlantic Ocean (Including the Gulf of Mexico and the Caribbean Sea)

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of a change of date and location for a public hearing.

SUMMARY: A notice of availability of a revised draft Fishery Management Plan for the Shark Fishery of the Atlantic Ocean (FMP), and a notice of eight scheduled public hearings on the revised draft FMP was published May 3, 1991 (56 FR 20410). This notice is being issued to change the date and the location of one hearing. All other information, as published, remains the same.

ADDRESSES: Oral and written statements will be taken at the hearings. Additional comments should be sent to Paul J. Leach, Southeast Region, NMFS, 9450 Koger Blvd., St. Petersburg, Florida 33702.

Mark envelope "Shark Plan." Copies of the revised draft FMP may be obtained from NMFS at this address.

FOR FURTHER INFORMATION CONTACT: Paul J. Leach (813) 893-3141.

SUPPLEMENTARY INFORMATION: In FR Doc. 91-10464, appearing in the issue of May 3, 1991 (56 FR 20410), make the following change:

On page 20411, in the third column, the hearing scheduled for May 29, 1991, at 7 p.m., in New Bern, North Carolina, is changed to May 30, 1991, 7 p.m., Carteret Community College, Joslyn Hall, 3500 Arendell Street, Morehead City, North Carolina.

Dated: May 10, 1991.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-11593 Filed 5-15-91; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 56, No. 95
Thursday, May 16, 1991

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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Adjudication; Public Hearing

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of a hearing before the Committee on Adjudication of the Administrative Conference of the United States. The hearing will be from 9:15 a.m. to 1 p.m. on Wednesday, June 19, 1991, in Courtroom 2, National Courts Building, 717 Madison Place, Washington, DC.

The Administrative Conference of the United States, at the request of Congress, is sponsoring a study of the administrative adjudicatory procedures of the Federal Aviation Administration and the National Transportation Safety Board in cases involving enforcement of air safety regulations. Following the study, which is being done by Professor Henry Perritt of the Villanova University Law School, the Conference will make recommendations on where authority to adjudicate administrative complaints under the Federal Aviation Act should reside. The hearing is intended to provide interested parties with the opportunity to present their views on the issues raised, which include whether the FAA and Department of Transportation or the NTSB are the better forum adjudicating air safety enforcement cases, and whether responsibility for both certification cases and civil penalty cases should be at the same agency.

Copies of Professor Perritt's outline for his study, which will be the focus of the hearing, are available from Nancy G. Miller, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., suite 500, Washington, DC (202) 254–7020. People who are interested in speaking at this hearing must contact Ms. Miller by May 31, 1991. Speakers will be asked to limit their remarks to 10 minutes. Written statements will also be accepted. Please submit 10 copies, or at least 2 copies plus accompanying diskette (5¼" or 3½"), by Wednesday, June 12, 1991. The hearing will be transcribed. The hearing will be open to the interested public, but limited to the space available.

For further information concerning this hearing, contact Nancy G. Miller.

Jeffrey S. Lubbers,
Research Director.

[FR Doc. 91–11630 Filed 5–15–91; 8:45 am]
BILLING CODE 6110–01–M

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

May 10, 1991.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 447–2118.

Revision

• Food and Nutrition Service.

7 CFR part 220—School Breakfast Program (Reporting and Recordkeeping Burdens).

Recordkeeping; Monthly; Quarterly; Semi-annually; Annually.

State or local governments; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations; 720,258 responses; 5,800,404 hours.

Marian Stroud (703) 756–3607.

• Agricultural Marketing Service.

Almonds Grown in California, Marketing Order No. 981.

Recordkeeping; On occasion; Monthly; Semi-monthly

Businesses or other for-profit; 13,291 responses; 6,254 hours.

Richard Shultz (202) 245–5172.

Extension

• Agricultural Stabilization and Conservation Service.

26 CFR part 35a, Payer's Request for Identifying Number CCC–343.

On occasion.

Individuals or households; Farms; 3,000 responses; 1,500 hours.

Karl Choice (202) 447–8782.

Extension

• Agricultural Stabilization and Conservation Service.

7 CFR part 1430, Monthly Report and Remittance of Amount Due for All Milk Marketed Commercially By Producers.

CC–310.

Monthly.

Individuals or households; Farms; Businesses or other for-profit; Small businesses or organizations; 18,000 responses; 4,500 hours

Joe Chervenic (202) 447–3679

New Collection

• Food and Nutrition Service.

Update to the Characteristics of State Food Stamp Program Operations.

Once per respondent.

State or local governments; 477 responses; 477 hours.

Sharron Cristofar (703) 756–3155.

• Agricultural Cooperative Service.

Livestock, Poultry, and Wool Marketing Cooperatives: Marketing Methods and Service for Members.

On occasion.

Businesses or other for-profit; Small businesses or organizations; 337 responses; 146 hours.

T. Fred White, Jr. (202) 245–5390.

New Collection-Emergency

• Agricultural Stabilization and Conservation Service.

7 CFR part 1446, Peanut Warehouse Contracts, Application for Approval, Examination Reports, Bond, Warehouse

Receipts and Drafts, Contracts for Additional Peanuts—Addendum 1.

CCC–1005.

On occasion.

Farms; Small businesses or organizations; 25,800 responses; 6,450 hours.

Solomon Whitfield (202) 447–7128.

Larry K. Roberson,

Deputy Departmental Clearance Officer.

[FR Doc. 91–11589 Filed 5–15–91; 8:45 am]

BILLING CODE 3410–01–M

Agricultural Marketing Service

[TB–91–009]

Burley Tobacco Advisory Committee; First Meeting

In accordance with the Federal Advisory Committee Act (5 U.S.C. app.) announcement is made of the following committee meeting:

Name: Burley Tobacco Advisory Committee.

Date: June 4, 1991.

Time: 10:30 a.m.

Place: Campbell House Inn, 1375 Harrodsburg Road, Lexington, Kentucky 40504.

Purpose: To explain responsibilities of individual members, provide informational materials to the newly established membership, review various regulations pursuant to the Tobacco Inspection Act (49 Stat. 731; 7 U.S.C., 511 *et seq.*), discuss new policies and procedures for the 1991 burley marketing season, and other related issues.

The meeting is open to the public. Persons, other than members, who wish to address the Committee at the meeting should contact the Director, Tobacco Division, Agricultural Marketing Service, U.S Department of Agriculture, room 502 Annex Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–2567, prior to the meeting. Written statements may be submitted to the Committee before, at, or after the meeting.

Dated: May 10, 1991.

Daniel Haley,

Administrator.

[FR Doc. 91–11559 Filed 5–15–91; 8:45 am]

BILLING CODE 3410–02–M

Forest Service

Proposed Felipito Timber Sale, Carson National Forest, Rio Arriba County, NM

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The Department of Agriculture, Forest Service, will prepare an environmental impact statement on the proposed Felipito Timber Sale.

The decisions to be made are as follows. Should there be a timber sale at this time? If so, what would be the harvest method and resulting volume of products? Would there be any clearcutting, thinning or reforestation? How much and what areas would be allocated to old growth? How would the fuels (fire potential) be handled? Would there be any wildlife or watershed improvements? What roads would be obliterated, closed, constructed or reconstructed?

DATES: Comments concerning the scope of the analysis should be received in writing by June 15, 1991.

ADDRESSES: Send written comments to El Rito Ranger District, Carson National Forest, P.O. Box 56, El Rito, NM 87530.

FOR FURTHER INFORMATION CONTACT: Ron Ellis, Interdisciplinary Team Leader, (505) 581–4554.

SUPPLEMENTARY INFORMATION: The Felipito Timber Sale was listed in the Carson Forest Plan and public notification of the intent to begin planning for such a sale was mailed in September of 1988. Planning meetings were held intermittently in 1989 and more frequently in 1990. A Decision Notice with an accompanying Environmental Assessment was signed in October 1990, but was withdrawn a few weeks later to allow the interdisciplinary team (ID) an opportunity to reconsider certain concerns and to take into account an October 1990 amendment to the Carson Forest Plan that modified the old growth criteria.

Comments were gathered on the proposal by contacting potentially affected and interested people. Open houses, meetings, press coverage, and letters to a large list of interested publics have afforded many people opportunity to comment.

The following issues have been identified for analysis: (1) Possible conflicts with wildlife and wildlife habitat; (2) potential soil movement, sedimentation of the Rio Vallecitos, soil productivity, water yield, and timing of water yield; (3) potential effects on habitat for Mexican spotted owls and other threatened and endangered species; (4) old growth within the diversity unit; and (5) economic stability of the local timber-dependent communities.

Seven alternatives have been developed. The alternatives include a no action alternative and six others that respond to the key issues.

Due to the analysis done to date, we have concluded that an EIS would be appropriate. A draft of the EIS is scheduled to be published in September, 1991.

The Carson National Forest Supervisor is the responsible official who will decide on the management strategy to be implemented on the Felipito area. (Carson National Forest, P.O. Box 558, Taos, NM 87571)

We invite any suggestions or comments in writing.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental stage, but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F. 2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D.Wis 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages of chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

Dated: May 9, 1991.

Leonard A. Lindquist,

Forest Supervisor.

[FR Doc. 91–11629 Filed 5–15–91; 8:45 am]

BILLING CODE 3410–11–M

Plum Creek Checkerboard Land Exchange; Kootenai National Forest; Lincoln, Flathead and Sanders Counties, MT

AGENCY: Forest Service, USDA.

ACTION: Notice of correction to notice of intent to prepare environmental impact statement.

SUMMARY: The Department of Agriculture, Forest Service (FS), Kootenai National Forest (KNF), in conjunction with Plum Creek Timber Company, Limited Partnership, (PCTC), issued a Notice of Intent (NOI) to prepare an environmental impact statement (EIS) for a proposal to exchange National Forest land for PCTC land. The NOI as published 4/25/91, in Vol. 56, No. 80, P. 19081 of the **Federal Register** should be corrected to read as follows:

Under Federal Lands:
Meadow Peak; T. 27 N., R. 27 W., P.M.M., Lincoln County
Sec. 4; All..... 640
should be:
Meadow Peak; T. 27 N., R. 27 W., P.M.M., Lincoln County
Sec. 14; All..... 640
and
Meadow Peak; T. 27 N., R. 26 W., P.M.M., Flathead County
Sec. 28; N½, W½SW¼, S½SE¼..... 400
should be:
Meadow Peak; T. 27 N., R. 26 W., P.M.M., Flathead County
Sec. 28; N½, W½SW¼..... 400

Dated: May 8, 1991.

Robert L. Schrenk,

Forest Supervisor.

[FR Doc. 91–11626 Filed 5–15–91; 8:45 am]

BILLING CODE 3410–11–M

Grouse Creek Timber Sale, Rogue River National Forest, Jackson County, OR

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare environmental impact statement.

SUMMARY: The USDA, Forest Service, will prepare an environmental impact statement (EIS) on a proposal to harvest timber and construct roads in a portion of the Kinney Roadless Area. The proposed Grouse Creek Timber Sale EIS will tier to the July 1990 final EIS for the Land and Resource Management Plan (Forest Plan) for the Rogue River National Forest. The Forest Service proposal will be in compliance with the direction in the Forest Plan which provide overall guidance for management of the area and the proposed projects. The proposed projects are planned for implementation in Fiscal Year 1993 on the Applegate Ranger District. The Grouse Creek Planning Area consists of approximately 3000 acres of National Forest and US Army Corps of Engineers Land located directly west of the Applegate Lake, 23 miles southwest of Medford, Oregon.

The Applegate Ranger District invites written comments and suggestions on the scope of the analysis in addition to comments already received as a result of local public participation activities. The district also gives notice of the full environmental analysis and decision-making process that will occur on the proposal so that interested and affected people are aware of how they may particpate and contribute to the final decision.

DATES: Comments concerning the scope of the analysis should be received in writing by June 7, 1991.

ADDRESSES: Send written comments to Susan E. Rolle, District Ranger, Applegate Ranger District, 6941 Upper Applegate Road, Jacksonville, Oregon 97530.

FOR FURTHER INFORMATION CONTACT: Thomas W. Lavagnino, Resource Planner, Applegate Ranger District, 6941 Upper Applegate Road, Jacksonville, Oregon 97530. (503) 899–1812.

SUPPLEMENTARY INFORMATION:

The proposed timber sale is listed on page A–23 under appendix A (10-year Activity Schedules) of the Rogue River National Forest Plan.

The proposed timber sale with associated activities is in an inventoried Kinney Roadless Area. This area was recommended as non-Wilderness in the 1979 final EIS for the Roadless Area Review and Evaluation II (RARE II). The final EIS for the Forest Plan analyzed the area for its roadless characteristic and allocated the land as shown in the table below.

The following table lists the approximate percentages and acres allocated to the specific Management Area (MA) by the Forest Plan:

Management area No.	Management strategy	Acres	Percent of PA
1	Minimum Management.	428	14
4	Developed Recreation.	284	10
6	Foreground Retention.	499	17
7	Foreground Partial Retention.	124	04
9	Middleground Partial Retention.	15	.5
14	Big Game Winter Range.	827	28
15	Old Growth	219	07
17	Primary Range	22	.5
20	Timber Suitable 1	523	18
26	Restricted Riparian.	31	01

The entire Rogue River National Forest (and more specifically the Grouse Creek Planning Area, as shown above) has been divided into Management Areas, each with an accompanying Management Strategy. Each area has different resource goals, opportunities, standards and guidelines. In essence, it is a unit of land to be managed to achieve a desired future condition. A complete description of each Management Strategy can be found in Chapter Four of the Forest Plan.

The analysis will consider a range of alternatives. Along with the proposed action, the analysis will consider a no-action alternative. Action alternatives will analyze high priority silvicultural stands that can be accessed with or without roads in areas determined suitable for timber management that are consistent with the Forest Plan and other management directions. The legal description for the Grouse Creek Planning Area is: portions of Section 22, 23, 25–27, & 34–36, T. 40 S., R. 4 W., Willamette Meridian and portions of section 2, 3, & 10, T. 41 S., R. 4 W., Willamette Meridian in Jackson County, Oregon. Public participation will be especially important at several points during the analysis, beginning with the scoping process (40 CFR 1501.7). The Forest Service will be seeking information, comments, and assistance from Federal, State, tribes, local agencies and other individuals or organizations who may be interested in or affected by the proposed project. Letters will also be sent to all adjacent landowners within ¼ mile of the Planning Area encouraging their participation. This input will be used in preparation of the draft EIS. The scoping process includes:

1. Identifying major issues to be analyzed in depth;

2. Exploring additional alternatives (that are consistent with the Forest Plan)

derived from issues recognized during scoping activities;

3. Identification of potential environmental effects of the proposed action and alternatives (i.e. direct, indirect, and cumulative effects and connected actions).

4. Notifying interested publics of opportunities to participate through meetings, personal contacts, or written comment. Keeping the public informed through the media and/or written material (i.e., newsletters, correspondence, letters and maps posted on local bulletin boards, etc.).

The following issues have been identified during scoping meeting: changing the character of the Kinney Roadless Area; reduction of Northern Spotted Owl (*Strix occidentalis caurina*) and/or Old Growth habitat; management of Pacific Yew (*Taxus brevifolia*) in the Planning Area; and compliance with the implementation of the Applegate Reservoir Bald Eagle Management Area (BEMA) Plan and the Applegate Lake Management Plan.

The Forest Service is the Lead Agency for this project. Cooperators may include the US Army Corps of Engineers and the Boise Cascade Corporation (through a share/cost agreement for road construction in the area).

The draft EIS is scheduled to be filed with Environmental Protection Agency (EPA) and to be available for public review June, 1991. At that time, copies of the draft EIS will be distributed to interested and affected agencies, organizations, and members of the public for their review and comment. EPA will publish a notice of availability of the draft EIS in the **Federal Register**. The comment period on the draft EIS will be 45 days from the date the EPA notice appears in the **Federal Register**. It is important that those interested in the management of the Rogue River National Forest participate at that time.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, a reviewer of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

The final EIS is scheduled to be completed by October, 1991. In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS, and applicable laws, regulations, and policies considered in making the decision regarding the Grouse Creek Timber Sale proposal. The Forest Supervisor is the responsible official. As the responsible official he will document the decision and rationale for the decision in the Record of Decision. That decision will be subject to Forest Service appeal regulations (36 CFR part 217).

Dated: May 3, 1991.

Steven W. Deitemeyer,

Forest Supervisor.

[FR Doc. 91–11598 Filed 5–15–91; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Questions on IRS Tax Forms for the 1992 Economic Censuses.

Form Number(s): IRS Forms 1120S; 1065; and 1040, Schedule C.

Agency Approval Number: None.

Type of Request: New collection

Burden: 350,000 hours.

Number of Respondents: 21,000,000.

Avg Hours Per Response: 1 minute.

Needs and Uses: The Bureau of the Census sponsors certain questions on Internal Revenue Service (IRS) forms every five years in conjunction with the economic censuses. Responses to these questions provide the Bureau with establishment counts and other information for small businesses. Additionally, we use responses to eliminate businesses too small for inclusion in the censuses, to classify businesses as full year/part year, to identify duplication in the Form 1040 Schedule C non-employer universe, and to edit related census data items. This submission requests OMB clearance for these questions on IRS Forms 1120S, 1065, and 1040 Schedule C for tax year 1992.

Affected Public: Businesses or other for–profit organizations, Small businesses or organizations.

Frequency: Every five years.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Marshall Mills, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Clearance Officer, (202) 377–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: May 13, 1991.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 91–11681 Filed 5–15–91; 8:45 am]

BILLING CODE 3510–07–F

International Trade Administration

[A–570–808]

Postponement of Final Antidumping Duty Determination and Rescheduling of Public Hearing: Chrome-Plated Lug Nuts From the People's Republic of China (PRC)

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that we have received a request from

the China National Machinery & Equipment Import & Export Corporation, Jiangsu Co., Ltd. (CMEC Jiangsu), respondent in the antidumping duty investigation, to postpone the final determination as permitted in section 735(a)(2) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)(2)). Based on this request, we are postponing our final determination as to whether sales of chrome-plated lug nuts from the PRC have been made at less than fair value until not later than September 3, 1991.

EFFECTIVE DATE: May 16, 1991.

FOR FURTHER INFORMATION CONTACT: Gary Bettger or Julie Anne Osgood, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at (202) 377–2239 or 377–0167, respectively.

SUPPLEMENTARY INFORMATION: On April 26, 1991, CMEC Jiangsu, the respondent accounting for all exports of the subject merchandise, requested that the Department postpone the final determination until not later than 135 days after the date of publication of the preliminary determination, in accordance with section 735(a)(2) of the Act. Accordingly, we are postponing the date of the final determination until not later than September 3, 1991.

Public Comment

We are rescheduling the public hearing announced in the Preliminary Determination of Sales at Less Than Fair Value: Chrome-Plated Lug Nuts from the People's Republic of China (56 FR 15857). Parties should confirm by telephone the time, date, and place of the hearing 48 hours prior to the scheduled time. In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary no later than June 7, 1991, and rebuttal briefs no later than June 14, 1991. The public hearing will be held on June 18, 1991, at 10 a.m. at the U.S. Department of Commerce, room 1411, 14th Street and Constitution Avenue, NW., Washington, DC 20230. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

This notice is published pursuant to section 735(d) of the Act and 19 CFR 353.20(b)(2).

Dated: May 10, 1991.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91–11682 Filed 5–15–91; 8:45 am]

BILLING CODE 3510–DS–M

Short-Supply Determination: Certain Hot-Rolled D6A Alloy Steel Strip

AGENCY: Import Administration/ International Trade Administration, Commerce.

ACTION: Notice of short-supply determination on certain hot-rolled D6A alloy steel strip.

SHORT-SUPPLY REVIEW NUMBER: 49.

SUMMARY: The Secretary of Commerce ("Secretary") hereby grants a short-supply allowance for 1,985 net tons of certain hot-rolled D6A alloy steel strip under Article 8 of the U.S.-EC steel arrangement for the remainder of 1991.

EFFECTIVE DATE: May 9, 1991.

FOR FURTHER INFORMATION CONTACT: Sally A. Craig or Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230, (202) 377–0165 or (202) 377–0159.

SUPPLEMENTARY INFORMATION: On April 24, 1991, the Secretary received an adequate short-supply petition from Theis Precision Steel Corporation ("Theis") requesting a short-supply allowance for 1,985 net tons of certain hot-rolled D6A alloy steel strip, which is processed into cold-rolled D6A alloy strip for use in the production of bi-metal band saws, for the remainder of 1991. This request was made under Article 8 of the Arrangement Between the European Coal and Steel Community and the European Economic Community and the Government of the United States of America Concerning Trade in Certain Steel Products ("U.S.-EC steel arrangement"). Theis requested short supply for this product because no domestic mill is currently able to produce sufficient quantities of material meeting Theis' specifications and because Theis' foreign suppliers are unable to meet Theis' total need through regular export licenses. The Secretary conducted this short-supply review pursuant to section 4(b)(4)(A) of the Steel Trade Liberalization Program Implementation Act, Public Law 101–221, 103 Stat. 1886 (1989) ("the Act"), and § 357.102 of the Department of Commerce's Short-Supply Procedures, 19 CFR 357.102 ("Commerce's Short-Supply Procedures").

The requested product is a certain grade of D6A steel hot-rolled strip (black or descaled as specified by purchase order) that is suitable for electron beam welding and meets the following specifications:

Thickness range: 0.080–0.125 inch;

Width range: 10–16 inches;

Chemical Composition (Ladle Analysis): Carbon (0.45–0.50); Manganese (0.60–0.90); Phosphorus (0.015 max.); Sulfur (0.010 max., aim as low as possible); Silicon (0.10–0.25); Nickel (0.50–0.70); Chromium (0.90–1.10); Molybdenum (0.90–1.10; Vanadium (0.08–0.15); Copper (0.20 max.); Aluminum (0.05–0.10, acid soluble); Hydrogen (15 ppm max.); Nitrogen (300 ppm max.); and Oxygen (150 ppm max.);

Condition: High quality steel made by the best steelmaking practice necessary to produce an extremely clean sound steel required for good electron beam welds;

Quality Requirements of Hot-Rolled Strip:

a. *Non-Metallic Inclusion Rating*: Utilize a sampling plan as outlined under Article 6 of ASTM E45–81.

b. *Surface Quality*: Inspection of the hot acid descaled surface shall reveal no detrimental surface defects such as silvers, shingle seams, labs, cold shuts, etc. which would affect the finished cold-rolled product;

Internal Soundness: A transverse section deep etched in hot acid and examined shall show no primary or secondary pipe, excessive segregation porosity or other injurious internal defects;

Microstructure:

a. *Grain size*: The McQuaid Ehn grain size shall be fine 6–8 as determined in accordance with ASTM E112–81 Annex A–3.

b. *Decarburization*: Shall be determined on transverse specimens taken one inch from the edges and the center of the strip properly polished and etched and microscopically measured for partial and complete decarburization.

c. *General Microstructure*: Shall be typical hot band fine pearlitic structure with minimum martensite;

Edge: Shall be the natural #2 mill edge or #3 slit edge and does not have to conform to any definite contour;

Size Variation Limits:

a. *Width*: The tolerance for mill edge width shall not exceed ±0.062 inch for a width of 10 inches and ±0.094 inch for widths over 10 inches.

b. *Camber*: Shall be measured by placing an 8 foot straight edge on the concave side edge and measuring the greatest distance between the straight

edge and the steep strip. The camber shall not exceed ¼ inch in 8 feet;

Size of Coils: The inside diameter shall be 16–24 inches. The outside diameter shall be 54 inches max. with 16 inches I.D.; however, 58 inches max. O.D. shall be allowed with 20–24 inches I.D. if the band is pickled and annealed. There shall be no fish tail ends.

Action

On April 24, 1991, the Secretary established an official record on this short-supply request (Case Number 49) in the Central Records Unit, room B–099, Import Administration, U.S. Department of Commerce at the above address. Section 4(b)(4)(B)(i) of the Act and § 357.106(b)(1) Commerce's Short-Supply Procedures require the Secretary to apply a rebuttable presumption that a product is in short supply and to make a determination with respect to a short-supply petition not later than the 15th day after the petition is filed if the Secretary finds that one of the following conditions exists: (1) The raw steelmaking capacity utilization in the United States equals or exceeds 90 percent; (2) the importation of additional quantities of the requested steel product was authorized by the Secretary during each of the two immeidately preceding years; or (3) the requested steel product is not produced in the United States. The Secretary finds that short-supply allowances for this product were granted in each of the two immediately preceding years; therefore, the Secretary has applied a rebuttable presumption that this product is presently in short supply in accordance with section 4(b)(4)(B)(i)(II) of the Act and § 357.106(b)(1)(ii) of Commerce's Short-Supply Procedures.

Unless domestic steel producers provided proof that they could and would produce the requested quantity of this product within the desired period of time, provided it represented a normal order-to-delivery period, the Secretary would issue a short-supply allowance not later than May 9, 1991. On April 30, 1991, the Secretary published a notice in the **Federal Register** announcing a review of this request and providing domestic steel producers an opportunity to rebut the presumption of short supply. All comments were required to be received no later than May 7, 1991. No comments were received.

Conclusion

Since the Secretary received no comments to the **Federal Register** notice by potential suppliers to rebut the Secretary's presumption of short supply for the requested product, the Secretary hereby grants, pursuant to section 4(b)(4)(A) of the Act and § 357.102 of Commerce's Short-Supply Procedures, a short-supply allowance for 1,985 net tons of the requested hot-rolled D6A alloy steel strip for the remainder of 1991 under Article 8 of the U.S.-EC steel arrangement.

Dated: May 9, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91–11683 Filed 5–15–91; 8:45 am]

BILLING CODE 3510–DS–M

Minority Business Development Agency

Business Development Center Applications: Augusta, Georgia

AGENCY: Minority Business Development Agency.

ACTION: Notice.

SUMMARY: In accordance with the provisions of Executive Order 11625, the Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a 3-year period, subject to available funds. The cost of performance for the first 12 months is estimated at $194,118 for the project performance of 10/1/91 to 09/30/92. The MBDC will operate in the Augusta, Georgia, Metropolitan Statistical Area (MSA). The first year cost for MBDC will consist of $165,000 in Federal Funds and a minimum of $29,118 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services).

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, non-profit and for-profit organizations, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations (50 points); the resources available to the firm in providing management and technical assistance (10 points); the firm's proposed approach to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). It is advisable that applicants have an existing office in the geographic region for which they are applying.

An applicant must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive.

The MBDC will operate for a 3-year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

Applicants who have an outstanding account receivable with the Federal Government may not be considered for funding until these debts have been paid or arrangements satisfactory to the Federal Government are made to pay the debt.

Applicants are subject to Governmentalwide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26. In accordance with the Drug-Free Workplace Act of 1988, each applicant must make the appropriate certification as a "prior condition" to receiving a grant or cooperative agreement.

Awards under this program shall be subject to all Federal Departmental regulations, policies, and procedures applicable to Federal assistance awards.

A false statement on an application may be grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment.

Section 319 of Public Law 101–121 generally prohibits recipients of appropriated funds from lobbying the Executive or Legislative Branches of Federal Government in connection with a specific contract, grant, or loan. A "Certification for Contracts, Grants Loans, and Cooperative Agreements" and the SF–LLL, "Disclosure of Lobbying Activities" (if applicable), is required. Anticipated processing time of this award is 120 days. Executive order 12372, "Intergovernmental Review of Federal Programs", is not applicable to this program.

CLOSING DATE: The closing date for applications is June 21, 1991.

Applications must be postmarked on or before June 21, 1991.

ADDRESSES: Proposals will be reviewed by the Dallas Regional Office. The mailing address for submission is: Dallas Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 1100 Commerce Street, room 7B23, Dallas, Texas 75242, 214/767–8001.

FOR FURTHER INFORMATION CONTACT: Carlton L. Eccles, Regional Director of the Atlanta Regional Office, 404/730–3300. In order to request an RFA and to receive additional information, contact U.S. Department of Commerce, MBDA, 401 West Peachtree Street, Room 1930, Atlanta, GA 30308.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

Note: A pre-application conference to assist all interested applicants will be held at the U.S. Department of Commerce, Minority Business Development Agency, 401 West Peachtree St., NW., room 1930, Atlanta, Georgia, June 5, 1991, at 9 a.m.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: May 10, 1991.

Carlton L. Eccles,

Regional Director, Atlanta Regional Office.

[FR Doc. 91–11594 Filed 5–15–91; 8:45 am]

BILLING CODE 3510–21–M

Business Development Center Applications; Columbus GA

May 10, 1991.

AGENCY: Minority Business Development Agency.

ACTION: Notice.

SUMMARY: In accordance with the provisions of Executive Order 11625, the Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a 3-year period, subject to available funds. The cost of performance for the first 12 months is estimated at $194,118 for the project performance of 10/1/91 to 09/30/92. The MBDC will operate in the Columbus, Georgia, Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of $165,000 in Federal Funds and a minimum of $29,118 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services).

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, non-profit and for-profit organizations, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations (50 points); the resources available to the firm in providing management and technical assistance (10 points); the firm's proposed approach to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). It is advisable that applicants have an existing office in the geographic region for which they are applying.

An applicant must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive.

The MBDC will operate for a 3-year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

Applicants who have an outstanding account receivable with the Federal Government may not be considered for funding until these debts have been paid or arrangements satisfactory to the Federal Government are made to pay the debt.

Applicants are subject to Governmentalwide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26. In accordance with the Drug-Free Workplace Act of 1988, each applicant must make the appropriate certification as a "prior condition" to receiving a grant or cooperative agreement.

Awards under this program shall be subject to all Federal Departmental regulations, policies, and procedures applicable to Federal assistance awards.

A false statement on an application may be grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment.

Section 319 of Public Law 101–121 generally prohibits recipients of appropriated funds from lobbying the Executive or Legislative Branches of Federal Government in connection with a specific contract, grant, or loan. A "Certification for Contracts, Grants Loans, and Cooperative Agreements" and the SF–LLL, "Disclosure of Lobbying Activities" (if applicable), is required. Anticipated processing time of this award is 120 days. Executive order 12372, "Intergovernmental Review of Federal Programs", is not applicable to this program.

CLOSING DATE: The closing date for applications is June 21, 1991. Applications must be postmarked on or before June 21, 1991.

ADDRESSES: Proposals will be reviewed by the Dallas Regional Office. The mailing address for submission is: Dallas Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 1100 Commerce Street, room 7B23, Dallas, Texas 75242, 214/767–8001.

FOR FURTHER INFORMATION CONTACT: Carlton L. Eccles, Regional Director of the Atlanta Regional Office, 404/730–3300. In order to request an RFA and to receive additional information, contact U.S. Department of Commerce, MBDA, 401 West Peachtree Street, Room 1930, Atlanta, GA 30308.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

Dated: May 10, 1991.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Note: A pre-application conference to assist all interested applicants will be held at the U.S. Department of Commerce, Minority Business Development Agency, 401 West Peachtree Street NW., room 1930, Atlanta, Georgia, June 5, 1991, at 9 a.m.

Carlton L. Eccles,

Regional Director, Atlanta Regional Office.

[FR Doc. 91–11595 Filed 5–15–91; 8:45 am]

BILLING CODE 3510–21–M

Business Development Center Applications: Indianapolis, Indiana

AGENCY: Minority Business Development Agency.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for approximately a 3 year period,

subject to the availability of funds. The cost of performance for the first 12 months is estimated at $165,000 in Federal funds and a minimum of $29,118 in non-Federal contributions for the budget period September 1, 1991 to August 31, 1992. Cost-sharing contributions may be in the form of cash contributions, client fees for services, in-kind contributions, or combinations thereof. The MBDC will operate in the Indianapolis, Indiana geographic service area. The award number of this MBDC will be 05–10–91009–01.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, State and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can coordinate and broker public and private resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated initially by Regional staff on the following criteria: The experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodology) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive.

The selection of an application for further processing by MBDA will be made by the Director based on a determination of the application most likely to further the purposes of the MBDC program. The application will then be forwarded to the Department for final processing and approval if appropriate. The Director will consider past performance of the applicant on previous Federal awards.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. Client fees for billable management and technical assistance (M&TA) rendered must be charged by MBDCs. Based on a standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales $500,000 or less and 35% of the total cost for firms with gross sales of over $500,000.

The MBDC may continue to operate, after the initial competitive year, for up to 2 additional budget periods. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds and Agency priorities.

Applicants who have an outstanding account receivable with the Federal Government may not be considered for funding until these debts have been paid or arrangements satisfactory to the Federal Government are made to pay the debt.

Applicants are subject to Governmentwide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26. In accordance with the Drug-Free Workplace Act of 1988, each applicant must make the appropriate certification as a "prior condition" to receiving a grant or cooperative agreement.

Awards under this program shall be subject to all Federal Departmental regulations, policies, and procedures applicable to Federal assistance awards.

A false statement on an application may be grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment.

Section 319 of Public Law 101–121 generally prohibits recipients of appropriated funds from lobbying the Executive or Legislative Branches of Federal Government in connection with a specific contract, grant, or loan. A "Certification for Contracts, Grants, Loans, and Cooperative Agreements" and the SF–LLL, "Disclosure of Lobbying Activities" (if applicable), is required.

CLOSING DATE: The closing date for applications is June 17, 1991. Applications must be postmarked on or before June 17, 1991.

MAILING ADDRESS FOR SUBMISSION: Proposals will be reviewed by the New York Regional Office. The mailing address for submission is: New York Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 26 Federal Plaza, room 3720 New York, New York 10278.

FOR FURTHER INFORMATION CONTACT: David Vega, Regional Director, Chicago Regional Office: Chicago Regional Office, Minority Business Development Agency, 55 East Monroe Street, suite 1440, Chicago, Illinois, 60603, 312/353–0182.

Statutory Authority: 15 U.S.C. 1512.

Funding Authority: Executive Order 11625, October 13, 1971.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development

(Catalog of Federal Domestic Assistance)

David Vega,

Regional Director, Chicago Regional Office.

Date: May 10, 1991.

Note: A pre-application conference to assist all interested applicants will be held at the U.S. Department of Commerce, Minority Business Development Agency, 55 East Monroe, suite 1440, Chicago, Illinois, June 3, 1991 at 10:00 a.m..

[FR Doc. 91–11597 Filed 5–15–91; 8:45 am]

BILLING CODE 3510–21–M

Business Development Center Applications: Nashville, Tennessee

May 10, 1991.

AGENCY: Minority Business Development Agency.

ACTION: Notice.

SUMMARY: In accordance with the provisions of Executive Order 11625, the Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a 3-year period, subject to available funds. The cost of performance for the first 12 months is estmiated at $194,118 for the project performance of 10/1/91 to 09/30/92. The MBDC will operate in the Nashville, Tennessee Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of $165,000 in Federal Funds and a minimum of $29,118 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services).

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, non-profit and for-profit organizations, local and state governments, American Indian tribes and educational institutions

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations (50 points); the resources available to the firm in providing management and technical assistance (10 points); the firm's proposed approach to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). It is advisable that applicants have an existing office in the geographic region for which they are applying.

An applicant must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive.

The MBDC will operate for a 3-year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

Applicants who have an outstanding account receivable with the Federal Government may not be considered for funding until these debts have been paid or arrangements satisfactory to the Federal Government are made to pay the debt.

Applicants are subject to Governmentalwide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26. In accordance with the Drug-Free Workplace Act of 1988, each applicant must make the appropriate certification a "prior condition" to receiving a grant or cooperative agreement.

Awards under this program shall be subject to all Federal Departmental regulations, policies, and procedures applicable to Federal assistance awards.

A false statement on an application may be grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment.

Section 319 of Public Law 101–121 generally prohibits recipients of appropriated funds from lobbying the Executive or Legislative Branches of Federal Government in connection with a specific contract, grant, or loan. A "Certification for Contractors, Grants, Loans, and Cooperative Agreements" and the SF-LLL, "Disclosure of Lobbying Activities" (if applicable), is required. Anticipated processing time of this award is 120 days. Executive order 12372, "Intergovernmental Review of Federal Programs", is not applicable to this program.

CLOSING DATES: The closing date for applications is June 21, 1991. Applications must be postmarked on or before June 21, 1991.

ADDRESSES: Proposals will be reviewed by the Dallas Regional Office. The mailing address for submission is: Dallas Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 1100 Commerce Street, Room 7B23, Dallas, Texas 75242, 214/767–8001.

FOR FURTHER INFORMATION CONTACT: Carlton L. Eccles, Regional Director of the Atlanta Regional Office, 404/730–3300. In order to request an RFA and to receive additional information, contact U.S. Department of Commerce, MBDA, 401 West Peachtree Street, Room 1930, Atlanta, GA 30308.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Note: A pre-application conference to assist all interested applicants will be held at the U.S. Department of Commerce, Minority Business Development Agency, 401 West Peachtree St., NW., room 1930, Atlanta, Georgia, June 5, 1991, at 9 a.m.

Carlton L. Eccles,

Regional Director, Atlanta Regional Office.

Dated: May 10, 1991.

[FR Doc. 91–11596 Filed 5–15–91; 8:45 am]

BILLING CODE 3510–21–M

National Oceanic and Atmospheric Administration

Marine Mammals; Application for Permit; Dr. Randall W. Davis, Dr. Patrick J. Butler (P477)

Notice is hereby given that the Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

1. Applicants:

Dr. Randall W. Davis, Department of Marine Biology, Texas A & M University, P.O. Box 1675, Galveston, TX 77553.

Dr. Patrick J. Butler, Comparative Physiology, School of Biological Sci., University of Birmingham, Birmingham, U.K. B15 2TT.

2. Type of Permit: Scientific Research.

3. Name and Number of Marine Mammals: Eight (8) California sea lions (*Zalophus californianus*).

4. Type of Take: The applicant proposes to conduct scientific studies on rehabilitated beached or stranded California sea lions deemed suitable for release. The sea lions are currently held at Sea World, San Diego. The activities will occur at Scripps Institute of Oceanography and the animals will be released upon completion of the studies. The study will estimate metabolic rate using the doubly labelled water method; animals will be weighed and blood sampled for determination of background levels of oxygen-18 and deuterium. To monitor heart rate, the animals will be fitted with a recorder and electrode patches. The relationship of heart rate to metabolic rate will be determined from direct respirometry while the animals swim in a flume at various speeds and water temperatures. The purpose of the study is to test a new data-storage system, which will be used in the field, with the objective of accurately determining detailed energy budgets for fur seals at the BAS laboratories on Bird Island, South Georgia.

5. Location and Duration of Activity: This application pertains only to the validation studies using sea lions at Scripps Institute of Oceanography over a 2-year period.

The arrangements and facilities for transporting and maintaining the marine mammals requested in this application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate to provide for the well-being of the marine mammals involved.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East-West Hwy., room 7234, Silver Spring, Maryland 20910, within 30 days of the

publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

By appointment: Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., suite 7324, Silver Spring, Maryland 20910 (301/427–2289);

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Isand, California 90731 (213/514–6196); and

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Blvd., St. Petersburg, Florida 33702 (813/893–3141).

Dated: May 10, 1991.

Nancy Foster,

Director, Office of Protected Resources.

[FR Doc. 91–11591 Filed 5–15–91; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals; Application for Modification; NMFS Southeast Fisheries Science Center (P77#51)

Notice is hereby given that the National Marine Fisheries Service, Southeast Fisheries Science Center, 75 Virginia Beach Drive, Miami, Florida 33149 has requested a modification of Permit No. 738 issued under the authority of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Permit No. 738 authorized the Holder to collect biopsy samples from all non-endangered species encountered during the Gulf of Mexico marine mammal survey cruises sponsored by the Southeast Fisheries Science Center. Additionally, the Permit authorized sampling and monitoring of Atlantic bottlenose dolphins throughout the NMFS Southeast Region.

The modification to the Permit would allow a take by harassment of up to 10,000 Atlantic bottlenose dolphin (*Tursiops truncatus*) annually throughout the NMFS Southeast Region as needed to conduct low-level monitoring of bottlenose dolphin stocks. Monitoring will include repeated approach during photo-identification activities.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this modification request should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East-West Hwy., room 7324, Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular modification request would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this modification request are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above modification request are available for review by interested persons in the following offices:

By appointment: Permit Division, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., suite 7324, Silver Spring, Maryland 20910 (301/427–2289); and

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Blvd., St. Petersburg, Florida 33702.

Dated: May 10, 1991.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 91–11592 Filed 5–15–91; 8:45 am]

BILLING CODE 3510–22–M

Patent and Trademark Office

Request for Comments for the Advisory Commission on Patent Law Reform

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice; request for public comments.

SUMMARY: The Advisory Commission on Patent Law Reform Commission will be submitting a report to the Secretary of Commerce by August 1992 on the state of, and the need for, any reform in the United States patent system. To ensure that the Commission recommendations represent a true consensus of the American public and the patent user community, public comments are invited on the issues to be considered by the Commission.

DATES: Written Comments must be submitted by July 15, 1991.

ADDRESSES: Submit written comments to E.R. Kazenske, Executive Assistant to the Commissioner, U.S. Patent and Trademark Office, Box 15, Washington, DC 20231.

FOR FURTHER INFORMATION CONTACT: Jeff Kushan, Commission Specialist, or Paul Salmon, Commission Specialist; U.S. Patent and Trademark Office, Box 15, Washington, DC 20231. Phone: (703) 557–3071.

SUPPLEMENTARY INFORMATION: The Commission requests public comments on the issues set forth below. Each issue should be individually addressed. Submissions should be concise statements of position, including supporting material where relevant, and should be limited to the questions framing each issue. All submissions must include the name and/or professional affiliation of the contributor. To ensure full consideration by the Commission, the submissions should be received by July 15, 1991.

I. Protection of Computer Related Inventions

The principal issue to be examined is whether the current U.S. patent laws provide adequate and appropriate protection of novel computer program-related inventions. The relationship of patent protection for computer program-related inventions to other forms of intellectual property protection will also be considered.

(a) What problems, if any, exist in the current framework of laws which protect computer-related inventions?

(b) What changes, if any, should be made in the domestic and international systems for protection of computer-related inventions?

(c) The Supreme Court has found that new and useful computer program-related inventions are eligible for patent protection. What rationale, if any, exists in law or policy for Congress to now remove patent protection for this field of science and technology?

(d) What evidence exists, if any, that patents issued on new and useful computer program-related inventions do or do not provide an incentive to conduct research and development on new products, and that such patents do or do not promote the development of new technology?

(e) What conflict or overlap is created by the existence of a patent for a new

and useful computer program-related invention and either (1) a copyright for original expression embodied in the computer program fixed therein, or (2) a mask work in the invention; and if any exists, is it harmful or helpful?

(f) Should Congress legislate the boundary for patents in the computer program area, or is it preferable to permit the courts to continue to define the outer boundary?

(g) Are the tests of patentability for computer program-related inventions implemented by the USPTO in the notice published in the *Official Gazette* on August 9, 1989, consistent with the patent statute and/or court decisions? If there are inconsistencies, what are they?

(h) What concrete steps should be taken, if necessary, to revise the PTO examination procedure for computer program-related inventions in order to achieve high-quality issued patents, particularly with respect to:

1. Providing patent examiners with complete, up-to-date prior art;

2. Providing patent examiners with training in this field to raise/maintain their expertise;

3. Recognizing computer science as a "science" for the purpose of qualification to take the PTO registration examination and recruiting computer scientists as patent examiners;

4. Providing an optimum system of classification to maximize the searchability of inventions in this field; and

5. Taking steps to reduce the PTO pendency time for patent applications in this field?

(i) What procedures, not currently available, should be considered to correct problems caused by improperly granted patents (i.e., post grant oppositions, court nullification), and how would these procedures particularly relate to computer program-related inventions?

II. Federal Protection for Trade Secrets

Trade Secret statutes now exist only at the state level, and are not uniform in the states wherein they exist.

The principal issue to be examined is whether Federal Statutory protection should be enacted and if so, how it should relate to state statutes

(a) Is there a need for a Federal law on trade secrets? What problems have been caused by the absence of such a law? What problems would such a law create?

(b) If there is need for a Federal trade secrets law, on what legal theories (i.e., tort, contract, etc.) should it be based? How should it relate to state laws and to what extent, if any, should it preempt state laws?

(c) If there are specific areas of trade secrets that are inadequately protected by present state laws or by their nature cannot be adequately protected by state laws, would it be possible to enact Federal laws in those areas only, leaving to state law what is currently adequately protected? Would such a bifurcated system create more problems that it would solve?

III. Cost and Complexity of Patent Enforcement

Although many patents are enforced through negotiation, resort is frequently made to either litigation in the Federal district courts or to arbitration or one of several other forms of alternative dispute resolution (ADR).

Patent litigation is said to be complex, expensive, unpredictable and heavily dependent on the ability of the judge to exert fair and effective control. Arbitration and other forms of ADR would seem to offer significant advantages in many types of dispute, but are not frequently used.

(a) Is the cost of patent enforcement too high? If so, what can be done within the existing Federal Rules to achieve determinations of validity, infringement and damages more efficiently and economically? Which, if any, of the Federal Rules should be changed to improve patent litigation, and how? Would provisions in the Civil Justice Reform Act of 1990 improve patent litigation?

(b) Is there a need for a "small claims" type of patent proceeding in the Federal courts, with simplified procedures and limited recovery? If so, describe the characteristics such a proceeding should have, e.g., how procedures would be simplified, what the limits on recovery should be, etc.

(c) Should the use of arbitration and other forms of ADR be increased? How? What, if any, deterrents are there to using ADR and how can they be overcome? What additional forms of ADR should be considered for patent disputes?

IV. Grounds for Holding Patents Unenforceable

In the United States, a party charged with infringement of a patent can raise an equitable defense of unenforceability which, if sustained, may preclude exercise of the patent rights even though the patent is valid and infringed. Historically, the defense has usually been based on alleged misconduct occurring after the patent is granted, e.g., restrictive conditions in patent licensing agreements.

In more recent years, conduct before the Patent and Trademark Office has frequently been claimed to give rise to the defense, e.g., misrepresentations or alleged failure to comply with the standard for disclosing to the Office information in the patent applicant's possession. Such claims, some argue, are often frivolous and unsupported.

(a) What are the benefits and drawbacks of permitting an unenforceability defense in patent litigation, based on alleged misconduct either before or after patent grant?

(b) Should any change be made in the present Patent and Trademark Office standard relating to the submission of prior art information, recognizing the need of the Office to consider information bearing on patentability before the patent issues?

(c) Are existing judicial procedures and standards for resolving unenforceability defenses adequate? If not, is legislation desirable and, if so, what kind? Discuss any other changes believed desirable.

(d) Once inequitable conduct has been found, whether based on conduct before or after grant, is unenforceability the appropriate remedy? If not, what other types of remedies might be applied and in what types of situations?

V. Licensee Challenges to Patent Validity

Since 1969, when the U.S. Supreme Court in *Lear* v. *Adkins*, 395 U.S. 653, abrogated the doctrine of licensee estoppel, the courts have been dealing *ad hoc* with a variety of issues flowing from that decision. These include the right of the patent owner to terminate the license agreement and sue for patent infringement, the right of the licensee to recover royalties should the patent be declared invalid, the extent to which the parties should be permitted to contract in advance for the various eventualities, etc.

It is asserted by some that this has created considerable uncertainty. Some would provide for all post-*Lear* eventualities by statute. Others would permit a licensor and licensee to bargain for provisions necessary to protect their respective interests.

(a) Is legislation desirable to clarify the results of the *Lear* decision? If so, what should it provide?

(b) Should any restraints, beyond the normal law of contracts, be imposed on the rights of licensee and licensor to bargain for the results of a potential challenge by the licensee of the licensed patent's validity?

IV. First-to-File System

In the United States patent system, when more than one patent application

is filed claiming the same invention, the patent is awarded to the applicant who establishes the earliest acts of invention in the United States and who has not thereafter suppressed, abandoned or concealed his invention ("first-to-invent" system). In international treaty negotiations aimed at more uniform patent laws throughout the world, particularly the World Intellectual Property Organization (WIPO) patent harmonization proceedings, the United States is being urged to adopt a different procedure, almost universally used in other countries, under which we would award the patent to the first applicant to file a patent application for the invention ("first-to-file" system). The principal issue presented is whether the United States should change from a first-to-invent procedure to a first-to-file procedure (1) only as part of a comprehensive treaty to harmonize all of the world's patent systems, (2) without regard to a harmonization treaty, or (3) not at all. The following questions are designed to help frame this issue:

(a) What benefits do United States patent holders and the public realize from the first-to-invent procedure? What detriments are there, particularly those that might not be addressed by further simplification of the procedure to determine priority of inventorship?

(b) What benefits are United States patent holders and the public expected to realize from a first-to-file procedure? What deteriments should be expected?

(c) What benefits are United States patent holders and the public expected to realize from a harmonization treaty? What detriments should be expected?

(d) If the United States retains the first-to-invent procedure, a partial step toward harmonization could be a change permitting applicants to establish dates of invention by reference to knowledge, or sue, or other activity in foreign countries in addition to such activities in the United States. Should such an expansion of admissible evidence of inventorship be adopted (1) only as part of a comprehensive treaty to harmonize all of the world's patent systems, (2) without regard to a harmonization treaty, or (3) not at all? Should such an expansion of admissible evidence of inventorship be adopted (1) only in respect to foreign countries that provide for practicable and effective judicial discovery of foreign inventorship activity, (2) only on a limited basis reflecting credibility of the foreign evidence, or (3) without regard to the legal procedures available in foreign countries?

(e) If the United States adopts a first-to-file procedure, should it condition this adoption on a grace period during which activities of the inventor or derived through the inventor will not be a bar to patentability by the inventor? Should the oath and its attendant sanctions be strengthened in respect to the requirement of originality?

(f) If the United States adopts a first-to-file procedure, would it be desirable to codify the rights, if any, of a prior user of the invention? If so, should such a user have (1) no defense or rights in respect to the subsequent patent, (2) a personal exemption to continue existing commercial use, or (3) some other right? Should the prior user rights, if any, extend to one not an actual user, but who has made effective and serious preparations for such use? Should it matter if the prior user had elected to practice the invention as a trade secret? Should any prior user right be transferrable to someone else? Should any such right extend only to use in the United States (a feature in other patent systems)? Should any prior user right extend to such users who were not originators of the invention?

(g) Would a first-to-file patent procedure run afoul of the reference to "inventors" in Article I, Section 8, Clause 8 of the Constitution?

VII. Automatic Publication of Applications

In the United States patent system, patent applications are held in confidence by the Patent and Trademark Office and not published until a patent is granted. Patent rights begin on the date of grant. In international treaty negotiations aimed at more uniform patent laws throughout the world, it has been proposed that patent applications be published and confer provisional protection commencing on the date of publication. The Japanese and European patent systems provide for publication of patent applications 18 months after their effective filing dates and feature provisional protection, generally a right to compensation from infringers with actual notice. The principal issue is whether United States patent applications should be published before grant of a patent (1) only as part of a comprehensive system to harmonize all of the world's patent system, (2) without regard to a harmonization treaty, or (3) not at all. The following questions are designed to help frame this issue:

(a) What benefit do United States patent holders and the public realize from keeping patent applications confidential until a patent is granted? What are the detriments?

(b) What benefits are United States patent holders and the public expected to realize from a procedure requiring automatic publication of patent applications? What are the detriments?

(c) Should U.S. patent applications be published by some fixed time measured from their U.S. or foreign priority filing dates? Does the need for a pre-grant publication differ depending upon whether patent terms are measured from filing date or issue date?

(d) If pre-grant publication becomes part of the U.S. patent system, is there a need for provisional protection starting from the date of publication? Does the need for provisional protection depend upon how the term of the patent is measured?

(e) If provisional protection is appropriate, what should it include?

VIII. Patent Term

In the United States patent system the term of a patent is 17 years from the date when the patent is granted. Many other countries provide a 20-year term for their patents from the date when the application for the patent was filed. The appropriate term for a patent is under consideration in negotiations aimed at more uniform patent laws throughout the world, as well as in the negotiations on the Trade-Related Aspects of Intellectual Property (TRIPs) in the current General Agreement on Tariffs and Trade (GATT) Round. The principal issue is whether the United States should measure the life of a patent from the date when the application for it was filed (1) only as part of comprehensive treaties to harmonize all of the world's patent systems, (2) without regard to harmonization treaties, or (3) not at all. The following questions are designed to help frame this issue.

(a) What benefits do United States patent holders and the public realize from measuring the life of a patent from its date of grant? What detriments are there?

(b) What benefits are United States patent holders and the public expected to realize from a procedure that would measure the life of a patent from its filing date? What would the detriments be?

(c) If the term of a United States patent is to be measured from the filing date, should the term be extended to compensate for delays due to (1) secrecy orders, (2) marketing delays due to FDA or EPA regulatory procedures, (3) NASA or DOE ownership proceedings, (4) appeals, or (5) any other delays outside of the control of the patent applicant?

(d) Should a United States patent application be permitted to rely upon the date of more than one foreign-filed application for priority, and, if so, should the term of the United States

patent be measured from the earliest priority date (recognizing that a modification of the Paris Convention probably would be necessary for adoption of any procedure to measure the life of a patent from any foreign priority date)?

(e) If the term of a United States patent is to be measured from a filing date, should that date be (1) the earliest United States filing upon which priority is based, (2) the earliest filing upon which priority is based, be it foreign or United States filing date, or (3) the filing date of the application on which the patent is granted?

(f) If the United States adopts a patent term based upon a filing date, should that term be 20 years? If not, how long should the term be?

IX. Deferred Examination

United States patent laws permit an applicant to petition for a deferral of the examination process only for a short period, and then only for "good and sufficient cause." Deferred examination at the option of the applicant is a feature of several foreign patent systems.

(a) What would be the benefits of a procedure whereby a patent application is not examined in due course, but instead, the applicant is given the option, for a period of years, to request that the application be examined? What would be the detriments?

(b) If optional deferred examination were adopted, what necessary or desirable companion changes (such as mandatory publication of applications) should be made, if any, in the United States patent law or procedures? Should a third party have the right to request examination?

(c) If optional deferred examination were adopted, should a patent application be deemed abandoned if the applicant fails to request examination within a fixed time after filing? Should the applicant be permitted thereafter to re-file an application for the same invention?

(d) Should the applicant have the option, in lieu of requesting formal examination, to obtain a lower-cost patent of shortened term and reduced enforcement rights?

X. In re Hilmer

Under the interpretation of United States patent law in the case of *In re Hilmer* (and other cases), a United States patent has a patent-defeating effect (becomes a "reference") as of the earliest filing date in the United States to which it is entitled, but not the earliest foreign filing date to which it is entitled. In other patent systems, patents or applications are effective as references as of their earliest filing date, be it domestic or foreign.

(a) If the effective date of a United States patent as a reference should be based on a foreign application filing date, should that foreign priority date be the effective date for anticipation purposes only and not for obviousness purposes so that the *Hilmer* rule is partially retained in that the United States patents with a foreign priority date are effective only as a reference for obviousness purposes as of the filing date in the United States?

(b) Is there rationale for abolishing the *Hilmer* rule totally so that foreign-origin United States patents will be effective as references for all purposes as of their foreign priority filing dates?

(c) What changes in procedure, if any, should the Patent and Trademark Office adopt to ensure adequate consideration of the disclosures in foreign-origin United States patents in the examination of United States patent applications?

(d) Should bilateral reciprocity be applied when deciding whether or not a United States patent is entitled to an earlier foreign filing priority date in a particular country for reference purposes?

XI. Reexamination

The reexamination statute permits any person to file, with the requisite fee, a request for the reexamination of a patent in view of prior art limited to prior patents and printed publications. Issues of inequitable conduct, public use and sale, and the like, may not be addressed in reexamination. If the USPTO determines that the request raises "a substantial new question of patentability," the patent is reexamined under the same procedures applicable to the examination of new applications and concludes with the issuance of a reexamination certificate. The reexamination process is basically *ex parte* in nature, with very limited participation by a third party requestor. Since the present system of reexamination was established by Congress in 1980, there have been numerous proposals to modify reexamination to increase the degree of participation of the requestor and/or to enlarge the scope of reexamination.

(a) Do you believe the present reexamination system is working effectively? If not, identify each deficiency that you believe exists in the system.

(b) Do you believe that the present reexamination system should be modified to permit complete *inter partes* participation by a protestor at all phases of the reexamination proceeding? If so, explain why. If not, explain why.

(c) If your answer to question (b) is "no," to what extent, if any, should third parties be allowed greater participation than at present in reexamination proceedings?

(d) Would you be in favor of modifying the present reexamination system to permit or require one or more of the following:

(1) Permitting a reexamination petitioner other than the patentee to comment on any claims in their finally allowed form, so as to provide the examiner with the petitioner's views prior to a final decision as to whether to issue a reexamination certificate?

(2) Permitting a reexamination petitioner to appeal both to the PTO Board of Patent Appeals and Interferences and to the Federal Circuit from any final decision favorable to a patentee in a reexamination proceeding?

(3) Conditioning the appeal noted in subparagraph (2) on the petitioner's agreement to forego litigating in any other forum any issue raised or which could have been raised on appeal?

(4) Precluding an accused infringer from relying as a defense on any prior art of printed publication unless that prior art or printed publication has been previously considered by the PTO either during the original prosecution of a patent or in a reissue or reexamination proceeding involving that patent?

(5) Precluding a party or its privies, against whom a judgment of invalidity of a patent claim or claims has been entered, from seeking or maintaining reexamination of that claim or claims?

(6) Requiring that claims of a reexamined application be construed under the same standards as those claims would be construed in a district court infringement proceeding?

(e) Should the scope of issues considered by the examiner during reexamination be broadened? If so, how (e.g., by permitting consideration of public use or on sale bars, section 112 issues, inequitable conduct, etc.)?

(f) In what other ways, if any, should reexamination proceedings be changed?

XII. Assignee Filing of Applications

The United States currently requires the actual inventor or inventors to file patent applications, subject to a few limited exceptions such as death, unavailability, or insanity. Each application must be accompanied by an oath from the actual inventor which states that the applicant believes he was the first to invent the claimed invention. Nearly all foreign patent systems permit the owner of an invention (whether the

actual inventor or the assignee) to file the patent application without an oath signed by the inventor.

(a) Should the United States allow filing of patent applications by assignees?

(b) What benefits and drawbacks would occur by allowing filing of patent applications by assignees?

(c) What contours should an assignee filing proposal have, including possible safeguards for inventors and the public?

XIII. PTO Funding and Fee Structure

The Patent and Trademark Office historically recovered its costs through a combination of fees and funding from general tax revenues. The major patent fees are filing fees, and issue and maintenance fees in a two-tier system with lower rates for small entities. These fees have undergone substantial increases recently as Congress and the Administration have changed from a policy under which applicants and patent owners paid only a portion of these costs to one under which they pay full costs.

(a) What impact, if any, will a system in which PTO costs are almost entirely user-fee funded have on (1) U.S. inventors generally, (2) on small entities, including independent inventors, and (3) the public?

(b) What realistic and practical alternatives can you suggest, other than user-fee funding, for funding PTO operations?

(c) Congress historically has provided fiscal oversight for the PTO. Will this attention by Congress continue at the same level in the absence of a significant allocation of taxpayer funds and, if not, what other fiscal oversight is appropriate?

(d) Should the more public-oriented functions of the PTO, e.g., public search room operations, be funded by user fees, or should such operations be supported by appropriated funds?

(e) Would it be desirable to increase the average application pendency time in the PTO to a level above 18 months if such increase permitted a significant reduction in PTO fees?

(f) What are the advantages and disadvantages of retaining a two-tier fee structure?

(g) Should large entities subsidize small entities in a two-tier structure, or should public funds be used to supplement small entity fees?

(h) As part of a two-tier fee structure, what would the pros and cons be of (1) redefining a small entity to include fewer than 500 employees, (2) providing a tax credit (e.g., 50%) in lieu of part or all of the 50% subsidy for small entities, (3) denying 50% subsidy benefits, on a need basis, to small entities who receive a defined minimum (e.g., $200,000) in technology transfer fees during the preceding year, and (4) imposing a flat (e.g., 10%) across-the-board fee increase if this permitted the continuance of the current small entity reduced fee structure?

(i) A major current cost of the PTO is that of automating the search files and system. How should this cost be recovered, if not through fees?

(j) Is there a mechanism in the Government for long-term investments, such as computer equipment, to be capitalized and paid off over their useful life? Would it be possible and desirable to have such investments paid for by a bond over a period of years (e.g., 20 years) instead of by user fees?) Should the current relation among filing, issue and maintenance fees be changed and, if so, how? Are there other fee strategies which will better balance the need to recover costs and the need to keep the patent system accessible to inventors?

(k) Should the current relation among filing, issue and maintenance fees be changed and, if so, how? Are there other fee strategies which will better balance the need to recover costs and the need to keep the patent system accessible to inventors?

(l) In discussions of patent harmonization, the question of pre-issuance publication of U.S. patents has been raised. Given the possible reluctance of Congress to fund the costs of such publication from general revenues, would you support such publication if its cost were totally user-funded?

Dated: May 8, 1991.

Harry F. Manbeck, Jr.,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 91-11569 Filed 5-15-91; 8:45 am]

BILLING CODE 3510-16-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Acquisition Streamlining; Meeting

ACTION: Cancellation of meeting.

SUMMARY: The meeting notice for the Defense Science Board Task Force on Acquisition Streamlining as published in the **Federal Register** (vol. 56, No. 76, page 16075, Friday, April 19, 1991, FR Doc. 91-9235) has been canceled.

Dated: May 10, 1991.

P.H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-11587 Filed 5-15-91; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board Sensors Panel of the Ad Hoc Committee Study of Off-Board Sensors—Summer Study 1991 will meet on 4–6 June 1991 from 8 a.m. to 5 p.m. at the Pentagon, Washington, DC, 20330–5430.

The purpose of these meetings is to receive presentations of Air Force projects and programs relevant to the concept using off-board sensors data to support air combat operations. This meeting will involve discussions of classified defense matters listed in section 552b(c) of title 5, United States Code, specifically subparagraph (1) and (4) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–4648.

Patsy J. Connor,

Air Force Federal Register Liaison Officer.

[FR Doc. 91-11584 Filed 5-15-91; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board Fusion Panel of the Ad Hoc Committee Study of Off-Board Sensors—Summer Study 1991 will meet on 4–7 June 1991 from 8 a.m. to 5 p.m. at the Pentagon, Washington, DC, 20330–5430.

The purpose of these meetings is to receive presentations of Air Force projects and programs relevant to the concept using off-board sensors data to support air combat operations. This meeting will involve discussions of classified defense matters listed in section 552b(c) of title 5, United States Code, specifically subparagraph (1) and (4) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–4648.

Patsy J. Connor,

Air Force Federal Register Liaison Officer.

[FR Doc. 91-11585 Filed 5-15-91; 8:45 am]

BILLING CODE 3910-01-M

Department of the Army

Availability of a Final Environmental Impact Statement for the Presidio of San Francisco, California, Base Closure

AGENCY: U.S. Army, DOD.

SUMMARY: The Presidio of San Francisco, including Letterman Army Medical Center, was recommended for closure by the Defense Secretary's Commission on Base Realignment and Closure. The Commission specifically recommended: the relocation of Headquarters, Sixth Army to Fort Carson, CO; the Letterman Army Institute of Research to Fort Detrick, MD; and redistribution of the medical assets of Letterman Army Medical Center throughout the Army medical force structure. This document focuses upon the environmental and socioeconomic impacts and mitigations associated with the planned closure of the Presidio of San Francisco and realignment activities at Fort Bragg, NC; Fort Carson, CO; Fort Detrick, MD; Fort Gordon, GA; Fort Lewis, WA; Fort Ord, CA; Fort Shafter, HI; Letterkenny Army Depot, PA; Oakland Army Base, CA; Walter Reed Army Medical Center, Washington, DC; Fitzsimons Army Medical Center, CO; Fort Benning, GA; Travis Air Force Base, CA; Fort Campbell, KY; Fort Sam Houston, TX; Fort Irwin, CA; Fort Jackson, SC; Fort Knox, KY; and Fort Leonard Wood, MO.

There is one significant socioeconomic impact associated with the closure of the Presidio that cannot be fully mitigated. Letterman Army Medical Center supports a large patient population capacity for space available military health care will be reduced in the Bay area for these eligible beneficiaries. While CHAMPUS and MEDICARE will partially offset health care costs, the closure of Letterman Army Medical Center will result in increased health care costs to military retirees and their dependents. All other potentially significant impacts can be mitigated to less than significant.

No long-term adverse environmental impact is expected at the Presidio as a result of realignment and closure implementation. A continuing concern for future use of the Presidio is the protection of the historic properties, designated a National Historic Landmark. The excessed Presidio property will be restored, to include remediation of toxic and hazardous contaminants, to protect public health and the environment.

The Final EIS will be available for comment for 30 days, after which the Assistant Secretary of the Army for Installations, Logistics and Environment will consider all comments before making a final decision. The public can obtain a copy of the Final EIS by writing to: Commander; U.S. Army Corps of Engineers, Sacramento District; attn: Installation Support Section (Mr. Bob Verkade); 650 Capitol Mall; Sacramento, California 95814–4794, or by calling Mr. Bob Verkade at (916) 551–2254. Written comments should be submitted to the same address.

Lewis D. Walker,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) OASA (I,L&E).

[FR Doc. 91–11641 Filed 5–15–91; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Open 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)

Dates of Meeting: 20–21 June 1991.

Time: 0800–1630 hours each day.

Place: Fort Knox, Kentucky.

Agenda: The Army Science Board (ASB) 1991 Summer Study on Army Simulation Strategy will hold a two-day meeting. The meeting will include technical programmatic briefings and site visits of simulations and simulators in the area of modeling and simulation. The meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695–0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 91–11618 Filed 5–15–91; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Open 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 Meetng:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 11 June 1991.

Time: 0800–1630 hours.

Place: Sikorsky Aircraft, Stratford, CN.

AGENDA: The Army Science Board (ASB) 1991 Summer Study on Army Simulation Strategy will hold a one-day meeting. The meeting will include technical programmatic briefings and site visits of PM Commanche Simulations/Simulators in the area of modeling and simulation. The meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695–0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 91–11621 Filed 5–15–91; 8:45 am]

BILLING CODE 3710–8–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).

Dates/Time of Meeting: 5–6 June 1991.

Time: 0900–1600 Hours, 5 June, 0900–1400 Hours, 6 June.

Place: Picatinny Arsenal, New Jersey.

Agenda: The Army Science Board Systems Issue Group is conducting a study on Liquid Propellant Advanced Field Artillery Systems. This group will meet for discussions focused on liquid propellant technical and developmental maturity, critical test analyses, propellant properties and composition, production, and operational challenges. 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 2, subsection 10(d). The classified and unclassified matters and proprietary information 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 (703) 695–0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 91–11622 Filed 5–15–91; 8:45 am]

BILLING CODE 3710–8–M

Army Science Board; Open 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).

Dates of Meeting: 13 June 1991.

Time: 0800–1630 hours.

Place: McDonnell Douglas Helicopter, Mesa, Arizona.

Agenda: The Army Science Board (ASB) 1991 Summer Study on Army Simulation Strategy will hold a one-day meeting. The meeting will include technical programmatic briefings and site visits of Apache and Longbow Apache Simulations/Simulators in the area of modeling and simulation. The meeting will be open to the public. Any interested person may attend, appear before,

or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695–0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 91–11623 Filed 5–15–91; 8:45 am]

BILLING CODE 3710–8–M

DEPARTMENT OF ENERGY

Morgantown Energy Technology Center Grant; Financial Assistance Award to North Slope Borough

AGENCY: Morgantown Energy Technology Center, Department of Energy (DOE).

ACTION: Notice of acceptance of a noncompetitive financial assistance application for a grant award.

SUMMARY: Based upon a determination made pursuant to 10 CFR 600.7(b)(2)(i)(D) the DOE, Morgantown Energy Technology Center gives notice of its plans to award a 12-month grant to the North Slope Borough, Barrow Gas Field Development Project, P.O. Box 1120, Barrow, AK 99723, with an associated budget of approximately $64,000.

FOR FURTHER INFORMATION CONTACT: Beverly J. Harness, I–07, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, West Virginia 26507–0880, Telephone: (304) 291–4089, Procurement Request No. 21–91MC28136.000.

SUPPLEMENTARY INFORMATION: The pending award is based on an application for a research project to assess the Walapka Field for potential production of gas from hydrate deposits or from the gas trapped by the hydrate deposits. The study will evaluate future opportunities in reservoir production engineering. This research effort will be important in aiding the United States in achieving its goals of reducing its dependence on foreign oil and will aid in the increase of the U.S. energy reserves. In view of the expertise of the personnel, ownership of the land, and the extensive background data available at the North Slope Borough to be dedicated to this effort and the enhanced benefits to be received by the public because of DOE's financial support, it has been determined that it is appropriate to award this grant to North Slope Borough on a noncompetitive basis.

Issued: May 7, 1991.

Louie L. Calaway,

Director, Acquisition and Assistance Division, Morgantown Energy Technology Center.

[FR Doc. 91–11661 Filed 5–15–91; 8:45 am]

BILLING CODE 6450–01–M

Morgantown Energy Technology Center Cooperative Agreement; Financial Assistance Award to University of Utah

AGENCY: Morgantown Energy Technology Center, Department of Energy (DOE).

ACTION: Notice of acceptance of a noncompetitive financial assistance renewal application for a cooperative agreement award.

SUMMARY: Based upon a determination made pursuant to 10 CFR 600.7(b)(2), the DOE, Morgantown Energy Technology Center gives notice of its plans to award a Cooperative Agreement to University of Utah, Office of Sponsored Projects, 309 Park Building, Salt Lake City, Utah 84112. The Cooperative Agreement will cover a twelve (12) month research project with an associated budget of approximately 1.1 million, including the total cost sharing by the Participant and other parties of approximately 14 percent.

FOR FURTHER INFORMATION CONTACT: Beverly J. Harness, I–07, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, West Virginia 26507–0880, Telephone: (304) 291–4089, Procurement Request No. 21–91MC26268.501.

SUPPLEMENTARY INFORMATION: The pending award is based on an unsolicited renewal application for continuing work necessary to the satisfactory completion of an activity presently being funded by DOE and for which competition for support would have a significant adverse effect on the continuity or completion of the activity. The primary objective is to advance the technologies of the water-assisted and modified water-assisted, fluidized bed, fluidized-bed coupled heat-pipe combustor, sub and super critical solvent and rotary kiln bitumen extraction processes to the levels where evaluations of their respective commercial potentials are possible. In view of the previous federally sponsored research completed in this area, technical expertise of personnel, and ownership of patents on numerous recovery processes at the University of Utah, it has been determined that it is appropriate to award this Cooperative Agreement to the University of Utah on a noncompetitive basis.

Issued: May 7, 1991.

Louie L. Calaway,

Director, Acquisition and Assistance Division, Morgantown Energy Technology Center.

[FR Doc. 91–11662 Filed 5–15–91; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

Proposed Consent Order With Eason Drilling Co. and ITT Corp.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of proposed consent order and opportunity for public comment.

SUMMARY: The Economic Regulatory Administration (ERA) announces a proposed Consent Order between the Department of Energy (DOE), Eason Drilling Company (formerly Eason Oil Company) (Eason) and ITT Corporation (ITT). The agreement proposes to resolve matters relating to Eason's compliance with the federal petroleum price and allocation regulations for the period November 1, 1973 through December 31, 1979 (the period covered by the Consent Order). If this Consent Order is approved, ITT shall pay to the DOE on behalf of Eason the sum of $7,000,000 within 30 days from the effective date of the Consent Order. The DOE's Office of Hearings and Appeals will be petitioned to implement Special Refund Procedures pursuant to 10 CFR part 205, subpart V, in which proceedings any persons who claim to have suffered injury from the alleged overcharges would have the opportunity to submit claims for payment.

Pursuant to 10 CFR 205.199J, ERA will receive written comments on the proposed Consent Order for thirty (30) days following publication of this notice. ERA will consider all comments received from the public in determining whether to accept the settlement and issue a final Order, seek to renegotiate the agreement, or reject the settlement, DOE's final decision will be published in the **Federal Register**, along with an analysis of the written comments, as well as a discussion of any other considerations that were relevant to the final decision.

FOR FURTHER INFORMATION CONTACT: Dorothy Hamid, Economic Regulatory Administration, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585 (202) 586–1699.

SUPPLEMENTARY INFORMATION: During the period covered by the Consent Order, Eason owned all or part of several natural gas processing plants. Eason also owned a substantial minority interest in a plant which, in addition to producing natural gas liquids and natural gas liquid products (NGLs/NGLPs), refined crude oil condensate into motor gasoline, kerosene and gas oil. Eason sold those products at prices governed by the federal petroleum price and allocation regulations. Accordingly, Eason was subject to the jurisdiction of DOE.

DOE conducted an audit to determine Eason's compliance with the federal petroleum price and allocation statutes and regulations. As a result of this audit, disputes arose between ERA and Eason concerning Eason's compliance with applicable regulations.

ERA issued a Proposed Remedial Order (PRO) to Eason on September 14, 1984. The PRO alleged that during the period covered by the Consent Order, Eason failed to calculate correctly its increased costs, prices, and recoveries of NGLs/NGLPs and refined petroleum products under the applicable regulations. The PRO also alleged that as a holder of a substantial minority interest in a plant which produced refined products from crude oil condensate, Eason was subject to the refiner pricing regulations of subpart E. Eason vigorously contested the PRO before the Office of Hearings and Appeals (OHA) in Case No. HRO–0254. Eason raised a number of objections to the manner in which ERA applied the regulations in determining that violations occurred, as well as other defenses to the charges. The principal matter in dispute is the relationship of the regulations of subpart K, governing gas processors, to Subpart E, governing refiners of petroleum products.

On December 6, 1990, OHA modified the PRO and issued it as a Remedial Order. OHA held that Eason was properly classified as a refiner and was required to calculate its maximum allowable prices for NGLs/NGLPs pursuant to subpart E. OHA modified the PRO to allow Eason to use the imputed price provision for the residue natural gas from new gas streams in calculating shrinkage costs and directed ERA to revise the overcharges in accordance with that modification. As recalculated, Eason's overcharges totaled $3,083,100 in principal amount, for a total potential liability of $12,546,615.35 including interest.

On January 4, 1991, Eason appealed the Remedial Order to the Federal Energy Regulatory Commission where that matter is pending in Docket No. RO91–1–000.

ERA has preliminarily agreed to the proposed settlement amount after assessing the litigation risks associated with the asserted legal and factual issues underlying the Remedial Order's findings and conclusions and Eason's defenses, and appropriate settlement compromises related to those issues. In addition, ERA took into account such factors as the number and complexity of the legal and factual issues, the time and expense required to litigate fully every issue in order to obtain any recovery, and the benefit to the public from a significant settlement of the issues which would have otherwise taken years of continued litigation to resolve. Based on all of these considerations, ERA has tentatively concluded that the resolution of these matters for $7,000,000 is an appropriate settlement and in the public interest.

Under the terms of the proposed settlement, ITT, which has assumed responsibility for any and all liability for violations of the federal petroleum price and allocation regulations resulting from Eason's pricing of petroleum products, shall pay to DOE $7,000,000 within 30 days from the effective date of the Consent Order. If not paid within 30 days, interest will accrue at the rate of 9.52% per annum, compounded quarterly, as specified in the proposed Consent Order, the text of which is published herewith.

To distribute the monies received by DOE under the settlement with Eason and ITT, the ERA will petition OHA to implement Special Refund Procedures under the provisions of subpart V. To ensure that OHA has sufficient information to evaluate refund claims, the proposed Consent Order requires that ITT provide customer identification and purchase volume information to OHA upon request.

Eason, ITT and DOE mutually release each other from the claims arising under the subject matter covered by the proposed Consent Order. The proposed Order does not affect the rights of any other party to take action against Eason and ITT, or Eason, ITT or DOE to take action against any other party.

If the settlement is not made final by the one hundred fiftieth (150th) day following execution, Eason and ITT may withdraw from the proposed agreement.

Submission of Written Comments

The proposed Consent Order cannot be made effective until the conclusion of the public review process, of which this notice is a part.

Interested parties are invited to submit written comments concerning this proposed Consent Order to: Eason Consent Order Comments, RG–30, Economic Regulatory Administration, 1000 Independence Avenue SW., Washington, DC 20585. Any information or data considered confidential by the person submitting it must be identified as such in accordance with the provisions of 10 CFR 205.9(f).

All comments received by the thirtieth day following publication of this notice in the **Federal Register** will be considered before determining whether to adopt the proposed Consent Order as a final Order. Any modifications of the proposed Consent Order which significantly alter its terms or impact will be published for additional comments. If, after considering the comments it has received, ERA determines to issue the proposed Consent Order as a final Order, the proposed Order will be made final and effective by publication of a notice in the **Federal Register.**

Issued in Washington, DC, on May 9, 1991.

Milton C. Lorenz,

Chief Counsel for Enforcement Litigation, Economic Regulatory Administration.

Consent Order With Eason Drilling Company and ITT Corporation

I. Introduction

101. This Consent Order is entered into between Eason Drilling Company (formerly Eason Oil Company) ("Eason"), ITT Corporation ("ITT") and the Department of Energy ("DOE"). Except as otherwise provided herein, this Consent Order settles and finally resolves all civil and administrative disputes, claims and causes of action, whether or not heretofore asserted, between the DOE, as hereinafter defined, and Eason, as hereinafter defined, relating to Eason's compliance with the Federal petroleum price and allocation regulations (as defined herein) during the period November 1, 1973, through December 31, 1979 ("the period covered by this Consent Order"). (All the matters settled and resolved by this Consent Order are referred to as "the matters covered by this Consent Order.")

II. Jurisdiction and regulatory authority

201. This Consent Order is entered into by DOE pursuant to the authority conferred upon it by sections 301 and 503 of the Department of Energy Organization Act (DOE Act), 42 U.S.C. §§ 7151 and 7193; Executive Order 12009, 42 FR 46267 (1977); and Executive Order No. 12038, 43 FR 4957 (1978); and 10 CFR 205.199J.

202. Reference herein to "DOE" includes, besides the Department of Energy, the Cost of Living Council, the Federal Energy Office, the Federal Energy Administration, the Economic Regulatory Administration and all agencies succeeding to the DOE's authority to enforce the federal petroleum price and allocation regulations. Reference herein to "Eason" refers to Eason Drilling Company, formerly known as Eason Oil Company, a corporation organized and existing under the laws of the State of Delaware. Reference herein to "ITT" refers to Eason Oil Company's former parent corporation, ITT Corporation, a corporation organized and existing under the laws of the State of Delaware. For purposes of this Consent Order, the phrase "federal petroleum price and allocation regulations" means all pricing, allocation, reporting and recordkeeping requirements imposed by or under the Economic Stabilization Act (ESA) of 1970, the Emergency Petroleum Allocation Act of 1973, the Federal Energy Administration Act of 1974, the DOE Act, any and all amendments to said Acts, Presidential Proclamation 3279, all applicable DOE regulations codified in 6 CFR parts 130 and 150, and 10 CFR parts 205, 210, 211, 212 and 213 including all rules, rulings, guidelines, interpretations, clarifications, manuals, decisions, orders, forms, and reporting and certification requirements regarding such regulations. The provisions of 10 CFR 205.199J and the definitions under the fedral petroleum price and allocation regulations shall apply to this Consent Order except to the extent inconsistent herewith.

III. Facts and Determinations

The stipulated facts upon which this Consent Order is based are as follows:

301. During the period covered by this Consent Order, Eason owned all or part of several natural gas processing plants. Eason also owned a substantial minority interest in a plant which, in addition to producing natural gas liquids, refined crude oil condensate into motor gasoline, kerosene and gas oil. Eason sold those products at prices governed by the federal petroleum price and allocation regulations. Accordingly, Eason was subject to the jurisdiction of DOE.

302. DOE conducted an audit to determine Eason's compliance during the period covered by this Consent Order with the Federal petroleum price and allocation statutes, regulations and requirements referred to in paragraph 202, *supra*. DOE and Eason disagree in several respects concerning the proper application of such federal petroleum price and allocation regulations to Eason's activities during the period covered by this Consent Order. ERA issued a Proposed Remedial Order ("PRO") to Eason on September 14, 1984, which Eason vigorously contested before the Office of Hearings and Appeals ("OHA") in Case No. HRO–0254. On December 6, 1990, OHA modified the PRO and issued it as a Remedial Order, and directed ERA to revise the overcharges in accordance with those modifications. On January 4, 1991, Eason appealed the Remedial Order to the Federal Energy Regulatory Commission ("FERC"), where that matter is now pending in Docket No. RO91–1–000. Eason and DOE each believe that their respective positions on the matters resolved by this Consent Order are meritorious. Neither DOE nor Eason disavows any position taken with respect to such matters.

303. In a pleading dated July 22, 1985, submitted in OHA Case No. HRO–0254, Eason stipulated that ITT has assumed responsibility for any and all liability for violations of the mandatory petroleum price regulations resulting from Eason's pricing of petroleum products.

304. Notwithstanding DOE's view as to the proper application of the Federal petroleum price and allocation regulations to Eason's activities during the period covered by this Consent Order, Eason maintains that it has calculated all costs, determined all prices, and operated in all other respects in accordance with the Federal petroleum price and allocation regulations. However, and without admitting any violation whatsoever, Eason and ITT have agreed to enter into this Consent Order in order to avoid the expense of protracted litigation.

The DOE believes this Consent Order constitutes a satisfactory resolution of the matters covered herein and is in the public interest.

IV. Remedial Provisions

401. In full and final settlement of all matters covered by this Consent Order and in lieu of all other remedies which have been or might be sought by the DOE against Eason for such matters under 10 CFR 205.1991 or otherwise, ITT shall pay to DOE seven million dollars ($7,000,000) in the manner specified in paragraph 402.

402. The payment pursuant to paragraph 401 shall be made within thirty (30) days from the effective date of this Consent Order. In the event that such payment date is not a business day, payment shall be due on the first business day following such date. If the payment is not received by 2 p.m. on the due date, interest shall be assessed on any monies remaining unpaid from the due date, which interest shall be computed at the rate of 9.52% per annum, compounded quarterly.

403. The payment pursuant to paragraph 401 of this Consent Order shall be made by wire transfer in accordance with instructions furnished to ITT by the Department of Energy in a timely manner. The payment made pursuant to this Consent Order shall be distributed by the DOE pursuant to the special refund procedures prescribed by 10 CFR part 205, subpart V.

V. Issues Resolved

501. All pending and potential civil and administrative claims, demands, liabilities, causes of action or other proceedings by DOE against Eason regarding Eason's compliance with and obligations under the Federal petroleum price and allocation regulations during the period covered by this Consent Order, whether or not heretofore raised by an issue letter, Notice of Probable Violation, Proposed Remedial Order, Remedial Order, actions in court or otherwise, are resolved, extinguished and released as to Eason by this Consent Order.

502. Eason warrants that there is no litigation pending against the DOE initiated or participated in by Eason which in any way relates to or arises out of the matters covered by this Consent Order, or related claims arising under the Freedom of Information Act (5 U.S.C. 552). Eason hereby agrees to release any and all claims, demands, liabilities, or causes of action that Eason has asserted or might be able to assert against DOE, and/or any employee of DOE, in any matter related to the matters covered by this Consent Order.

503. (a) Compliance with this Consent Order by ITT on behalf of Eason shall be deemed by DOE to constitute full compliance for civil purposes with regard to the matters covered by this Consent Order. Except as explicitly excluded herein, in consideration for performance as required under this Consent Order by Eason and ITT, DOE hereby releases Eason and ITT completely and for all purposes from all administrative and civil judicial claims, demands, liabilities, or causes of action, including, without limitation, claims for civil penalties that the DOE has asserted or might otherwise be able to assert against Eason before or after the date of this Consent Order for alleged violations of the Federal petroleum price and allocation regulations with respect to the matters covered by this Consent Order. DOE will not initiate or prosecute any such administrative or civil judicial

matter against Eason or cause or refer any such matter to be initiated or prosecuted, nor will DOE or its successors directly or indirectly aid in the initiation of any such administrative or civil judicial matter against Eason or participate voluntarily in the prosecution of such actions. DOE will not assert voluntarily in any administrative or civil judicial proceeding that Eason has violated the Federal petroleum price and allocation regulations with respect to the matters covered by this Consent Order, or otherwise take actions with respect to Eason in derogation of this Consent Order. However, nothing contained herein shall preclude DOE from defending the validity of the Federal petroleum price and allocation regulations.

(b) The DOE will not seek or recommend any criminal fines or penalties based on information or evidence currently in its possession for the matters covered by this Consent Order; provided, however, that nothing in this Consent Order precludes the DOE from (1) seeking or recommending such criminal fines or penalties if information subsequently coming to its attention indicates, either by itself or in combination with information or evidence currently known to DOE, that a criminal violation may have occurred, or (2) otherwise complying with its obligations under law with regard to forwarding information of possible criminal violations to appropriate authorities. Nothing contained herein may be construed as a bar, an estoppel, or a defense against any criminal action or against any civil action brought by an instrumentality or agency of the United States other than DOE under: (I) Section 210 of the ESA or (ii) any statute or regulation other than the Federal petroleum price and allocation regulations. Finally, this Consent Order does not prejudice the rights of any third party, Eason or ITT in any private action, including an action for contribution by or against Eason or ITT.

(c) Eason and ITT release the DOE completely and for all purposes from all administrative and civil judicial claims, or causes of action that Eason and/or ITT have asserted or may otherwise be able to assert against the DOE relating to the DOE's administration of the Federal petroleum price and allocation regulations with respect to the matters covered by this Consent Order. This release, however, does not preclude Eason and/or ITT from asserting any factual or legal position or argument as a defense to any action, claim, or proceeding brought by the DOE, the United States, or any agency of the United States. Nor does it preclude Eason and/or ITT from asserting a defense, counterclaim or offset to any action, claim or proceeding brought by any other person.

504. Execution of this Consent Order constitutes neither an admission by Eason or ITT nor a finding by DOE of any violation by Eason of any statute or of any regulation. DOE has determined that it is not appropriate to seek to impose civil penalties for the matters covered by this Consent Order, and DOE will not seek any such civil penalties. The payment by ITT on behalf of Eason pursuant to this Consent Order is not to be considered for any purpose as a penalty, fine, forfeiture, or as settlement of any potential liability for penalties, fines or forfeitures.

505. Notwithstanding any other provision herein, and in addition to the matters excluded herein, DOE reserves the right to initiate an enforcement proceeding, including, without limitation, an action for penalties, for any newly discovered regulatory violations committed by Eason during the period covered by this Consent Order, but only if Eason concealed facts relating to such violations. DOE also reserves the right to seek appropriate judicial remedies other than full rescission of this Consent Order, or to rescind this Consent Order, for any misrepresentation of fact material to this Consent Order made by Eason or ITT during the course of the audit, during the litigation relating to Eason's alleged liability for the violations asserted in OHA Case No. HRO–0254 and FERC Docket No. RO91–1–000, or during the course of the negotiations that preceded this Consent Order.

506. Within ten (10) days after the effective date of this Consent Order, Eason and the DOE will file or cause to be filed appropriate pleadings to withdraw all claims and dismiss with prejudice all proceedings relating to the matters covered by this Consent Order pending before the DOE's Office of Hearings and Appeals and the Federal Energy Regulatory Commission.

VI. Reporting and Recordkeeping Requirements

601. ITT shall maintain such records as are necessary to demonstrate compliance with the terms of this Consent Order. To assist DOE in the distribution of the monies paid pursuant to paragraph 401, ITT shall also maintain any records in its possession for the time period covered by this Consent Order evidencing sales volume data for each product subject to controls and customers' names and addresses, until thirty (30) days after final distribution by DOE of the funds paid pursuant to paragraph 401, *supra* or December 31, 1999, whichever occurs earlier. If requested, ITT shall make such information available to DOE. Except as otherwise provided in this paragraph, upon timely payment to DOE of the amount required to be paid under paragraph 401 of this Consent Order, ITT is relieved of its obligation to comply with the recordkeeping requirements of the Federal petroleum price and allocation regulations relating to the matters settled by this Consent Order.

602. Except for formal requests for information regarding compliance by other firms with the Federal petroleum price and allocation regulations, Eason will not be subject hereafter to any audit requests, report orders, subpoenas, or other administrative discovery by DOE relating to Eason's activities subject to such regulations regarding the matters covered by this Consent Order.

603. This Consent Order is subject to disclosure by the DOE pursuant to the requirements of the Freedom of Information Act, as amended, 5 U.S.C. 552 (FOIA). Eason and ITT waive all claims that either may have that some or all of the information contained in this Consent Order is exempt from the mandatory public disclosure requirements of the FOIA, as amended, is information referred to in 18 U.S.C. 1905, or is otherwise exempt by law from public disclosure.

VII. Contractual Undertaking

701. It is the understanding and express intention of Eason, ITT and DOE that this Consent Order constitutes a legally enforceable contractual undertaking that is binding on the parties and their successors and assigns. Notwithstanding any other provision herein, Eason, ITT and DOE each reserves the right to institute a civil action in an appropriate United States District Court, if necessary, to secure enforcement of the terms of this Consent Order, and DOE also reserves the right to seek appropriate penalties for any failure to comply with the terms of this Consent Order. Consistent with Departmental policy, DOE will undertake the defense of the Consent Order in response to any litigation challenging the Consent Order's validity in which the DOE is named as a party. Eason and ITT agree to cooperate with the DOE in the defense of any such challenge.

VIII. Final Order

801. Subject to paragraphs 901 and 902, this Consent Order is a final order of DOE having the same force and effect as a Remedial Order issued pursuant to section 503 of the DOE Act, 42 U.S.C. 7193, and 10 CFR 205.199B. Eason and ITT hereby waive their right to administrative or judicial appeal from this Order, but Eason and ITT reserve the right to participate in any such review initiated by a third party.

IX. Effective Date

901. This Consent Order shall become effective as a final order of the DOE upon notice to that effect being published in the **Federal Register**. Prior to that date, the DOE will publish notice in the **Federal Register** that it proposes to make this Consent Order final and, in that notice, will provide not less than thirty (30) days for members of the public to submit written comments. The DOE will consider all written comments to determine whether to adopt the Consent Order as a final order, to withdraw agreement to the Consent Order, or to attempt to renegotiate the terms of the Consent Order.

902. Until the effective date, the DOE reserves the right to withdraw consent to this Consent Order by written notice to Eason and ITT, in which event this Consent Order shall be null and void. If this Consent Order is not made effective on or before the one hundred fiftieth (150) day following execution by Eason and ITT, Eason and ITT may at any time thereafter until the effective date, withdraw their agreement to this Consent Order by written notice to the DOE, in which event this Consent Order shall be null and void.

I, the undersigned, a duly authorized representative of Eason Drilling Company, hereby agree to and accept on behalf of Eason Drilling Company, the foregoing Consent Order.

Signed: H. John Rogers.

Name: H. John Rogers.

Title: President.

Date: May 3, 1991.

I, the undersigned, a duly authorized representative of ITT Corporation, hereby agree to and accept on behalf of ITT Corporation the foregoing Consent Order.

Signed: R.S. Ward.

Name: R.S. Ward.

Title: Vice President.

Date: May 2, 1991.

I, the undersigned, a duly authorized representative of the Department of Energy, Economic Regulatory Administration, hereby agree to and accept on behalf of said Administration, the foregoing Consent Order.

Signed: M.C. Lorenz.

Name: M.C. Lorenz.

Title: Chief Counsel.

Date: April 19, 1991.

[FR Doc. 91-11665 Filed 5-15-91; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Project No. 10934-000]

William B. Ruger; Availability of Environmental Assessment

May 9, 1991.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for license for the Sugar River II Project, located on the Sugar River in Sullivan County, New Hampshire, and has prepared an Environmental Assessment (EA) for the project. In the EA, the Commission's staff has analyzed the environmental impacts of the project and has concluded that approval of the proposed project, with appropriate mitigative measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 3308, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91-11578 Filed 5-15-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA91-1-28-002]

Panhandle Eastern Pipe Line Co.; Proposed Changes in FERC Gas Tariff

May 9, 1991.

Take notice that Panhandle Eastern Pipe Line Company (Panhandle) on April 29, 1991, tendered for filing revised tariff sheets listed on appendix A attached to the filing, to its FERC Gas Tariff, Original Volume No. 1, to be effective December 1, 1990, January 1, 1991, March 1, 1991 and April 1, 1991, respectively.

Panhandle states that the tariff sheets are being submitted to revise the tariff sheets previously submitted on April 1, 1991, in compliance with the Commission's February 28, 1991 order in Docket Nos. TA91-1-28-000.

Panhandle states that Ordering Paragraph (B) of the Commission's February 28, 1991 order required Panhandle to submit revised tariff sheets "reflecting FERC authorized billing determinant levels in effect as of March 1, 1991". Panhandle also states that Ordering Paragraph (C) required Panhandle to file reduced rates, effective December 1, 1990, to "reflect FERC authorized changes in billing determinants in effect as of the effective date of the PGA filing."

Panhandle states that copies of the filing are being served on all jurisdictional sales customers and applicable rate regulatory agencies.

Any person desiring to protest said filing should file 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 and 385.211. All such protests should be filed on or before May 16, 1991. 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. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91-11579 Filed 5-15-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP91-52-000, RP91-53-000, and RP88-262-000]

Panhandle Eastern Pipe Line Conference to Discuss Settlement

May 9, 1991.

A conference will be held on Tuesday, May 14, 1991, at 9 a.m., in the above dockets to explore the possibility of settlement of the take-or-pay related issues raised in the above-captioned proceedings. The conference will focus primarily on Panhandle Docket Nos. RP91-52-000 and RP91-53-000 proceedings but may raise issues relating to RP88-262-000.

The conference on May 14, 1991, will be held in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426. All parties should be represented by principals who have the authority to commit to a

settlement or have arrangements made by which principals can be readily contacted during the conference.

All interested persons and Staff are permitted to attend.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91-11580 Filed 5-15-91; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 91-14-NG]

B.C. Gas Inc.; Application to Amend Authorization to Import and Export Natural Gas

AGENCY: Office Of Fossil Energy, Department of Energy.

ACTION: Notice of application to amend authorization to import and export natural gas.

SUMMARY: The Office of Fossil Energy of the Department of Energy (DOE) gives notice of receipt on February 15, 1991, of an application filed by BC Gas Inc. (BC Gas) requesting amendment of its authorization to import and export Canadian natural gas. Pursuant to the application, BC Gas would increase the annual volumes it imports for injection into the Jackson Prairie Storage Facility (Jackson Storage) in Lewis County, Washington, and the sequential export of equivalent annual volumes back to Canada, from 2,164,122 Mcf to 3,045,777 Mcf. In addition, BC Gas seeks elimination of both the daily gas volume limit of 60,115 Mcf/d, and the seasonal delivery date restrictions (May thru September for import/storage and October thru April for export/withdrawal), contained in its current authorization.

BC Gas plans to continue using the existing facilities of Northwest Pipeline Corporation (Northwest) for the importation and exportation of gas supplies at Sumas, Washington, and states that it will continue to submit quarterly reports detailing all import/export transactions.

The application was filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene, or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., e.d.t., June 17, 1991.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Thomas Dukes, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-094, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9590.

Lot Cooke, Office of the Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-0503.

SUPPLEMENTARY INFORMATION: BC Gas, a Canadian corporation located in Vancouver, British Columbia, Canada, is a local distribution company engaged in the transmission, storage and sale of gas wholly within the Province of British Columbia. Under DOE/ERA Opinion and Order No. 285, (1 ERA Para. 70,827), BC Gas was granted emergency authorization to import and export up to 2,164,000 Mcf of gas per year held in storage by the Washington Water Power Company (Water Power) and interim authority to export up to 60,115 Mcf per day during the 1988/1989 winter heating season through April 30, 1996. Final authorization was granted on March 31, 1989, in DOE/FE Opinion and Order No. 285-A (1 FE Para. 70,296). It is that authorization that BC Gas is seeking to amend.

In support of its application, BC Gas states that the DOE should find the amendments that BC Gas proposes to its authorization are not inconsistent with the public interest, as the net effect of the proposed amendments will be no different from the previously authorized arrangements under DOE/FE Opinion and Order No. 285-A. No Canadian Gas is proposed to be sold into United States markets or vice versa. BC Gas only wishes to continue using existing storage facilities in the United States to store additional gas which it purchases in Canada during off-peak periods for subsequent sale and use in Canada during peak periods. Lastly, BC Gas asserts that, because no new facilities are required to deliver the additional volumes sought, no adverse environmental impacts will result from approval of its proposed amendments.

The decision on the application to amend BC Gas' import/export authority will be made consistent with the DOE's gas import policy guidelines, (49 FR 6684, February 22, 1984). The applicant asserts that DOE's policy criteria relating to the competitiveness, need and security of supply are not applicable to its import/export arrangement since the use of U.S. facilities are solely for transportation and storage and none of the import/export storage volumes are sold in the U.S. marketplace. The DOE would agree that the only relevant issue in this case is the potential impact, if any, BC Gas' transportation and storage arrangements would have on either Northwest's or Water Power's systems. Parties, especially those that may oppose this application, should comment in their responses on those issues.

NEPA Compliance

The National Environmental Policy Act (NEPA) 42 U.S.C. 4321 *et seq.*, requires the DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until the DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any

request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of BC Gas' application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC., May 16, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91–11663 Filed 5–15–91; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 91–08–NG]

Consolidated Edison Company of New York, Inc.; Order Granting Authorization to Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of an order granting blanket authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Consolidated Edison Company of New York, Inc., authorization to import up to 146 Bcf of Canadian natural gas over a two-year period commencing with the date of first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, May 10, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91–11664 Filed 5–15–91; 8:45 am]

BILLING CODE 6450–01–M

Western Area Power Administration

Change of Location for Informational/Scoping Meeting Scheduled for Sioux Falls, SD, to Brookings, SD, for Proposed Energy Planning and Management Program

AGENCY: Western Area Power Administration, DOE.

ACTION: The Western Area Power Administration (Western) has relocated one of seven scheduled informational/scoping meetings as identified within its Notice of Intent to Prepare an Environmental Impact Statement (56 FR 19995) for a proposed Energy Planning and Management Program.

SUMMARY: Western has changed the location of one informational/scoping meeting previously planned for June 26, 1991, at the Townhouse, 400 South Main, in Sioux Falls, South Dakota, to a new location. The new location is the Holiday Inn, 2500 East 6th Street, Brookings, South Dakota. The meeting will address Western's proposed Energy Planning and Management Program designed to replace its Guidelines and Acceptance Criteria (G&AC) for the Conservation and Renewable Energy (C&RE) Program. The goal of the Energy Planning and Management Program is to develop a link between Western's power resource allocations and efficient electric energy use by Western customers.

BACKGROUND: On May 1, 1991 (56 FR 19995), Western published a Notice of Intent to prepare an Environmental Impact Statement (EIS) for its proposed Energy Planning and Management Program. Within this notice Western identified seven informational/scoping meetings to initiate the EIS process. Due to some complications in scheduling, Western has relocated the June 26, 1991, meeting from Sioux Falls, South Dakota, to Brookings, South Dakota.

PROPOSED ACTION: The informational/scoping meetings previously planned for June 26, 1991, at the Townhouse, 400 South Main, in Sioux Falls, South Dakota, has been moved to a new location. The new location is the Holiday Inn, 2500 East 6th Street, Brookings, South Dakota. The informational meeting is scheduled from 1 p.m. to 4:30 p.m., and the scoping meeting from 6 p.m. to 9 p.m. Dependent upon participation, these times may be extended or shortened at Western's discretion. Additional written comments will be accepted through July 31, 1991.

FOR FURTHER INFORMATION CONTACT: To receive information regarding this change, to submit written comments, or for additional meeting information please call or write:

Marlene A. Moody, Assistant Administrator for Power Management, Operations, and Maintenance, Western Area Power Administration, P.O. Box 3402, Golden, CO 80401–3398. (303) 231–1518.

Warren L. Jamison, Assistant to the Administrator for Conservation, Environment, and Safety, Western Area Power Administration, P.O. Box 3402, Golden, CO 80401–3398, (303) 231–7945.

James D. Davies, Area Manager, Billings Area Office, Western Area Power Administration, P.O. Box 35800, Billings, MT 59107–5800, (406) 657–6532.

Issued at Golden, Colorado, May 8, 1991.

William H. Clagett,

Administrator.

[FR Doc. 91–11666 Filed 5–15–91; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–36181; FRL 3927–3]

Notification to Secretary of Agriculture of a Proposed Regulation On Reporting Requirements for Risk/benefit Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification to the Secretary of Agriculture.

SUMMARY: Notice is given that the Administrator of EPA has forwarded to the Secretary of Agriculture a proposed regulation under section 25 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The proposed rule would codify EPA's interpretation regarding which failures to report information, or delays in reporting, will be regarded as violations of FIFRA Section 6(a)(2), actionable under FIFRA 12(a)(2)(B)(ii) and 12(a)(2)(N). This action is required by section 25(a)(2)(A) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) , as amended.

FOR FURTHER INFORMATION CONTACT: By mail: David Alexander, Attorney Advisor, Office of Pesticide Programs

(H7508W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 2805 Jefferson Davis Highway, Arlington, VA, (703–308–8003).

SUPPLEMENTARY INFORMATION: Section 25(a)(2)(A) of FIFRA provides that the Administrator shall provide the Secretary of Agriculture with a copy of any proposed regulation at least 60 days prior to signing it for publication in the **Federal Register**. If the Secretary comments in writing regarding the proposed regulation within 30 days after receiving it, the Administrator shall issue for publication in the **Federal Register**, with the proposed regulation, the comments of the Secretary, if requested by the Secretary, and the response of the Administrator concerning the Secretary's comments. If the Secretary does not comment in writing within 30 days after receiving the proposed regulation, the Administrator may sign the proposed regulation for publication in the **Federal Register** anytime after the 30–day period. As required by FIFRA section 25(a)(3), a copy of this proposed regulation has been forwarded to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate. As required by FIFRA section 25(d), a copy of this proposed regulation has also been forwarded to the Scientific Advisory Panel.

Authority: 7 U.S.C. 136 et seq.

Dated: May 9, 1991.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 91–11675 Filed 5–15–91; 8:45 am]

BILLING CODE 6560–50–F

[FRL–3956–3]

Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, as Amended by the Superfund Amendments and Reauthorization Act

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Liability Act (CERCLA), as amended by Superfund Amendments and Reauthorization Act (SARA) notice is hereby given that a proposed administrative (CERCLA) cost recovery settlement concerning the Delmar Drum Site in St. Louis, Missouri was signed and filed by the Agency on April 24, 1991. The settlement resolves an EPA claim under section 107 of CERCLA for a section 122(h)(1) agreement against Sinclair & Rush, Inc. The settlement requires the settling party to pay $219,020.39 to the Hazardous Substances Superfund.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency's response to any comments received will be available for public inspection at 726 Minnesota Avenue, Kansas City, Kansas 66101.

DATES: Comments must be submitted on or before June 17, 1991.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at 726 Minnesota Avenue, Kansas City, Kansas 66101. A copy of the proposed settlement may be obtained from Vanessa Cobbs, Regional Hearing Clerk, 726 Minnesota Avenue, Kansas City, Kansas 66101, telephone (913) 551–7630. Comments should reference the Delmar Drum Site, St. Louis, Missouri, EPA Docket No. VII–91–F–0015, and should be addressed to Vanessa Cobbs, Regional Hearing Clerk, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Joseph E. Sheehy, 726 Minnesota Avenue, Kansas City, Kansas 66101, telephone (913) 551–7643.

Dated: April 26, 1991.

Alan Wehmeyer,

Acting Director, Waste management Division, U.S. Environmental Protection Agency, Region VII.

[FR Doc. 91–11633 5–15–91; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–44569; FRL 3893–8]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on methylethylketoxime (MEKO) (CAS No.96–29–7), metaphenylenediamines (*m*-pda) (CAS No. 108–45–2), and commercial hexane (CAS Nos. 96–37–7 and 110–54–3) submitted pursuant to a final test rule under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS–799), Office of Toxic Substances, Environmental Protection Agency, rm. E–543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: Section 4(d) of TSCA requires EPA to publish a notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days after it is received.

I. Test Data Submissions

Test data for MEKO were submitted by the Industrial Health Foundation, Inc., pursuant to a test rule at 40 CFR 799.2700. They were received by EPA on April 16, 1991. The submissions describe:

(1) A supplementary probe 6-week inhalation toxicity study of MEKO in the rat and mouse.

(2) A *Drosophila melanogaster* sex-linked recessive lethal test.

(3) An acute motor activity time course study in rats with MEKO.

(4) An acute neurotoxicity study in rats with MEKO.

Health effects testing is required by this test rule. This chemical is sold primarily as a nonreactive antiskinning agent in alkyd surface coating and paints. It is also used as a blocking agent for isocyanates and siloxanes.

Test data for *m*-pda were submitted by E. I. du Pont de Nemours and Company pursuant to a test rule at 40 CFR 799.3300. They were received by EPA on April 11, 1991. The submission describes the results of a sex-linked recessive lethal assay with *Drosophila melanogaster*. Health effects testing is required by this test rule. This chemical is used in aramid fibers, rubber and plastic antioxidants, photographic chemicals, dye intermediates, corrosion inhibitors and pesticides.

Test data for commercial hexane were submitted by the American Petroleum Institute on behalf of the major U. S. commercial hexane manufacturers and pursuant to a test rule at 40 CFR 799.2155. They were received by EPA on April 22, 1991. The submission describes a two-generation reproduction study of inhaled commercial hexane in rats. Reproduction and fertility effects testing is required by this test rule. This chemical is used as a solvent to extract seed oils.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is

unable to provide any determination as to the completeness of the submissions.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPTS–44569). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 12 noon, and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, Rm. NE–G004, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

Dated: May 8, 1991.

Charles M. Auer,

Director, Existing Chemical Assessment Division, Office of Toxic Substances.

[FR Doc. 91–11676 Filed 5–15–91; 8:45 am]

BILLING CODE 6560–50–F

[OPTS–59908; FRL 3926–1]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of 5 such PMN(s) and provides a summary of each.

DATES: Close of review periods:

Y 91–128, April 23, 1991.
Y 91–138, 91–139, May 12, 1991.
Y 91–140, May 21, 1991.
Y 91–141, May 22, 1991.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS–799), Office of Toxic Substances, Environmental Protection Agency, rm. E–545, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Public Docket Office, NE–G004 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

Y 91–128

Manufacturer. Moore Business Forms, Inc.

Chemical. (G) Poly(isodecyl acrylate).

Use/Production. (S) Adhesive for paper products. Prod. range: 5,072–46,880 kg/yr.

Toxicity Data. Acute oral toxicity: LD50 > 5.0 g/kg species (rat). Eye irritation: none species (rabbit). Skin irritation: negligible species (rabbit).

Y 91–138

Manufacturer. Confidential.

Chemical. (C) Modified polyester.

Use/Production. (G) Coating. Prod. range: Confidential.

Y 91–139

Manufacturer. Eastman Chemical Company.

Chemical. (S) Dimethyl glutarate; 1,4-butanediol.

Use/Production. (G) Barrier films. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species (rat). Acute dermal toxicity: LD50 > 1,000 mg/kg species (guinea pig). Eye irritation: moderate species (rabbit).

Y 91–140

Manufacturer. Confidential.

Chemical. (G) Vinyl ester.

Use/Production. (G) Coating. Prod. range: Confidential.

Y 91–141

Importer. Uniglobe Kisco, Inc.

Chemical. (G) Polyester based polyurethane.

Use/Import. (G) Binder resin for inorganic particles. Import range: 10,000–30,000 kg/yr.

Dated: May 9, 1991.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 91–11677 Filed 5–15–91; 8:45 am]

BILLING CODE 6560–50–F

[OPTS–51763; FRL 3926–2]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of 42 such PMNs and provides a summary of each.

DATES: Close of review periods:

P 91–579, May 14, 1991.
P 91–717, July 20, 1991.
P 91–769, 91–770, July 7, 1991.
P 91–806, July 14, 1991.
P 91–807, 91–808, 91–809, July 15, 1991.
P 91–810, 91–811, 91–812, 91–813, 91–814, 91–815, 91–816, July 16, 1991.
P 91–817, July 17, 1991.
P 91–818, 91–819, 91–820, 91–821, 91–822, 91–823, 91–824, 91–825, 91–826, 91–827, 91–828, July 20, 1991.
P 91–831, 91–832, 91–833, 91–834, July 21, 1991.
P 91–836, 91–837, July 27, 1991.
P 91–838, August 3, 1991.
P 91–839, 91–840, 91–841, 91–842, July 28, 1991.
P 91–843, July 29, 1991.
P 91–844, 91–845, 91–846, July 30, 1991.

Written comments by:

P 91–579, April 14, 1991.
P 91–717, June 20, 1991.
P 91–769, 91–770, June 7, 1991.
P 91–806, June 14, 1991.
P 91–807, 91–808, 91–809, June 15, 1991.
P 91–810, 91–811, 91–812, 91–813, 91–814, 91–815, 91–816, June 16, 1991.
P 91–817, June 17, 1991.
P 91–818, 91–819, 91–820, 91–821, 91–822, 91–823, 91–824, 91–825, 91–826, 91–827, 91–828, June 20, 1991.
P 91–831, 91–832, 91–833, 91–834, June 21, 1991.
P 91–836, 91–837, June 27, 1991.
P 91–838, July 4, 1991.
P 91–839, 91–840, 91–841, 91–842, June 28, 1991.
P 91–843, June 29, 1991.

P 91–844, 91–845, 91–846, June 30, 1991.

ADDRESSES: Written comments, identified by the document control number "(OPTS–51763)" and the specific PMN number should be sent to: Document Processing Center (TS–790), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., rm L–100, Washington, DC, 20460, (202) 382–3532.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS–799), Office of Toxic Substances, Environmental Protection Agency, rm EB–44, 401 M St., SW., Washington, DC 20460 (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Public Docket Office NE–G004 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

P 91–579

Importer. Ajinomoto USA., Inc.
Chemical. (S) L-lysine, N6-(1-oxododecyl)-.
Use/Import. (S) Color enchances for carbon black used in copier toners. Import range: 3,000–9,000 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 > 5.0 g/kg species (rat). Eye irritation: none species (rabbit). Skin irritation: negligible species (rabbit). Mutagenicity: negative. Skin sensitization: negative species (guinea pig). Phototoxicity: negative species (guinea pig).

P 91–717

Importer. Brigestone Sporting Goods Manufacturing Co.
Chemical. (S) 4-(Perfluord (1,3-dimehyl-2-isoprpryl-1-butenyloxybenzyl phosphonic acid.
Use/Import. (G) Component in a mold release. Import range: Confidential.

P 91–769

Importer. Borden - Toagosei Company.
Chemical. (S) 2-Methylpropyl-2-cycanoacrylate.
Use/Import. (G) Instant glue. Import range: Confidential.

P 91–770

Importer. Borden - Toagosei Company.
Chemical. (S) 2-Ethoxyethyl-2-cyanoacrylate.
Use/Import. (G) Instant glue. Import range: Confidential.

P 91–806

Importer. Confidential.
Chemical. (G) Poloxyalkylene glycol ether.
Use/Import. (G) Lubricant. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 2,000 mg/kg species (rat). Skin irritation: negligible species (rabbit). Skin sensitization: negative species (guinea pig).

P 91–807

Manufacturer. Confidential.
Chemical. (G) Carbomonocyclic carboxylic acid reaction product with polyalkylene polyamine polyalkyl sulfate salt.
Use/Production. (G) Aid for paper processing. Prod. range: Confidential.

P 91–808

Manufacturer. Reichhold Chemicals, Inc.
Chemical. (G) Modified alkyd resin.
Use/Production. (S) Aluminium coating. Prod. range: Confidential.

P 91–809

Manufacturer. E.I. Du Pont De Nemours & Co., Inc.
Chemical. (G) Recovered metal hydride.
Use/Production. (G) Metal recycling. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 670 g/kg species (rat). Eye irritation: strong species (rabbit). Skin irritation: negligible species (rabbit).

P 91–810

Manufacturer. Confidential.
Chemical. (G) Polyester isocyanate prepolymer.
Use/Production. (S) Adhesive. Prod. range: Confidential.

P 91–811

Manufacturer. Confidential.
Chemical. (G) Hybrid polyurethane.
Use/Production. (G) Reactive component of molded components. Prod. range: Confidential.

P 91–812

Manufacturer. Confidential.
Chemical. (G) Hybrid polyurethane.
Use/Production. (G) Reactive component of molded components. Prod. range: Confidential.

P 91–813

Manufacturer. Confidential.
Chemical. (G) Polyamide copolymer.
Use/Production. (G) Nonplasticized flexible polyamide. Prod. range: Confidential.

P 91–814

Manufacturer. Confidential.
Chemical. (G) Polyamide copolymer.
Use/Production. (G) Nonplasticized flexible polyamide. Prod. range: Confidential.

P 91–815

Manufacturer. Confidential.
Chemical. (G) Polyamide copolymer.
Use/Production. (G) Nonplasticized flexible polyamide. Prod. range: Confidential.

P 91–816

Manufacturer. Hoechst Celanese Corporation.
Chemical. (G) Homopolymer of 4-ethenylphenol plus initiator end groups/fragments.
Use/Production. (S) Photorist for microelectronic chip manufacture. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 5 g/kg species (rat). Acute dermal toxicity: LD50 > 5 g/kg species (rabbit). Eye irritation: moderate species (rabbit). Skin irritation: negligible species (rabbit).

P 91–817

Manufacturer. Confidential.
Chemical. (G) Ethylbenzene-2-propenenitrile copolymer.
Use/Production. (S) Dispersive/carrier for worker ink applied to paper. Prod. range: Confidential.

P 91–818

Importer. Berol Nobel Inc.
Chemical. (G) Alkyl-di(alkyloxyhydroxypropyl)derivatice, phosphoric acid esters, potassium salts.
Use/Import. (G) Mining chemial. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 5 g/kg species (rat). Static acute toxicity: time EC50 96H6.1 mg/l species (algae). Eye irritation: strong species (rabbit). Mutagenicity: negative. Skin irritation: moderate species (rabbit).

P 91–819

Importer. Tosohaas.
Chemical. (G) Polymethacrylate derivative with reactive blue 2.
Use/Import. (G) For use with aqueous solutions in a contained use. Import range: Confidential.

P 91–820

Importer. Tosohaas.
Chemical. (G) Polymethacrylate derivative with reactive red 120.
Use/Import. (G) For use with aqueous solutions in a contained use. Import range: Confidential.

P 91-821

Importer. Hoechst Celanese Corporation.

Chemical. (G) Cresol novolak resin.

Use/Import. (S) Binder resin photoresist formulation. Import range: Confidnetial.

P 91-822

Manufacturer. Confidential.

Chemical. (G) Starch, bis(dialkylamino)-propyl ether.

Use/Production. (G) Papermaking wet end additive. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5.0 g/kg species (rat). Acute dermal toxicity: LD50 > 2.0 g/kg species (rabbit). Eye irritation: none species (rabbit). Static acute toxicity: time LC50 > 1,000 mg/l species (fathead minnow).

P 91-823

Manufacturer. Confidential.

Chemical. (G) Amylopectin, bis(diphenylamino)-propyl ether.

Use/Production. (G) Papermaking wet end additive. Prod. range: Confidential.

P 91-824

Manufacturer. Confidential.

Chemical. (G) 2-(Hydroxypropyl)-trimethylammonium chloride ether, 3-(hydroxypropoxy)trimethoxyl derivative starch ether.

Use/Production. (G) Papermaking wet end additive. Prod. range: Confidential.

Toxicity Data. Acute dermal toxicity: LD50 > 2.0 g/kg species (rabbit). Static acute toxicity: time LC50 > 1,000 mg/k species (fathead minnow). Eye irritation: none species (rabbit). Skin irritation: negligible species (rabbit).

P 91-825

Manufacturer. Confidential.

Chemical. (G) 2-(Hydroxypropyl)-trimethylammonium chloride ether, 3-(hydroxyproxpropoxy)trimethoxyl dreivative amylopectin ether.

Use/Production. (G) Papermaking wet end additive. Prod. range: Confidential.

Toxicity Data. Acute dermal toxicity: LD50 > 2.0 g/kg species (rabbit). Static acute toxicity: time LC50 > 1,000 mg/k species (fathead minnow). Eye irritation: none species (rabbit). Skin irritation: negligible species (rabbit).

P 91-826

Manufacturer. Confidential.

Chemical. (G) Carboxylic acid, alkenyl ester.

Use/Production. (G) Chemical intermediate. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 5.47 ml/kg species (rat). Acute dermal toxicity: LD50 > 16 ml/kg species (rabbit).

P 91-827

Importer. Confidential.

Chemical. (G) Modified alcohol alkoxylate.

Use/Import. (G) Processing and finishing aid. Import range: Confidential.

P 91-828

Importer. Quest International Fragrances, Company.

Chemical. (G) Unsaturated(poly)cyclic methyl ketone.

Use/Import. (G) Fragrance raw material. Import range: Confidential.

P 91-831

Manufacturer. Confidential.

Chemical. (G) Halogenated alkane.

Use/Production. (G) Fire extinquishant and refrigerant. Prod. range: Confidential.

Toxicity Data. Inhalation toxicity: LC50 > 241,188 ppm time 4:23 species (rat).

P 91-832

Manufacturer. Confidential.

Chemical. (G) Carbomonocyclic carboxylic acid reaction product with polyalkylene polyamine.

Use/Production. (G) Aid for paper processing. Prod. range: Confidential.

P 91-833

Manufacturer. Confidential.

Chemical. (G) Carbomonocyclic carboxylic acid reaction product with polyalkylene polyamine polyalkyl sulfate salt.

Use/Production. (G) Aid for paper processing. Prod. range: Confidential.

P 91-834

Manufacturer. Confidential.

Chemical. (G) Carbomonocyclic carboxylic acid reaction product with polyalkylene polyamine.

Use/Production. (G) Aid for paper processing. Prod. range: Confidential.

P 91-836

Importer. Confidential.

Chemical. (G) Alkyd.

Use/Import. (G) Paint. Import range: Confidential.

P 91-837

Manufacturer. Confidential.

Chemical. (G) Aromatic poyether polyurethane.

Use/Production. (S) Coatings/ adhesive. Prod. range: 10,000 kg/yr.

P 91-838

Importer. Huls America Inc.

Chemical. (G) Salt of cyclodiamine and mineral acid.

Use/Import. (S) Hardener for epoxy. Import range: 20,000–60,000 kg/yr.

P 91-839

Manufacturer. American Cyanamid Company.

Chemical. (G) Substituted alkyl amide.

Use/Production. (G) Process aid for open, nondispersive use. Prod. range: Confidential.

P 91-840

Manufacturer. American Cyanamid Company.

Chemical. (G) Substituted alkyl amide.

Use/Production. (G) Process aid for open, nondispersive use. Prod. range: Confidential.

P 91-841

Manufacturer. American Cyanamid Company.

Chemical. (G) Substituted alkyl amide.

Use/Production. (G) Process aid for open, nondispersive use. Prod. range: Confidential.

P 91-842

Manufacturer. American Cyanamid Company.

Chemical. (G) Substituted alkyl amide.

Use/Production. (G) Process aid for open, nondispersive use. Prod. range: Confidential.

P 91-843

Importer. Ciba-Geigy.

Chemical. (G) Substituted anthraquinone.

Use/Import. (S) Site-limited intermediate, used in dye production. Import range: Confidential.

P 91-844

Manufacturer. E.I Du Pont De Nemours & Co. Inc.

Chemical. (G) Reaction product of socyanate and 2-butanone oxime.

Use/Production. (G) Coating. Prod. range: Confidential.

P 91-845

Manufacturer. Confidential.

Chemical. (S) Lithium diisobutylamide.

Use/Production. (S) Preparation of commerical intermediate chemical. Prod. range: Confidential.

P 91-846

Manufacturer. Confidential.

Chemical. (G) Lithium dialkylamide.

Use/Production. (S) Preparation of commerical intermediate chemicals. Prod. range: Confidential.

Dated: May 9, 1991.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 91–11678, Filed 5–15–91; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. 3507. Persons wishing to comment on this information collection request should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, telephone (202) 395–4814. For further information contact Judy Boley, Federal Communications Commission, telephone (202) 632–7513.

Please note: The Commission has requested emergency review of this item by May 13, 1991, under the provisions of 5 CFR 1320.18.

Title: Automated Reporting and Management Information Systems (ARMIS).

FCC Report No: FCC 43–05.

Action: Revision.

Respondents: Businesses or other for-profit.

Frequency of Response: Quarterly reporting.

Estimated Annual Burden: 1,645 responses; 11 hours average burden per response; 368,650 hours total annual burden.

Needs and Uses: Mandatory price cap local exchange carriers (LEC's) and carriers electing price cap regulation are required to file quarterly service quality monitoring reports. The information will be used by the FCC and other interested parties to monitor the LEC performance under price cap regulation.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91–11689 Filed 5–15–91; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL ELECTION COMMISSION

[Notice 1991–8]

Filing Dates for the Pennsylvania Special Elections

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for special elections.

SUMMARY: Pennsylvania has scheduled a Special General Election on November 5, 1991, to fill the seat of the late Senator John Heinz. The Republican and Democratic State committees will select their nominees for the November Special General Election in state party conventions held for that purpose.

Committees required to file a report in connection with the Special General Election on November 5, 1991, must file a 12-day Pre-General Report by October 24, 1991, and a Post-General Report by December 5, 1991.

Committees are not required to file reports for the Republican Convention scheduled for May 11 or the Democratic Convention scheduled for June 1. These reports are not required because the short time periods between the dates when the conventions were scheduled, and when they will be held does not allow sufficient time to prepare and file a report. In addition to this short time frame, no formal primary election ballot will be prepared and all candidates participating in the conventions have not been officially identified.

FOR FURTHER INFORMATION CONTACT: Ms. Bobby Werfel, Public Information Office, 999 E. Street, NW., Washington, DC 20463, Telephone: (202) 376–3120; Toll Free (800) 424–9530.

SUPPLEMENTARY INFORMATION: All principal campaign committees of candidates participating in the Special Democratic and Republican Conventions, and all other political committees not filing monthly which support candidates in these elections shall file the Mid-Year Report due July 31, 1991, with coverage dates from the close of books of the last report filed, through June 30, 1991. If no previous reports have been filed, the reporting period begins with the date of the committee's first activity.

All principal campaign committees of candidates in the Special General Election and all other political committees not filing monthly which support candidates in this election shall file a 12-day Pre-General Report, due on October 24, 1991, with coverage dates from July 1, 1991, or the last report filed, through October 16, 1991, and a Post-General Report on December 5, 1991, with coverage dates from October 17, 1991, through November 25, 1991.

CALENDAR OF REPORTING DATES FOR PENNSYLVANIA SPECIAL ELECTIONS

[All Committees Involved in the Special General Election (11/5)]

Report	Period Covered [1]	Reg./Cert. Mailing Date [2]	Filing Date
Mid-Year	01/01/91–06/30/91	07/31/91	07/31/91
Pre-General	07/01/91–10/16/91	10/21/91	10/24/91
Post-General	10/17/91–11/25/91	12/05/91	12/05/91

[1] The period begins with the close of books of the last report filed by the committee. If the committee has filed no previous reports, the period begins with the date of the committee's first activity.

[2] Reports sent by registered or certified mail must be postmarked by the mailing date; otherwise, they must be received by the filing date.

Dated: May 9, 1991.

John Warren McGarry,

Chairman, Federal Election Commission.

[FR Doc. 91-11628 Filed 5-15-91; 8:45 am]

BILLING CODE 6715-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35).

Type: New collection.

Title: Survey of Flood Victims Regarding the Usefulness of the Flood Recovery Handbook "Following a Flood: Steps to Recovery".

Abstract: A major aspect of reducing flood losses is to make the general public aware of the steps that they can take to make their homes less vulnerable to flood damage. A handbook has been drafted that will provide homeowners with information on how to clean up and repair a flooded house. Other topics covered include the usefulness of flood insurance; preparing for an imminent flood and for evacuation; financial assistance available; and ways that future flood damage can be reduced by individuals and the community.

During the spring and summer of 1991, copies of the draft flood recovery handbook "Following a Flood: Steps to Recovery" will be distributed to randomly selected flood victims in flood damaged communities. Distribution of the handbooks will take place in coordination with Red Cross field units. Five hundred copies of the handbook will be distributed at each flooded location, depending on the number of flooded households. A telephone survey will follow. The telephone survey will determine the usefulness of the handbook to flood victims. The information will be used to determine (a) if the information in the handbook is presented well, and (b) what additional needs flood victims have that the handbook could meet. The survey is designed to glean flood recovery information from readers as well as nonreaders of the handbook. The results of the survey will be used to revise and publish the handbook, and prepare other publications for use by flood victims.

Type of Respondents: Individuals or households.

Estimate of Total Annual Reporting and Recordkeeping Burden: 1,825 Hours.

Number of Respondents: Hear Instructions—1,500; Read Handbook—1,500; Complete Telephone Survey—1,200.

Estimated Average Burden Hours Per Response: Hear Instructions—5 minutes; Read Handbook—1 Hour; Complete Telephone Survey—10 minutes.

Frequency of Response: One-time.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Borror, (202) 646-2624, 500 C Street, SW., Washington, DC 20472.

Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: The FEMA Clearance Officer at the above address; and to Gary Waxman, (202) 395-7340, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503 within four weeks of this notice.

Dated: May 6, 1991.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 91-11644 Filed 5-15-91; 8:45 am]

BILLING CODE 6718-01-M

[FEMA-903-DR]

Kansas; Amendment to Notice of a Major Disaster Declaration

AGENCY: Fedreal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Kansas (FEMA-903-DR), dated April 29, 1991, and related determinations.

DATES: May 8, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: The notice of a major disaster for the State of Kansas, dated April 29, 1991, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 29, 1991:

Jefferson County for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 91-11646 Filed 5-15-91; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-903-DR]

Kansas; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Kansas (FEMA-903-DR), dated April 29, 1991, and related determinations.

DATES: May 6, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: The notice of a major disaster for the State of Kansas, dated April 29, 1991, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 29, 1991:

The counties of Wabaunsee and Washington.

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

[FR Doc. 91-11649 Filed 5-15-91; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-902-DR]

Louisiana; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Louisiana (FEMA-902-DR), dated April 23, 1991, and related determinations.

DATES: May 9, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: The notice of a major disaster for the State of Louisiana, dated April 23, 1991, is hereby amended to include the following areas among those areas determined to have been adversely afected by the catastrophe declared a major disaster by the President in his declaration of April 23, 1991:

Natchitoches Parish for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 91–11647 Filed 5–15–91; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–904–DR]

Louisiana; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Louisiana (FEMA–904–DR), dated May 3, 1991, and related determinations.

DATE: May 8, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3614.

NOTICE: The notice of a major disaster for the State of Louisiana, dated May 3, 1991, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 3, 1991:

Caldwell Parish for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 91–11652 Filed 5–15–91; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–904–DR]

Louisiana; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Louisiana (FEMA–904–DR), dated May 3, 1991, and related determinations.

DATES: May 6, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3614.

NOTICE: The notice of a major disaster for the State of Louisiana, dated May 3, 1991, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 3, 1991:

Madison and west Carroll Parishes for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Acting Deputy Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 91–11653 Filed 5–15–91; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–904–DR]

Louisiana; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Louisiana (FEMA–904–DR), dated May 3, 1991, and related determinations.

DATED: May 9, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3614.

NOTICE: The notice of a major disaster for the State of Louisiana, dated May 3, 1991, is hereby amended to include the following areas among those areas determined to have been aversely affected by the catastrophe declared a major disaster by the President in his declaration of May 3, 1991:

Winn Parish for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support Federal Emergency Management Agency.

[FR Doc. 91–11654 Filed 5–15–91; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–904–DR]

Louisiana; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Louisiana (FEMA–904–DR), dated May 3, 1991, and related determinations.

DATES: May 3, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3614.

NOTICE: Notice is hereby given that, in a letter dated May 3, 1991, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*, Pub. L. 93–288, as amended by Pub. L. 100–707), as follows:

I have determined that the damage in certain areas of the State of Louisiana, resulting from severe storms, tornadoes, and flooding beginning on April 27, 1991, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Louisiana.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas. Public Assistance may be provided at a later date, if requested and warranted. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Graham L. Nance of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Louisiana to have

been affected adversely by this declared major disaster:

The parishes of Ouachita and Union for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Wallace E. Stickney,

Director, Federal Emergency Management Agency.

[FR Doc. 91–11650 Filed 5–15–91; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–904–DR]

Louisiana; Amendments to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Louisiana (FEMA–904–DR), dated May 3, 1991, and related determinations.

DATES: May 4, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3614.

NOTICE: The notice of a major disaster for the State of Louisiana, dated May 3, 1991, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 3, 1991:

The parishes of Claiborne, East Carroll, Morehouse, and Richland for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Robert G. Chappell,

Assistant Associate Director, Disaster Assistance Programs, Federal Emergency Management Agency.

[FR Doc. 91–11651 Filed 5–15–91; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–905–DR]

Oklahoma; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Oklahoma (FEMA–905–DR), dated May 8, 1991, and related determinations.

DATED: May 8, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3614.

NOTICE: Notice is hereby given that, in a letter dated May 8, 1991, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*, Pub. L. 93–288, as amended by Pub. L. 100–707), as follows:

I have determined that the damage in certain areas of the State of Oklahoma, resulting from severe storms and tornadoes on April 26–27, 1991, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Oklahoma.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Alton S. Ray, Jr. of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Oklahoma to have been affected adversely by this declared major disaster:

The counties of Noble, Pawnee, and Rogers for Individual Assistance and Public Assistance; and Osage County for Individual Assistance only.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Wallace E. Stickney,

Director, Federal Emergency Management Agency.

[FR Doc. 91–11655 Filed 5–15–91; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–900–DR]

Texas; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas (FEMA–900–DR), dated April 12, 1991, and related determinations.

DATES: May 8, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3614.

NOTICE: Notice is hereby given that the incident period for this disaster was closed effective April 6, 1991.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 91–11648 Filed 5–15–91; 8:45 am]

BILLING CODE 6718–02–M

U.S. Fire Administration; Board of Visitors for the National Fire Academy; Open 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: Board of Visitors for the National Fire Academy.

Date of Meeting: July 21–22, 1991.

Place: National Emergency Training Center, National Fire Academy, H Building, Third Floor Conference Room, Emmitsburg, Maryland.

Time: July 21 9 a.m.–5 p.m. (Quarterly Meeting). July 22 9 a.m.–Agenda Completion.

Proposed Agenda: Old Business, New Business, Joint Meeting with Emergency Management Institute Board of Visitors.

The meeting will be open to the public with seating available on a first-come, first-serve basis. Members of the general public who plan to attend the quarterly meeting should contact the Office of the Superintendent, National Fire Academy, U.S. Fire Administration, 16825 South Seton Avenue, Emmitsburg, Maryland, 21727 (telephone number, 301–447–1362) on or before July 11, 1991.

Minutes of the meeting will be prepared by the Board and will be available for public viewing in the Administrator's Office, U.S. Fire Administration, Federal Emergency

Management Agency, 16825 South Seton Avenue, Emmitsburg, Maryland 21727. Copies of the minutes will be available upon request 30 days after the meeting.

Dated: May 3, 1991.

Olin L. Greene,

Administrator, U.S. Fire Administrator.

[FR Doc. 91–11645 Filed 5–15–91; 8:45 am]

BILLING CODE 6718–01–M

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of section 2, Public Law 89–777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Alaska Sightseeing Tours, Inc.,
West Leasing, Inc.,
West Travel, Inc., and
Alaska Pacific Boat Company
4th and Battery Bldg., suite 700
Seattle, WA 98121

Vessel: SPIRIT OF ALASKA.

Dated: May 13, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 91–11671 Filed 5–15–91; 8:45 am]

BILLING CODE 6730–01–M

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transporation pursuant to the provisions of section 3, Public Law 89–777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Chandris Incorporated, Chandris S.A., and
Zenith Shipping Corporation
900 Third Avenue
New York, NY 10022–4756

Vessel: ZENITH.

Dated: May 13, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 91–11672 Filed 5–15–91; 8:45 am]

BILLING CODE 6730–01–M

Security for the Protection of the Public Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of section 2, Public Law 89–777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Seven Seas Cruise Line, Ltd. and
Seven Seas Nassau Limited
c/o K Line America, Inc.
535 Mountain Avenue
Murray Hill, New Jersey 07974

Vessel: SONG OF FLOWER.

Dated: May 13, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 91–11673 Filed 5–15–91; 8:45 am]

BILLING CODE 6730–01–M

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Public Law 89–777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR 540, as amended: Seven Seas Cruise Line, Ltd. and K Line America, Inc., 535 Mountain Avenue, Murray Hill, New Jersey 07974.

Vessel: SONG OF FLOWER.

Dated: May 10, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 91–11563 Filed 5–15–91; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Availability of Funds for Community and Migrant Health Center Activities, for the Provision of Technical and Non-Financial Assistance to Community and Migrant Health Centers, and for Cooperative Agreements to Support Community and Migrant Health Centers

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of extension of application due date.

SUMMARY: This notice extends the due date previously published in the **Federal Register** on April 16, 1991 (56 FR 15374–15377) for applications to provide for cooperative agreements to develop migrant health environmental projects addressing migrant farmworker housing, pesticide exposure, field sanitation, health and social services, and water and sanitation services. The new due date is June 17, 1991. All other information remains unchanged.

Dated: May 10, 1991.

John H. Kelso,

Acting Administrator.

[FR Doc. 91–11599 Filed 5–15–91; 8:45 am]

BILLING CODE 4160–15–M

National Institutes of Health,

National Cancer Institute; Meeting of the Board of Scientific Counselors, Division of Cancer Etiology

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, Division of Cancer Etiology on June 27–28, 1991. The meeting will be held in Building 31, C Wing, Conference Room 10, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public from 1 p.m. to recess on June 27 and from 9 a.m. to adjournment on June 28 for discussion and review of the division budget and review of concepts of grants and contracts. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public from 9 a.m. to approximately 12 noon on June 27 for the review, discussion and evaluation of individual programs and projects conducted by the Division of

Cancer Etiology. These programs, projects, and discussions could reveal information concerning individuals associated with the programs and projects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Committee Management Office, National Cancer Institute, Building 31, room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. David McB. Howell, Executive Secretary of the Board of Scientific Counselors, Division of Cancer Etiology, National Cancer Institute, Building 31, room 11A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496–6927) will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.395, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: May 3, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91–11566 Filed 5–15–91; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Meeting; National Arthritis and Musculoskeletal and Skin Diseases Advisory Council

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the National Arthritis and Musculoskeletal and Skin Diseases Advisory Council to provide advice to the National Institute of Arthritis and Musculoskeletal and Skin Diseases on June 13 and 14, 1991, Wilson Hall, Shannon Building, National Institutes of Health, Bethesda, Maryland.

The meeting will be open to the public June 13 from 8:30 a.m. to 12 noon to discuss administrative details relating to council business and special reports. Attendance by the public will be limited to space available.

The meeting of the Advisory Council will be closed to the public on June 13 from 1 p.m. to recess and again on June 14 from 8:30 a.m. to adjournment at approximately 12 noon in accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications. These deliberations could reveal confidential trade secrets or commercial property, such as patentable materials, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Further information concerning the Council meeting may be obtained from Dr. Michael Lockshin, Executive Secretary, National Arthritis and Musculoskeletal and Skin Diseases Advisory Council, NIAMS, Building 31, room 4C32, Bethesda, Maryland 20892, (301) 496–0802.

A summary of the meeting and roster of the members may be obtained from the Committee Management Office, NIAMS, Building 31, room 4C32, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–0803.

(Catalog of Federal Domestic Assistance Program No. 13.846, Arthritis, Bone and Skin Diseases, National Institutes of Health)

Dated: May 3, 1991.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 91–11564 Filed 5–15–91; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Meeting of the Arthritis and Musculoskeletal and Skin Diseases Special Grants Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Arthritis and Musculoskeletal and Skin Diseases Special Grants Review Committee (AMS) of the National Institute of Arthritis and Musculoskeletal and Skin Diseases on June 23 and 24, 1991, Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, Maryland.

The meeting will be open to the public on June 23 from 8 p.m. to 8:30 p.m. to discuss administrative details or other issues relating to the committee activities. Attendance by the public will be limited to space available.

The meeting will be closed to the public on June 23 from 8:30 p.m. to recess and again on June 24 to adjournment in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion, and evaluation of individual research grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Further information concerning this meeting may be obtained from Dr. Melvin H. Gottlieb, Executive Secretary, Arthritis and Musculoskeletal and Skin Diseases Special Grants Review Committee, NIAMS, Westwood Building, room 5A07, Bethesda, Maryland 20892, (301) 496–0754.

Ms. Suzanne Sangalan, Committee Management Officer, National Institute of Arthritis and Musculoskeletal and Skin Diseases, National Institutes of Health, Building 31, room 4C27, Bethesda, Maryland 20892, 301–496–0803, will provide summaries of the meeting and roster of the committee members upon request.

(Catalog of Federal Domestic Assistance Program No. 13.846, project grants in arthritis, musculoskeletal and skin diseases research, National Institutes of Health)

Dated: May 3, 1991.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 91–11565 Filed 5–15–91; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Child Health and Human Development; Meeting of the Board of Scientific Counselors, NICHD

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Child Health and Human Development, June 7, 1991, in Building 31, room 2A52.

This meeting will be open to the public from 9 a.m. to 12 noon on June 7 for the review of the Intramural Research Program and scientific presentations. Attendance by the public will be limited to space available

In accordance with the provisions set forth in sec. 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92–463, the meeting will be closed to the public on June 7 from 1 p.m. to adjournment for the review, discussion, and evaluation of individual programs and projects conducted by the National Institutes of Health, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy

Ms. Mary Plummer, Committee Management Officer, NICHD, Executive Plaza North, room 520, National Institutes of Health, Bethesda, Maryland, Area Code 301, 496–1485, will provide a summary of the meeting and a

roster of Board members, and substantive program information upon request.

Dated: May 3, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91-11568 Filed 5-15-91; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Diabetes and Digestive and Kidney Diseases; Meeting of Subcommittees B, C, and D of the Diabetes and Digestive and Kidney Diseases Special Grants Review Committee

Pursuant to Public Law 92-463, notice is hereby given of meetings of Subcommittees B, C, and D of the National Diabetes and Digestive and Kidney Diseases Special Grants Review Committee, National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK).

These meetings will be open to the public to discuss administrative details at the beginning of the first session of the first day of the meetings. Attendance by the public will be limited to space available. Notice of the meeting rooms will be posted in the hotel lobby.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, for the review, discussion, and evaluation of individual research grant applications. Discussion of these applications could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winnie Martinez, Committee Management Officer, National Institute of Diabetes and Digestive and kidney Diseases, National Institutes of Health, Building 31, room 9A19, Bethesda, Maryland 20892, 301-496-6917, will provide summaries of the meetings and rosters of the committee members upon request. Other information pertaining to the meetings can be obtained from the Executive Secretary indicated.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Special Grants Review Committee, Subcommittee B.

Executive Secretary: Francisco O. Calvo, Westwood Building, room 419, National Institutes of Health, Bethesda, Maryland 20892, Phone: 301-496-7697.

Dated of Meeting: June 6-7, 1991.

Place of Meeting: Residence Inn Hotel, 7335 Wisconsin Avenue, Bethesda, Maryland 20814.

Open: June 6, 7:30 p.m.-8 p.m.

Closed: June 6, 8 p.m.-recess. June 7, 8 a.m.—adjournment.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Special Grants Review Committee, Subcommittee C.

Executive Secretary: Daniel Matsumoto, Westwood Building, room 404B, National Institutes of Health, Bethesda, Maryland 20892, Phone: 301-496-8830.

Dates of Meeting: June 3-4, 1991.

Place of Meeting: Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland 20852.

Open: June 3, 8 a.m.-8:30 a.m.

Closed: June 3, 8:30 a.m.-recess. June 4, 8 a.m.-adjournment.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Special Grants Review Committee, Subcommittee D.

Executive Secretary: Ann A. Hagan, Westwood Building, room 417A, National Institutes of Health, Bethesda, Maryland 20892, Phone: 301-496-7841.

Date of Meeting: June 14, 1991.

Place of Meeting: Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland 20852.

Open: June 14, 8:30 a.m.-8:40 a.m.

Closed: June 14, 8:40 a.m. to adjournment.

Dated: May 3, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91-11567 Filed 5-15-91; 8:45 am]

BILLING CODE 4140-01-M

Office of Human Development Services

Administration for Children and Families

Revised Fiscal Year 1992 Federal Allotments to States for Developmental Disabilities Basic Support and Protection and Advocacy Formula Grant Programs

AGENCY: Administration on Developmental Disabilities, Administration for Children and Families, Department of Health and Human Services.

ACTION: Correction Notice: Revised Fiscal Year 1992 Federal Allotments for States for Developmental Disabilities Basic Support and Protection and Advocacy Formula Grant Programs.

SUMMARY: This notice sets forth the revised individual allotment for each state for fiscal year (FY) 1992 pursuant to section 125 of the Developmental Disabilities Assistance and Bill of Rights Act (Act). This revision is required because the estimated FY 1992 allotments published in the **Federal Register** on April 2, 1991 (56 FR 13482), were based on an erroneous formula computation. The allotments for the states published herein supersede those published on April 2, 1991, and are based upon fiscal year 1991 appropriation levels. These allotments reflect the appropriated funds allocated to the states based on the most recent data available for population, extent of need for services for persons with developmental disabilities, and the financial need of the states.

EFFECTIVE DATE: October 1, 1991.

FOR FURTHER INFORMATION CONTACT: Bettye Mobley, Chief, Formula Grants Management Branch, Division of Grants and Contracts Management, Administration for Children and Families, Department of Health and Human Services, 200 Independence Avenue SW., room 341-F, Washington, DC 20201, telephone (202) 245-7220.

SUPPLEMENTARY INFORMATION: Section 125(a)(2) of the Act requires that adjustments in the amounts of state allotments may be made not more often than annually and that states are to be notified not less than six (6) months before the beginning of any fiscal year of any adjustments to take effect in that fiscal year.

The Administration on Developmental Disabilities updated the data for issuance of fiscal year 1991 formula grants and states were notified by **Federal Register** announcement of April 2, 1990. The data elements used are the same as provided in that issuance, which are:

A. The number of beneficiaries in each State and Territory under the Childhood Disabilities Beneficiary Program, December 1988, are from table 5.J10 of the "Social Security Bulletin: Annual Statistical Supplement 1990" issued by the Social Security Administration, U.S. Department of Health and Human Services. The numbers for the Northern Mariana Islands and the Trust Territories of the Pacific Islands, included under "Abroad" in the table, were obtained from the Social Security Administration.

B. State data on Average Per Capita Income, 1986-88, are from table 1, page 328 of the "Survey of Current Business", August 1990, issued by the Bureau of Economic Analysis, U.S. Department of Commerce; comparable data for the

Territories also were obtained from that Bureau.

C. State data on total population as of July 1, 1988, are from table 1 of "Current Population Reports: Population Estimates and Projections," Series P–25, Number 1058, issued March 1990 by the Bureau of the Census, U.S. Department of Commerce. The working population (ages 18–64) were from table 6 of Series P–25, Number 1058. The Territories data on population are from Current Population Report P–25, No. 1049 issued October 1989. The Territories working populations were obtained from Bureau of Census.

FY 1992 ALLOTMENT—ADMINISTRATION ON DEVELOPMENT DISABILITIES

	Basic support	Protection & advocacy
Total	$64,409,000	$20,982,000
Alabama	1,277,052	383,402
Alaska	350,001	200,000
Arizona	834,276	246,948
Arkansas	728,735	223,674
California	5,538,111	1,614,314
Colorado	703,645	219,486
Connecticut	649,369	208,065
Delaware	350,001	200,000
District of Columbia	350,001	200,000
Florida	2,740,211	816,312
Georgia	1,571,776	482,335
Hawaii	350,001	200,000
Idaho	350,001	200,000
Illinois	2,510,742	773,401
Indiana	1,397,778	426,509
Iowa	759,306	231,799
Kansas	579,574	200,000
Kentucky	1,192,557	351,317
Louisiana	1,335,044	411,662
Maine	350,001	200,000
Maryland	889,956	269,566
Massachusetts	1,257,494	360,946
Michigan	2,300,485	686,771
Minnesota	959,886	293,280
Mississippi	910,637	273,048
Missouri	1,251,855	386,055
Montana	350,001	200,000
Nebraska	397,133	200,000
Nevada	350,001	200,000
New Hampshire	350,001	200,000
New Jersey	1,462,782	424,448
Nex Mexico	442,086	200,000
New York	4,058,809	1,165,430
North Carolina	1,740,521	528,980
North Dakota	350,001	200,000
Ohio	2,748,275	835,703
Oklahoma	877,636	254,377
Oregon	675,716	210,409
Pennsylvania	3,044,603	905,985
Rhode Island	350,001	200,000
South Carolina	1,011,854	308,290
South Dakota	350,001	200,000
Tennessee	1,380,879	420,348
Texas	4,122,685	1,184,151
Utah	501,433	200,000
Vermont	350,001	200,000
Virginia	1,297,636	400,192
Washington	1,024,371	299,141
West Virginia	740,065	222,408
Wisconsin	1,228,946	374,125
Wyoming	350,001	200,000
American Samoa	200,001	107,000
Guam	200,001	107,000
Puerto Rico	2,277,501	654,123

FY 1992 ALLOTMENT—ADMINISTRATION ON DEVELOPMENT DISABILITIES—Continued

	Basic support	Protection & advocacy
Trust Territories	287,562	107,000
Virgin Islands	200,001	107,000
Northern Mariana Islands	200,001	107,000

(Catalog of Federal Domestic Assistance Program Number 93.630 Developmental Disabilities—Basic Support and Advocacy Grants.)

Dated: May 3, 1991.

Deborah L. McFadden,

Commissioner, Administration on Developmental Disabilities.

Approved: May 10, 1991.

Donna N. Givens,

Deputy Assistant Secretary for Children and Families.

[FR Doc. 91–11640 Filed 5–15–91; 8:45 am]

BILLING CODE 4130–01–M

Public Health Service

Diseases Transmitted Through the Food Supply

AGENCY: Centers for Disease Control, Public Health Service, Department of Health and Human Services.

ACTION: Notice of interim list and request for comments regarding infectious and communicable diseases that are transmitted through handling the food supply and the methods by which such diseases are transmitted.

SUMMARY: Section 103(d) of the Americans with Disabilities Act of 1990 requires the Secretary to publish a list of infectious and communicable diseases that are transmitted through handling the food supply. After consultation with the Food and Drug Administration, National Institutes of Health, State and local health officers, and national public health organizations, the interim list set forth below was developed. Comments are requested regarding this interim list.

EFFECTIVE DATE: May 16, 1991. Comments regarding this interim list should be made in writing by July 1, 1991, to the address specified below.

ADDRESSES: Comments should be addressed to Dr. Morris E. Potter, Center for Infectious Diseases, Centers for Disease Control, 1600 Clifton Road, NE., Mailstop C09, Atlanta, Georgia 30333.

FOR FURTHER INFORMATION CONTACT: Dr. Morris E. Potter (see address above), telephone (404) 330–3131.

SUPPLEMENTARY INFORMATION: Section 103(d) of the Americans with Disabilities Act of 1990, 42 U.S.C. 12113(d), requires the Secretary of Health and Human Services to:

1. Review all infectious and communicable diseases which may be transmitted through handling the food supply;

2. Publish a list of infectious and communicable diseases which are transmitted through handling the food supply;

3. Publish the methods by which such diseases are transmitted; and

4. Widely disseminate such information regarding the list of diseases and their modes of transmissibility to the general public.

Such list shall be updated annually.

The purpose of this document is to publish an interim list and request for comments regarding infectious and communicable diseases that are transmitted through handling the food supply and the methods by which such diseases are transmitted.

I. Pathogens often Transmitted by Food Contaminated by Infected Persons Who Handle Food, and the Modes of Transmission of Such Pathogens

The contamination of raw ingredients from infected food-producing animals and contamination during processing are more important causes of foodborne disease than is contamination of foods by persons with infectious or contagious diseases. However, some pathogens are frequently transmitted by food contaminated by infected persons. The presence of any one of the following signs or symptoms in persons who handle food may indicate infection by one of these pathogens: Diarrhea, vomiting, open skin sores, fever, dark urine, or jaundice. The failure of food employees to wash hands (in situations such as after using the toliet, handling raw chicken, cleaning spills, or carrying garbage, for example), wear clean gloves, or use clean utensils is responsible for the foodborne transmission of these pathogens. Non-foodborne routes of transmission, such as from one person to another, are also important in the spread of these pathogens. Pathogens that can cause diseases after an infected person handles food are the following: Hepatitis A virus, Norwalk and Norwalk-like viruses, *Salmonella typhi, Shigella* species, *Staphylococcus aureus, Streptococcus pyogenes.*

II. Pathogens Occasionally Transmitted by Food Contaminated by Infected Persons Who Handle Food, but Usually Transmitted by Contamination at the Source or in Food Processing or by Non-Foodborne Routes

Other pathogens are occasionally transmitted by infected persons who handle food, but usually cause disease when food is intrinsically contaminated or cross-contaminated during processing or preparation. Bacterial pathogens in this category often require a period of temperature abuse to permit their multiplication to an infectious dose before they will cause disease in consumers. Preventing food contact by persons who have an acute diarrheal illness will decrease the risk of transmitting the following pathogens: *Campylobacter jejuni, Entamoeba histolytica,* Enterohemorrhagic *Escherichia coli,* Enterotoxigenic *Escherichia coli, Giardia lamblia,* Nontyphoidal *Salmonella,* Rotavirus, *Vibrio cholerae* 01, *Yersinia enterocolitica.*

References

1. World Health Organization. *Health surveillance and management procedures for food-handling personnel: Report of a WHO consultation.* World Health Organization technical report series; 785. Geneva: World Health Organization, 1989.
2. Frank JF, Barnhart HM. Food and dairy sanitation. In: Last JM, ed *Maxcy-Rosenau public health and preventive medicine,* 12th edition. New York: Appleton-Century-Crofts, 1986:765–806.
3. Bennett JV, Holmberg SD, Rogers MF, Solomon SL. Infectious and parasitic diseases. In: Amler RW, Dull HB, eds. *Closing the gap: The burden of unnecessary illness.* New York: Oxford University Press, 1987:102–114.

Dated: January 4, 1991.

James O. Mason,

Assistant Secretary for Health.

Dated: May 9, 1991.

Louis W. Sullivan,

Secretary.

[FR Doc. 91–11638 Filed 5–15–91; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Policy Development and Research

[Docket No. N–91–3269]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject survey.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Wendy Sherwin, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; telephone (202) 708–0050. This is not a toll-free number. Copies of the documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the survey of single family mortgage escrow practices to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C., chapter 35). It is also requested that OMB complete its review within ten (10) days.

This Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, or reinstatement, and (9) the telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: May 9, 1991.

John C. Weicher,

Assistant Secretary, Policy Development and Research.

Proposal: Survey of Single Family Mortgage Escrow Practices.

Office: Policy Development and Research.

Description of the Need for the Information and Its Proposed Use

The survey is a component of a larger study examining escrow management for single family mortgages and is destined to document existing escrow practices, assess compliance with the Real Estate Settlement Procedures Act of 1974, and determine the impact of current escrow methods on borrowers' accounts.

The study is being completed by the Department in response to Congressional concern over consumer complaints and the April 1990 report by seven State Attorneys General entitled "Overcharging on Mortgages: Violations of Escrow Account Limits by the Mortgage Lending Industry." HUD's intention to conduct an independent analysis of escrow policies was completed within 90 days. The initial analysis—based on a series of interviews with industry representatives and other interested parties, as well as the results of simulating escrow account balances under alternative policies—has now been completed. Phase II of the study will collect data from a representative sample of mortgage servicers to quantify the impacts of existing practices for actual borrowers.

Respondents: 285.

Frequency of Submission: One time.

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Reporting Burden:	285		1		8		2,280

Total Estimated Burden Hours: 2,280

Status: New.

Contact: Susan E. Woodward, HUD (202) 708–3080, Wendy Sherwin, OMB 395–6680.

Dated: May 9, 1991.

REQUEST FOR OMB APPROVAL AND SUPPORTING STATEMENT

SURVEY OF SINGLE FAMILY MORTGAGE ESCROW PRACTICES, APRIL 15, 1991

Introduction

This request pertains to survey of approximately 285 mortgage servicers to be conducted for the Department of Housing and Urban Development. The survey is a component of a larger study examining escrow management for single family mortgages and is designed to document existing escrow practices, assess compliance with the Real Estate Settlement Procedures Act of 1974, and determine the impact of current escrow methods on borrowers' accounts.

The study is being completed by the Department in response to Congressional concern over consumer complaints and the April 1990 report by seven State Attorneys General entitled "Overcharging on Mortgages: Violations of Escrow Account Limits by the Mortgage Lending Industry." HUD's intention to conduct an independent analysis of escrow policies was communicated to Congress in December, 1990, with the initial component of the analysis to be completed within 90 days. That initial analysis—based on a series of interviews with industry representatives and other interested parties, as well as the results of simulating escrow account balances under alternative policies—has now been completed. Phase II of the study will collect data from a representative sample of mortgage servicers to quantify the impacts of existing practices for actual borrowers.

The survey and analysis will be conducted for HUD by an independent contractor, with results to be provided by August 9, 1991. As shown in Appendix A, the survey will consist of two parts: the first part will collect information on servicing practices from a sample of approximately 285 servicing institutions; the second part will request summary data for a sample of between 25 and 50 mortgage loans serviced by each institution. The remainder of this document addresses the specific elements requested by SF83.

Section A.—Justification for the Collection of Information

A1. Circumstances That Make the Collection of Information Necessary

When HUD General Counsel Keating testified before Congress in September, 1990,[1] the Committee expressed concern over possible "overescrowing" of mortgage accounts as described in an April 1990 report prepared by the Attorneys General of seven states. Key issues include the extent of servicers' conformance with acceptable methods of escrow calculation under the Real Estate Settlement Procedures Act of 1974 (RESPA), as well as compliance with underlying loan documents which may contain controlling language on escrow management.

Under RESPA, HUD is responsible for prescribing rules and regulations pursuant to the Act. According to Section 19(c)(1):

"The Secretary may investigate any facts, conditions, practices or matters that may be deemed necessary or proper to aid in the enforcement of the provisions of this Act, in prescribing of rules and regulations thereunder, or in securing information to serve as a basis for recommending further legislation concerning real estate settlement practices."

Under this authority, the Department has commissioned an independent study of mortgage escrow practices which includes the survey of mortgage servicers for which OMB clearance is requested.

A2. Use and Users of the Information

The information to be collected includes data on mortgage escrow practices to be collected from a sample of 285 mortgage servicers, and data on 8,650 individual mortgages serviced by the respondent firms. Appendix A includes a copy of the survey instrument. Note that the instrument is divided into two parts:

- Part A consists of 22 questions requesting basic information on servicing volume, loan characteristics, and escrow procedures, including a series of detailed questions designed to capture servicer practices in various aspects of escrow management.
- Part B requests information on individual loan accounts served by the respondent. The cover sheet will provide detailed instructions on how servicers are to randomly select sample loans for inclusion in the study. The Mortgage Account Data Sheet requests approximately 30 data items related to individual accounts. These are intended to provide a summary picture of account activity which will permit quantitative analysis of key escrow issues.

In addition to providing summary data on each loan, servicers are requested to attach two documents to the summary sheet. These include an escrow history (typically a computer generated report that will be used as the basis for providing summary data) and a copy of the loan document. The former will be used to verify the information provided. The latter will be used to assess the extent to which servicing procedures are in conformance with the underlying loan documents.

Survey data will be collected by mail. To ensure high response rates, servicers who do not respond during the alloted time period will be contacted by telephone to answer any questions and to encourage them to respond. The survey will be conducted by an independent contractor who will also perform the survey analysis and prepare a report of the findings to be submitted to HUD.

The Department will be the principal user of the information collected through the survey. HUD will use the results to assess the impact of current escrow practices and to develop new rules and regulations as appropriate. Congress will also be a user of the information in its consideration of escrow issues. Failure to conduct the survey would leave the Department without a means of obtaining statistically reliable data on this topic and without a means to determine whether further regulatory or statutory response is warranted.

A3. Use of Information Technology To Reduce Burden

Information for this study will include written survey responses as provided by escrow managers and summary data abstracted from account records for individual loans. All respondents should be able to select sample loans and generate the needed account data using in house computer systems. However, systems and reporting formats are not standardized; thus, some additional manipulation will be required to provide the data in usable form. Discussions with managers contacted as a part of Phase I of this study suggest that the proposed approach is workable and that the needed data can be generated quickly and easily.

A4. Efforts To Identify Duplication

Previous information on escrow accounts is available from the work of the seven State Attorneys General noted above. However, these data are incomplete for the purposes of this study. In addition they do not reflect a statistically reliable sample from which conclusions can be drawn.

As a part of Phase I of this study, discussions were held with individuals who worked on the report of the Attorneys General and with a wide variety of industry representatives. A conclusion of this investigation was that there is no existing source of

[1] Committee on Banking, Finance, and Urban Affairs. Subcommittee on Housing and Community Development.

information on escrow practices or accounts that could be used for this study.

A5. Why Similar Information Cannot Be Used

As described above, there is no source of data on escrow practices other than that which can be obtained by surveying individual mortage servicers. The only similar data which exits is that obtained (by identical means) by the State Attorneys General. However, these detailed loan data cover only 79 loans serviced by two of the nation's largest servicers. The methods used by the Attorneys General were not intended to provide a statistically sound basis for determining industry wide practice. By contrast, the current study will employ statistically valid samples of servicing entities and escrow accounts.

A6. Efforts To Minimize the Burden on Small Businesses

It is unlikely that the servicers included in the survey will be small businesses. Every effort will be made in this study to minimize the burden on all respondents. No special procedures are envisioned for small business repondents.

A7. Consequences of Less Frequent Data Collection

The Survey of Single Family Mortage Escrow Practices is a one-time activity.

A8. Circumstances That Require Data Collection Procedures Inconsistent With 5 CFR 1320.6

No data collection procedures that are inconsistent with 5 CFR 1320.6 are proposed.

A9. Efforts To Consult With Persons Outside the Agency on Data Collection

In Phase I of this study, the contractor and HUD personnel met with representatives of the mortgage servicing industry, the Mortage Bankers Association, investment bankers, and servicing software vendors, as well as with staff of the New York Attorney General's Office. A list of key contacts is provided in Exhibit 1. As part of these interviews the proposed survey approach was discussed in order to examine possible alternatives and to refine the survey methods. In selected cases, the content of the survey questions was reviewed in order to ensure that terms were correctly used and that questions would indeed elicit the desired information.

A10. Assurances of Confidentiality

Respondents to this survey will be assured that any data they provide will be considered confidential and will not be shared with HUD or any other party. They study contractor will maintain all such data in secure storage. No individual respondents or firms will be identified. The contractor will report only aggregate data. Consistent with HUD policy on research data, if HUD requests data tapes at the conclusion of the study for its own analysis, these will only be made available after all identifying data has been deleted from the survey files.

Exhibit 1.—Consulation With Persons Outside the Agency on Data Collection

Ms. Dorothy H. Autrey, Senior Vice President, Lomas Information Systems, 1750 Regal Row, Dallas, TX 75235 (214) 879–4168

Ms. Donna M. Krall, Senior Vice President, Independence One Mortgage Corporation, 300 Galleria Officentre, Southfield, MI 48034, P.O. Box 5076, Southfield, MI 48086–5076, (313) 350–6175

Mr. Terry J. Deyoe, Executive Vice President, Lomas Mortgage USA, 1600 Viceroy Drive, Dallas, TX 75235, (214) 879–4400

Ms. Linda Whiteman, Vice President, Fireman's Fund Mortgage Corporation, 27555 Farmington Road, Farmington Hills, MI 48334–3357

Mr. Robert W. Shively, Vice President, CitFed Mortgage Corporation of America, One Citizens Federal Centre, Dayton, OH 45402

Mr. Dennis J. Davis, Vice President—Sales, Lomas Information Systems, 1750 Viceroy Drive, Dallas, Texas 75235, (214) 879–5952

Mr. William T. Hartt, Senior Vice President, Southeast Mortgage Company, 2500 Northwest 79th Avenue, Miami, Florida 33122, (305) 594–2446

Mr. Steven F. Eckstein, Senior Vice President, Fireman's Fund Mortgage Corporation, 27555 Farmington Road, Farmington Hills, MI 48018, (313) 661–7428

A11. Justification for Questions of a Sensitive Nature

The information requested through this survey is ordinarily not considered to be sensitive in nature. Questions are related to business practices and the maintenance of escrow accounts in conformance with HUD requirements. There are no questions of a personal nature or questions on matters that are commonly considered private.

A12. Estimate of the Annual Cost of the Data Collection

The survey data will be collected as part of a Task Order under HC–5813, an Indefinite Quantity Contract between the Department and ICF Incorporated. Costs for the survey are estimated at $265,193 as follows:

Direct Labor (112 hours), Fringe Benefits, and Overhead	8,514
Other Direct Costs	151
Total Labor and Expenses	8,666
General and Administrative	1,031
Subcontractor Cost	225,000
Subcontractor General and Administrative	9,720
Total Estimated Cost	244,417
Estimated Cost with Fees	265,193

Estimated subcontractor costs are based on approximately 2,000 labor hours plus expenses.

A13. Estimates of the Burden of Information Collection

Estimated respondent burden for this data collection is 2,352 hours as shown below:

	Number of respondents	Burden per respondent (hours)	Total burden (hours)
Survey part A: Escrow practices	285	0.75	214
Survey part B: Accounts data	285	7.5	2,138
Total data collection	285	8.25	2,352

*Assumes that, on average, each servicer will provide data on 30 accounts. The estimated time needed to generate account records, copy mortgage documents, and complete the summary data form is 15 minutes per account.

A14. Changes in Burden

This is a new data collection and is a one-time activity. There is no change in burden.

A15. Plans for Statistical Analysis and Publication

The data to be collected through this survey will be used to conduct an analysis of escrow practices and their impacts on borrower accounts.

- Data collected in Part A will support a descriptive analysis of current escrow practices, including the extent to which single item versus composit analysis is used. Information on other policies/factors that affect escrow balances (e.g., reserve amounts, the frequency with which escrow accounts are reviewed, disbursement policy, procedures for handling shortages and averages, and estimation procedures)

will be presented. Differences in policies and practices will be related to outcomes observed for the sample accounts.

• Data collected in Part B will support an analysis of the impact of escrow practices on borrower accounts. This will include a determination of the extent of overescrowing if any (by comparing target reserves with actual minimum and average balances) and an analysis of the potential costs to borrowers. In addition to analyzing servicer compliance with RESPA requirements, data will be presented on the extent to which accounts are maintained in conformance with underlying loan documents.

The data will also support analyses of variances between servicers, and other factors that may affect the amount of escrow (e.g., property tax payment policy at the state level, disbursement relationships, and aspects of servicer policies).

Regression analysis will be used to estimate the relative importance of different independent factors that predict the likelihood and the level of overescrow. (See Question B2 for additional information on statistical tests and methods.)

The data and analysis outlined above will be presented in a final research report to be submitted to the Department of Housing and Urban Development. This report will form a basis for the Department's response to Congress and for any regulatory or statutory steps that may be warranted.

The schedule for the project is provided below. The Phase II schedule assumes that OMB clearance can be obtained in fewer than the standard 60 days.

Phase I: Assessment of Issues

Management Plan—February 8, 1991
Industry Meetings—February 22, 1991
Modeling and Analysis—February 22, 1991
Survey Design—February 22, 1991
Phase I Report—February 28, 1991

Phase II: Survey and Analysis

Receipt of OMB Clearance—May 3, 1991 (Target)
Select Survey Sample—May 17, 1991 (Week 2)
Data Base Programming—May 17, 1991 (Week 2)
Distribution of Survey—May 24, 1991 (Week 3)
Follow-up and Data Entry—June 12, 1991 (Week 10)
Analysis and Report—August 9, 1991 (Week 14)

Section B.—Collections of Information Employing Statistical Methods

B1. Respondent Universe/Sample Plan

Sampling Approach/Description of the Population: A stratified two-stage sampling plan is proposed as follows:

1. *Primary Sampling Unit Stratification.* The primary sampling units are mortgage servicers. Mortgage servicers will be stratified into three strata or tiers as follows:

• First tier servicers consisting of the largest 25 servicers in terms of number of mortgages serviced.

• Second tier servicers consisting of the next largest 475 servicers in terms of number of mortgages serviced.[2]

• Third tier servicers consisting of the remaining primary sampling units, i.e., servicers.

All servicers in the first tier will be selected. However, only a sample of servicers from the second tier and a sample of servicers from the third tier will be selected.

2. *Secondary Sampling Unit.* The secondary sampling units are mortgages. For each servicer selected in the previous stage, a sample of mortgages serviced by that servicer will be selected.

Sample Size: Sample size determination requires that certain predictions about the expected parameters of the population distribution be made. When data about these parameters are not available, predictions are usually based on a pilot sample. In this case, the necessary data are not available, nor is a pilot sample proposed. However, the first phase of this study provides some insights that allow assumptions to be made for the purpose of estimating the sample size. Among other assumptions, the following are important to the proposed sample size.

First, we expect more variability between servicers that within servicers. Further, we expect variability between servicers to be low among first tier servicers and successively higher in the next two tiers. In addition, we expect variability within servicers to be consistently low in all tiers. Finally, we expect that approximately 35% to 40% of the mortgages selected will not be usable because of no escrow or recent origination.

Another consideration in the proposed sample is HUD's desire to know more about servicers in the first tier than in the other two tiers. Accordingly, al' servicers in the first tier are included in the sample.

Based on these assumptions and considerations, the following sample sizes are proposed:

Tier	Servicers	Mortgages per servicer	Total mortgages
First	25	50	1,250
Second	60	40	2,400
Third	200	25	5,000
Total	285	30.4	8,650

B2. Sample Selection Procedures and Statistical Methods

Sample Selection: Procedures for selecting the samples in each stage are as follows:

Stage 1. It is proposed that:

1. All servicers in the first tier will be selected.

2. Second tier sample selection will be based on either equal probability selection or selection based on probability proportionate to size, depending on the definition of the tier.

3. Third tier sample selection will be based on equal probability selection.

Stage 2. A systematic selection of mortgages with a random start is proposed. The result will be for servicers selected in the third tier (and possibly the second tier) that the number of mortgages selected will be proportional to the number of mortgages serviced by that servicer.

Statistical methods

1. *Estimation of Population parameters (Descriptive Statistics).* Many of the questions of interest address the population as a whole. For example, the following questions could be answered at a proposed level of confidence of 95% and within different precision limits ranging from 5% to 10% from the sample:

• What is the total number of mortgages in the U.S. that had average escrow balances in excess of escrow requirements by, say, $25 or more?

• What is the average escrow balance or overescrow amount per mortgage?

[2] To determine the primary units within this stratum, total mortgage dollars serviced by the servicer may have to be used in some cases as a surrogate of size. However, to minimize errors resulting from the use of this surrogate, an average dollar amount per mortgage in this stratum will be used to verify the faithfulness of total dollars served as a measure of servicer size. Alternatively, this stratum may need to be limited to those servicers in this group for which we have an actual number of mortgages serviced. Under this alternative, this stratum would be defined as the top 100 banks in mortgage servicing, the top 300 mortgage companies and the top 50 thrifts that are not included in the first tier of 25 servicers.

Estimation of population parameters could be done for the population as a whole, for any tier, for any collection of tiers, or any individual servicer which is selected.

Any such estimate would be derived by calculating a point estimate from the sample, and then a confidence interval that would depend on the variance of the sample, the sample size, and the weights of the population tiers.

2. *Tests for Differences/Analysis of Variance (ANOVA).* For many of the issues in the study, a test of differences of analysis of variance (ANOVA) will be utilized. Between any two tiers, or between any two individual servicers the standard t-test (for means) could be used to test if any differences found are significant.

For comparison of more than two groups (i.e., differences between the top 25 individual servicers), a one-way ANOVA can be used.

In addition to measuring differences by servicer (or servicer size), other variables will be of interest. For example, we will need to consider the impact of state policies such as the number of tax payments per year.

We have the option of performing a one-way ANOVA on the variable of interest, or a two-way ANOVA (say between size of servicer and a second variable). Since the sampling plan does not consider these variables (i.e., we cannot control for the number of mortgages selected by state), we almost certainly will be in a situation where a weighted ANOVA calculations will be required. Also, to keep the calculations feasible, and the number of degrees of freedom reasonable, we may make certain assumptions about the lack of interaction between the variables being analyzed, and only look for the linear impacts of the variables selected.

For all of the ANOVA tests, the F-Statistic can be used to determine if the differences found are significant.

3. *Regression Analysis (Model Building).* Since so many of the parameters are based on numeric scales (size of servicer, size of mortgage, number of tax payments/year), and many of the others can be adapted to a numeric scale, multiple linear regression can be utilized to determine the relative importance of different independent variables in predicting dependent variables, such as the likelihood of overescrow or an estimate of the amount of overescrow.

B3. Methods for Maximizing Response Rates

Respondents selected for the survey will be advised of HUD's authority to collect data under RESPA section 19(c)(1). This section states:

"The Secretary may investigate any facts, conditions, practices or matters that may be deemed necessary or proper to aid in the enforcement of the provisions of this Act, in prescribing of rules and regulations thereunder, or in securing information to serve as a basis for recommending further legislation concerning real estate settlement practices."

In addition, all firms who have not responded within 4 weeks of the initial request will be contacted by telephone by the survey contractor. The contacts will be used to encourage a timely response and to provide any assistance that may be necessary. These steps should ensure a relatively high response rate for this survey effort.

B4. Tests of Procedures

As noted previously, various aspects of the intended survey have been informally reviewed with industry representatives. This has included discussion of appropriate data collection approaches, the level of effort (burden) required to assemble the needed data, and review of the content and wording of specific questions. Prior to implementing the survey, the survey contractor will conduct an additional pretest with several mortgage servicers to confirm that the full instrument and its instructions are clear and understood by potential respondents.

B5. Statistical Consultation

The study is being conducted for HUD by an independent contractor. The prime contractor is ICF Incorporated (contact Kathleen Heintz, 703–934–3726). The survey subcontractor is McGaldrey & Pullen (contact Mark Jones, 202–382–0024). The sampling plan was developed by Dr. Sabry Heakal (612–332–4300). HUD's representative for this project is Susan Woodward, Deputy Assistant Secretary, Office of Economic Affairs (202–708–3080).

APPENDIX A

SURVEY INSTRUMENTS AND INSTRUCTIONS

Escrow Management For Single-Family Residential Property

Part A: Servicer Policies and Procedures—Instructions

This part of the survey consists of twenty-two questions relating to escrow policies and procedures for 1–4 single family mortgages. We are interested only in escrow practices for 1–4 single family mortgages. If you service other types of mortgages, please exclude these activities from your survey response.

These questions have been reviewed with representatives from the mortgage servicing industry in an attempt to standardize terminology, and refine and target our questions.

Questions 1–10 are intended to provide us an overview of your servicing business. We are asking for statistical and portfolio balance information. Estimates and approximations are acceptable if you do not have these figures available.

Questions 11–22 are presented in a multiple choice format and ask about specific policies and practices. We appreciate the complexities of the mortgage servicing business and understand that exceptions to policies and procedures are made. In answering these questions, please indicate what the "typical" or "routine" action is. If there are common and significant exceptions we should know about, please describe these in an attachment.

Escrow Management for Single-Family Residential Property

Escrow Survey of Mortgage Servicers

(Draft: 3/11/91)

Business Overview:

1. Approximate number of single-family mortgages serviced during past two years.

(a) Number of loans serviced: 1990._____

(b) Number of loans serviced: 1989._____

(c) Average $ amount (year-end total) of loans serviced: 1990._____

(d) Average $ amount (year-end total) of loans serviced: 1989._____

2. Approximate number of states and local tax jurisdictions represented in your servicing portfolio.

(a) States._____

(b) Total tax jurisdictions. (Approximate)_____

3. In how many states do you use an outside tax service vendor?

(a) None._____

(b) Number:_____

4. Percentage of number of loans for which you maintain some type of escrow account.

(a)_____%

5. Approximate average $ balance of the escrow accounts you maintain (based on month-end totals).

(a) Average throughout 1990._____

(b) Average throughout 1989._____

6. Approximate average $ balance of outstanding escrow advances you made on performing single-family mortgages (based on month-end totals).

(a) Average throughout 1990._____

(b) Average throughout 1989._____

7. On what fraction of the performing, non-delinquent loans you service did you have funds advanced? (Month-end number of loans, averaged over the year).

(a) Average throughout 1990._____

(b) Average throughout 1989._____

8. Have you purchased or sold servicing to an unaffiliated entity within the past two years?

(a) Yes—both purchased and sold.

(b) Yes—purchases only.

(c) Yes—sales only.

(d) No

9. If "yes", approximately how much servicing did you purchase or sell during the past two years?

(a) Purchased servicing (# of loans): 1990._____

(b) Purchased servicing (# of loans): 1989._____

(c) Sold servicing (# of loans): 1990._____

(d) Sold servicing (# of loans): 1989._____

10. What was the first year in which you purchased or sold servicing?

(a) Year servicing first sold:_____

(b) Year servicing first purchased:_____

Escrow Policies and Procedures

11. Would you describe your basic method of escrow accounting as:

(a) Individual-item or single-item analysis.

(b) Composite, aggregate or cash analysis.

(c) Other (please describe).

_____

12. How many years have you used the method indicated above?

(a) 2 years or less.

(b) 2–10 years.

(c) 10–16 years.

(d) Prior to the enactment of RESPA in 1974.

13. (FOR COMPOSITE ANALYSIS USERS ONLY): What is your escrow reserve target?

(a) No reserve.

(b) One month reserve.

(c) Two month reserve.

(d) Other (please describe).

_____

14. (FOR SINGLE-ITEM USERS ONLY): Which of the following choices best describes your escrow reserve policy?

(a) No reserve accrued for or retained if it arises.

(b) No reserve accrued for, but we will retain a balance of up to 1 month or 2 months (circle correct answer) if it arises.

(c) We accrue for a 1 month or 2 month reserve (circle correct answer).

(d) Other (please describe).

_____

15. How often do you perform escrow analysis?

(a) Annually.

(b) Semi-annually.

(c) Other (please describe).

_____

16. Assume the following situation: A tax payment of $900 is due May 1st. The delinquent date is May 15. On what date would you normally disburse the funds.

(a) May 15.

(b) May 5.

(c) April 25.

(d) Other (please describe).

_____

17. Assume the facts of the previous question, and that your policy is to disburse on May 5. In establishing the monthly escrow amount, at what point would you expect to have accrued.

(a) May Payment.

(b) April Payment.

(c) March Payment.

(d) Other (please describe).

_____

18. If escrow analysis disclosed a deficiency (escrow balance under target), what best describes your policy for eliminating the deficiency.

(a) Request single payment to cover deficiency.

(b) Adjust monthly payment so as to eliminate deficiency over the next twelve months.

(c) Other (please describe).

_____

19. If escrow analysis disclosed a shortage (negative balance in the escrow account) thus requiring you to make an advance, what best describes your policy for collecting the advance from the borrower?

(a) Request single payment to cover amount advanced.

(b) Collect amount advanced over six months.

(c) Collect amount advanced over twelve months.

(d) Depends on $ amount of shortage (please describe $ limits and action taken).

_____

20. The presence of a shortage will typically result in a deficiency as well. What best describes your policy for dealing with a deficiency when it is accompanied by an advance?

(a) Request a single payment to recover both the advance and the full amount of the deficiency.

(b) Collect the advance in a single payment and adjust the monthly payment to eliminate the deficiency over a twelve month period.

(c) Collect both the advance and the deficiency over a twelve month period.

(d) Other (please describe).

_____

21. If escrow analysis disclosed an overage, what best describes your policy for handling the overage?

(a) Apply excess to the mortgage balance.

(b) Remit overage to the borrower.

(c) Reduce future escrow payment amount to eliminate overage.

(d) Depends on $ amount of overage (please describe $ limits and action taken).

_____

22. In performing escrow analysis for the coming year, it is necessary to estimate the future payment for escrow items. Assume that the following facts about a particular mortgage:

—Last year's property taxes were $1,200, paid in April and October.

—The April payment was $550; the October payment was $650.

—Property taxes have tended to increase during the past few years.

Which of the following choices most closely describes how you would typically estimate the amount to be collected for property taxes?

(a) Use last year's actual payment ie, $1,200.

(b) Take the last actual payment and annualize the amount, ie., $1,300.

(c) Apply a percentage increase factor, taking into account your best information.

(d) Other (please describe).

_____

Escrow Management for Single-Family Residential Property

Part B: Individual Escrow Account Data-Instructions

This part of the survey requests information on specific borrower escrow accounts. A Mortgage Account Data Sheet is to be completed for each borrower account. A completed form has been included as an example. Attach the completed Mortgage Account Data Sheet to the supporting Escrow History Statement for 1989 and 1990.

Selection of Borrower Accounts

Escrow Management for Single-Family Residential Property Survey of Mortgage Servicers

Part B: Individual Escrow Account Data

Mortgage Account Data Sheet

Servicer ID code: _____
Date: _____
Prepared by: _____
Mortgage Account Number: _____
Date of Origination: _____
Original Balance: _____
Current Balance: _____

HISTORY OF SERVICING

Servicer	Date	
	From	To
(1) _____		
(2) _____		
(3) _____		
(4) _____		
(5) _____		

List Payments for Which Escrow is Maintained

(1) _____
(2) _____
(3) _____
(4) _____
(5) _____
(6) _____

Jurisdiction in Which Taxes are Paid

County _____
State _____

Were any Corporate Advances Made on This Account During 1989 or 1990?

(A) Yes
(B) No

If Yes, Provide the Following Information About Each Advance

(1) Number of Days Account in Advance (Deficient) Status
(2) High Balance of Advance
(3) Average Balance of Advance

Is Interest Paid on This Account?

(A) Yes, at _____%
(B) No

History of Escrow Balances

	1989	1990
Low Balance		
High Balance		
Average Balance (Based on Month End Balances)		

Attach a Copy of the Mortgage Documentation That Discusses Allowable Escrow Practices

Monthly Escrow Amount? Total Payments by Escrow Type Each Year

[FR Doc. 91-11686 Filed 5-15-91; 8:45 am]
BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

White House Conference on Indian Education Advisory Committee; Meeting

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the proposed schedule of the forthcoming meeting of the White House Conference on Indian Education Advisory Committee. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. The White House Conference on Indian Education Advisory Committee is established by Public Law 100-297, part E. The Committee is established to assist and advise the Task Force in the planning and conducting the conference.

DATE, TIME AND PLACE: June 3, 1991, at 10:30 a.m. to 5 p.m. and June 4, 1991, at 9 a.m. to 4 p.m. at the U.S. Department of Education, 400 Maryland Avenue, SW., room 3000, FOB 6, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Dr. Benjamin Atencio, Deputy Director, White House Conference on Indian Education, U.S. Department of Interior, 1849 C St., NW., MS 7026-MIB, Washington, DC 20240; telephone 202-208-7167; fax 208-4868.

AGENDA: The Advisory Committee for the White House Conference on Indian Education will discuss and advise the Task Force on all aspects of the Conference and actions which are necessary for the conduct of the Conference. Summary minutes of the meeting will be made available upon request. The meeting of the Advisory Committee will be open to the public.

Items to be discussed: Pre-Conference activities and grants; telecommunications; conference site; selection process for participants; budget and administrative matters; election of Advisory Committee Chairperson and Conference Chairperson; Commission Paper topics and writers and other matters related to the Conference.

Dated: May 9, 1991.

Selma Sierra,

Assistant to the Secretary and Director of External Affairs.

[FR Doc. 91-11577 Filed 5-15-91; 8:45 am]
BILLING CODE 4310-RK-M

Bureau of Land Management

[MT-070-4333-13]

Rescission of Emergency Area Closure, Limestone Hills, Headwaters Resource Area, MT

AGENCY: Bureau of Land Management, Butte District Office; Interior.

ACTION: Nullification of emergency area closure on public lands.

SUMMARY: Notice is hereby given to rescind the emergency area closure order for all described public lands of the Limestone Hills area as previously published on page 37509 of the Federal Register on September 11, 1989. This action is effective as of the date of this publication. Authority for revoking this closure is 43 CFR 8341.2. Rationale for the emergency closure is no longer applicable in that the area burned by the Indian Creek Fire has now been successfully rehabilitated.

FOR FURTHER INFORMATION CONTACT: Bradley Rixford, Bureau of Land Management, P.O. Box 3383, Butte, Montana 59702, at commercial phone 406-494-5059 or FTS 585-8059.

Dated: May 7, 1991.

James R. Owings,

District Manager.

[FR Doc. 91-11607 Filed 5-15-91; 8:45 am]
BILLING CODE 4310-DN-M

[ID-010-00-4320-02-ADVB]

Boise District Grazing Advisory Board; Tour and Meeting

AGENCY: Boise District, Bureau of Land Management, Idaho; Interior.

ACTION: Notice of tour and meeting.

SUMMARY: The Boise District Grazing Advisory Board will tour the Jarbridge Resource Area on June 12th to look at various wildlife projects that have been funded in part with Range Improvement (8100) monies. The tour will leave the BLM Boise District Office at 8 a.m. on June 12th and conclude at Jackpot, Nevada that evening. A Grazing Advisory Board meeting will be held June 13th at Three Creek School. The following items will be discussed: implementation of a District Project Schedule, District Exclosure Policy,

Owyhee RMP update, Cliff's and Reynolds Creek CRMP update, drought update, and water quality update. The meeting is open to the public and a comment period will be held at 2 p.m.

DATES: The tour will leave at 8 a.m. Wednesday, June 12, 1991, from the BLM Boise District Office. The meeting will begin at 9:00 a.m. on Thursday, June 13, 1991.

ADDRESSES: The Boise District Office is located at 3948 Development Avenue, Boise, Idaho, 83705. The Grazing Advisory Board meeting will be held at Three Creek School which is approximately 35 miles east of Rogerson on the Rogerson-Three Creek highway.

FOR FURTHER INFORMATION CONTACT: Fred Schley, Boise District, BLM (208)384–3457.

Dated: May 3, 1991.

J. David Brunner,

District Manager.

[FR Doc. 91–11606 Filed 5–15–91; 8:45 am]

BILLING CODE 4310–GG–M

[G–010–5101–09–YGKJ/G1–011; NMNM80900]

Albuquerque District Office; Right-of-Way Application; New Mexico

AGENCY: Bureau of Land Management, Albuquerque District, Interior.

SUMMARY: An application, serialized as NM80900, was received for a seven mile right-of-way for a 30 inch diameter pipeline.

Notice is hereby given that, pursuant to section 28 of the Mineral Leasing Act of 1920 (30 USC 185), as amended by the Act of November 16, 1973 (37 Stat. 576), Transwestern Pipeline Company has applied for a right-of-way serialized as NM80900 to construct seven miles of 30 inch diameter natural gas pipeline across public land in San Juan County, New Mexico. This is part of a project that will transport natural gas to California markets. The proposed line crosses the following public lands in San Juan County:

New Mexico Principal Meridian

T. 28 N., R. 11 W.,
Sec. 9: SE¼SE¼;
Sec. 10: Lots 2, 3, 4, S½SW¼.

The purpose of this notice is to inform the public that the Bureau will be deciding whether the right-of-way should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, 435 Montano Road, NE., Albuquerque, NM 87107.

Dated: May 9, 1991.

Patricia E. McLean,

Associate District Manager.

[FR Doc. 91–11604 Filed 5–15–91; 8:45 am]

BILLING CODE 4310–FB–M

[OR–030–01–4212–13: GP1–207]

Exchange of Public Lands in Malheur County, OR

May 7, 1991

ACTION: Notice of Realty Action OR 44787.

The following described lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Willamette Meridian

T. 17S., R. 44E.:
Sec. 14: NE¼, N½NW¼, SE¼NW¼, NE¼SW¼, N½SE¼.
T. 17S., R. 45E.:
Sec. 17: W½;
Sec. 18: lot 1, 2, 3, 4, E½W½, E½.

The area described above aggregates 1353.01 acres in Malheur County, Oregon.

In exchange for these lands, the Federal Government will acquire the following described private lands from OT Farms.

Willamette Meridian

T. 17S., R. 45E.:
Sec. 8: E½W½.
T. 18S., R. 45E.:
Sec. 3: lot 1, 2, 3, 4, S½N½, S½.

The area described above aggregates 802.64 acres in Malheur County, Oregon.

This proposed land exchange was published in the **Federal Register** Vol. 54 FR, page 27436 on Thursday, June 29, 1989. The purpose of this Notice is to extend the segregative effect on the public lands described above from appropriation under the public land laws, including the mining laws, but not from exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976. The segregative effect of this Notice will terminate upon issuance of patent or in two years, whichever occurs first.

FOR FURTHER INFORMATION CONTACT: Nancy Getchell, Bureau of Land Management, Vale District, 100 E. Oregon Street, Vale, OR 97918. (Telephone 503 473–3144).

Geoffrey B. Middaugh,

Acting District Manager.

[FR Doc. 91–11572 Filed 5–15–91; 8:45 am]

BILLING CODE 4310–33–M

[OR–030–01–4212–13: GP1–208]

Vale District Office; Exchange of Public Lands in Malheur County, OR

May 7, 1991.

AGENCY: Vale District, Bureau of Land Management, Interior.

ACTION: Notice of realty action OR 39525.

The following described lands have been determined to suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act 1976, 43 U.S.C. 1716:

Willamette Meridian

T. 23s., R. 38E.:
Sec. 31: lot 1, 2, 3, 4, NE¼, E½NW¼, NE¼SW¼, NW¼SE¼, E½SE¼;
Sec. 32: all;
Sec. 33: W½SW¼.
T. 24S., R. 38E.:
Sec. 4: lot 4.

The area described above aggregates 1332.51 acres in Malheur County, Oregon.

In exchange for these lands, the Federal Government will acquire the following described private lands from Walter T. McEwen:

Willamette Meridian

T. 24S., R. 38E.:
Sec. 11: S½SW¼.
T. 25S., R. 38E.:
Sec. 13: SW¼SW¼;
Sec. 14: S½SE¼;
Sec. 15: SW¼NE¼;
Sec. 24: N½.
T. 24S., R. 39E.
Sec. 19: SW¼SE¼;
Sec. 30: SE¼NE¼, W½E½, E½SW¼.
T. 25S., R. 39E.:
Sec. 3: NW¼SW¼;
Sec. 4: NE¼SE¼;
Sec. 19: lot 2.
T. 26S., R. 39E.:
Sec. 7: E/½SE¼;
Sec. 8: S½SW¼, SW¼SE¼;
Sec. 17: N½NW¼, NW¼NE¼.

The area described above aggregates 1319.61 acres in Malheur County, Oregon.

This proposed land exchange was published in the **Federal Register** 54 FR 27435 on Thursday, June 29, 1989, and corrected in the **Federal Register** 54 FR 30633 on Friday July 21, 1989.

The purpose of this Notice is to extend the segregative effect on the public lands described above from appropriation under the public land laws, including the mining laws, but not from exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976. The segregative effect of this Notice will terminate upon issuance of patent or in two years, whichever occurs first.

FOR FURTHER INFORMATION CONTACT: Nancy Getchell, Bureau of Land Management, Vale District, 100 E. Oregon Street, Vale, OR 97918. (Telephone 503 473–3144).

Geoffrey B. Middaugh,

Acting District Manager.

[FR Doc. 91–11573 Filed 5–15–91; 8:45 am]

BILLING CODE 4310–33–M

[ID–943–4214–11;IDI–05282]

Proposed Continuation of Withdrawal; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Forest Service, Department of Agriculture, proposes that the withdrawal for a 15 acre portion of the Lola Creek Forest Camp within the Challis National Forest continue for an additional 30 years. The lands are still being used for recreational site purposes, as designated in the original withdrawal. The lands would remain closed to surface entry and mining under the proposal, but have been and would remain open to mineral leasing.

EFFECTIVE DATE: August 14, 1991.

FOR FURTHER INFORMATION CONTACT: William E. Ireland, BLM, Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706 (208) 327–3162.

The Forest Service proposes that the existing land withdrawal made by public land order No. 1228 be continued for a period of 30 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714. The land is described as follows:

Boise Meridian

Challis National Forest

T. 12 N., R. 11 E.,

Sec. 3, SW¼NW¼lot 4 and NW¼SW¼lot 4.

Sec. 4, that portion of S½N½NE¼lot 1 lying outside the Frank Church River of No Return Wilderness, S½NE¼lot 1, E½S¼NW¼lot 1 and N½NE¼SE¼lot 1.

The area described contains 15 acres in Custer County.

The withdrawal is essential for protection of recreational values on the site. The withdrawal closed the land to all forms of appropriation under the public land laws, including the mining but not the mineral leasing laws. No change in the segregative effect or use of the land is proposed by this action.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the State Director at the above address.

The authorized officer of the Bureau of Land Management will undertake such investigations as necessary to determine the existing and potential demand for the lands and their resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawals will be continued; and if so, for how long. The final determination of the withdrawals will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

Dated: May 7, 1991.

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 91–11605 Filed 5–15–91; 8:45 am]

BILLING CODE 4310–GG–M

Minerals Management Service

Outer Continental Shelf (OCS) Operations, Current List of Notices to Lessees and Operators (NTL) Issued by Each OCS Region

AGENCY: Minerals Management Service, Interior.

ACTION: Notice.

SUMMARY: This notice informs the public, industry, and other Government agencies of NTL's that were current and effective as of January 1, 1991, in each OCS Region. If an NTL issued before January 1, 1991, is not included in this listing, it is hereby canceled and no longer in effect.

ADDRESSES: Requests to obtain a copy of an NTL should be directed in writing or by telephone to the Regional Director at the following appropriate address.

Alaska OCS Region, 949 East 36th Avenue, room 110, Anchorage, AK 99508–4302, (907) 261–4010.

Atlantic OCS Region, suite 1109, 381 Elden Street, Herndon, VA 22070–4817, (703) 787–1110.

Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, LA 70123–2394, (504) 736–2589.

Pacific OCS Region, 770 Paseo Camarillo, Camarillo, CA 93010, (805) 389–7502.

FOR FURTHER INFORMATION CONTACT: Chief, Engineering and Technology Division; Minerals Management Service; telephone (703) 787–1598 or FTS 393–1598.

SUPPLEMENTARY INFORMATION: The current NTL's for each OCS Region are as follows:

Alaska OCS region		
80–1	Feb. 5, 1980	Furnishing Food, Quarters, and Transportation to USGS Personnel.
80–2	June 13, 1980	Guidelines for Preparing Outer Continental Shelf Environmental Reports. Note: See additional guidelines prepared March 30, 1982, entitled "Guidelines for Outer Continental Shelf Exploration Plans, Environmental Reports and Application for Permit to Drill Exploratory Wells."
84–4	Aug. 1, 1984	Preliminary Activities Conducted on Leased Areas; Gulf of Alaska/ Cook Inlet.
85–2	Aug. 9, 1985	Preliminary Activities Conducted on Leased Areas; Bering Sea (Supersedes NTL Nos. 83–2, 83–4, and 84–1).
86–2	Jan. 15, 1987	Preliminary Activities Conducted on Leased Areas; Beaufort Sea (Supersedes NTL Nos. 83–1 and 84–3).
86–3	Oct. 6, 1986	New Form for Designation of Operator (Form 1123).
87–1	Nov. 30, 1987	Preliminary and Other Activities Conducted on Leased Areas; Chukchi Sea.

89-1	Dec. 1, 1989	Minimizing Potential for Incidental Taking of Polar Bear and Walrus During Preliminary and Other Activities Conducted on Leased Areas in the Beaufort and Chukchi Seas.
89-2	Dec. 1, 1989	Preliminary Activities, Shallow Hazards, Geophysical Surveys, and Geotechnical Evaluations (Supersedes NTL 83-5, 9/07/83).
90-1	Apr. 2, 1990	Submission of Digitized Well Log Data on Magnetic Tape (Supersedes NTL 86-1, February 20, 1986).
90-2	Apr. 3, 1990	District Office Hours and Contact Procedures (Supersedes NTL 87-02, 12/10/87).

Atlantic OCS Region

78-9	May 4, 1979	Requirements for Submission of Digitized Well Log Data on Magnetic Tape.
NA80-10.	May 6, 1980	Minimum Criteria for Training Programs in Fishing Industry Operations.
83-2	Sept. 7, 1983	Minimum Requirements for Site Surveys for Exploration Activities (Supersedes NTL 78-2 South Atlantic Supplement 1; and NTL 80-2).

Gulf of Mexico OCS Region

72-9	Sept. 22, 1972	OCS Operations Safety Alert Notice No. 1, Flash Fire From Liquid Phase Heat Transfer Unit.
73-3	Feb. 16, 1973	The Use of Polychlorinated Biphenyls (PCB's).
74-1	Jan. 4, 1974	Applicability of OCS Orders Nos. 2 and 4 to OCS Leases Issued off the Coasts of Mississippi, Alabama, and Florida. (Note: NTL will be updated to include reference to regulations rather than OCS Orders. The intent of the NTL remains in effect.)
82-7	Aug. 13, 1982	Clarification of Requirements of subparagraph 5.7, Safety Device Training of OCS Order No. 5, "Production Safety Systems." (Note: NTL will be updated to include reference to subpart O of 30 CFR part 250 when it is issued. The intent of the NTL remains in effect.)
75-3	Oct. 1, 1982	OCS Cultural Resource Revision No. 1 Requirements for the Gulf of Mexico OCS Region (See NTL 75-3, January 20, 1975, for copy of Revision No. 1).
83-3	Sept. 7, 1983	OCS Shallow Hazards Requirements for the Gulf of Mexico OCS Region (Cancels NTL Nos. 75-8 and 80-5).
85-2	Feb. 4, 1985	Effect of Drilling "Window" Approvals.
85-6	Sept. 30, 1985	Submittal of Electric, Radioactive, and Other Wellbore Surveys.
85-8	Nov. 26, 1985	Minimizing Oil and Gas Structures in the Gulf of Mexico.
86-5	June 18, 1986	New Forms for Designation of Operator.
86-9	Oct. 13, 1986	Outer Continental Shelf Environmental Report/ Information Guidelines for Plans Submitted in the Gulf of Mexico OCS Region (Supersedes NTL 80-6).
86-11	Nov. 17, 1986	Guidelines for Reducing or Eliminating Trash and Debris in the Gulf of Mexico.
88-2	June 10, 1988	Submission of List of Safety and Pollution-Prevention Equipment.
88-3	June 29, 1988	Information to Be Made Available on the Reports Required in subpart K of 30 CFR part 250.
88-7	Sept. 15, 1988	Reorganization of Office of Field Operations and Realignment of New District Boundaries.
88-11	Feb. 1, 1989	Implementation of Measures to Detect and Protect Deepwater Chemosynthetic Communities.
.....	.....	Outer Continental Shelf Functional Responsibility of New Regulations.
89-01	Aug. 1, 1989	Implementation of Consistent Biological Stipulation Measures in the Central and Western Gulf of Mexico.

89–2	Mar. 30, 1989	Special Security Handling of Well Logs and Data Generated from Oil and Gas Leases.
89–05	Sept. 29, 1989	Timelapse in Exploratory Drilling Operations Not to Exceed 180 days for Deepwater (400 meters or deeper) Leases.
89–06	Nov. 30, 1989	Requirements for Submittal of Documents Under 30 CFR part 250, subpart I, Platforms and Structures.
89–07	Dec. 15, 1989	Supplemental Bonds.
.....	May 8, 1990	NMFS Letter as Addendum to 90–01.
.....	June 27, 1990	Memorandum on Removal of All Abandoned Casing Stubs.
90–03	Aug. 27, 1990	Minimum Interim Requirements for Site Clearance and Verification of Abandoned Oil and Gas Structures in the Gulf of Mexico.
90–04	Oct. 1, 1990	New Orleans District Office Hours and Phone Call Procedures (Supersedes NTL 88–8, October 6, 1988).
90–05	Oct. 1, 1990	Houma District Office Hours and Phone Call Procedures (Supersedes NTL 89–03, June 9, 1989).
90–06	Oct. 1, 1990	Lafayette District Office Hours and Phone Call Procedures (Supersedes HTL 89–04, September 26, 1989).
90–07	Oct. 1, 1990	Rate Control Section Address, Office Hours, and Phone Call Procedures.
90–08	Oct. 31, 1990	Lake Jackson District Address, Office Hours and Phone Call Procedures.
90–09	Nov. 8, 1990	Temporary Abandonment of Wells and Maintenance, Protection and Removal of Underwater Casing Stubs.
90–10	Nov. 16, 1990	Reporting of Leases Off Production.

Pacific OCS Region

77–3	Mar. 1, 1977	Minimum Cultural Survey Requirements, OCS Exploratory Drilling.
78–1	Oct. 23, 1978	Minimum Requirements for Biological Surveys (Supersedes NTL 77–4).
80–2	Mar. 20, 1980	Minimum Requirements for Environmental Reports.
86–4	Aug. 18, 1986	New Form for Designation of Operator
88–1	June 27, 1988	Submission of List of Safety and Pollution-Prevention Equipment.
88–2	Sept. 28, 1988	NTL's Cancellation.
88–5	May 5, 1989	Requirements for Exploratory Operations OCS California (Supersedes NTL 82–3).
88–6	May 5, 1989	Guidelines for Shallow Hazards Survey for OCS Exploratory Drilling (Supersedes NTL 85–01).
88–7	May 5, 1989	Guidelines for Shallow Hazards Survey for OCS Development Platforms (Supersedes NTL 85–02).
88–8	May 5, 1989	Guidelines for Shallow Hazards Survey for OCS Pipeline Routes (Supersedes NTL 85–03).
88–9	May 5, 1989	Submission of Digitized Well Log Data on Magnetic Tape (Supersedes NTL 86–01).
89–01	Apr. 12, 1989	Santa Maria District Office Hours and Phone Call Procedures.
90–01	May 25, 1990	Notice to Lessees and Operators of Federal Oil and Gas Leases in the Outer Continental Shelf, Pacific OCS Region; Supplemental Bonds.
90–02	July 5, 1990	Santa Maria District Office Hours and Phone Call Procedures (Supersedes NTL 89–02).
90–03	Nov. 29, 1990	Change of Title for the Ventura District Office to the Camarillo District Office, Phone Call Procedures and the New Office Hours (Supersedes NTL 88–03).

An updated list of NTL's will be published periodically in the **Federal Register.**

Dated: May 3, 1991.

Thomas A. Readinger,

Acting Associate Director for Offshore Minerals Management.

[FR Doc. 91–11574 Filed 5–15–91; 8:45 am]

BILLING CODE 4310–MR–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31863]

Arizona & California Railroad Co. Limited Partnership—Acquisition and Operation Exemption—the Atchison, Topeka and Santa Fe Railway Co.

Arizona & California Railroad Company Limited Partnership (A&C), a non-carrier, has filed a notice of exemption to acquire and operate approximately 240 miles of rail line owned by The Atchison, Topeka and Santa Fe Railway Company (ATSF). A&C will become a class III rail carrier.

The track to be purchased is in San Bernadino and Riverside Counties, CA, and in Maricopa, Yavapai, and La Paz Counties, AZ, and consists of three segments: (1) Between ATSF milepost 190+0975.5 feet, at or near Cadiz, CA, and ATSF milepost 105+4224 feet, at or near Parker, AZ; (2) connecting rail line between the western connection to the Cadiz Subdivision at milepost 105+4224 feet, at or near Parker, AZ, and milepost 0+446.7 feet, at or near Matthie, AZ, including the connecting "Y" Track Number 1, at and near Matthie, AZ, west of milepost 134+4875 feet; and (3) between the connection to the Cadiz Subdivision at milepost 0+0 feet, at Rice, CA, and the end of the Ripley Subdivision at milepost 49+2112 feet, at or near Ripley, CA.

A&C will also acquire from ATSF incidental limited overhead trackage rights over connecting interchange tracks as follows: (1) Tracks connecting at or near Cadiz, CA, between ATSF's Cadiz Subdivision milepost 190+975.5 feet and ATSF's Needles Subdivision milepost 647+5234.7 feet, on Tracks Nos. 2 and 36 at Cadiz; and (2) connecting rail line between ATSF's Parker Subdivision milepost 0+446.7 feet (also Phoenix Subdivision milepost 135+144 feet) and ATSF's Phoenix Subdivision milepost 191+4789.8 feet, including all yard track in the Mobest Yard in Phoenix, AZ (the "Connecting Rail Lines"). Consummation was to occur on or after May 1, 1991.[1]

Any comments must be filed with the Commission and served on Jill M. Hawken, Weiner, McCaffrey, Brodsky, Kaplan & Levin, P.C., suite 800, 1350 New York Avenue, NW., Washington, DC 20005–4797.

A&C shall retain its interest in and take no steps to alter the historic integrity of all sites and structures on the line that are 50 years old or older until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: May 9, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–11668 Filed 5–15–91 8:45 am]

BILLING CODE 7035–01–M

[1] The notice of exemption in this proceeding was filed April 24, 1991. Under the Commission's rules, the exemption is effective seven days after the notice is filed. 49 CFR 1150.32(b).

[Finance Docket No. 31656 (Sub-No. 1)]

Joppa and Eastern Railroad Co.—Petition for Exemption—Lease—Missouri Pacific Railroad Co.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10505, the Commission exempts from the prior approval requirements of 49 U.S.C. 11343, *et seq.*, the lease by Joppa and Eastern Railroad Co. of a portion of Union Pacific Railroad Company's and Missouri Pacific Railroad Company's rail and rail-related property from milepost 359.5 to the end of the track at approximately milepost 362 in Massac County, IL, subject to standard employee protective conditions.

DATES: This exemption is effective on May 16, 1991. Petitions to reopen must be filed by June 5, 1991.

ADDRESSES: Send pleadings referring to Finance Docket No. 31656 (Sub-No. 1) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission; Washington, DC 20423

(2) Petitioners' representatives:
Joppa and Eastern Railroad Company
John R. Molm
Troutman, Sanders, Lockerman and Ashmore, 1400 Chandler Building, 127 Peachtree Street, NE., Atlanta, GA 30303–1810
Union Pacific Railroad Company, Missouri Pacific Railroad Company
Beverly S. Greer, Esq., 1416 Dodge Street, Omaha, NE 68179

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245. [TDD for hearing impaired: (202) 275–1721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 275–1721.]

Decided: May 9, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–11669 Filed 5–15–91; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Office of the Attorney General

Designation of Director (Frauds), Commercial Litigation Branch, Civil Division as Agent of the Attorney General to Receive Declarations Pursuant to the Financial Institutions Anti-Fraud Enforcement Act

AGENCY: Department of Justice.

ACTION: Notice.

SUMMARY: The Financial Institutions Anti-Fraud Enforcement Act of 1990, Public Law 101–647, title XXV, subtitle H, 2560–94 (1990), authorizes any person to file with the Attorney General, or an agent designated by the Attorney General, a declaration identifying acts giving rise to an action for civil penalties under section 951 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA") or a declaration identifying specific assets which might be recovered by the Government in satisfaction of a judgment or settlement obtained pursuant to section 951 of FIRREA. The Attorney General has designated the Director (Frauds) of the Commercial Litigation Branch, Civil Division as his agent to receive all declarations filed pursuant to the Financial Institutions Anti-Fraud Enforcement Act.

EFFECTIVE DATE: May 16, 1991.

ADDRESSES: Declarations may be mailed to: Director, Frauds, U.S. Department of Justice, P.O. Box 261, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Michael F. Hertz, Director, Commercial Litigation Branch, Civil Division. Telephone (202) 514–7179.

Dated: May 10, 1991.

Stuart E. Schiffer,

Deputy Assistant Attorney General, Civil Division.

[FR Doc. 91–11611 Filed 5–15–91; 8:45 am]

BILLING CODE 4410–01–M

Chromalloy American Corp. et al.; Lodging of Consent Decree

In accordance with section 122 of the Comprehensive Environmental Response, Compensation and Liability Act, as amended 42 U.S.C. 9622, and the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that a complaint styled *United States* v. *Chromalloy American Corporation (formerly doing business as Woolley Took & Manufacturing Division) and Sequa Corporation*, Civil Action No. MO–91CA57, was filed in the United States District Court for the Western District of Texas on May 6, 1991. On the same day, a consent decree between the United States as plaintiff, and Chromalloy American Corporation and Sequa Corporation as defendants was lodged with the court in settlement of the allegations in the complaint. This consent decree settles the government's claims in the complaint against Chromalloy American Corporation and Sequa Corporation, pursuant to sections 104, 106, and 107 of CERCLA, 42 U.S.C. 9604, 9606, 9607, for injunctive relief to abate an imminent and substantial endangerment to the public health, welfare or the environment because of actual or threatened releases of hazardous substances from a facility, and for the recovery of response costs incurred by the United States with respect to a facility located in Odessa, Ector County, Texas, known as the "North Site at the Odessa Chromium II Site" (hereafter "the Site"). The complaint alleged, among other things, that the defendants are persons who at the time of disposal of any hazardous substance owned and operated any facility at which such hazardous substances were disposed of, or are successors-in-interest to such an owner or operator. The complaint further alleged that the United States has incurred and will continue to incur response costs in response to the release or threat of release of hazardous substances.

Under the terms of the proposed consent decree, the defendants agree to implement the remedy selected by EPA in its Record of Decision, which the EPA estimates will cost in excess of $3.5 million, and to pay to the United States the sum of $695,265.00 for the United States' costs related to the Site through February 1989, as well as costs through entry of the Decree not to exceed $61,000, and all future oversight costs.

The Department of Justice will receive comments relating to the proposed consent decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, 10th and Pennsylvania Avenue NW., Washington, DC 20530. All comments should refer to *United States* v. *Chromalloy American Corporation, et al.*, D.J. Ref. 90–11–2–571. The proposed consent decree may be examined at the following offices of the United States Attorney and the Enviromental Protection Agency ("EPA"):

United States Attorney's Office

Office of the United States Attorney, U.S. Courthouse, 200 East Wall Street, room 304, Midland, Texas 79701, (915) 684–4120.

EPA Region VI

Contact: Bruce Jones, Office of Regional Counsel, U.S. Environmental Protection Agency, Region VI, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 655–2120.

Copies of the proposed consent decree may also be examined at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, Box 1097, Washington, DC 20004, (202) 347–7829. A copy of the proposed consent decree may be obtained by mail from the Document Center. When requesting a copy of the decree, please enclose a check for copying costs in the amount of $13.75 payable to "Consent Decree Library."

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91–11616 Filed 5–15–91; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that two complaints were filed in 1989 in the United States District Courts for the Eastern and Western Districts of Arkansas: *United States* v. *Custom Insulation, Inc. and Worley Plumbing Co., Inc.*, Civil Action No. 89–6027 (W.D. Ark., Hot Springs Division) filed February 21, 1989, and *United States* v. *Custom Insulation, Inc.*, Civil Action No. J–C–89–200 (E.D. Ark., Jonesboro Division) filed September 26, 1989. The cases were consolidated before the court in the Eastern District of Arkansas, Little Rock Division. On May 3, 1991, a Consent Decree between the United States and defendants Custom Insulation, inc. and Worely Plumbing Co., Inc. was lodged with the court. This Consent Decree settles the government's claims in the complaint against both defendants pursuant to sections 112(c) and (e) of the Clean Air Act ("the Act"), 42 U.S.C. 7412(c) and (e) and the work practice standards set forth in the National Emission Standards for Hazardous Air Pollutants (NESHAP) regulations for asbestos, 40 CFR 61.146, 61.147(e) and 61.152 for (1) injunctive relief to protect public health and the environment in the future, and (2) for payment of twenty-five thousand dollars ($25,000.00) in penalty. The February 21, 1989 complaint alleged, in part, that defendant Worley was a person who contracted with codefendant Custom for the removal and disposal of asbestos from the Garland Towers, Hot Springs, Arkansas, both of which were liable for dropping friable asbestos approximately eight feet to the ground, failing to adequately wet asbestos-containing material to insure that it remained wet until collected for disposal, and failing to seal the asbestos-containing material in leak-tight containers while wet in violation of the Act and the asbestos NESHAP. The September 26, 1989 complaint alleged that defendant Custom, while removing asbestos from the Luxora Elementary School, Luxora, Arkansas, failed to adequately wet friable asbestos-containing material to insure that it remained wet until collected for disposal, failed to seal the asbestos-containing material in leak-tight containers while wet, and failed to notify the Arkansas Department of Pollution Control and Ecology or the U.S. Environmental Protection Agency with written notification of an intent to renovate the school before commencing the renovation operation in violation of the Act and the asbestos NESHAP.

Under the terms of the proposed Partial Consent Decree, the defendants agree to (1) obey the provisions of the Act and the NESHAP at any future renovation/demolition sites owned or operated by them, (2) provide a copy of the Decree to all contractors and subcontractors retained to perform work contemplated in the Decree, and (3) allow entry of any authorized representative of the EPA for monitoring compliance with the Decree into any defendant-owned or operated facility being demolished or renovated. The Consent Decree also calls for the defendant Custom to pay the United States twenty-five thousand dollars

(25,000.00) in penalty over the next eighteen months in three separate payments: $8,400 within six months of entry of the decree, $8,300 within twelve months, and $8,300 within eighteen months.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, 10th and Pennsylvania Avenue, NW., Washington, DC 20530. All comments should refer to *United States* v. *Custom Insulation, Inc., et al.*, D.J. Ref. 90–5–2–1–1369.

The proposed Consent Decree may be examined at the following offices of the United States Attorney and the Environmental Protection Agency ("EPA"):

EPA Region VI

Contact: Cheryl Boyd, Office of Regional Counsel, U.S. Environmental Protection Agency, Region VI, 144 Ross Avenue, Dallas, Texas 75202–2733, (214) 655–2125.

United States Attorney's Office

Assistant United States Attorney, Civil Division, Eastern District of Arkansas, 331 U.S. Post Office and Courthouse Building, 600 W. Capitol, Little Rock, Arkansas 72201, (501) 378–5342.

Copies of the proposed Consent decree may also be examined at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004, (202) 347–7829. A copy of the proposed Consent Decree may be obtained by mail from the Document Center. When requesting a copy of the Decree, please enclose a check for copying costs in the amount of $3.25 payable to "Consent Decree Library."

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91–11613 Filed 5–15–91; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree United States v. Goodyear Tire and Rubber Co.

In accordance with Departmental Policy, 28 CFR 50.7, and pursuant to section 122(d)(2)(B) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9622(d)(2)(B), notice is hereby given that a Consent Decree in *United States* v. *Goodyear Tire & Rubber Company, et al.*, Civil Action No. 88–1443 PHX (D. Ariz.), was lodged with the United States District Court for the District of Arizona on May 7, 1991. This action was brought under sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607. The Consent Decree provides that defendants Goodyear Tire and Rubber Company and Loral Defense Systems-Arizona, a Division of Loral Corporation, will clean up the Phoenix-Goodyear Airport Superfund Site as required by the Record of Decision issued by the U.S. Environmental Protection Agency on September 26, 1989, pay $1.5 million of the past response costs incurred by the U.S. Environmental Protection Agency, pay past response costs of $75,333 to the State of Arizona, and pay all future response and oversight costs incurred by the U.S. Environmental Protection Agency and the State of Arizona.

For thirty (30) days from the date of publication of this notice, the Department of Justice will receive written comments relating to the Consent Decree from persons who are not parties to the action. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530 and should refer to *United States* v. *Goodyear Tire & Rubber Company, et al.*, D.O.J. Ref. No. 90–11–2–248.

The Consent Decree may be examined at the Office of the United States Attorney, District of Arizona, 4000 U.S. Courthouse, 230 North First Street, Phoenix, Arizona 85025 and at the Region IX office of the U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California 94105.

A copy of the Consent Decree also may be examined at the Environmental Enforcement Section Document Center, 1333 F Street NW., suite 600, Washington, DC 20004, telephone number (202) 347–7829. A copy of the Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center. The proposed Consent Decree package consists of a 90 page Consent Decree and 304 pages of Appendices. You may request a copy of the Consent Decree with or without appendices. Please specify in the request whether or not appendices are requested. A request for a copy of the proposed Consent Decree with appendices should be accompanied by a check in the amount of $98.50 (25 cents per page reproduction charge) payable to "Consent Decree Library." A request for a copy of the proposed Consent Decree without appendices should be accompanied by a check in the amount of $22.50 payable to "Consent Decree Library."

Barry M. Hartman,

Acting Assistant Attorney General, Environmental and Natural Resources Division.

[FR Doc. 91–11614 Filed 5–15–91; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Cooperative Research Notification; National Center for Manufacturing Sciences, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the National Center For Manufacturing Sciences, Inc. ("NCMS"), on March 18, 1991, filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) The formation of a technology-specific venture within the NCMS general membership, (2) the identities of the parties to the venture, and (3) the nature and objective of the venture. The notification was filed for the purpose of maintaining the protections of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

The parties to the venture are:

AT&T, 2 Oak Way, Barkeley Heights, New Jersey 07922

Digital Equipment Corporation, 146 Main Street, Maynard, Massachusetts 01754

Hamilton Standard Interconnect Systems, Inc., 300 Park East Drive, Woonsocket, Rhode Island 02895

National Center for Manufacturing Sciences, Inc., 900 Victors Way, Ann Arbor, Michigan 48108

Texas Instruments Incorporated, 13500 N. Central Expressway, Dallas, Texas 75243

United Technologies Corporation, One Hamilton Road, Windsor Locks, Connecticut 06096–1010

The nature and objective of the venture is to undertake research and development activities focusing on generic enabling technologies for improving printed wiring board products and manufacturing processes.

On February 20, 1987, NCMS filed its original notification pursuant to section 6(a) of the Act, notice of which the Department of Justice published in the **Federal Register** pursuant to section 6(b) of the Act of March 17, 1987 (52 FR

8375). NCMS filed additional notifications on April 15, 1988, and May 5, 1988, notice of which the Department published in the Federal Register on June 2, 1988 (53 FR 20194). NCMS also filed additional notifications on July 11, 1988, September 13, 1988, December 8, 1988, March 9, 1989, August 10, 1989, November 3, 1989, January 29, 1990, April 27, 1990, July 31, 1990, November 7, 1990, and February 5, 1991, notices of which the Department published on August 19, 1988 (53 FR 31771), November 4, 1988 (53 FR 44680), January 18, 1989 (54 FR 2006), April 13, 1989 (54 FR 14878), September 18, 1989 (54 FR 38461), November 29, 1989 (54 FR 49122), February 28, 1990 (55 FR 7045), June 5, 1990 (55 FR 22964), August 28, 1990 (55 FR 35194), December 10, 1990 (55 FR 50786), and March 12, 1991 (56 FR 10444), respectively.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91-11612 Filed 5-15-91; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL SCIENCE FOUNDATION

Interagency Arctic Research Policy Committee; Meeting

The National Science Foundation announces the following meeting:

Name: Interagency Arctic Research Policy Committee.

Date and Time: Wednesday, June 5, 1991, 3:30 p.m.–5 p.m.

Place: National Science Foundation, room 540, 18th and G Street, NW., Washington, DC.

Type of Meeting: Open.

Contact Persons: Jerry Brown or Charles E. Myers, Division of Polar Programs, room 627, National Science Foundation, Washington, DC 20550, Telephone: (202) 357-7817.

Purpose of Committee: The Interagency Arctic Research Policy Committee was established by Public Law 98-373, the Arctic Research and Policy Act, to survey arctic research, help set priorities for future arctic research, assist in the development of a national arctic research policy, prepare an integrated multi-agency budget request for arctic research, develop a plan to implement national arctic research policy, and simplify cooperation in and coordination of arctic research.

Proposed Agenda Items:

1. Review and Approval of U.S. Arctic Research Plan and Implementation Plans.
2. Status of International Activities.
3. Status of Data and Social Sciences Activities.
4. Arctic Research Commission Activities.

Public Participation: Committee meetings are not public hearings and will not normally receive verbal comments from observers unless specifically invited by the Committee. Observers invited to address the Committee will be limited to 5 minutes each. To address the Committee, submit a proposed statement. If the statement is relevant and appropriate to the agenda at that particular meeting, the Committee will invite you to present your statement. The texts of statements shall not exceed 5 double spaced typed pages each.

Charles E. Myers,

Division of Polar Programs.

[FR Doc. 91-11679 Filed 5-15-91; 8:45 am]

BILLING CODE 7555-01-M

OFFICE OF PERSONNEL MANAGEMENT

Reservist Leave Bank Program

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: The Office of Personnel Management (OPM) is establishing an open season for contributions of annual leave under the reservist leave bank program established under Public Law 102-25, April 6, 1991, for Federal employee reservists returning from duty in the Persian Gulf War. In addition, this notice advises Federal agencies of the date by which the total number of potential leave recipients must be reported to OPM and the date by which the total amount of annual leave contributions must be reported to OPM.

ADDRESSES: Send or deliver written reports to Barbara L. Fiss, Assistant Director for Pay Policy and Programs, room 7H30, U.S. Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415. Supplementary written reports may be sent to OPM by FAX at the following number: (202) 606-1349 or (FTS) 266-1349.

FOR FURTHER INFORMATION CONTACT: Joe Cerio, (202) 606-2858 or (FTS) 266-2858.

SUPPLEMENTARY INFORMATION: On May 6, 1991 (56 FR 20517), OPM issued interim regulations and requested comments on rules establishing a leave bank authorized by Public Law 102-25 for returning Federal employees who were called to active duty in the U.S. Armed Forces during Operations Desert Shield and/or Desert Storm (56 FR 20517). Those rules define the procedures and conditions that agencies must follow to (1) identify eligible returnees, (2) identify qualified leave contributors, (3) accept contributed annual leave, (4) report to OPM, and (5) credit the annual leave accounts of recipients. OPM has determined that the open season for all Executive agencies to accept contributions of annual leave from qualified leave contributors under the reservist leave bank program will be June 2 to July 13, 1991.

In addition, as required by the interim regulations, OPM has determined that each agency must report to OPM by June 24, 1991, the total number of all known potential leave recipients under the reservist leave bank program. For this purpose, agencies must identify all potential leave recipients who have already returned to civilian positions, as well as those still on active duty who are or would be eligible to receive contributions of annual leave under this program, as of April 30, 1991. Agencies are reminded that an "eligible returnee" is defined by regulation as an employee serving or having served under orders issued under 10 U.S.C. 672(a), 672(g), 673, 673b, 674, 675, or 688, beginning on or after August 2, 1990. (See 5 CFR 630.1102.) Supplementary reports may be necessary depending upon the ending date established for the Persian Gulf War.

Finally, as required by the interim regulations, OPM also has determined that each agency must report to OPM by August 10, 1991 (4 weeks after the close of the open season), the total number of hours of annual leave contributed during the open season established above. This report must be made in writing to the address indicated above. Official written reports may be supplemented by telephone or FAX reports. However, all supplementary reports also must be received by August 10, 1991.

Following the receipt of these reports, OPM will divide the total amount of annual leave contributed under the reservist leave bank program equally among all "eligible returnees" and notify each agency of the amount of leave each such "eligible returnee" is to receive.

Office of Personnel Management.

Constance Berry Newman,

Director.

[FR Doc. 91-11536 Filed 5-15-91; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-29183; File No. SR-Amex-91-07]

Self-Regulatory Organizations; Filing of Proposed Rule Change by American Stock Exchange, Inc. Relating to Amendments to Rule 127—Minimum Fractional Changes

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 24, 1991, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities

and Exchange Commission ("Commission") the proposed rule change 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 Amex proposes to amend Exchange Rule 127 to increase, from $1 to $5, the price level at which equity securities are traded in sixteenths, and at or above which equity securities are traded in eighths.

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 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

(1) Purpose

Exchange Rule 127 currently provides that securities selling under $1 but above $0.25 trade in sixteenths, while securities selling at $1 and above trade in eighths. Exchange Rule 127 further provides that the Exchange has the discretion to fix different minimum fractional changes for securities traded on its floor. Pursuant to this authority, the Exchange has established sixteenths trading in foreign issues selling at less than $5 and in foreign currency warrants selling at less than $3. The Exchange also has used this exemptive authority, from time to time, generally at the request of a specialist seeking to improve market quality, to establish sixteenths trading in certain stocks selling above $1.

The Exchange now proposes to increase the price level below which securities are traded in sixteenths, and at or above which securities are traded in eighths, from $1 to $5. Under the proposal, Exchange Rule 127 will be amended so that securities (including foreign issues) selling above $0.25 but under $5 will trade in sixteenths; securities selling at $5 and above will trade in eighths; and securities selling under $0.25 will continue to trade in thirty-seconds. The proposed amendments to rule 127 do not pertain to bond issues which will continue to be dealt in at ⅛ of 1%. In addition, the Exchange will retain its authority to fix different minimum fractional changes where appropriate.

The Exchange believes that trading in sixteenths promotes greater liquidity in lower priced stocks by allowing a quotation between the current eighths bids and offers, which will better the market for those stocks.

It should be noted that trading in sixteenths currently cannot be accommodated by the Intermarket Trading System ("ITS"), which is designed only to accommodate stocks trading in eighths.[1] The Exchange plans to work with the other ITS participants [2] to develop appropriate enhancements to the ITS system to accommodate sixteenths trading. Until those enhancements are made, the Exchange does not intend to allow stocks currently in eighths and on the ITS system to be switched to sixteenths.

(2) Basis

The proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) in particular in that it is intended to promote just and equitable principles of trade, to facilitate transactions in securities, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will remove or lessen existing burdens on competition in that it will permit greater liquidity in lower priced stocks.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

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 at 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 Amex. All submissions should refer to File No. SR-Amex-91-07 and should be submitted by June 6, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 9, 1991.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-11581 Filed 5-15-91; 8:45 am]

BILLING CODE 8010-01-M

[1] ITS is a communications and order routing system designed to facilitate trading of certain securities designated as eligible for ITS trading between competing market centers.

[2] In addition to the Amex, the Boston, Cincinnati, Midwest, New York, Pacific, and Philadelphia Stock Exchanges and the National Association of Securities Dealers are all participants in the ITS.

[Release No. 34-29168; Filed No. SR-DTC-91-04]

Self-Regulatory Organizations; Depository Trust Company; Filing and Order Granting Temporary Accelerated Approval of Proposed Rule Change Relating to Automated Tender Offer Program

May 7, 1991.

Pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b), notice is hereby given that on February 25, 1991, the Depository Trust Company ("DTC")

filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in items I, II, and III below, which items have been prepared by the self-regulatory organization. On April 23, 1991, DTC amended the proposed rule change to provide for Commission review pursuant to section 19(b)(2) of the Act rather than section 19(b)(3)(A) of the Act.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. The Commission also is granting temporary approval, on an accelerated basis, for the reasons discussed below, until May 7, 1992.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

DTC filed the proposed rule change to modify its Automated Tender Offer Program ("ATOP"). The proposed rule change will: (1) Enable participants to withdraw, through ATOP, securities previously tendered; (2) permit agents of tender offers ("agents") to receive messages from DTC by computer to computer transmission; and (3) implement a new program, ATOP II, which will enable agents, which do not handle a large volume of offers and which do not have a Participants Terminal System ("PTS") terminal and printer, to participate in ATOP.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC 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 item IV below. DTC 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

ATOP enables DTC participants to submit acceptances in tender and exchange offers ("offers") by means of electronic instructions through DTC's PTS.[2] Currently, participants wishing to withdraw acceptances of an offer, pursuant to withdrawal rights in the offer, have had to submit withdrawal instructions by means of hardcopy (*i.e.*, paper) instruction forms. Participants have experienced difficulty in coordinating the automated submission of acceptances in ATOP with the manual withdraw of acceptances. To alleviate that difficulty, DTC proposes to modify ATOP to include an automated withdrawal capability. By means of PTS instructions, a participant which has previously accepted an offer will be able to request DTC or the agent to permit withdrawal of all or part of the tendered securities, and the agent can accept or reject the withdrawal request.

DTC also proposes to modify ATOP to permit an agent to receive "agent's messages" (which indicate acceptance of an offer) by computer-to-computer transmission in addition to or in place of having the agent's messages generated on the Agent's PTS printer.

DTC also proposes to modify ATOP by making ATOP available to agents which do not handle a large volume of offers and which do not have a PTS terminal and printer available for ATOP. DTC proposes to implement a new service, ATOP II, which will allow such agents to participate in ATOP without incurring the ongoing costs of a PTS terminal and printer currently required for ATOP participation. Under the proposed ATOP II service, participants will utilize PTS to submit acceptances of offers and instructions to fulfill notices of guaranteed deliveries as they do in the existing version of ATOP. For the proposed ATOP II, DTC will generate the agent's messages to the agent at the end of the day. During the day the agent will be able, through a personal computer, to access information about the offer, such as which participants have tendered securities. The electronic withdrawal capability, which DTC proposes to be added to the ATOP service, will not be available under ATOP II. Therefore, under ATOP II, participants must make withdrawals by hardcopy instructions.

DTC believes the proposed rule change is consistent with the requirements of section 17A of the Act and the rules and regulations thereunder applicable to DTC since the proposed rule change will further automate the processing of offers involving securities on deposit at DTC. DTC also believes the proposed rule change is consistent with the safeguarding of securities and funds in DTC's custody or control or for which is responsible since the proposed rule change enhances DTC's existing ATOP service.

B. Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives no impact on competition by reason of the proposed rule change.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The proposed rule change was developed through discussions with participants and agents. Written comments from DTC participants or others have not been solicited or received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

DTC requested the Commission to find good cause for approving the proposed rule change on an accelerated basis. For the reasons discussed below, the Commission finds that "good cause" exists under section 19(b)(2) of the Act for approving the proposal prior to the thirtieth day after publication of notice in the Federal Register.

The Commission believes that DTC's proposed rule change is consistent with section 17A of the Act and, specifically, with sections 17A(b)(3) (A) and (F).[3] Sections 17A(b)(3) (A) and (F) of the Act require a clearing agency be organized and its rules be designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible.

The proposed rule change will enable participants to withdraw acceptances through PTS instructions to DTC or the agent. Currently, participants are required to submit withdrawal instructions by means of hardcopy instruction forms. Thus, the Commission believes the proposed rule change provides participants a more efficient means of submitting withdrawals of acceptances of tender offers and will further enhance the prompt and accurate clearance and settlement of tender offer transactions.

The proposed rule change also will permit an agent to receive agent's messages through computer-to-computer transmissions in addition to or in place of having the agent's messages generated on the Agent's PTS printer.

[1] Letter from Carl Urist, Deputy General Counsel, DTC, to Jerry W. Carpenter, Branch Chief, Division of Market Regulation, Commission, dated April 23, 1991.

[2] For a more complete description of ATOP, see Securities Exchange Act Release No. 26538 (February 13, 1989), 54 FR 7316.

[3] 15 U.S.C. 78q-1(b)(3) (A) and (F).

The Commission notes that in adopting section 17A of the Act, Congress found that new data processing and communications techniques create the opportunity for more efficient, effective, and safe procedures for clearance and settlement. The Commission believes that DTC's proposed computer-to-computer transmission of agent's messages is consistent with these goals and should promote the prompt and accurate clearance and settlement of tender offers.

The proposed rule change also will implement a new service, ATOP II, that will enable agents, which do not handle a large volume of offers, to participate in ATOP. Under ATOP II, agents will be able to participate in ATOP without incurring the cost of a dedicated PTS terminal and printer. This proposed service will further automate tender offers that might not otherwise be eligible for ATOP. This should reduce the inefficiencies and risks associated with processing tender offers which are not book-entry eligible.[4]

DTC has requested that the proposed rule change be approved on an accelerated basis since ATOP II will provide an important service for its participants. As noted in the ATOP approval order,[5] the Commission believes that automation of tender and exchange offer processing significantly benefits a process that was handled through inefficient physical settlement. DTC has operated the ATOP program for the past two years and has encouraged tender and exchange offer processing to be brought within the automated, centralized environment of securities depositories. DTC will operate ATOP II as a pilot program for the next several months in which time it will gain experience in processing low volume tender offers. Thus, the Commission believes "good cause" exists under Section 19(b)(2) of the Act for approving DTC's proposed rule change prior to the thirtieth day after publication of notice.[6]

[4] Because of the inefficiencies and risks associated with the processing of tender offers that are tendered in physical form, the Commission adopted rule 17Ad-14 of the Act. Rule 17Ad-14 requires transfer agents acting on behalf of bidders as tender agents to establish and maintain special accounts with all qualified securities depositories holding the subject company's securities. Securities Exchange Act Release No. 20581 (March 1, 1984) 49 FR 3064.

[5] Securities Exchange Act Release No. 27139 (August 14, 1989), 54 FR 34841.

[6] As required by section 19(b)(4)(A) of the Act, 15 U.S.C. 78s(b)(4)(A), the Commission has consulted with and received the concurrence of the Board of Governors of the Federal Reserve System in granting accelerated approval. Telephone conversation between Don R. Vinnedge, Manager, Trust Activities Program, Federal Reserve Board, and Anthony Bosch, Staff Attorney, Division of Market Regulation, Commission (May 2, 1991).

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 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principle office of DTC. All submissions should refer to File No. SR-DTC-91-04 and should be submitted by June 6, 1991.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change (File No. SR-DTC-91-04) be, and hereby is, approved until May 7, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-11582 Filed 5-15-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29167; File No. SR-OCC-91-03]

Self-Regulatory Organizations; Options Clearing Corporation; Notice of Proposed Rule Change Relating to the Formula Used To Replenish Itself From Clearing Funds

May 7, 1991.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 12, 1991, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("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 purpose of this proposed rule change is to amend the formula by which OCC replenishes itself from its clearing funds for losses incurred as a result of a default by a clearing member and for losses resulting from the failure of any bank or securities or commodities clearing organization.

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 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 purpose of this rule change is to revise the formula by which OCC replenishes itself from its clearing funds for losses incurred as a result of a default by a Clearing Member and for losses resulting from the failure of any bank or securities or commodities clearing organization.

OCC maintains a Stock Clearing Fund to which OCC's Stock Clearing Members are required to contribute and a Non-Equity Security Clearing Fund to which Non-Equity Security Clearing Members are required to contribute. Among other things, the purpose of the clearing funds is to make good any losses sustained by OCC as a result of the failure of a Clearing Member to meet its obligations to OCC or the failure of a clearing bank or another clearing organization to settle with OCC. In the event of a Clearing Member default, once the contributions of the defaulting Clearing Member are exhausted, OCC may then replenish itself for any remaining losses by charging, on a pro rata basis, the clearing fund contributions of non-defaulting Clearing Members. In the event of a clearing bank or clearing organization default, the resulting loss is to be charged

against all Clearing Members' contributions to the Clearing Funds on a pro rata basis.

Unless a Clearing Member has been recently admitted, a Member's contribution to the clearing funds is determined pursuant to the formula set forth in rule 1001. A Clearing Member's contribution to the clearing funds is related to the Member's use of the options markets, provided, however, that no Member can contribute less than the required minimum. Pursuant to rule 1001, each Stock Clearing Member or Non-Equity Securities Clearing Member must contribute to the Stock Clearing Fund or the Non-Equity Securities Clearing Fund, respectively, the greater of: (i) Such Clearing Member's proportionate share ("computed contribution") of seven percent of the average daily aggregate margin requirement in respect of equity or non-equity securities option contracts (as the case may be) outstanding during the previous calendar month or (ii) the required minimum contribution amount of $75,000. Because this contribution formula is based on a Clearing Member's open interests and margin requirements, it provides a reasonable approximation of a Clearing Member's participation in the options markets. Therefore, it is highly probable that a Clearing Member which deposits the required minimum to the clearing funds is less active in the marketplace than a Clearing Member which contributes its computed contribution.

Pursuant to the current replenishment formula, non-defaulting Clearing Members are charged on a pro rata basis. Thus, those Clearing Members who contribute the minimum required amount are charged against that amount rather than against their computed contributions to the clearing funds. OCC believes that it is more equitable to base its replenishment formula on a Clearing Member's participation in the options markets rather than on a minimum contribution requirement. OCC therefore is proposing that charges to clearing fund contributions be made on a proportionate basis against non-defaulting Clearing Members' computed contributions.

Accordingly, OCC would amend section 5 of article VIII of its By-Laws to provide that remaining losses would be charged on a proportionate basis against non-defaulting Clearing Members' computed contributions. Section 5 would be further amended to add three Interpretations and Policies. Those Interpretations and Policies propose to set forth the manner by which a Clearing Member's proportionate share of a remaining loss would be determined and, additionally, propose that the contribution formula of rule 1001 be used to determine a Clearing Member's computed contribution. This replenishment formula is based upon a Clearing Member's use of the options markets and will be more equitable to those Clearing Members which use the options markets with less frequency.

The proposed amendments will not affect the total size of the clearing funds. Nonetheless, it is possible that the proposed formula could result in more than one round of charges to the clearing fund contributions of Clearing Members because the full amount of the clearing funds would not be available to satisfy a charge for replenishment made by OCC. The portion of the clearing funds that would be unavailable for the first charge would equal the difference between the sum of the minimum contributions of those Members required to contribute that amount and the sum of such Members' computed contributions. That difference, however, would be available for a second assessment. Moreover, the historical difference between actual contributions to the clearing funds and computed contributions has been *de minimis* (averaging about six percent over the last six months). Should more than a second round of assessments be required, the losses would have to exceed twice the dollar size of the affected clearing fund. Since a loss of such magnitude could threaten the continued viability of the options markets in their entireties, OCC does not believe that its ability to be replenished for losses will be materially or adversely affected by its proposed formula for determining charges to Clearing Members' clearing fund contributions.

Conforming changes are made to sections 5 (a), (b), (c), (d), (e), and (h), 6, 7, and 8 of article VIII of OCC's By-Laws and to rule 1106(e) (protective action provision). A technical amendment to section 5(h) also is made to correctly identify paragraph (b), in the place of paragraph (d), as a paragraph pertaining to certain applications of Clearing Fund contributions. Lastly, another technical amendment is made to section 1 of article VIII to identify correctly chapter XI, in the place of chapter VI, as the chapter of OCC's Rules where the protective action provisions may be found.

The proposed rule change is consistent with section 17A of the Act, as amended, in that it provides for a more equitable formula by which OCC may replenish itself from the clearing fund contributions of Clearing Members.

B. Self-Regulatory Organizations's Statement on Burden on Competition

The proposed rule change will have no adverse impact upon competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change and none were received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

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 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 SR–OCC–91–03 and should be submitted by June 6, 1991.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 91-11636 Filed 5-15-91; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 35-25310]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

May 10, 1991.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by June 3, 1991 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

General Public Utilities Corporation, et al. (70-7525)

General Public Utilities Corporation ("GPU"), 100 Interpace Parkway, Parsippany, New Jersey 07054, a registered holding company, and General Portfolios Corporation ("GPC"), Mellon Bank Center, Tenth and Market Streets, Wilmington, Delaware 19001, a wholly-owned subsidiary company of GPU, have filed a post-effective amendment to their application-declaration under sections 9(c)(3) and 12(b) of the Act and rule 45 thereunder.

By order dated November 2, 1988 (HCAR No. 24738), the Commission authorized, among other things, the acquisition by GPU of all the authorized capital stock of GPC for $100,000 and a cash capital contribution by GPU of up to $25 million to GPC, which GPC would in turn contribute to its subsidiary company, Energy Initiatives, Incorporated, to fund activities in connection with the development of and investment in certain cogeneration and small power production facilities. The Commission reserved jurisdiction over GPU's request to contribute an additional $25 million to GPC to make other non-rate-regulated equity investments.

GPU now proposes to make a cash capital contribution of $10 million to GPC on or before December 31, 1991 for the proposed purchase by GPC of $10 million aggregate principal amount of 9.9% Convertible Subordinated Debentures due 2005 ("Debentures") to be issued by California Energy Company, Inc. ("CE"), a nonassociate company. CE is a California corporation incorporated to explore and develop geothermal resources in California for electric power production. CE currently operates three qualifying facilities, within the meaning of the Public Utility Regulatory Policies Act of 1978, with approximately 240 MW of capacity.

The Debentures which GPC proposes to purchase will (1) bear interest, payable semi-annually, at the rate of 9.9%, (2) be convertible into shares of CE common stock at a price equal to the lesser of 120% of the closing price of CE's common stock on the closing date or $10.00 per share, subject to adjustment for certain dilution events, provided, however, that the conversion price shall not be less than the average of the closing prices of CE's common stock for the period August 15, 1990 through November 15, 1990, and (3) be redeemable by CE beginning October 1, 1995 at 107% of their face value and at declining premiums thereafter until September 30, 2000 and at face value after September 30, 2000 until maturity.

Ownership of the Debentures would not provide GPC with voting rights. Such rights would be obtained only upon conversion of the Debentures into CE common stock. Based upon the reported closing price of CE common stock on September 26, 1990, conversion in full of the Debentures would result in the acquisition of less than 5% of CE's common stock outstanding after giving effect to the conversion on a fully diluted basis.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 91-11635 Filed 5-15-91; 8:45 am]
BILLING CODE 8010-01-M

SELECTIVE SERVICE SYSTEM

Forms Submitted to the Office of Management and Budget for Extension of Clearance

The following forms, to be used only in the event that inductions into the armed services are resumed, have been submitted to the Office of Management and Budget (OMB) for the extension of clearance in compliance with the Paperwork Reduction Act (44 U.S. chapter 35):

SSS-9

Title: Registrant Claim Form.
Purpose: Is used to submit a claim for postponement of induction or a different classification.
Respondents: Registrants filing claims for either postponement or reclassification.
Frequency: One-time.
Burden: The reporting burden is five minutes or less per individual.

SSS-21

Title: Claim Documentation Form—Administrative.
Purpose: Is used to document those claims for reclassification which can be approved by an Area Office upon the presentation of documentary proof.
Respondents: Registrants whose past or present status is reason for reclassification.
Frequency: One-time.
Burden: The reporting burden is ten minutes or less per individual.

SSS-23

Title: Claim Documentation Form—Divinity Student.
Purpose: Is used to document a claim for classification as a divinity student.
Respondents: Registrants who are divinity students.
Frequency: One-time.
Burden: The reporting burden is 20 minutes or less per individual.

SSS-24

Title: Claim Documentation Form—Hardship to Dependents.
Purpose: Is used to document a claim for classification on the basis of the hardship induction will cause a registrant's dependent(s).

Respondents: Registrants whose induction will cause hardship on their dependent(s).

Frequency: This form is normally used one-time.

Burden: The reporting burden is 30 minutes or less per individual.

SSS–25

Title: Claim Documentation Form—Minister of Religion.

Purpose: Is used to document claims for classification as a regular or duly ordained minister.

Respondents: Registrants who are regular or duly ordained ministers.

Frequency: One-time.

Burden: The reporting burden is 20 minutes or less per individual.

SSS–26

Title: Claim Documentation Form—Alien or Dual National.

Purpose: Is used to document a registrant's claim for classification as an Alien, Dual National or Treaty Alien.

Respondents: Registrants who wish to be classified as an Alien, Dual National or Treaty Alien.

Frequency: One-time.

Burden: The reporting burden is 20 minutes or less per individual.

SSS–27

Title: Claim Documentation Form—Postponement of Induction.

Purpose: Is used to document a claim for the postponement of induction.

Respondents: Registrants whose present status warrants postponement of induction.

Frequency: This form is normally used one-time.

Burden: The reporting burden is ten minutes or less per individual.

SSS–109

Title: Student Certificate.

Purpose: Is used to substantiate a claim for postponement of induction because the subject registrant is a student.

Respondents: Registrants who are attending school but have not graduated.

Frequency: This certificate is normally used one-time.

Burden: The reporting burden is six minutes or less per individual.

SSS–130

Title: Application by Alien for Relief from Training and Service in the Armed Forces of the United States.

Purpose: Is used to request relief from training and service based on being a national of a country with which an applicable treaty is in effect, i.e. "Treaty Alien."

Respondents: Those registrants who are "Treaty Aliens" and desire not to serve in the Armed Forces of the United States.

Frequency: One-time.

Burden: The reporting burden is five minutes or less per individual.

SSS–254

Title: Application for Voluntary Induction.

Purpose: Is used to apply for voluntary induction into the Armed Services.

Respondents: Registrants or nonregistrants who are seventeen years of age.

Frequency: One-time.

Burden: The reporting burden is twelve minutes or less per individual.

SSS–350

Title: Registrant Travel Reimbursement Request.

Purpose: Is used to request reimbursement for expenses incurred when traveling to or from a Military Entrance Processing Station in compliance with an official order issued by the Selective Service System.

Respondents: All registrants required to travel to or from a Military Entrance Processing Station at their own expense.

Frequency: One-time.

Burden: The reporting burden is ten minutes or less per request.

SSS–402

Title: Uncompensated Registrar Appointment.

Purpose: Is used to verify the official status of applicants for the position of Uncompensated Registrars and to establish authority for those appointed to perform as Selective Service System Registrars.

Respondents: United States citizens over the age of 18.

Frequency: One-time.

Burden: The reporting burden is three minutes or less.

Copies of the above identified forms can be obtained upon written request to Selective Service System, Reports Clearance Officer, Washington, DC 20435.

Written comments and recommendations for the proposed extension of clearance of the form(s) should be sent within 60 days of publication of this notice to Selective Service System, Reports Clearance Officer, Washington, DC 20435.

A copy of the comments should be sent to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Selective Service System, Office of Management and Budget, New Executive Office Building, room 3235, Washington, DC 20503.

Dated: May 10, 1991.

Robert W. Gambino,

Director.

[FR Doc. 91–11586 Filed 5–15–91; 8:45 am]

BILLING CODE 8015–01–M

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice #1395]

Bulgaria, Foreign Assistance Determinations

Pursuant to section 620(f)(2) of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2370(f)(2)), and section 1–201(a)(12) of Executive Order No. 12163, as amended, I hereby determine that the removal of the Republic of Bulgaria from the application of section 620(f) of the Foreign Assistance Act is important to the national interest of the United States. I therefore direct that the Republic of Bulgaria be henceforth removed, for an indefinite period, from the application of section 620(f) of the Foreign Assistance Act, as amended.

This determination shall be reported to the Congress immediately and published in the **Federal Register.**

Dated: May 3, 1991.

Lawrence S. Eagleburger,

Deputy Secretary of State.

[FR Doc. 91–11631 Filed 5–15–91; 8:45 am]

BILLING CODE 4710–01–M

Bureau of Intelligence and Research

[Public Notice 1396]

Discretionary Grant Programs: Application Notice Establishing Closing Date for Transmittal of Certain Fiscal Year 1992 Applications

AGENCY: The Department of State invites applications from national organizations with interest and expertise in conducting research and training concerning the USSR and Eastern Europe to serve as intermediaries administering national competitive programs under the Soviet-Eastern European Research and Training Act. The grants will be based on an open, national competition among applying organizations.

Authority for this program is contained in the Soviet-Eastern European Research and Training Act of 1983.

SUMMARY: The purpose of this application notice is to inform potential applicant organizations of fiscal and programmatic information and closing dates for transmittal of applications for awards in Fiscal Year 1992 under a program administered by the Department of State.

Organization of Notice: This notice contains three parts. Part I lists the closing date covered by this notice. Part II consists of a statement of purpose and priorities of the program. Part III provides the fiscal data for the program.

Part I

Closing Date for Transmittal of Applications

An application for an award must be mailed or hand-delivered by September 20, 1991.

Applications Delivered by Mail

An application sent by mail must be addressed to Kenneth E. Roberts, Executive Director, Soviet-Eastern European Studies Advisory Committee, suite 233, 1730 K Street, NW., Washington, DC 20006.

An applicant must show proof of mailing consisting of *one* of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial center.

(4) Any other proof of mailing acceptable to the Department of State.

If an application is sent through the U.S. Postal Service, the Department of State does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a date postmark. Before relying on this method, an applicant should check with the local post office.

An applicant is encouraged to use registered or at least first class mail. Late applications will not be considered and will be returned to the applicant.

Applications Delivered by Hand

An application that is hand-delivered must be taken to Kenneth E. Roberts, Executive Director, Soviet-Eastern European Studies Advisory Committee, Suite 233, 1730 K Street, NW., Washington, DC.

The Soviet-Eastern European Studies Advisory Committee will accept hand-delivered applications between 9 a.m. and 4 p.m. (Washington, DC time) daily, except Saturdays, Sundays, and Federal holidays.

An application that is hand-delivered will not be accepted after 4 p.m. on the closing date.

Part II

Program Information

In the Soviet-Eastern European Research and Training Act of 1983 the Congress declared that independently verified factual knowledge about the countries of that area is "of utmost importance for the national security of the United States, for the furtherance of our national interests in the conduct of foreign relations, and for the prudent management of our domestic affairs." Congress also declared that the development and maintenance of such knowledge and expertise "depends upon the national capability for advanced research by highly trained and experienced specialists, available for service in and out of Government." The Act authorizes the Secretary of State to provide financial support for advanced research, training and other related functions.

The full purpose of the Act and the eligibility requirements are set forth in Public Law 98–164, title VIII, 97 Stat. 1047–50. Under title VIII, the countries include Albania, Bulgaria, Czechoslovakia, German Democratic Republic, Hungary, Poland, Romania, USSR, and Yugoslavia.

The Act establishes an Advisory Committee to recommend grant policies and recipients. The Secretary of State, after consultation with the Advisory Committee, approves policies and makes final determination on awards.

Applications for funding under the Act are invited from organizations prepared to conduct competitive programs in the fields of Soviet and Eastern European and related studies. Applying organizations or institutions should have the capability to conduct competitive award programs that are national in scope. Programs of this nature are those that make awards which are based upon an open, nationwide competition, incorporating peer group review mechanisms. Applications sought are those that would contribute to the development of a stable, long-term, national program of unclassified, advanced research and training on the Soviet Union and countries of Eastern Europe by proposing:

(1) *National programs* which award contracts or grants to American institutions of higher education or not-for-profit corporations in support of postdoctoral or equivalent level research projects, such contracts or grants to contain shared-cost provisions;

(2) *National programs* which offer graduate, postdoctoral and teaching fellowships for advanced training in Soviet and Eastern European and related studies, including training in the languages of the Soviet Union and Eastern Europe, such training to be conducted, on a shared-cost basis, at American institutions of higher education;

(3) *National programs* which provide fellowships and other support for American specialists enabling them to conduct advanced research in the field of Soviet, Eastern European and related studies; and those which facilitate research collaboration between Government and private specialists in these fields;

(4) *National programs* which provide advanced training and research on a reciprocal basis in the Soviet Union and in the countries of Eastern Europe by facilitating access for American specialists to research facilities and resources in those countries;

(5) *National programs* which facilitate public dissemination of research methods, data and findings; and those which propose to strengthen the national capability for advanced research or training on the Soviet Union and Eastern Europe in ways not specified above.

Note: The Advisory Committee will not consider applications from individuals to further their own training or research, or from institutions or organizations whose proposals are not for competitive award programs that are national in scope as defined above. Support for specific activities will be guided by the following policies:

—*Publications.* Title VIII funds should not be used to subsidize journals, newsletters and other periodical publications except in unique or special circumstances, in which cases the funds should be supplied by peer-review organizations with national competitive programs.

—*Conferences.* Proposals for conferences, like those for research projects and training programs, should be assessed according to their relative contribution to the advancement of knowledge and to the professional development of cadres in the fields. Therefore, title VIII grants generally should not be made solely to support a particular conference or series of conferences. Rather conference funding should come from one or more of the national peer-review organizations receiving title VIII funds, with proposed conferences

being evaluated competitively against research, fellowship or other proposals for achieving the purposes of the grant.

—*Library Activities.* Title VIII funds may be used for certain library activities which clearly strengthen research and training in Soviet and East European studies and benefit the field as a whole. Such programs must make awards based upon open, nationwide competition, incorporating peer group review mechanisms. Title VIII funds may not be used for activities such as modernization or preservation. Modest, cost-effective proposals to facilitate research, by eliminating serious cataloging backlogs or otherwise improving access to research materials, will be considered for funding.

—*Language Support.* The Advisory Committee encourages attention to the non-Russian languages of the Soviet Union and the less commonly taught languages of the East European countries. Support provided to Russian language instruction normally will be only at the advanced level.

—*German Democratic Republic.* Support for research on the former German Democratic Republic is limited to the study of historical issues related to its communist experience.

—*Soviet Republics.* The Advisory Committee will consider applications for national programs which advance knowledge and understanding of the Soviet republics, as well as those which focus on the broader aspects of Soviet and East European research and training.

In making its recommendations, the Committee will seek to encourage a coherent, long-term, and stable effort directed toward developing and maintaining a national capability in Soviet and Eastern European studies. Program proposals can be for the conduct of any of the functions enumerated, but in making its recommendations, the Committee will be concerned to develop a balanced national effort which, over the life of the Act, will ensure attention to all the countries of the area. While title VIII legislation requires that in certain cases grantee organizations include shared-cost provisions in their arrangements with end-users, cost-sharing in all forms is encouraged whenever feasible in all programs.

Part III

Available Funds

The President has requested for Fiscal Year 1992 $4.784 million for the title VIII program. However, the amount available for awards (if any) will not be known until legislative action is complete on the Department of State Appropriations Bill. In Fiscal Year 1991, the Congress increased funding for the title VIII program from the requested level, $4.6 million, to $10 million.

The Department legally cannot commit funds that may be appropriated in subsequent fiscal years. Thus multi-year projects cannot receive assured funding unless such funding is supplied out of a single year's appropriation. Generally, grant agreements will permit the expenditure from a particular year's grant to be made up to three years from the grant's effective date.

Applications

Applications must be prepared and submitted in 20 copies in the form of a statement, the narrative part of which should not exceed 20 double-spaced pages. This must be accompanied by a one page executive summary, a budget, and vitae of professional staff. Proposers may append other information they consider essential, though bulky submissions are discouraged.

Applicants who have received a title VIII grant in the previous fiscal year competition should provide detailed information on the peer evaluation and review procedures followed, and awards made, including, where applicable, names/affiliations of recipients, and amounts and types of awards. If an applicant also received title VIII support prior to last year, a summary of those awards would be helpful.

Descriptions of competitive fellowships and other award programs should specify the applicant-to-award ratios.

Procedures for evaluating and selecting applicants to receive awards should be described in detail. For proposals including language instruction programs, criteria for evaluation should address levels of instruction, degrees of intensiveness, facilities, methods for measuring language proficiency (including pre- and post-testing), instructors' qualifications, and budget information showing estimated costs per student.

A description of affirmative action policies and practices should be included in the application.

Applicants should include certifications of compliance with the provisions of: (1) The Drug-Free Workplace Act (Pub. L. 100–690), in accordance with appendix C of 22 CFR 137, subpart F; and (2) Section 319 of the Department of the Interior and Related Agencies Appropriations Act (Pub. L. 101–121), in accordance with appendix A of 22 CFR 138, New Restrictions on Lobbying Activities.

Budget

Applicants should familiarize themselves with OMB Circular A–110, "Grants and Agreements with Institutions of Higher Education . . . Uniform administrative Requirements," and OMB Circular A–133, "Audits of Institutions of Higher Learning and Other Non-Profit Institutions" and indicate or provide the following information:

(1) Whether the organization falls under OMB Circular No. A–21, "Cost Principles for Educational Institutions," or OMB Circular No. A–122, "Cost Principles for Nonprofit Organizations;"

(2) A budget request containing total amount, a detailed program budget indicating direct expenses by program element, and indirect costs. NB: Indirect costs are limited to 10 percent of total direct program costs. Applicants who are requesting title VIII funds to supplement a program having other sources of support should submit a current budget for the total program and an estimated future budget for it showing how specific lines in the budget would be affected by the allocation of requested title VIII grant funds. Other funding sources, when known, should be identified;

(3) The applicant's cost-sharing proposal, if applicable, containing appropriate details and cross references to the requested budget;

(4) Whether payment is requested on a reimbursable basis or by advance methods; for grants above $120,000, payments will be made through the Department of State by wire transfers, but if less than $120,000, payments will be made by Treasury checks;

(5) The organization's most recent audit report (the most recent U.S. Government audit report if available) and the name, address and point of contact of the audit agency.

Technical Review

The Soviet-Eastern European Studies Advisory Committee will evaluate applications on the basis of the following criteria:

(1) Responsiveness to the substantive provisions set forth above in *part II, Program Information* (40 points);

(2) The professional qualifications of the applicant's key personnel and their experience conducting national competitive award programs of the type the applicant proposes in the Soviet and East European fields (40 points); and

(3) Budget and cost effectiveness (20 points).

Further Information

For further information, contact Kenneth E. Roberts, Executive Director, Soviet-Eastern European Studies Advisory Committee, INR/RES, Department of State, suite 233, 1730 K Street NW., Washington, DC 20006. Telephone (202) 632–2025 or 632–6080.

Kenneth E. Roberts,

Executive Director, Soviet-Eastern European Studies Advisory Committee.

[FR Doc. 91–11625 Filed 5–15–91; 8:45 am]

BILLING CODE 4710–32–M

TENNESSEE VALLEY AUTHORITY

Tennessee Valley Authority Act of 1933 and Public Utility Regulatory Policies Act of 1978; Modifications in Guidelines on Dispersed Power Production

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Notice of proposed modifications in TVA's Dispersed Power Production Guidelines.

SUMMARY: On April 20, 1981, TVA initially adopted a policy to encourage dispersed power production in the Tennessee Valley region and an interim program and guidelines to assist TVA and the distributors of TVA power in implementation of the policy. Subsequently, from time-to-time revisions in the guidelines have been made. The guidelines encompass cogeneration and small power production facilities included under sections 201 and 210 of the Public Utility Regulatory Policies Act of 1978 (Pub. L. 95–617). In light of TVA's experience with the guidelines over the years, additional modifications in the guidelines are being considered. The proposed guidelines should provide greater flexibility for power purchase arrangements. Other changes include the elimination of provisions allowing contract demand reductions for industrial customers installing facilities that meet certain efficiency standards. With the shorter contract terms available to such customers, these provisions no longer appear to be needed. Additionally, the format and wording have been revised to make the guidelines shorter. Written comments are invited from interested persons and the comments will be considered in the development of the guideline changes.

DATES: Comments in writing must be received by 5 p.m., June 30, 1991, to be assured of being considered.

ADDRESSES: Written comments should be sent to Mary Sharpe Hayes, President, Customer Group, Tennessee Valley Authority, 6B Missionary Ridge, 1101 Market Street, Chattanooga, Tennessee 37402–2801.

FOR FURTHER INFORMATION CONTACT: Sam H. Powell, Tennessee Valley Authority, 5D Signal Place, 1101 Market Street, Chattanooga, Tennessee 37402–2801, (615) 751–6273.

The proposed modified guidelines for dispersed power production are printed below.

Dated: May 9, 1991.

Mary Sharpe Hayes,

President, Customer Group.

Dispersed Power Production Guidelines

These guidelines are intended to assist TVA and the distributors of TVA power in developing arrangements for the effective utilization of dispersed power production in the Tennessee Valley. TVA develops and administers these guidelines which are applicable for purchases by TVA and by distributors of TVA power from dispersed power production facilities and for utilization of dispersed power production on the region's power system. The guidelines may be modified by TVA from time-to-time as it deems appropriate.

A. Definitions
B. Generation from Qualified Facilities
  1. Disposition of Power from Qualified Facilities
  2. Purchase Price for Power from Qualified Facilities
  3. Security Requirements for Qualified Facilities
  4. Purchase of Power by TVA
  5. Purchase of Power by Distributor
  6. Availability of Power to Qualified Facility Within the TVA Area
  7. Additional Requirements
C. Generation from Authorized Facilities
  1. Development of Authorized Facilities and Related Activities
  2. Disposition of Power from Authorized Facilities
  3. Purchase Price for Power from Authorized Facilities
  4. Security Requirements for Authorized Facilities
  5. Contract Requirements for Distributors
  6. Purchases of Power from TVA
  7. Additional Requirements
D. General Provisions Applicable for Arrangements Involving Any Qualified or Authorized Facility
  1. Temporary Curtailments
  2. Responsibility for Interconnection, Transmission, and Metering Costs
  3. Parallel Operation
  4. Compliance with Safety, System Protection, and System Operating Guidelines
Attachment A—Dispersed Power Price—Schedule CSPP
Attachment B—Standby Power Rate—Schedule SP
Attachment C—Wholesale Standby Power Rate—Schedule WSP
Attachment D—Supplemental Safety, System Protection, and System Operating Guidelines Applicable to Owners of Qualified or Authorized Facilities

A. Definitions

For purposes of these guidelines, the following terms (whether in the singular or plural) shall have the following meanings:

1. *Qualified Facility* shall be either a cogeneration or small power production facility which meets the qualifications set out in Federal Energy Regulatory Commission (FERC) Rules (18 CFR part 292).

2. *Qualified Producer* shall be any entity, other than a Distributor as hereinbelow defined, who owns and operates a Qualified Facility and meets the qualifications set out in FERC Rules (18 CFR part 292).

3. *Distributor* shall be an electric cooperative or municipal electric system or department that purchases and distributes electric power and energy to consumers pursuant to a wholesale power contract with TVA.

4. *Authorized Facility* shall be either a cogeneration or small power production facility which (a) is owned by a Distributor and (b) meets the qualifications set out in FERC Rules (18 CFR part 292), with the exception of criteria set out in such rules limiting electric system participation in facility ownership.

5. *TVA Area* shall be the area within which TVA or the Distributors are a source of power supply under the provisions of the TVA Act.

6. *Standard Purchase Price Schedule* shall be the attached Dispersed Power Price—Schedule CSPP (Attachment A), as it may be adjusted, modified, changed, or replaced by TVA from time to time.

7. *Alternative Purchase Prices* shall be any purchase prices agreed upon by TVA for purchases by TVA (and as agreed upon by TVA and a Distributor for Distributor's purchase) as alternative prices to those set forth in the Standard Purchase Price Schedule. In developing Alternative Purchase Prices, consideration will be given to such factors as TVA's current and projected avoided energy costs and any projected capacity costs, dispatchability, maintenance scheduling, administrative and billing requirements, variations in line losses, curtailment rights during periods when deliveries would increase operating costs on the TVA system, and reliability of output from the power

production facility during TVA onpeak load periods. Alternative Purchase Prices may include prices (or components of prices) that are fixed for all or some portion of the contract term.

B. Generation From Oualified Facilities

1. Disposition of Power From Qualified Facilities

A Qualified Producer may either (a) use all of the output of it its Qualified Facility to supply its own requirements, (b) use a portion of said output to supply its own requirements and sell the surplus to the local Distributor or TVA, or (c) sell the entire output of the Qualified Facility to the local Distributor or TVA.

2. Purchase Price for Power From Qualified Facilities

a. Qualified Producers with Qualified Facilities located within the TVA Area and those Qualified Producers with Qualified Facilities located outside the TVA Area that make arrangements with connecting utility systems (or are otherwise able to deliver their output to the power system of TVA or a Distributor) may make arrangements to sell their output to TVA or a Distributor (i) under the then-available Standard Purchase Price Schedule, or (ii) for those Qualified Producers with Qualified Facilities who contract to provide 500 kW or more of capacity from a production facility, under Alternative Purchase Prices.

b. The amounts payable under the Standard Purchase Price Schedule or under Alternative Purchase Prices may be modified, as appropriate, to reflect costs incurred by TVA or the Distributor in connection with the purchase, which costs may include, but are not limited to, administrative costs, metering costs, and the costs of transmission line losses.

3. Security Requirements Qualified Facilities

In recognition that TVA systemwide avoided costs are utilized to determine the purchase price for the output from Qualified Facilities and that there is a risk of loss to the TVA power system if the Qualified Producer fails to deliver the power and energy provided for under contract, contractual arrangements with the Qualified Producer shall include appropriate provisions to minimize such risks. Such provisions may include payment of damages, return by the Qualified Producer of a portion of the payment amounts it has received from TVA or Distributor, setoffs against amounts to be paid to the Qualified Producer, and the establishment of security to be provided by the Qualified Producer. Such security may be a performance bond, a bank letter of credit, or other measures of security in such form, or combination of forms, and amount as deemed sufficient by TVA (and the local Distributor in situations where it is to purchase the output). In such situations, the contractual arrangements will also provide that the security will be for the benefit of TVA and that amounts to be repaid which reflect the electric system loss due to a Qualified Producer's deficiencies in delivering its output, as compared with contract terms and requirements, will be paid to TVA.

4. Purchase of Power by TVA

a. Arrangements for sale to TVA of any of the output of a Qualified Facility will be subject to the provisions of a purchase contract between the Qualified Producer and TVA and shall be subject to all applicable provisions of these guidelines.

b. If a Qualified Facility is to be connected to a Distributor's system but the Qualified Producer has elected to sell the output to TVA, it shall be the Qualified Producer's responsibility to make appropriate arrangements with the Distributor for use of the Distributor's system for transmitting such output to TVA. Under such an arrangement, the Qualified Producer will reimburse the Distributor for any additional transmission, distribution, and administrative costs that the Distributor incurs as a result of such purchases by TVA from the Qualified Producer. The amount of any such payments by the Qualified Producer will be determined by the Distributor in consultation with TVA taking into consideration such factors as operation and maintenance of the Distributor's facilities, changes in the Distributor's transmission and distribution losses, and meter reading and billing costs.

5. Purchase of Power by Distributor

a. If the Qualified Producer elects to sell all or a portion of the output of its Qualified Facility to a Distributor, arrangements for the sale will be subject to the provisions of a purchase contract between the Qualified Producer and the Distributor and shall be subject to all applicable provisions of these guidelines. The purchase contract plus all supplements and amendments thereto shall be subject to the approval of TVA before becoming effective.

b. For purchases made by a Distributor from a Qualified Producer, appropriate adjustments will be made by TVA (unless it is not economically and administratively feasible) in the Distributor's wholesale power bill so that the Distributor pays to TVA for power and energy taken from TVA and the Qualified Producer, as if all such power and energy had been supplied by TVA under the wholesale power contract. The Distributor will receive a credit on such wholesale power bill equal to the actual payments made by the Distributor to the Qualified Producer for power and energy.

c. In the event that a Distributor's contract with a Qualified Producer includes provisions for the availability of standby power to the Qualified Producer, the contractual arrangements between TVA and the Distributor making such power available will include provisions for appropriate adjustments in the Distributor's wholesale power bill reflecting the additional costs imposed on the TVA power system resulting from the provision of standby power.

6. Availability of Power to Qualified Facility Within the TVA Area.

a. If requested by the Qualified Producer, contractual arrangements involving a Qualified Facility within the TVA Area shall include the availability to the Qualified Producer of maintenance and emergency standby power at the applicable standby power charges, which power is currently provided under the provisions of the Standby Power Rate—Schedule SP (Attachment B), as adjusted, modified, changed, or replaced from time to time by TVA as it deems appropriate to reflect changes in the costs of providing such power. The Qualified Producer will be required to bear the costs of any additional facilities necessary to provide such standby power.

b. Contractual arrangements involving a Qualified Facility within the TVA Area may also include the supply to the Qualified Producer of such of its power requirements as it may request under applicable terms and conditions, including power rates, as power is supplied to electric power customers in the area for the same customer classification as the Qualified Facility.

c. It shall be clearly understood (i) that it shall be the responsibility of the Qualified Producer to contract for its maximum expected power requirements, (ii) that neither TVA nor any of the Distributors will be obligated to supply power in greater amounts than the amount contracted, and (iii) that neither TVA nor any of the Distributors will contract or otherwise become obligated to sell power to any Qualified Producer not located within the TVA Area.

7. Additional Requirements

All Qualified Producers with Qualified Facilities must comply with the additional applicable requirements set out in Section D.

C. Generation From Authorized Facilities.

1. Development of Authorized Facilities and Related Activities

a. Distributors will be permitted to develop, own, and operate facilities that meet the criteria for an Authorized Facility except that, without prior approval from TVA, Distributors will not undertake the construction or acquisition of a production facility that either

i. Has a design production capacity exceeding 80 MW for any individual facility or any amount of capacity that would cause the aggregate production capacity of all production facilities owned by the Distributor to exceed 10 percent of the Distributor's peak capacity requirements projected for the year in which the proposed facility is to become operational; or

ii. Has ongoing annual revenue requirements which, in the event of facility failure, will cause the projected ongoing annual revenue requirements for all Authorized Facilities of the Distributor to exceed 10 percent of the Distributor's projected annual net revenues from its electric operations (resale electric revenue less total power supply cost) during any year after the proposed facility is to become operational.

b. Distributors are permitted to use up to 2 percent of their annual net revenues (resale electric revenue less wholesale power cost) for research and demonstration activities, including the evaluation of proposed production facilities. Activities requiring aggregate expenditures above this amount are subject to prior review and approval by TVA.

c. In seeking TVA's prior approval of any proposed project or research and demonstration activity that exceeds the limitations in subsections C.1.a. and C.1.b. above, it will be the responsibility of the Distributor to notify TVA in writing of the proposed undertaking and to provide TVA with such data and information as TVA might reasonably request for the purpose of evaluating the technical and financial feasibility of the proposed project or activity. TVA will endeavor to respond within 90 days from the date that the Distributor submits such notice and information to TVA.

d. Distributors will provide TVA with reasonable advance notice of all power production facilities that either the Distributors or their customers plan to acquire and operate and will coordinate with TVA the development of any necessary power supply and operating arrangements. Additionally, after such facilities commence operations, the Distributors will be responsible for notifying TVA promptly of any anticipated change in the capability of such production facilities to continue to supply power.

2. Disposition of Power from Authorized Facilities

A distributor owning and operating an Authorized Facility may either (a) use all of the output thereof to supply a portion of its power system requirements, (b) use a portion of said output to supply a portion of its power system requirements and sell the surplus to TVA, or (c) sell the entire output of the Authorized Facility to TVA.

3. Purchase Price for Power from Authorized Facilities

a. A Distributor may elect either to sell TVA the output of the Authorized Facility (i) under the then-available Standard Purchase Price Schedule, or (ii) if the Authorized Facility will be used to supply at least 500 kilowatts of capacity to TVA, under Alternative Purchase Prices.

b. The amounts payable to a Distributor under the Standard Purchase Price Schedule or under Alternative Purchase Prices may be modified, as appropriate, to reflect costs incurred by TVA in connection with the purchase, which costs may include, but are not limited to, administrative costs, metering costs, and the costs of transmission line losses.

4. Security Requirements for Authorized Facilities

In recognition that there is a risk of loss to the TVA power system if the Distributor fails to deliver power and energy provided for under contract, the contractual arrangements with the Distributor shall include appropriate provisions to minimize such risks. Such provisions may include payment of damages, return by the Distributor of a portion of the payment amounts it has received from TVA, setoffs against amounts to be paid to the Distributor, and the establishment of security to be provided by the Distributor. Such security may be a performance bond, a bank letter of credit, or other measures of security in such form, or combination of forms, and amount as deemed sufficient by TVA.

5. Contract Requirements for Distributors

Arrangements for the sale to TVA of any of the output of an Authorized Facility will be subject to the provisions of a purchase contract between the Distributor and TVA and shall be subject to all applicable provisions of these guidelines.

6. Purchases of Power from TVA

a. A Distributor providing a portion of its power system requirements from an Authorized Facility, or through purchases from one or more Qualified Producers pursuant to these guidelines, shall obtain the remainder of its power system requirements from TVA in accordance with the provisions of its wholesale power contract with TVA, including the wholesale rates provided for therein.

b. A Distributor owning an Authorized Facility and using the output thereof to provide a portion of its power system requirements shall purchase standby power from TVA at the applicable standby power charges, which power is currently provided under the provisions of Wholesale Standby Power Rate—Schedule WSP (Attachment C), as adjusted, modified, changed, or replaced from time to time by TVA as it deems appropriate to reflect changes in the costs of providing such power. The Distributor will also be required to bear the costs of any additional facilities necessary to provide such standby power.

7. Additional Requirements

All Distributors with Authorized Facilities must comply with the additional applicable requirements set out in Section D.

D. General Provisions Applicable for Arrangements Involving Any Qualified or Authorized Facility.

1. Temporary Curtailments

The Qualified Producer's right to sell power to the Distributor or TVA, or in the case of an Authorized Facility, the Distributor's right to sell power to TVA, may be subject to temporary curtailments during system emergencies and when, as a result of operational circumstances, the delivery of such power will interfere with the safe operation of TVA's and/or Distributor's respective power systems.

2. Responsibility for Interconnection, Transmission, and Metering Costs

a. A Qualified Producer with a Qualified Facility will be required to pay TVA and the local Distributor for any

additional transmission or distribution costs (including the costs of metering, system protection, safety equipment, administrative costs, and transmission line losses) to the extent that any such costs are in excess of those that TVA and the local Distributor would have incurred if the Qualified Facility had not been installed. In the case of an Authorized Facility, the owning Distributor will be responsible for any such costs to TVA. If a Qualified or Authorized Facility is capable of producing in excess of 15,000 kW, the Qualified Producer or Distributor owner, as the case may be, may be required to provide telemetering facilities to supply information on the power output of its facility to the purchasing electric system (and to TVA when a Distributor is the purchasing electric system).

b. Existing customers of a Distributor or TVA that subsequently install Qualified Facilities may also be required to compensate the Distributor and TVA for the unamortized costs less salvage value of any existing transmission or distribution facilities that are rendered surplus by changes in the customer's supply requirements. When such surplus facilities are severable from the electric systems, the Qualified Producer will have the option of taking possession of the severable facilities in lieu of receiving any credit for salvage value.

c. A Distributor that operates an Authorized Facility may be required to compensate TVA for the unamortized costs less salvage value of any existing transmission or distribution facilities owned by TVA that are rendered surplus by any reduction in the Distributor's supply requirements from TVA. When such surplus facilities are severable from TVA's system, the Distributor will have the option of taking possession of the severable facilities in lieu of receiving any credit for salvage value.

d. The Qualified Producer or Distributor owner, as the case may be, at its expense, shall be reaponsible for installing, owning, operating, and maintaining all electrical equipment associated with its facility and necessary for the protection of such equipment up to the point of connection with the connecting electric system to which the proposed facility's output will be delivered, including furnishing the equipment necessary to connect the facility to the electric system lines. The connecting electric system shall make the connection and the reimbursement for this cost shall be made by the Qualified Producer or Distributor owner of the facility.

3. Parallel Operation

All Qualified Producers and Distributors (that operate Authorized Facilities) that desire to operate their production facilities in parallel with the connecting electric system of TVA or a Distributor, as the case may be, will be required to execute contractual agreements with the connecting electric system.

4. Compliance with Safety, System Protection, and System Operation Guidelines

All Qualified Producers and Distributors with Authorized Facilities will be required to comply with the applicable safety, system protection, and system operating guidelines set out in Attachment D, as they may be modified or revised by TVA from time to time.

Attachment A—Dispersed Power Price—Schedule CSPP

(_____, 19____)

Availability

This schedule shall apply to purchases by TVA, or by distributors of TVA power, from cogeneration and small power production facilities which are qualified, operated, and maintained in accordance with the guidelines for TVA's Dispersed Power Production Program.

Character of Purchased Power

Alternating current, single or three-phase, 60 hertz. Power will be purchased at the highest voltage available in the vicinity or other voltage agreed to by the purchasing electric system.

Standard Prices

Part A

Price for power and energy when no time-differentiated metering is utilized.

All kilowatthours per month at 1.960 cents per kWh.

Part B

Price for power and energy when time-differentiated metering is utilized.

All onpeak kilowatthours per month at 2.350 cents per kWh.

All offpeak kilowatthours per month at 1.730 cents per kWh.

Part C

Price for power and energy when time-differentiated metering is utilized. (Only available for purchases under contracts having terms of 10 years or longer.)

All onpeak kilowatthours per month at 2.940 cents per kWh.

All offpeak kilowatthours per month at 1.730 cents per kWh.

Revisions

All of the above prices are subject to revision by TVA annually to reflect, as TVA deems appropriate, TVA's then-current projections of avoided energy costs and avoided capacity costs, if any, for the next annual period in which the power and energy is to be supplied.

The onpeak price in Part C above contains a capacity component based on capacity cost projections for an extended period. This portion of the price will be revised annually to reflect changes in such capacity cost projections.

Determination of Onpeak and Offpeak Hours

Except for Saturdays and Sundays and the weekdays that are observed as Federal holidays for New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day, onpeak hours for each day shall be 10 a.m. to 10 p.m. during calendar months of May through September and from 6 a.m. to 12 noon and from 4 p.m. to 10 p.m. during all other calendar months. All other hours of each day and all hours of such excepted days shall be offpeak hours. Such times shall be Central Standard Time or Central Daylight Time, whichever is then in effect. The onpeak and offpeak hours under this price schedule are subject to change by TVA. In the event TVA determines that such changed onpeak and offpeak hours are appropriate, it shall so notify producers supplying power to TVA hereunder and distributors at least 12 months prior to the effective date of such changed hours, and the distributors shall promptly notify producers supplying power to them hereunder.

Contract Requirement

Contracts are required for purchases hereunder. For purchases under Part A and Part B above, contracts shall extend for a term of not less than one year; provided, however, that they may be cancelled by the producer upon not less than 90 days' advance written notice to the purchasing electric system. For purchases under Part C above contracts shall extend for a term of not less than 10 years.

Payment

Representatives of TVA or distributor shall on a monthly basis read the meters at the point of delivery and provide the owner of the production facility with a detailed accounting of the amount of power and energy supplied (including, as appropriate, metered amounts during onpeak and offpeak periods) as determined by TVA or distributor. From these readings, calculations will be made to determine the amount to be paid for power and energy supplied by the production facility, and payment will be rendered promptly to the owner of the production facility in accordance with the terms of the contract.

Attachment B—Standby Power Rate—Schedule SP

(_____, 19 ____)

Availability

Available for small power producers and cogenerators within the TVA Area that qualify under TVA's Dispersed Power Production Program and that elect to purchase standby service for scheduled maintenance and emergency standby power supply. Service is subject to notice and

scheduling requirements set out in the contract.

Character of Standby Service

Alternating current, single or three-phase, 60 hertz. Power supplied shall be delivered at the highest voltage available in the vicinity, unless at the customer's request a lower standard voltage is agreed upon.

Standby Power Charges

Reservation Charges:

$1.20 per month per kilowatt of customer's standby contract demand, plus

$0.48 per month per kilowatt of aggregate production capacity of customer's facilities.

Demand Use Charges:

$2.41 per week per kilowatt of maintenance standby power prescheduled by customer, plus

$4.82 per week per kilowatt of emergency standby power used by customer.

Standby demand use charges will be prorated on a daily basis for periods of less than one week. All energy deemed to be taken with standby power will be billed as firm energy at the charges applicable under the standard general power rate schedule available for service to the customer. (For customers for whom firm power is also being made available, the amounts of standby power scheduled or taken will be subtracted from the customer's measured demand during such periods for purposes of determining the customer's billing demand for firm power.)

The above reservation and demand use charges may be increased or decreased by TVA, effective with the effective date of any Adjustment Addendum published by TVA or any rate change, to reflect changes in the cost of standby service.

Facilities Rental

There shall be no facilities rental charge under this rate schedule for delivery at bulk transmission voltage levels of 161 kV or higher. For delivery at less than 161 kV, there shall be added to the customer's bill a facilities rental charge. This charge shall be 36 cents per kW per month except for delivery at voltages below 46 kV, in which case the charge shall be 93 cents per kW per month for the first 10,000 kW and 73 cents per kW per month for the excess over 10,000 kW. Such charge shall be applied to the customer's then-effective standby contract demand except that, for a customer for whom firm power is also being made available, and whose firm power takings are also subject to facilities rental charges under the provisions of the standard general power rate schedule, calculations for determining the facilities rental charges for firm power and for standby power shall be made as follows. The standby contract demand will be added to the higher of (1) the highest billing demand for firm power established during the latest 12-consecutive-month period or (2) the customer's then-effective firm contract demand, and the amounts in cents per kW set out above shall be applied to the total. The facilities rental charge shall be in addition to all other charges under this rate schedule. Such amounts in cents per kW may be increased or decreased by TVA, effective with the effective date of any Adjustment Addendum published by TVA or any rate change, to reflect changes in the costs of providing for delivery at voltage levels below 161 kV.

Contract Requirement

Customers to whom this rate schedule is applicable shall be required to execute contracts, and such contracts shall be for a term not to exceed 10 years.

Payment

Bills under this rate schedule will be rendered monthly. Any amount of bill unpaid after due date specified on bill may be subject to additional charges under Distributor's standard policy.

Single Point Delivery

The charges under this rate schedule are based upon the supply of standby service through a single delivery and metering point, and at a single voltage. If service is supplied to the same customer through more than one point of delivery or at different voltages, the supply of service at each delivery and metering point and at each different voltage shall be separately metered and billed under this rate schedule.

Service is subject to Rules and Regulations of the Distributor and to guidelines applicable under TVA's Dispersed Power Production Program.

Attachment C—Wholesale Standby Power Rate—Schedule WSP

(_____, 19____)

This schedule is applicable to distributors of TVA power which elect, in accordance with TVA's Dispersed Power Production Guidelines, to use the output of their own authorized production facilities (hereinafter called "Units") to reduce their power supply requirements from TVA. All charges under this schedule are in addition to the charges provided for under the wholesale power rate schedule, and the provisions of said wholesale power rate schedule are in no way affected by this schedule.

Standby Power Reservation Charge

For each month, whether or not standby power is taken, Distributor shall pay a monthly standby power reservation charge calculated as provided below.

$8.86 (100 percent—CF) (Capacity—Standby Power Use) per month, where

CF = Capacity factor (expressed as a percentage) for all Units which is determined by TVA by dividing the expected annual energy generation for all Units by the maximum annual energy generation (equal to 8,760 hours times the Capacity) for all Units; and

Capacity = The aggregate production capacity in kW of all Units; and

Standby Power Use = The kW amount by which Distributor's billing demand (as determined under the wholesale power rate schedule) exceeds its firm demand. Distributor's firm demand shall be the kW amount by which its maximum system requirement in a month exceeds the aggregate production capacity of all Units. Distributor's system requirement shall be determined on a simultaneous basis. For any 60-consecutive-minute period of the month, the system requirements shall be the sum of (a) the average demands measured in kW in such period for all delivery points to Distributor and (b) the average generation measured in kW in such period for all Units, and the highest such system requirement for any month shall be the maximum system requirement for the month.

Adjustments and Changes

The above standby reservation charge may be increased or decreased by TVA, effective with the effective date of any Adjustment Addendum published by TVA or any rate change, to reflect changes in the cost of providing standby power.

Attachment D—Supplemental Safety, System Protection, and System Operating Guidelines Applicable to Owners of Qualified or Authorized Facilities

These requirements shall be applicable to assure system safety and reliability of interconnected operations. The adequacy of safety and system protection facilities for interconnection with producers as provided herein will be determined by TVA and, as appropriate, by the Distributors but only insofar as necessary to determine the compatibility of such facilities with the connecting electric system. TVA and the Distributors will apply such other safety and system protection requirements as may be determined to be appropriate.

It is recommended that the connecting electric system, TVA or the Distributor, emphasize to prospective producers the importance of discussing plans with the connecting electric system before purchasing or installing equipment.

1. Fault Protection

a. Adequate protection facilities shall be provided by the owner to protect the connecting electric system from fault currents originating from the production facility. The owner will provide adequate fault current interruption capability with secondary relaying and control circuits.

b. It shall be the responsibility of the owner to provide adequate protection for its production facility from fault currents originating on the connecting electric system because of a fault in the production facility.

2. Overvoltage and Undervoltage

a. It shall be the responsibility of the owner to provide adequate protection or safeguards to prevent damage to the connecting electric system caused by overvoltage originating from the operation of the production facility.

b. It shall be the responsibility of the owner to provide adequate protection of its production facility from overvoltages originating on the connecting electric system.

c. It shall be the responsibility of the owner to provide facilities adequate to prevent the production facility from being damaged by undervoltage conditions on the connecting electric system.

3. Synchronization and Isolation

a. The owner shall provide adequate facilities for the proper synchronization of its

production facility with the connecting electric system such that synchronism is accomplished, either manually or by automatic means, without causing undesirable currents or voltages (including current surges and voltage fluctuations) on the connecting electric system.

b. The owner shall provide means for properly disconnecting the production facility from the connecting electric system for system line interruptions, for occasions when the connecting electric system becomes isolated from its source of generation, and for the proper resynchronization of the production facility after such interruptions or isolation. Rapid restoration of service following a temporary interruption using automatic circuit breaker reclosing is a standard utility practice.

c. To provide assurance that the connecting electric system cannot be energized from the production facility during outages on the connecting electric system, the owner of the production facility must provide equipment for manually disconnecting and isolating the production facility. This will help provide safety for the connecting electric system's employees performing emergency repairs or routine maintenance to its lines. Such equipment must be capable of preventing the production facility from energizing the system's lines and must include a device (or devices) which can be locked so as to visually show isolation of the production facility to prevent all means of backfeed into the connecting electric system.

d. The owner may install generating facilities to supply a portion of its load without operating its generating facilities in parallel with the electric system. In these instances, the owner must verify to the electric system that the switches used for transferring the load from the electric system lines to the onsite generation facilities will meet the electric system's requirements for nonparallel operation. Also, the owner must verify there is no possibility of backfeed to the electric system's lines. If it is found that the generating facilities can backfeed, the facilities must meet the requirements for parallel operation.

4. Grounding

The facilities (generator, connecting transformer, etc.) that connect to the electric system must be grounded in such a way that coordination is maintained with the relay protection system in use by the connecting electric system, and the connected facilities will be protected from deleterious voltages during fault conditions.

5. Harmonics

a. Adequate design precautions must be taken by the owner to prevent excessive and deleterious harmonic voltages or currents caused by the production facility from occurring on the connecting electric system.

b. The production facility must be designed to operate with normal harmonic voltages and currents that originate from the connecting electric system.

6. Reactive Power

The production facility shall be operated to supply appropriate amounts (as hereinafter described) of reactive power during onpeak hours and to supply no reactive power, or to consume appropriate amounts (as hereinafter described) of reactive power during offpeak hours. The specific reactive power requirements to be met by the production facility will be determined by the connecting electric system, taking into consideration such factors as production facility size and equipment design limitations, electric system voltage levels, and other conditions on the electric system. If the production facility is unable to meet such requirements due to equipment design or other such limitations for which reasonable corrective measures cannot be taken by the producer, the connecting electric system, as it deems necessary, may provide the required reactive power at the expense of the owner of the production facility.

The connecting electric system reserves the right to install metering equipment or to make periodic tests to determine the reactive power flows to or from the owner's production facility and to mutually agree with the owner of the production facility to requirements differing from those described in the above paragraph. The onpeak hours and offpeak hours referred to above are the same as those provided in the then-effective standard price schedule.

7. Voltage Regulation

The owner shall provide necessary voltage regulation equipment to prevent the production facility from causing excessive voltage variation on the connecting electric system. The voltage variation caused by the production facility must be within ranges capable of being handled by the voltage regulation facilities used by the connecting electric system.

8. Voltage Flicker

The voltage surges caused by the operation, synchronization, or isolation of the production facility shall be within the standards of frequency of occurrence and magnitude established by the connecting electric system to prevent undue voltage flicker on the connecting electric system.

9. Voltage Balance

a. The voltage produced by the production facility must be balanced if it is a 3-phase installation. The waveform must be sinusoidal and compatible with the operation of the connecting electric system.

b. The owner will be responsible for protecting its production facility from inadvertent phase unbalance or single phasing in the connecting electric system's voltage.

10. Operational Oversight

a. The owner will be responsible for operating its production facility in a manner that will not cause undesirable or harmful effects to the connecting electric system or its other customers.

b. The owner will not begin initial operation of the production facility until it has received written approval from the connecting electric system. This approval shall not be construed as confirming or endorsing the design or as any warranty of safety, durability, or reliability of the production facility equipment.

c. The owner shall supply the connecting electric system with diagrams and specifications describing the production facility and related interconnection, operation, and protective equipment and any proposed changes to the aforesaid facilities. These diagrams and specifications shall be consistent with good engineering practice and shall specify the equipment to be used (relays, breakers, transformers, generators, etc.) by manufacturer, model, type, size, impedance, and other pertinent information.

For any production facility with output greater than 1,000 kW, the control and protective equipment used by the owner shall be utility class and shall conform to the latest revision of ANSI/IEEE C37.90, IEEE Standard Relays and Relay Systems Associated with Electric Power Apparatus. Specifications and/or instruction manuals for such control and protective equipment shall be made available by the owner upon request by the connecting electric system.

d. The connecting electric system shall have the right at any time to inspect and test the operation of any control and protective equipment owned and maintained by the owner.

e. If, subsequent to initial operation, a production facility is unable to comply with the provisions for safety, system protection, and production facility operation contained in this Attachment D, or is otherwise operated in an unsafe manner, the production facility may be disconnected from the connecting electric system until the problem has been corrected.

11. Metering

The type of metering and associated equipment shall be determined by the connecting electric system (and purchasing electric system, if different). Selection of metering arrangements will be based upon the lowest cost for equipment and arrangements that will also meet the electric systems' reasonable data requirements. Operation, maintenance, and testing of the metering equipment may be required from time to time by the electric systems. When tests are requested by the owner of a production facility, such tests shall be at the owner's expense.

12. Dc Current Injection

Adequate design precautions must be taken by the owner of the production facility to prevent injecting direct current into the connecting electric system. Where dc current injection is a possibility, methods such as isolation transformers, monitoring devices, or other decoupling devices should be utilized by the owner of the production facility to prevent dc current injection.

13. Single-phase Generators

Single-phase generators larger than 100 kW will be permitted to be connected to distribution facilities (26 kV and below) only after a determination by the connecting electric system that such connection will not interfere with the operation of the distribution circuit. Single-phase generators will not normally be permitted to be connected to subtransmission and transmission (46 kV and above) facilities.

14. Indemnification

The owner of the production facility will release, indemnify, and save harmless the connecting electric system, and the purchasing electric system if different, and their respective agents and employees from all liability, claims, demands, causes of action, costs, or losses for personal injuries, property damage, or loss of life or property, sustained by the owner, its agents and employees, or third parties rising out of or in any way connected with the installation, operation, maintenance, repair, defect, or failure of the production facility and associated equipment and facilities.

15. Insurance

The owner of the production facility will carry general liability insurance (in such minimum amounts as may be determined appropriate by the connecting and purchasing electric systems) to provide protection against liability, claims, demands, causes of action, costs, or losses as described in section 14 above (including losses sustained by the connecting electric system and the purchasing electric system and their respective agents and employees). The owner of the production facility, at the request of the electric systems, will provide the electric systems with evidence of the continuing effectiveness of such insurance during the production facility's construction and operation. The owner of the production facility, at the request of the electric systems, will name the electric systems, and their respective agents and employees, as additional insureds.

[FR Doc. 91-11617 Filed 5-15-91; 8:45 am]

BILLING CODE 8120-08-M

DEPARTMENT OF TRANSPORTATION

Order Adjusting International Cargo Rate Flexibility Level

Policy Statement PS-109, implemented by Regulation ER-1322 of the Civil Aeronautics Board and adopted by the Department, established geographic zones of cargo pricing flexibility within which cargo rate tariffs filed by carriers would be subject to suspension only in extraordinary circumstances.

The Standard Foreign Rate Level (SFRL) for a particular market is the rate in effect on April 1, 1982, adjusted for the cost experience of the carriers in the applicable ratemaking entity. The first adjustment was effective April 1, 1983. By Order 90-11-29, the Department established the currently effective SFRL adjustments.

In establishing the SFRL for the six-month period beginning April 1, 1991, we have projected non-fuel costs based on the year ended December 31, 1990 data, and have determined fuel prices on the basis of the latest available experienced monthly fuel cost levels as reported to the Department.

These projections reflect the intense fluctuations in fuel prices and costs induced by the recent Mid East crisis.

By Order 91-5-9 cargo rates may be adjusted by the following adjustment factors over the October 1979 level:

Atlantic	1.5638
Western Hemisphere	1.3174
Pacific	1.8111

For further information contact: Keith A. Shangraw (202) 366-2439.

Dated: May 9, 1991.

By the Department of Transportation:

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 91-11588 Filed 5-15-91; 8:45 am]

BILLING CODE 4910-62-M

Coast Guard

[CGD 91-033]

Towing Safety Advisory Committee; Meetings

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. app. I), notice is hereby given of a meeting of the Towing Safety Advisory Committee (TSAC) and Subcommittees. The full Committee meeting will be held on Thursday, July 18, 1991, in room 2415 of U.S. Coast Guard Headquarters. The meeting is scheduled to run from 9 a.m. to 4 p.m. Attendance is open to the public. The agenda follows:

1. Subcommittee Reports.
   a. Personnel Manning and Licensing.
   b. Tug-Barge Construction, Certification and Operations.
   c. Personnel Safety and Workplace Standards.
   d. Oil Pollution Act of 1990 Implementation.
2. Other Topics of Discussion.

A preliminary meeting of the aforementioned subcommittees will be held on Wednesday, July 17, 1991, in room 2415 of U.S. Coast Guard Headquarters. This meeting is scheduled to run from 1 p.m. to 4 p.m. Attendance is open to the public.

With advance notice, and at the discretion of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements should notify the TSAC Executive Director no later than the day before the meeting.

Written statements or materials may be submitted for presentation to the Committee at any time; however, to ensure distribution to each committee member, 20 copies of the written material should be submitted to the Executive Director by July 17, 1991.

FOR FURTHER INFORMATION CONTACT: Ms. Jo Pensivy, Executive Director, Towing Safety Advisory Committee, room 2412, U.S. Coast Guard Headquarters (G-MP-4), 2100 Second Street SW., Washington, DC 20593-0001, (202) 267-1406.

Dated: May 10, 1991.

J. D. Sipes,

Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 91-11667 Filed 5-15-91; 8:45 am]

BILLING CODE 4910-14-M

Federal Highway Administration

Environmental Impact Statement: Riverside and San Bernardino Counties, CA

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 proposed highway project in Riverside and San Bernardino Counties, California.

FOR FURTHER INFORMATION CONTACT: Leonard E. Brown, District Engineer, Federal Highway Administration, P.O. Box 1915, Sacramento, California 95812-1915, telephone: (916) 551-1307, or Mahmoud Sadeghi, California Department of Transportation, 3560 University Avenue, suite 300, Riverside, California 92501, telephone: (714) 787-7976.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the California Department of Transportation, will prepare an environmental impact statement (EIS) on a proposal to improve Interstate 215 (I-215) between the east junction of State Route 60 (SR-60) near Moreno Valley and Orange Show Road in San Bernardino. This proposed project is a collaborative effort with the Riverside County Transportation Commission (RCTC) and the San Bernardino County Associated Governments (SANBAG).

The approximately 12-mile portion of I-215 to be studied links traffic flows to and from the Counties of Riverside, San Bernardino, Los Angeles, and Orange. This heavily traveled segment of I-215 is currently experiencing traffic congestion. As the surrounding areas continue to increase in population, it is projected that traffic volumes will

increase, resulting in greater delays to the motoring public.

The EIS will address the purpose and need for the proposed project, evaluate solutions and alternatives to satisfy the needs, describe the affected environment, and identify environmental consequences and mitigation measures.

Improvements to be studied include the upgrading of the Routes 60/215 interchange, Routes 60/91/215 interchange, and the I–10/215 interchange. Improvements in pedestrian and bicycle access to the University of California at Riverside campus will be studied. High occupancy vehicles (HOV) lanes and truck climbing lanes will be considered and structures will be examined for seismic adequacy. Various modifications to existing interchanges to improve operations will be studied.

The alternatives proposed to be considered are (a) No-Build; (b) Transportation System Management (TSM) measures including access ramp improvements, such as widening and signalized ramp metering, the addition of high occupancy vehicle (HOV) lanes, and fringe parking facilities; and (c) widening existing Interstate Route 215 by four lanes for the entire length of the project. Both mixed-flow lanes and high occupancy vehicle (HOV) lanes will be considered. For the portion between the I–215/60/91 and Routes 60/215 interchange the addition of two auxiliary truck climbing lanes will also be considered. Staged construction may be considered for this alternative including the initial design for two additional lanes on the right-of-way necessary for four additional lanes. Subsequent staged construction would provide two additional lanes, thereby realizing the ultimate addition of four additional lanes.

The appropriate Federal, State, and local agencies, and private organizations and citizens who have previously expressed or are known to have interest in this proposal will each receive a letter describing the proposed action and soliciting their comments. A scoping meeting will be held in the near future and a series of public meetings are proposed prior to the public hearing. Public notice will be given of the time and place of the meetings and hearing. Scoping meetings will occur with one meeting scheduled for San Bernardino County, and another meeting for Riverside County. The scoping meetings are expected to occur in early 1991. Public meetings will be held throughout the planning process and prior to the circulation of the draft EIS. The public hearing will be held after the draft EIS is available for reviews, and is scheduled for the beginning of 1993.

To ensure that the full range of issues related to this proposed action are addressed and any significant impacts are identified, comments and suggestions are invited from all interested parties. The views of agencies which may have knowledge about historic and archaeological resources potentially affected by the proposal or interest in the effects of the proposal on historic properties are specifically solicited. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA or the California Department of Transportation at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: May 8, 1991.

Leonard E. Brown,

District Engineer, Sacramento, California.

[FR Doc. 91–11624 Filed 5–15–91; 8:45 am]

BILLING CODE 4910–22–M

UNITED STATES INFORMATION AGENCY

American Studies Summer Institutes

AGENCY: United States Information Agency.

ACTION: Announcement.

SUMMARY: Subject to the availability of funds, the United States Information Agency (USIA) invites applications from U.S. universities to conduct a graduate level, interdisciplinary, American Studies Summer Institute for secondary school educators. USIA is asking for detailed proposals from universities which have an acknowledged reputation in American studies and related fields with expertise in handling cross-cultural programs.

DATES: Deadline for proposals: Must be received at USIA by 5 p.m. e.d.t. on August 2, 1991. Faxed documents will not be accepted, nor will documents post-marked August 2d but received at a later date.

Approximate project dates: July 2 to August 15, 1992.

Duration: The duration of the award should begin two to two and-a-half months prior to the beginning of the project date, July 2, for which period only minimal administrative assistance costs will be allowed. The termination date should be 60 to 90 days after the end of the project date of August 15, to cover the required end-of-project report. Approximate time period for the activity on the USIA cover sheet should be from approximately May 1 to October 15, 1992. No funds may be expended until the agreement is signed.

ADDRESSES: Fifteen copies of the completed application, including USIA cover sheet and required forms, should be submitted to the Office below: U.S. Information Agency, Office of the Executive Director, Attn: Summer Institutes, E/X, room 336, 301 4th Street, SW., Washington, D.C. 20547.

Required forms: USIA cover sheet, Assurance of Compliance form; Certification Regarding Drug-Free Workplace Requirements; Certification Regarding Debarment, Suspension, and Other Responsibility Matters; and Certification for Contracts, Grants and Cooperative Agreements with appropriate Disclosure of Lobbying Activities forms.

FOR FURTHER INFORMATION CONTACT: Interested U.S. organizations should write or call Dr. Katherine Passias, at: USIA 301 4th Street, SW., Washington, DC. 20547, Study of the U.S. Branch, (E/AAS), room 256, Tel. (202) 619–4568.

SUPPLEMENTARY INFORMATION: Two and possibly three institutes may be funded in the summer of 1992. The authority for this exchange program is contained in the Mutual Educational and Cultural Exchange Act of 1961, as amended, Public Law 87–256 (Fulbright-Hays Act). The Fulbright Program seeks to increase mutual understanding between the people of the United States and people of other countries. Programs and projects must conform with all Agency requirements and guidelines and are subject to final review by the USIA contracting officer.

Eligibility

Accredited colleges and universities with graduate programs in fields related to the study of the U.S., including consortia of universities, are eligible to apply. Proposals from a consortium may be submitted by a member institution with authority to represent the consortium. The project director, or one of the key program staff responsible for the academic program must have an advanced degree in a field related to the study of the U.S. University escorts traveling under USIA grant support must be U.S. citizens.

Proposals that do not comply with the eligibility factors and with the budget ceiling for administrative and program costs, which should not exceed $60,000, will be technically ineligible.

Notification

All applicants will be notified of the results of the review process on or about October 10, 1991. Funded proposals will be subject to periodic reporting and evaulation requirements.

Dated: May 6, 1991.

Warren J. Obluck,

Deputy Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 91–11620 Filed 5–15–91; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 95
Thursday, May 16, 1991

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).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Notice forwarded to Federal Register on May 10, 1991.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 11:00 a.m., Monday, May 20, 1991.

CHANGES IN THE MEETING: Addition of the following closed item(s) to the meeting:

Proposed purchase of currency processing equipment within the Federal Reserve System.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: May 14, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91–11807 Filed 5–14–91; 3:33 pm]

BILLING CODE 6210–01–M

UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES

Meeting Notice

TIME AND DATE: 1:00 p.m., May 17, 1991.

PLACE: Uniformed Services University of the Health Sciences, Room D3–001, 4301 Jones Bridge Road, Bethesda, Maryland 20814–4799.

STATUS: Open—under "Government in the Sunshine Act" (5 U.S.C. 552b(e)(3)).

MATTERS TO BE CONSIDERED:

1:00 p.m. Meeting—Board of Regents

(1) Approval of Minutes—February 11, 1991; (2) Approval of Graduates; (3) Report—Admissions; (4) Financial Report; (5) Report—Deputy Dean, USUHS; (6) Comments—Members, Board of Regents; (7) Comments—Chairman, Board of Regents; (8) Reports of Subcommittees on Planning and Oversight

New Business

CONTACT PERSON FOR MORE INFORMATION: Charles R. Mannix, Executive Secretary of the Board of Regents, 301/295–3028.

Dated: May 13, 1991.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–11723 Filed 5–13–91; 4:46 pm]

BILLING CODE 3810–01–M

U.S RAILROAD RETIREMENT BOARD

Notice of Public Meeting

Notice is hereby given that the Railroad Retirement Board will hold a meeting on May 21, 1991, 9:00 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois, 60611. The agenda for this meeting follows:

(1) Board Letters to Agency Heads
(2) On-site Representative at Travelers
(3) Training: Discussion of RRB Policy, Budget Priorities
(4) Automation Review: Policy, Budget
(5) Backlog Review Task Force Report: Briefing and Discussion
(6) Atlanta Regional Director Position
(7) Hiring a Senior Actuary
(8) Regulations—Parts 202 and 301, Employers Under the Railroad Retirement Act and Railroad Unemployment Insurance Act
(9) Regulations—Part 203, Employees Under the Act
(10) Regulations—Part 225, Recovery of Overpayments

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. 386–4920.

Dated: May 13, 1991.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 91–11810 Filed 5–15–91; 3:37 pm]

BILLING CODE 7905–01–M

Corrections

Federal Register
Vol. 56, No. 95
Thursday, May 16, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3924-1]

Agency Information Collection Activities Under OMB Review

Correction

In notice document 91-9363 appearing on page 16331 in the issue of Monday, April 22, 1991, in the third column, under *Title*, in the third line, "1530.01" should read "1503.01".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice That the Secretary of Health and Human Services Is Declining To Determine Supplemental Security Income Benefit Amounts by Alternate Method

Correction

In notice document 91-8138 beginning on page 14268 in the issue of Monday, April 8, 1991, under **DATES**, "March 8, 1991" should read "April 8, 1991".

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Rel. No. 18118; International Series Rel. No.263; 812-7715]

Baillie Gifford International Fund, Inc.; Application

Correction

In notice document 91-10631 beginning on page 20635 in the issue of Monday, May 6, 1991, in the heading, the release number should read as set forth above.

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-25306]

Filings Under the Public Utility Holding Company Act of 1935("Act")

Correction

In notice document 91-10568 beginning on page 20638 in the issue of Monday, May 6, 1991, make the following correction:

In the third column, in the first line of the document, the release number was incorrect and should read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8337]

1545-AM08

Allocation and Apportionment of Deduction for State Income Taxes

Correction

In rule document 91-5585 beginning on page 10365 in the issue of Tuesday, March 12, 1991, make the following corrections:

On page 10366, in the second column, in the second paragraph, in the third line, "May 19, 1989" should read "May 18, 1989".

§ 1.861-8 [Corrected]

1. On page 10372, in § 1.861-8(g), *Example 25*(i), in the eighth line from the end of the paragraph, "$200,00" should read "$200, 000".

2. On page 10373, in the first column, in the same section, in *Example* 27(ii)(C)(2), in the second line, "estimate" was misspelled.

3. On page 10376, in the third column, in the same section, in *Example* 33, in the first line "(1)" should read "(i)".

BILLING CODE 1505-01-D

federal register

Thursday
May 16, 1991

Part II

United States Sentencing Commission

Amendments to the Sentencing Guidelines for United States Courts; Notice

UNITED STATES SENTENCING COMMISSION

Amendments to the Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of submission of amendments to the sentencing guidelines to Congress.

SUMMARY: Pursuant to its authority under section 994(p) of Title 28, United States Code, the Commission on May 1, 1991, submitted to the Congress for review a report containing a number of amendments to the sentencing guidelines, policy statements, and official commentary, together with reasons for the amendments.

DATES: Pursuant to 28 U.S.C. 994(p), as amended by section 7109 of the Anti-Drug Abuse Act of 1988 (Pub. L. 100–690, Nov. 18, 1988), the Commission has specified an effective date of November 1, 1991, for these amendments.

ADDRESSES: Comments should be sent to: United States Sentencing Commission, 1331 Pennsylvania Avenue, NW., Suite 1400, Washington, DC 20004, Attn: Public Information Office.

FOR FURTHER INFORMATION CONTACT: Mike Courlander, Public Information Specialist, Telephone: (202) 626–8500.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the U.S. Government. The Commission is empowered by 28 U.S.C. 994(a) to promulgate sentencing guidelines and policy statements for federal sentencing courts. The statute further directs the Commission to periodically review and revise guidelines previously promulgated and authorizes it to submit guideline amendments to the Congress no later than the first day of May each year. See 28 U.S.C. 994(o), (p). Absent action of Congress to the contrary, the amendments become effective on the date specified by the Commission (i.e., November 1, 1991) by operation of law.

Notice of the amendments submitted to the Congress on May 1, 1991, was published in the **Federal Register** of January 17, 1991 (56 FR 1846) and a public hearing on the proposed amendments was held in Washington, DC on March 5, 1991. After review of the hearing testimony and additional public comment, the Commission promulgated the amendments, each amendment having been approved by at least four voting Commissioners. In connection with its ongoing process of guideline review, the Commission continues to welcome comment on any aspect of the sentencing guidelines, policy statements, and official commentary. Specifically, the Commission solicits comment on which, if any, of the amendments submitted to the Congress that may result in a lower guideline range should be made retroactive to previously sentenced defendants under Policy Statement 1B1.10.

Authority: 28 U.S.C. 994(a), (o), (p); sec. 7109 of the Anti-Drug Abuse Act of 1988 (Pub. L. 100–690).

William W. Wilkins, Jr.,
Chairman.

Amendments to the Sentencing Guidelines

Pursuant to section 994(p) of title 28, United States Code, as amended by section 7109 of the Anti-Drug Abuse Act of 1988 (Pub. L. 100–690, Nov. 18, 1988), the United States Sentencing Commission reports to the Congress the following amendments to the sentencing guidelines, and the reasons therefor. As authorized by this section, the Commission specifies an effective date of November 1, 1991, for these amendments.

Amendments to the Sentencing Guidelines, Policy Statements, and Official Commentary

Chapter Two, Part A (Offenses Against the Person)

1. Amendment: Section 2A4.1 is amended by deleting subsection (b)(5) and inserting in lieu thereof:

"(5) If the victim was sexually exploited, increase by 3 levels.

(6) If the victim is a minor and, in exchange for money or other consideration, was placed in the care or custody of another person who had no legal right to such care or custody of the victim, increase by 3 levels.

(7) If the victim was kidnapped, abducted, or unlawfully restrained during the commission of, or in connection with, another offense or escape therefrom; or if another offense was committed during the kidnapping, abduction, or unlawful restraint, increase to—

(A) The offense level from the Chapter Two offense guideline applicable to that other offense if such offense guideline includes an adjustment for kidnapping, abduction, or unlawful restraint, or otherwise takes such conduct into account; or

(B) 4 plus the offense level from the offense guideline applicable to that other offense, but in no event greater than level 43, in any other case,

If the resulting offense level is greater than that determined above.

(c) Cross Reference

(1) If the victim was killed under circumstances that would constitute murder under 18 U.S.C. 1111 had such killing taken place within the territorial or maritime jurisdiction of the United States, apply § 2A1.1 (First Degree Murder).".

The Commentary to § 2A4.1 captioned "Application Notes" is amended by inserting the following additional note:

"4. 'Sexually exploited' includes offenses set forth in 18 U.S.C. 2241–2244, 2251, and 2421–2423.".

The Commentary to § 2A4.1 captioned "Background" is amended by inserting the following additional paragraph at the end:

"Section 401 of Public Law 101–647 amended 18 U.S.C. 1201 to require that courts take into account certain specific offense characteristics in cases involving a victim under eighteen years of age and directed the Commission to include those specific offense characteristics within the guidelines. Where the guidelines did not already take into account the conduct identified by the Act, additional specific offense characteristics have been provided.".

The Commentary to § 1B1.1 captioned "Application Notes is amended in Note 1(h) by inserting the following additional sentence at the end:

"In the case of a kidnapping, for example, maltreatment to a life-threatening degree (e.g., by denial of food or medical care) would constitute life-threatening bodily injury.".

Reason for Amendment: Section 401 of the Crime Control Act of 1990 (Public Law 101–647) contains instructions to the Commission concerning kidnapping involving minor victims. This amendment implements these instructions, in some cases with a broader scope, by revising § 2A4.1 and the Commentary to § 1B1.1. With respect to the portion of the Congressional instruction pertaining to aiders or abettors, no amendment was required because § 1B1.3 (Relevant Conduct) provides an offense level greater than that required by the Congressional instruction. In addition, this amendment replaces the current subsection (b)(5) with a revised subsection (b)(7) that addresses other offenses connected with kidnapping, abduction, or unlawful restraint in a manner that more appropriately reflects the combined seriousness of such offenses, and inserts a cross reference to address the case in which the victim was murdered.

Chapter Two, Part B (Offenses Involving Property); Chapter Two, Part F (Fraud or Deceit)

2. Amendment: Section 2B1.1(b)(7) is amended by inserting "—(A)" immediately before "substantially", and by deleting the comma immediately following "institution" and inserting in lieu thereof "; or (B) affected a financial

institution and the defendant derived more than $1,000,000 in gross receipts from the offense,".

The Commentary to § 2B1.1 captioned "Statutory Provisions" is amended by inserting "225," immediately before "641".

The Commentary to § 2B1.1 captioned "Application Notes" is amended in Note 9 by deleting "215" and inserting in lieu thereof "20", and by deleting "1008, 1014, and 1344" and inserting in lieu thereof "1007, and 1014".

The Commentary to § 2B1.1 captioned "Application Notes" is amended in Note 10 by deleting:

"As a consequence of the offense the institution became insolvent, substantially reduced benefits to pensioners or insureds, was unable on demand to refund fully any deposit, payment or investment, or was so depleted of its assets as to be forced to merge with another institution in order to continue active operations",

and inserting in lieu thereof:

", as a consequence of the offense, the institution became insolvent; substantially reduced benefits to pensioners or insureds; was unable on demand to refund fully any deposit, payment, or investment; was so depleted of its assets as to be forced to merge with another institution in order to continue active operations; or was placed in substantial jeopardy of any of the above".

The Commentary to § 2B1.1 captioned "Application Notes" is amended by inserting the following additional notes:

"11. 'Derived more than $1,000,000 in gross receipts from the offense,' as used in subsection (b)(7)(B), generally means that the gross receipts to the defendant individually, rather than to all participants, exceeded $1,000,000. 'Gross receipts from the offense' includes all property, real or personal, tangible or intangible, which is obtained directly or indirectly as a result of such offense. See 18 U.S.C. 982(a)(4).

12. If the defendant is convicted under 18 U.S.C. 225 (relating to a continuing financial crimes enterprise), the offense level is that applicable to the underlying series of offenses comprising the 'continuing financial crimes enterprise.'

13. If subsection (b)(7)(A) or (B) applies, there shall be a rebuttable presumption that the offense involved 'more than minimal planning.' ".

The Commentary to § 2B1.1 captioned "Background" is amended in the seventh paragraph by deleting "(b)(7)" and inserting in lieu thereof "(b)(7)(A)", and by deleting "statutory directive" and inserting in lieu thereof "instruction".

The Commentary to § 2B1.1 captioned "Background" is amended by inserting the following additional paragraph at the end:

"Subsection (b)(7)(B) implements the instruction to the Commission in section 2507 of Public Law 101–647.".

Section 2B4.1(b)(2) is amended by inserting "—(A)" immediately before "substantially", and by deleting the comma immediately following "institution" and inserting in lieu thereof "; or (B) affected a financial institution and the defendant derived more than $1,000,000 in gross receipts from the offense,".

The Commentary to § 2B4.1 captioned "Statutory Provisions" is amended by inserting "–225" immediately following "224".

The Commentary to § 2B4.1 is amended in Note 2 by deleting "Bribery" and inserting in lieu thereof "Offering, Giving, Soliciting, or Receiving a Bribe; Extortion Under Color of Official Right".

The Commentary to § 2B4.1 captioned "Application Notes" is amended in Note 3 by deleting "215" and inserting in lieu thereof "20", and by deleting "1008, 1014, and 1344" and inserting in lieu thereof "1007, and 1014".

The Commentary to § 2B4.1 captioned "Application Notes" is amended in Note 4 by deleting:

"As a consequence of the offense the institution became insolvent, substantially reduced benefits to pensioners or insureds, was unable on demand to refund fully any deposit, payment or investment, or was so depleted of its assets as to be forced to merge with another institution in order to continue active operations",

and inserting in lieu thereof:

", as a consequence of the offense, the institution became insolvent; substantially reduced benefits to pensioners or insureds; was unable on demand to refund fully any deposit, payment, or investment; was so depleted of its assets as to be forced to merge with another institution in order to continue active operations; or was placed in substantial jeopardy of any of the above".

The Commentary to § 2B4.1 captioned "Application Notes" is amended by inserting the following additional notes:

"5. 'Derived more than $1,000,000 in gross receipts from the offense,' as used in subsection (b)(2)(B), generally means that the gross receipts to the defendant individually, rather than to all participants, exceeded $1,000,000. 'Gross receipts from the offense' includes all property, real or personal, tangible or intangible, which is obtained directly or indirectly as a result of such offense. See 18 U.S.C. 982(a)(4).

6. If the defendant is convicted under 18 U.S.C. 225 (relating to a continuing financial crimes enterprise), the offense level is that applicable to the underlying series of offenses comprising the 'continuing financial crimes enterprise.'

7. If subsection (b)(2)(A) or (B) applies, there shall be a rebuttable presumption that the offense involved 'more than minimal planning.' ".

The Commentary to § 2B4.1 captioned "Background" is amended in the second paragraph by deleting the second sentence; in the seventh paragraph by deleting "(b)(2)" and inserting in lieu thereof "(b)(2)(A)", and by deleting "statutory directive" and inserting in lieu thereof "instruction"; and by inserting the following additional paragraph at the end:

"Subsection (b)(2)(B) implements the instruction to the Commission in Section 2507 of Public Law 101–647.".

Section 2F1.1(b)(6) is amended by inserting "—(A)" immediately before "substantially", and by deleting the comma immediately following "institution" and inserting in lieu thereof "; or (B) affected a financial institution and the defendant derived more than $1,000,000 in gross receipts from the offense,".

The Commentary to § 2F1.1 captioned "Statutory Provisions" is amended by inserting "225," immediately before "285".

The Commentary to § 2F1.1 captioned "Application Notes" is amended in Note 14 by deleting "215" and inserting in lieu thereof "20", and by deleting "1008, 1014, and 1344" and inserting in lieu thereof "1007, and 1014".

The Commentary to § 2F1.1 captioned "Application Notes" is amended in Note 15 by deleting:

"As a consequence of the offense the institution became insolvent, substantially reduced benefits to pensioners or insureds, was unable on demand to refund fully any deposit, payment or investment, or was so depleted of its assets as to be forced to merge with another institution in order to continue active operations",

and inserting in lieu thereof:

", as a consequence of the offense, the institution became insolvent; substantially reduced benefits to pensioners or insureds; was unable on demand to refund fully any deposit, payment, or investment; was so depleted of its assets as to be forced to merge with another institution in order to continue active operations; or was placed in substantial jeopardy of any of the above".

The Commentary to § 2F1.1 captioned "Application Notes" is amended by inserting the following additional notes:

"16. 'Derived more than $1,000,000 in gross receipts from the offense,' as used in subsection (b)(6)(B), generally means that the gross receipts to the defendant individually, rather than to all participants, exceeded $1,000,000. 'Gross receipts from the offense' includes all property, real or personal, tangible or intangible, which is obtained directly or indirectly as a result of such offense. See 18 U.S.C. 982(a)(4).

17. If the defendant is convicted under 18 U.S.C. 225 (relating to a continuing financial crimes enterprise), the offense level is that applicable to the underlying series of offenses comprising the 'continuing financial crimes enterprise.'

18. If subsection (b)(6)(A) or (B) applies, there shall be a rebuttable presumption that the offense involved 'more than minimal planning.' ".

The Commentary to § 2F1.1 captioned "Background" is amended in the sixth paragraph by deleting "(b)(6)" and inserting in lieu thereof "(b)(6)(A)", and by deleting "statutory directive" and inserting in lieu thereof "instruction".

The Commentary to § 2F1.1 captioned "Background" is amended by inserting the following additional paragraph at the end:

"Subsection (b)(6)(B) implements the instruction to the Commission in Section 2507 of Public Law 101–647.".

Reason for Amendment: This amendment implements the instruction to the Commission in section 2507 of the Crime Control Act of 1990 (Public Law 101–647). It also reflects the new offense relating to a continuing financial crimes enterprise created by section 2510 of the Crime Control Act of 1990. In addition, it revises the Commentary to §§ 2B1.1, 2B4.1, and 2F1.1 with respect to the definition of "substantially jeopardized the safety and soundness of a financial institution" so that the commentary is read to include cases in which the offense created a substantial risk of any of the harms described in addition to cases in which such harm actually occurred.

* * * * *

3. Amendment: Section 2B3.1(b)(2) is deleted and the following inserted in lieu thereof:

"(2) (A) If a firearm was discharged, increase by 7 levels; (B) if a firearm was otherwise used, increase by 6 levels; (C) if a firearm was brandished, displayed, or possessed, increase by 5 levels; (D) if a dangerous weapon was otherwise used, increase by 4 levels; (E) if a dangerous weapon was brandished, displayed, or possessed, increase by 3 levels; or (F) if an express threat of death was made, increase by 2 levels.".

Section 2B3.1(b)(3) is amended by deleting "9" and inserting in lieu thereof "11".

The Commentary to § 2B3.1 captioned "Application Notes" is amended in Note 1 by inserting " 'bodily injury,' 'serious bodily injury,' 'permanent or life-threatening bodily injury,' " immediately before " 'brandished' ".

The Commentary to § 2B3.1 captioned "Application Notes" is amended in Note 2 by deleting "(b)(2)(C)" and inserting in lieu thereof "(b)(2)(E)".

The Commentary to § 2B3.1 captioned "Application Notes" is amended in Note 4 by deleting "9" and inserting in lieu thereof "11".

The Commentary to § 2B3.1 captioned "Application Notes" is amended in Note 7 by deleting "(b)(2)(D)" and inserting in lieu thereof "(b)(2)(F)".

Reason for Amendment: This amendment increases the offense levels for use or possession of a firearm by 2 levels to better reflect the seriousness of such offenses and to reduce the disparity resulting from the exercise of prosecutorial discretion in the charging of an offense under 18 U.S.C. 924(c) or 929(a). In addition, this amendment revises the commentary to make the reference to the terms defined in § 1B1.1 more comprehensive.

* * * * *

4. Amendment: Section 2B3.2 is amended by deleting subsections (b)(1) and (b)(2), by renumbering subsections (b)(3) and (b)(4) as (b)(4) and (b)(5) respectively, by inserting the following as subsections (b)(1)–(b)(3):

"(1) If the offense involved an express or implied threat of death, bodily injury, or kidnapping, increase by 2 levels.

(2) If the greater of the amount demanded or the loss to the victim exceeded $10,000, increase by the corresponding number of levels from the table in § 2B3.1(b)(6).

(3) (A)(i) If a firearm was discharged, increase by 7 levels; (ii) if a firearm was otherwise used, increase by 6 levels; (iii) if a firearm was brandished, displayed, or possessed, increase by 5 levels; (iv) if a dangerous weapon was otherwise used, increase by 4 levels; or (v) if a dangerous weapon was brandished, displayed, or possessed, increase by 3 levels; or

(B) If the offense involved preparation to carry out a threat of death, serious bodily injury, kidnapping, or product tampering; or if the participant(s) otherwise demonstrated the ability to carry out such threat, increase by 3 levels.",

and in the last sentence of the renumbered subsection (b)(4) (formerly (b)(3)) by deleting "(2)", "(3)" and "9", and inserting in lieu thereof "(3)", "(4)", and "11", respectively.

Section 2B3.2 is amended by inserting the following additional subsection:

"(c) Cross Reference

(1) If the offense was tantamount to attempted murder, apply § 2A2.1 (Assault With Intent to Commit Murder; Attempted Murder) if the resulting offense level is greater than that determined above.".

The Commentary to § 2B3.2 captioned "Application Notes" is amended in Note 1 by inserting " 'bodily injury,' 'serious bodily injury,' 'permanent or life-threatening bodily injury,' " immediately before "abducted"; and in Note 4 by deleting "9" and inserting in lieu thereof "11".

The Commentary to § 2B3.2 captioned "Application Notes" is amended by deleting Note 5 and inserting in lieu thereof:

"5. 'Loss to the victim,' as used in subsection (b)(2), means any demand paid plus any additional consequential loss from the offense (e.g., the cost of defensive measures taken in direct response to the offense).

6. In certain cases, an extortionate demand may be accompanied by conduct that does not qualify as a display of a dangerous weapon under subsection (b)(3)(A)(v) but is nonetheless similar in seriousness, demonstrating the defendant's preparation or ability to carry out the threatened harm (e.g., an extortionate demand containing a threat to tamper with a consumer product accompanied by a workable plan showing how the product's tamper-resistant seals could be defeated, or a threat to kidnap a person accompanied by information showing study of that person's daily routine). Subsection (b)(3)(B) addresses such cases.

7. If the offense involved the threat of death or serious bodily injury to numerous victims (e.g., in the case of a plan to derail a passenger train or poison consumer products), an upward departure may be warranted.

8. If the offense involved organized criminal activity, or a threat to a family member of the victim, an upward departure may be warranted.".

Reason for Amendment: This amendment provides a specific offense characteristic to distinguish the greater seriousness of offenses that involve an express or implied threat of death, bodily injury, or kidnapping; conforms the loss table to that used in the robbery guideline to reflect that the typical case under the amended guideline will have an offense level that is more closely comparable to robbery; increases the offense levels for use or possession of a firearm to conform to an amendment being made to the robbery guideline; adds a subdivision to the specific offense characteristic dealing with use or possession of a dangerous weapon to address cases in which the conduct is tantamount in seriousness to the brandishing, display, or possession of a dangerous weapon, but does not qualify under the current specific offense characteristic for weapon enhancement; adds a factor to the specific offense characteristic dealing with loss to address consequential damages; adds a cross reference to the attempted murder guideline (§ 2A2.1) to address cases in which the conduct was tantamount to attempted murder; and sets forth commentary describing certain aggravating factors that may warrant an upward departure.

Chapter Two, Part C (Offenses Involving Public Officials)

5. Amendment: Section 2C1.1(b)(1) is amended by inserting "or extortion" immediately following "bribe".

Section 2C1.1(b)(2)(A) is amended by deleting "bribe or the benefit received, or to be received, in return for the bribe" and inserting in lieu thereof "payment, the benefit received or to be received in return for the payment, or the loss to the government from the offense, whichever is greatest,".

Section 2C1.1(b)(2)(B) is amended by deleting "bribe" and inserting in lieu thereof "payment".

Section 2C1.1 is amended by deleting subsection (c)(1), by renumbering subsection (c)(2) as (c)(3), and by inserting the following as subsections (c)(1) and (2):

"(1) If the offense was committed for the purpose of facilitating the commission of another criminal offense, apply the offense guideline applicable to a conspiracy to commit that other offense if the resulting offense level is greater than that determined above.

(2) If the offense was committed for the purpose of concealing, or obstructing justice in respect to, another criminal offense, apply § 2X3.1 (Accessory After the Fact) or § 2J1.2 (Obstruction of Justice), as appropriate, in respect to that other offense if the resulting offense level is greater than that determined above."

The Commentary to § 2C1.1 captioned "Application Notes" is amended in Note 2 by deleting the first sentence and inserting in lieu thereof " 'Loss' is discussed in the Commentary to § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft) and includes both actual and intended loss."; and by deleting " 'value of the" and inserting in lieu thereof "value of 'the".

The Commentary to § 2C1.1 captioned "Application Notes" is amended in Note 3 by deleting "§ 2C1.1(c) (1) or (2)." and inserting in lieu thereof "§ 2C1.1(c) (1), (2), or (3). In such cases, an adjustment from § 3B1.3 (Abuse of Position of Trust or Use of Special Skill) may apply.".

The Commentary to § 2C1.1 captioned "Application Notes" is amended in Note 4 by deleting "bribe" and inserting in lieu thereof "unlawful payment"; and by deleting "and (2)" and inserting in lieu thereof ", (2), and (3)".

The Commentary to § 2C1.1 captioned "Application Notes" is amended in Note 6 by inserting the following as the first sentence: "Subsection (b)(1) provides an adjustment for offenses involving more than one incident of either bribery or extortion.", by deleting "bribe" the first time it occurs and inserting in lieu thereof "incident of bribery or extortion", and by inserting "or extortion" immediately before ", even if charged".

The Commentary to § 2C1.1 captioned "Background" is amended in the third paragraph by deleting "bribe" wherever it appears and inserting in lieu thereof in each instance "payment".

The Commentary to § 2C1.1 captioned "Background" is amended in the fourth paragraph by deleting "bribe is" and inserting in lieu thereof "payment was".

The Commentary to § 2C1.1 captioned "Background" is amended by inserting the following additional paragraph as the fifth paragraph:

"Under § 2C1.1(c)(1), if the payment was to facilitate the commission of another criminal offense, the guideline applicable to a conspiracy to commit that other offense will apply if the result is greater than that determined above. For example, if a bribe was given to a law enforcement officer to allow the smuggling of a quantity of cocaine, the guideline for conspiracy to import cocaine would be applied if it resulted in a greater offense level.".

The Commentary to § 2C1.1 captioned "Background" is amended by deleting the sixth (formerly fifth) paragraph and inserting in lieu thereof:

"Under § 2C1.1(c)(2), if the payment was to facilitate the concealment of another criminal offense or the obstruction of justice in respect to another criminal offense, the guideline from § 2X3.1 (Accessory After the Fact) or § 2J1.2 (Obstruction of Justice), as appropriate, will apply if the result is greater than that determined above. For example, if a bribe was given for the purpose of concealing the offense of espionage, the guideline for accessory after the fact to espionage would be applied.".

The Commentary to § 2C1.1 captioned "Background" is amended in the seventh (formerly sixth) paragraph by deleting "§ 2C1.1(c)(2)" and inserting in lieu thereof "§ 2C1.1(c)(3)".

The Commentary to § 2C1.1 captioned "Background" is amended in the eighth (formerly seventh) paragraph by deleting:

"Note that, when applying 2C1.1(c) (1) or (2), an adjustment from Chapter Three, Part B (Role in the Offense) will also apply. This normally will result in an increase of at least 2 levels.",

and inserting in lieu thereof:

"When the offense level is determined under § 2C1.1(c) (1), (2), or (3), an adjustment from § 3B1.3 (Abuse of Position of Trust or Use of Special Skill) may apply.".

Reason for Amendment: This amendment adds an additional factor in subsection (b)(2)(A) to take into account loss to the government from the offense; substitutes "payment" for "bribe" and adds "or extortion", where necessary, to reflect that this guideline covers both bribery and extortion under color of official right; and amends subsection (c) to distinguish an offense committed for the purpose of facilitating the commission of another offense from an offense committed to cover up or obstruct justice in respect to another offense.

6. Amendment: Chapter Two, Part C, is amended by inserting the following additional guideline and accompanying commentary:

"§ 2C1.7. Fraud Involving Deprivation of the Intangible Right to the Honest Services of Public Officials; Conspiracy to Defraud by Interference With Governmental Functions

(a) Base Offense Level: 10

(b) Specific Offense Characteristic

(1) (If more than one applies, use the greater):

(A) If the loss to the government, or the value of anything obtained or to be obtained by a public official or others acting with a public official, whichever is greater, exceeded $2,000, increase by the corresponding number of levels from the table in § 2F1.1 (Fraud and Deceit); or

(B) If the offense involved an elected official or any official holding a high level decision-making or sensitive position, increase by 8 levels.

(c) Cross References

(1) If the offense was committed for the purpose of facilitating the commission of another criminal offense, apply the offense guideline applicable to a conspiracy to commit that other offense if the resulting offense level is greater than that determined above.

(2) If the offense was committed for the purpose of concealing, or obstructing justice in respect to, another criminal offense, apply § 2X3.1 (Accessory After the Fact) or § 2J1.2 (Obstruction of Justice), as appropriate, in respect to that other offense if the resulting offense level is greater than that determined above.

(3) If the offense involved a threat of physical injury or property destruction, apply § 2B3.2 (Extortion by Force or Threat of Injury or Serious Damage) if the resulting offense level is greater than that determined above.

(4) If the offense is covered more specifically under § 2C1.1 (Offering, Giving, Soliciting, or Receiving a Bribe; Extortion Under Color of Official Right), § 2C1.2 (Offering, Giving, Soliciting, or Receiving a Gratuity), or § 2C1.3 (Conflict of Interest), apply the offense guideline that most specifically covers the offense.

Commentary

Statutory Provisions: 18 U.S.C. 371, 1341–1343, 1346.

Application Notes

1. This guideline applies only to offenses committed by public officials or others acting with them that involve depriving others of the intangible right to honest services (such offenses may be prosecuted under 18 U.S.C. 1341–1343, 1346), or conspiracy to defraud the United States by interfering with

governmental functions (such offenses may be prosecuted under 18 U.S.C. 371). 'Public official,' as used in this guideline, includes officers and employees of federal, state, or local government.

2. 'Official holding a high level decision-making or sensitive position' includes, for example, prosecuting attorneys, judges, agency administrators, supervisory law enforcement officers, and other governmental officials with similar levels of responsibility.

3. 'Loss' is discussed in the Commentary to § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft) and includes both actual and intended loss.

4. Do not apply § 3B1.3 (Abuse of Position of Trust or Use of Special Skill) except where the offense level is determined under § 2C1.7(c) (1), (2), or (3). In such cases, an adjustment from § 3B1.3 (Abuse of Position of Trust or Use of Special Skill) may apply.

5. Where the court finds that the defendant's conduct was part of a systematic or pervasive corruption of a governmental function, process, or office that may cause loss of public confidence in government, an upward departure may be warranted. See Chapter Five, Part K (Departures).

Background: The maximum term of imprisonment authorized by statute under 18 U.S.C. 371, 1341–1343, and 1346 is five years.".

Section 3D1.2(d) is amended in the second paragraph by inserting ", 2C1.7" immediately following "2C1.2".

Reason for Amendment: This amendment provides an additional guideline to cover certain fraud offenses that involve public corruption but do not fall within the guidelines of Chapter Two, Part C (Official Corruption) as currently written. In some cases, the statutes covered are used to prosecute offenses more appropriately covered under § 2C1.1 (Offering, Giving, Soliciting, or Receiving a Bribe; Extortion Under Color of Official Right), § 2C1.2 (Offering, Giving, Soliciting, or Receiving a Gratuity), or § 2C1.3 (Conflict of Interest). A cross reference is provided to address such cases.

Chapter Two, Part D (Offenses Involving Drugs)

7. Amendment: Section 2D1.1(c)(12) is amended by deleting the period immediately after "Schedule III substances" and inserting in lieu thereof "(except anabolic steroids);", and by inserting the following additional subdivision at the end:

"40,000 or more units of anabolic steroids.".

Section 2D1.1(c)(13) is amended by deleting the period immediately after "Schedule III substances" and inserting in lieu thereof "(except anabolic steroids);", and by inserting the following additional subdivision at the end:

"At least 20,000 but less than 40,000 units of anabolic steroids.".

Section 2D1.1(c)(14) is amended by deleting the period immediately after "Schedule III substances" and inserting in lieu thereof "(except anabolic steroids);", and by inserting the following additional subdivision at the end:

"At least 10,000 but less than 20,000 units of anabolic steroids.".

Section 2D1.1(c)(15) is amended by deleting the period immediately after "Schedule III substances" and inserting in lieu thereof "(except anabolic steroids);", and by inserting the following additional subdivision at the end:

"At least 5,000 but less than 10,000 units of anabolic steroids.".

Section 2D1.1(c)(16) is amended by inserting "(except anabolic steroids)" immediately after "Schedule III substances", and by inserting the following additional subdivision after the next to last subdivision:

"At least 2,500 but less than 5,000 units of anabolic steroids;".

Section 2D1.1(c)(17) is amended by inserting "(except anabolic steroids)" immediately after "Schedule III substances", and by inserting the following additional subdivision after the next to last subdivision:

"At least 1,000 but less than 2,500 units of anabolic steroids;".

Section 2D1.1(c)(18) is amended by inserting "(except anabolic steroids)" immediately after "Schedule III substances", and by inserting the following additional subdivision after the fourth subdivision:

"At least 250 but less than 1,000 units of anabolic steroids;".

Section 2D1.1(c)(19) is amended by inserting "(except anabolic steroids)" immediately after "Schedule III substances", and by inserting the following additional subdivision after the fourth subdivision:

"Less than 250 units of anabolic steroids;".

Section 2D1.1(c) is amended in the note following subdivision (19) by inserting the following additional paragraph at the end:

"In the case of anabolic steroids, one 'unit' means a 10 cc vial of an injectable steroid or fifty tablets. All vials of injectable steroids are to be converted on the basis of their volume to the equivalent number of 10 cc vials (e.g., one 50 cc vial is to be counted as five 10 cc vials).".

The Commentary to § 2N2.1 captioned "Application Notes" is amended in note 4 by deleting "anabolic steroids" and inserting in lieu thereof "human growth hormones", and by inserting at the end:

"Offenses involving anabolic steroids are covered by Chapter Two, Part D (Offenses Involving Drugs). In the case of an offense involving a substance purported to be an anabolic steroid, but not containing any active ingredient, apply § 2F1.1 (Fraud and Deceit) with 'loss' measured by the amount paid, or to be paid, by the victim for such substance.".

Reason for Amendment: Title XIX of the Crime Control Act of 1990 (Public Law 101–647) reclassifies anabolic steroids as Schedule III controlled substances under 21 U.S.C. 812(c). This amendment adds offenses involving anabolic steroids to § 2D1.1, the guideline addressing controlled substances. Because of the variety of substances involved, the Commission has determined that a measure based on quantity unit, rather than weight, provides the most appropriate measure of the scale of the offense.

8. Amendment: Section 2D1.1(c)(1) is amended by inserting ", or 30 KG or more of 'Ice' " immediately following "Pure Methamphetamine".

Section 2D1.1(c)(2) is amended by inserting ", or at least 10 KG but less than 30 KG of 'Ice' " immediately following "Pure Methamphetamine".

Section 2D1.1(c)(3) is amended by inserting ", or at least 3 KG but less than 10 KG of 'Ice' " immediately following "Pure Methamphetamine".

Section 2D1.1(c)(4) is amended by inserting ", or at least 1 KG but less than 3 KG of 'Ice' " immediately following "Pure Methamphetamine".

Section 2D1.1(c)(5) is amended by inserting ", or at least 300 G but less than 1 KG or 'Ice' " immediately following "Pure Methamphetamine".

Section 2D1.1(c)(6) is amended by inserting ", or at least 100 G but less than 300 G of 'Ice' " immediately following "Pure Methamphetamine".

Section 2D1.1(c)(7) is amended by inserting ", or at least 70 G but less than 100 G of 'Ice' " immediately following "Pure Methamphetamine".

Section 2D1.1(c)(8) is amended by inserting ", or at least 40 G but less than 70 G of 'Ice' " immediately following "Pure Methamphetamine".

Section 2D1.1(c)(9) is amended by inserting ", or at least 10 G but less than 40 G of 'Ice' " immediately following "Pure Methamphetamine".

Section 2D1.1(c)(10) is amended by inserting ", or at least 8 G but less than 10 G of 'Ice' " immediately following "Pure Methamphetamine".

Section 2D1.1(c)(11) is amended by inserting ", or at least 6 G but less than 8 G of 'Ice' " immediately following "Pure Methamphetamine".

Section 2D1.1(c)(12) is amended by inserting ", or at least 4 G but less than 6 G of 'Ice' " immediately following "Pure Methamphetamine".

Section 2D1.1(c)(13) is amended by inserting ", or at least 2 G but less than 4 G of 'Ice' " immediately following "Pure Methamphetamine".

Section 2D1.1(c)(14) is amended by inserting ", or at least 1 G but less than 2 G of 'Ice' " immediately following "Pure Methamphetamine".

Section 2D1.1(c)(15) is amended by inserting ", or at least 500 MG but less than 1 G of 'Ice,' " immediately following "Pure Methamphetamine".

Section 2D1.1(c)(16) is amended by inserting ", or less than 500 MG of 'Ice' " immediately following "Pure Methamphetamine".

Section 2D1.1(c) is amended in the note following subdivision (19) by inserting the following as the second paragraph:

" 'Ice,' for the purposes of this guideline, means a mixture or substance containing d-methamphetamine hydrochloride of at least 80% purity.".

Reason for Amendment: This amendment implements the instruction to the Commission in section 2601 of the Crime Control Act of 1990 (Pub. L. 101–647) in a form compatible with the structure of the guidelines.

* * * * *

9. Amendment: Chapter Two, Part D, Subpart 1, is amended by inserting the following additional guidelines and accompanying commentary:

"§ 2D1.11. Unlawfully Distributing, Importing, Exporting or Possessing a Listed Chemical

(a) Base Offense Level: The offense level from the Chemical Quantity Table set forth in subsection (d) below.

(b) Specific Offense Characteristics.

(1) If a dangerous weapon (including a firearm) was possessed, increase by 2 levels.

(2) If the defendant is convicted of violating 21 U.S.C. 841(d)(2), (g)(1), or 960(d)(2), decrease by 3 levels, unless the defendant knew or believed that the listed chemical was to be used to manufacture a controlled substance unlawfully.

(c) Cross Reference.

(1) If the offense involved unlawfully manufacturing a controlled substance, or attempting to manufacture a controlled substance unlawfully, apply § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, Trafficking), or § 2D1.4 (Attempts and Conspiracies), as appropriate, if the resulting offense level is greater than that determined above.

(d) Chemical Quantity Table*.

(1) Level 28.

Listed Precursor Chemicals
20 KG or more of Benzyl Cyanide;
200 G or more of D-Lysergic Acid;
20 KG or more of Ephedrine;
200 G or more of Ergonovine;
400 G or more of Ergotamine;
20 KG or more of Ethylamine;
44 KG or more of Hydriodic Acid;
320 KG or more of Isoafrole;
4 KG or more of Methylamine;
500 KG or more of N-Methylephedrine;
500 KG or more of N-Methylpseudoephedrine;
200 KG or more of Norpseudoephedrine;
20 KG or more of Phenylacetic Acid;
200 KG or more of Phenylpropanolamine;
10 KG or more of Piperidine;
320 KG or more of Piperonal;
1.6 KG or more of Propionic Anhydride;
20 KG or more of Pseudoephedrine;
320 KG or more of Safrole;
400 KG or more of 3, 4-Methylenedioxyphenyl-2-propanone;

Listed Essential Chemicals
11 KG or more of Acetic Anhydride;
1175 KG or more of Acetone;
20 KG or more of Benzyl Chloride;
1075 KG or more of Ethyl Ether;
1200 KG or more of Methyl Ethyl Ketone;
10 KG or more of Potassium Permanganate;
1300 KG or more of Toluene.

(2) Level 26.

Listed Precursor Chemicals
At least 6 KG but less than 20 KG of Benzyl Cyanide;
At least 60 G but less than 200 G of D-Lysergic Acid;
At least 6 KG but less than 20 KG of Ephedrine;
At least 60 G but less than 200 G of Ergonovine;
At least 120 G but less than 400 G of Ergotamine;
At least 6 KG but less than 20 KG of Ethylamine;
At least 13.2 KG but less than 44 KG of Hydriodic Acid;
At least 96 KG but less than 320 KG of Isoafrole;
At least 1.2 KG but less than 4 KG of Methylamine;
At least 150 KG but less than 500 KG of N-Methylephedrine;
At least 150 KG but less than 500 KG of N-Methylpseudoephedrine;
At least 60 KG but less than 200 KG of Norpseudoephedrine;
At least 6 KG but less than 20 KG of Phenylacetic Acid;
At least 60 KG but less than 200 KG of Phenylpropanolamine;
At least 3 KG but less than 10 KG of Piperidine;
At least 96 KG but less than 320 KG of Piperonal;
At least 480 G but less than 1.6 KG of Propionic Anhydride;
At least 6 KG but less than 20 KG of Pseudoephedrine;
At least 96 KG but less than 320 KG of Safrole;
At least 120 KG but less than 400 KG of 3, 4-Methylenedioxyphenyl-2-propanone;

Listed Essential Chemicals
At least 3.3 KG but less than 11 KG of Acetic Anhydride;
At least 352.5 KG but less than 1175 KG of Acetone;
At least 6 KG but less than 20 KG of Benzyl Chloride;
At least 322.5 KG but less than 1075 KG of Ethyl Ether;
At least 360 KG but less than 1200 KG of Methyl Ethyl Ketone;
At least 3 KG but less than 10 KG of Potassium Permanganate;
At least 390 KG but less than 1300 KG of Toluene.

(3) Level 24

Listed Precursor Chemicals
At least 2 KG but less than 6 KG of Benzyl Cyanide;
At least 20 G but less than 60 G of D-Lysergic Acid;
At least 2 KG but less than 6 KG of Ephedrine;
At least 20 G but less than 60 G of Ergonovine;
At least 40 G but less than 120 G of Ergotamine;
At least 2 KG but less than 6 KG of Ethylamine;
At least 4.4 KG but less than 13.2 KG of Hydriodic Acid;
At least 32 KG but less than 96 KG of Isoafrole;
At least 400 G but less than 1.2 KG of Methylamine;
At least 50 KG but less than 150 KG of N-Methylephedrine;
At least 50 KG but less than 150 KG of N-Methylpseudoephedrine;
At least 20 KG but less than 60 KG of Norpseudoephedrine;
At least 2 KG but less than 6 KG of Phenylacetic Acid;
At least 20 KG but less than 60 KG of Phenylpropanolamine;
At least 1 KG but less than 3 KG of Piperidine;
At least 32 KG but less than 96 KG of Piperonal;
At least 160 G but less than 480 G of Propionic Anhydride;
At least 2 KG but less than 6 KG of Pseudoephedrine;
At least 32 KG but less than 96 KG of Safrole;
At least 40 KG but less than 120 KG of 3, 4-Methylenedioxyphenyl-2-propanone;

Listed Essential Chemicals
At least 1.1 KG but less 3.3 KG of Acetic Anhydride;
At least 117.5 KG but less than 352.5 KG of Acetone;
At least 2 KG but less than 6 KG of Benzyl Chloride;
At least 107.5 KG but less than 322.5 KG of Ethyl Ether;
At least 120 KG but less than 360 KG of Methyl Ethyl Ketone;
At least 1 KG but less than 3 KG of Potassium Permanganate;
At least 130 KG but less than 390 KG of Toluene.

(4) Level 22.

Listed Precursor Chemicals
At least 1.4 KG but less than 2 KG of Benzyl Cyanide;
At least 14 G but less than 20 G of D-Lysergic Acid;
At least 1.4 KG but less than 2 KG of Ephedrine;
At least 14 G but less than 20 G of Ergonovine;

At least 28 G but less than 40 G of Ergotamine;
At least 1.4 KG but less than 2 KG of Ethylamine;
At least 3.08 KG but less than 4.4 KG of Hydriodic Acid;
At least 22.4 KG but less than 32 KG of Isoafrole;
At least 280 G but less than 400 G of Methylamine;
At least 35 KG but less than 50 KG of N–Methylephedrine;
At least 35 KG but less than 50 KG of N–Methylpseudoephedrine;
At least 14 KG but less than 20 KG of Norpseudoephedrine;
At least 1.4 KG but less than 2 KG of Phenylacetic Acid;
At least 14 KG but less than 20 KG of Phenylpropanolamine;
At least 700 G but less than 1 KG of Piperidine;
At least 22.4 KG but less than 32 KG of Piperonal;
At least 112 G but less than 160 G of Propionic Anhydride;
At least 1.4 KG but less than 2 KG of Pseudoephedrine;
At least 22.4 KG but less than 32 KG of Safrole;
At least 28 KG but less than 40 KG of 3, 4–Methylenedioxyphenyl-2-propanone;

Listed Essential Chemicals
At least 726 G but less than 1.1 KG of Acetic Anhydride;
At least 82.25 KG but less than 117.5 KG of Acetone;
At least 1.4 KG but less than 2 KG of Benzyl Chloride;
At least 75.25 KG but less than 107.5 KG of Ethyl Ether;
At least 84 KG but less than 120 KG of Methyl Ethyl Ketone;
At least 700 G but less than 1 KG of Potassium Permanganate;
At least 91 KG but less than 130 KG of Toluene.

(5) Level 20.

Listed Precursor Chemicals
At least 800 G but less than 1.4 KG of Benzyl Cyanide;
At least 8 G but less than 14 G of D–Lysergic Acid;
At least 800 G but less than 1.4 KG of Ephedrine;
At least 8 G but less than 14 G of Ergonovine;
At least 16 G but less than 28 G of Ergotamine;
At least 800 G but less than 1.4 KG of Ethylamine;
At least 1.76 KG but less than 3.08 KG of Hydriodic Acid;
At least 12.8 KG but less than 22.4 KG of Isoafrole;
At least 160 G but less than 280 G of Methylamine;
At least 20 KG but less than 35 KG of N–Methylephedrine;
At least 20 KG but less than 35 KG of N–Methylpseudoephedrine;
At least 8 KG but less than 14 KG of Norpseudoephedrine;
At least 800 G but less than 1.4 KG of Phenylacetic Acid;
At least 8 KG but less than 14 KG of Phenylpropanolamine;
At least 400 G but less than 700 G of Piperidine;
At least 12.8 KG but less than 22.4 KG of Piperonal;
At least 64 G but less than 112 G of Propionic Anhydride;
At least 800 G but less than 1.4 KG of Pseudoephedrine;
At least 12.8 KG but less than 22.4 KG of Safrole;
At least 16 KG but less than 28 KG of 3, 4–Methylenedioxyphenyl-2-propanone;

Listed Essential Chemicals
At least 440 G but less than 726 G of Acetic Anhydride;
At least 47 KG but less than 82.25 KG of Acetone;
At least 800 G but less than 1.4 KG of Benzyl Chloride;
At least 43 KG but less than 75.26 KG of Ethyl Ether;
At least 48 KG but less than 84 KG of Methyl Ethyl Ketone;
At least 400 G but less than 700 G of Potassium Permanganate;
At least 52 KG but less than 91 KG of Toluene.

(6) Level 18.

Listed Precursor Chemicals
At least 200 G but less than 800 G of Benzyl Cyanide;
At least 2 G but less than 8 G of D–Lysergic Acid;
At least 200 G but less than 800 G of Ephedrine;
At least 2 G but less than 8 G of Ergonovine;
At least 4 G but less than I6 G of Ergotamine;
At least 200 G but less than 800 G of Ethylamine;
At least 440 G but less than 1.76 KG of Hydriodic Acid;
At least 3.2 KG but less than 12.8 KG of Isoafrole;
At least 40 G but less than 160 G of Methylamine;
At least 5 KG but less than 20 KG of N-Methylephedrine;
At least 5 KG but less than 20 KG of N-Methylpseudoephedrine;
At least 2 KG but less than 8 KG of Norpseudoephedrine;
At least 200 G but less than 800 G of Phenylacetic Acid;
At least 2 KG but less than 8 KG of Phenylpropanolamine;
At least 100 G but less than 400 G of Piperidine;
At least 3.2 KG but less than 12.8 KG of Piperonal;
At least 16 G but less than 64 G of Propionic Anhydride;
At least 200 G but less than 800 G of Pseudoephedrine;
At least 3.2 KG but less than 12.8 KG of Safrole;
At least 4 KG but less than 16 KG of 3, 4-Methylenedioxyphenyl-2-propanone.

Listed Essential Chemicals
At least 110 G but less than 440 G of Acetic Anhydride;
At least 11.75 KG but less than 47 KG of Acetone;
At least 200 G but less than 800 G of Benzyl Chloride;
At least 10.75 KG but less than 43 KG of Ethyl Ether;
At least 12 KG but less than 48 KG of Methyl Ethyl Ketone;
At least 100 G but less than 400 G of Potassium Permanganate;
At least 13 KG but less than 52 KG of Toluene.

(7) Level 16

Listed Precursor Chemicals
At least 160 G but less than 200 G of Benzyl Cyanide;
At least 1.6 G but less than 2 G of D-Lysergic Acid;
At least 160 G but less than 200 G of Ephedrine;
At least 1.6 G but less than 2 G of Ergonovine;
At least 3.2 G but less than 4 G of Ergotamine;
At least 160 G but less than 200 G of Ethylamine;
At least 352 G but less than 440 G of Hydriodic Acid;
At least 2.56 KG but less than 3.2 KG of Isoafrole;
At least 32 G but less than 40 G of Methylamine;
At least 4 KG but less than 5 KG of N-Methylephedrine;
At least 4 KG but less than 5 KG of N-Methylpseudoephedrine;
At least 1.6 KG but less than 2 KG of Norpseudoephedrine;
At least 160 G but less than 200 G of Phenylacetic Acid;
At least 1.6 KG but less than 2 KG of Phenylpropanolamine;
At least 80 G but less than 100 G of Piperidine;
At least 2.56 KG but less than 3.2 KG of Piperonal;
At least 12.8 G but less than 16 G of Propionic Anhydride;
At least 160 G but less than 200 G of Pseudoephedrine;
At least 2.56 KG but less than 3.2 KG of Safrole;
At least 3.2 KG but less than 4 KG of 3, 4-Methylenedioxyphenyl-2-propanone.

Listed Essential Chemicals
At least 88 G but less than 110 G of Acetic Anhydride;
At least 9.4 KG but less than 11.75 KG of Acetone;
At least 160 G but less than 200 G of Benzyl Chloride;
At least 8.6 KG but less than 10.75 KG of Ethyl Ether;
At least 9.6 KG but less than 12 KG of Methyl Ethyl Ketone;
At least 80 G but less than 100 G of Potassium Permanganate;
At least 10.4 KG but less than 13 KG of Toluene.

(8) Level 14.

Listed Precursor Chemicals
3.6 KG or more of Anthranilic Acid;
At least 120 G but less than 160 G of Benzyl Cyanide;
At least 1.2 G but less than 1.6 G of D-Lysergic Acid;
At least 120 G but less than 160 G of Ephedrine;

At least 1.2 G but less than 1.6 G of Ergonovine;
At least 2.4 G but less than 3.2 G of Ergotamine;
At least 120 G but less than 160 G of Ethylamine;
At least 234 G but less than 352 G of Hydriodic Acid;
At least 1.92 KG but less than 2.56 KG of Isoafrole;
At least 24 G but less than 32 G of Methylamine;
4.8 KG or more of N-Acetylanthranilic Acid;
At least 3 KG but less than 4 KG of N-Methylephedrine;
At least 3 KG but less than 4 KG of N-Methylpseudoephedrine;
At least 1.2 KG but less than 1.6 KG of Norpseudoephedrine;
At least 120 G but less than 160 G of Phenylacetic Acid;
At least 1.2 KG but less than 1.6 KG of Phenylpropanolamine;
At least 60 G but less than 80 G of Piperidine;
At least 1.92 KG but less than 2.56 KG of Piperonal;
At least 9.6 G but less than 12.8 G of Propionic Anhydride;
At least 120 G but less than 160 G of Pseudoephedrine;
At least 1.92 KG but less than 2.56 KG of Safrole;
At least 2.4 KG but less than 3.2 KG of 3, 4-Methylenedioxyphenyl-2-propanone;

Listed Essential Chemicals
At least 66 G but less than 88 G of Acetic Anhydride;
At least 7.05 KG but less than 9.4 KG of Acetone;
At least 120 G but less than 160 G of Benzyl Chloride;
At least 6.45 KG but less than 8.6 KG of Ethyl Ether;
At least 7.2 KG but less than 9.6 KG of Methyl Ethyl Ketone;
At least 60 G but less than 80 G of Potassium Permanganate;
At least 7.8 KG but less than 10.4 KG of Toluene.

(9) Level 12.

Listed Precursor Chemicals
Less than 3.6 KG of Anthranilic Acid;
Less than 120 G of Benzyl Cyanide;
Less than 1.2 G of D-Lysergic Acid;
Less than 120 G of Ephedrine;
Less than 1.2 G of Ergonovine;
Less than 2.4 G of Ergotamine;
Less than 120 G of Ethylamine;
Less than 264 G of Hydriodic Acid;
Less than 1.92 KG of Isoafrole;
Less than 24 G of Methylamine;
Less than 4.8 KG of N-Acetylanthranilic Acid;
Less than 3 KG of N-Methylephedrine;
Less than 3 KG of N-Methylpseudoephedrine;
Less than 1.2 KG of Norpseudoephedrine;
Less than 120 G of Phenylacetic Acid;
Less than 1.2 KG of Phenylpropanolamine;
Less than 60 G of Piperidine;
Less than 1.92 KG of Piperonal;
Less than 9.6 G of Propionic Anhydride;
Less than 120 G of Pseudoephedrine;
Less than 1.92 KG of Safrole;
Less than 2.4 KG of 3, 4-Methylenedioxyphenyl-2-propanone;

Listed Essential Chemicals
Less than 66 G of Acetic Anhydride;
Less than 7.05 KG of Acetone;
Less than 120 G of Benzyl Chloride;
Less than 6.45 KG of Ethyl Ether;
Less than 7.2 KG of Methyl Ethyl Ketone;
Less than 60 G of Potassium Permanganate;
Less than 7.8 KG of Toluene.

Notes

(A) If more than one listed precursor chemical is involved, use the Precursor Chemical Equivalency Table to determine the offense level.

(B) If more than one listed essential chemical is involved, use the single listed essential chemical resulting in the greatest offense level.

(C) If both listed precursor and listed essential chemicals are involved, use the offense level determined under (A) or (B) above, whichever is greater.

(D) The Precursor Chemical Equivalency Table provides a means for combining different listed precursor chemicals to obtain a single offense level. In cases involving multiple precursor chemicals, convert each to its ephedrine equivalency from the table below, add the quantities, and apply the Chemical Quantity Table to obtain the applicable offense level.

Precursor Chemical Equivalency Table

1 gm of Anthranilic Acid* = .033 gm of Ephedrine
1 gm of Benzyl Cyanide = 1 gm of Ephedrine
1 gm of D-Lysergic Acid = 10 gm of Ephedrine
1 gm of Ergonovine = 100 gm of Ephedrine
1 gm of Ergotamine = 50 gm of Ephedrine
1 gm of Ethylamine* = 1 gm of Ephedrine
1 gm of Hydriodic Acid** = .4545 gm of Ephedrine
1 gm of Isoafrole = .0625 gm of Ephedrine
1 gm of Methylamine = 5 gm of Ephedrine
1 gm of N-Acetylanthranilic Acid = .025 gm of Ephedrine
1 gm of N-Methylephedrine = .04 gm of Ephedrine
1 gm of N-Methylpseudoephedrine = .04 gm of Ephedrine
1 gm of Norpseudoephedrine = .1 gm of Ephedrine
1 gm of Phenylacetic Acid = 1 gm of Ephedrine
1 gm of Phenylpropanolamine = .1 gm of Ephedrine
1 gm of Piperidine = 2 gm of Ephedrine
1 gm of Piperonal = .0625 gm of Ephedrine
1 gm of Propionic Anhydride = 12.5 gm of Ephedrine
1 gm of Pseudoephedrine = 1 gm of Ephedrine
1 gm of Safrole = .0625 gm of Ephedrine
1 gm of 3,4-Methylenedioxyphenyl-2-propanone = .05 gm of Ephedrine

Commentary

Statutory Provisions: 21 U.S.C. 841(d) (1), (2), (g)(1), 960(d) (1), (2)

* The ephedrine equivalency for anthranilic acid or N-acetylanthranilic acid, or both, shall not exceed 159.99 grams of ephedrine.

** In cases involving both hydriodic acid and ephedrine, calculate the offense level for each separately and use the quantity that results in the greater offense level.

Application Notes

1. 'Firearm' and 'dangerous weapon' are defined in the Commentary to § 1B1.1 (Application Instructions). The adjustment in subsection (b)(1) should be applied if the weapon was present, unless it is improbable that the weapon was connected with the offense.

2. 'Offense involved unlawfully manufacturing a controlled substance or attempting to manufacture a controlled substance unlawfully,' as used in subsection (c)(1), means that the defendant, or a person for whose conduct the defendant is accountable under § 1B1.3 (Relevant Conduct), completed the actions sufficient to constitute the offense of unlawfully manufacturing a controlled substance or attempting to manufacture a controlled substance unlawfully.

3. In certain cases, the defendant will be convicted of an offense involving a listed chemical covered under this guideline, and a related offense involving an immediate precursor or other controlled substance covered under § 2D1.1 (Unlawfully Manufacturing, Importing, Exporting, or Trafficking). For example, P2P (an immediate precursor) and 3,4-methylenedioxyphenyl-2-propanone (a listed chemical) are used together to produce methamphetamine. Determine the offense level under each guideline separately. The offense level for 3,4-methylenedioxyphenyl-2-propanone is determined by using § 2D1.11. The offense level for P2P is determined by using § 2D1.1. (P2P is listed in the Drug Equivalency Table under LSD, PCP, and Other Schedule I and II Hallucinogens (and their immediate precursors)). Under the grouping rules of § 3D1.2(b), the counts will be grouped together. Note that in determining the scale of the offense under § 2D1.1, the quantity of both the controlled substance and listed chemical should be considered (see Application Note 12 in the Commentary to § 2D1.1).

4. Where there are multiple listed precursor chemicals, the quantities of all listed precursors are added together for purposes of determining the base offense level, except as expressly noted (see Note A to the Chemical Quantity Table). This reflects that only one listed precursor typically is used in a given manufacturing process. For example, in the case of an offense involving 300 grams of piperidine and 800 grams of benzyl cyanide, the piperidine is converted to 600 grams of ephedrine and the benzyl cyanide is converted to 800 grams of ephedrine, using the Precursor Chemical Equivalency Table, for a total of 1400 grams of ephedrine. Applying the Chemical Quantity Table to 1400 grams (1.4 kilograms) of ephedrine results in a base offense level of 22.

5. Where there are multiple listed essential chemicals, all quantities of the same listed essential chemical are added together for purposes of determining the base offense level. However, quantities of different listed essential chemicals are not aggregated (see Note B to the Chemical Quantity Table). Thus, where multiple listed essential chemicals are involved in the offense, the base offense level is determined by using the

base offense level for the single listed essential chemical resulting in the greatest base offense level. For example, in the case of an offense involving seven kilograms of methyl ethyl ketone and eight kilograms of acetone, the base offense level for the methyl ethyl ketone is 12 and the base offense level for the acetone is 14; therefore, the base offense level is 14.

6. Where both listed precursor chemicals and listed essential chemicals are involved, use the greater of the base offense level for the listed precursor chemicals or the listed essential chemicals (see Note C to the Chemical Quantity Table).

7. Convictions under 21 U.S.C. 841 (d)(2), (g)(1), and 960(d)(2) do not require that the defendant have knowledge or an actual belief that the listed chemical was to be used to manufacture a controlled substance unlawfully. Where the defendant possessed or distributed the listed chemical without such knowledge or belief, a 3-level reduction is provided to reflect that the defendant is less culpable than one who possessed or distributed listed chemicals knowing or believing that they would be used to manufacture a controlled substance unlawfully.

Background: Offenses covered by this guideline involve listed precursor chemicals and listed essential chemicals. Listed precursor chemicals are critical to the formation of a controlled substance and become part of the final product. For example, ephedrine reacts with other chemicals to form methamphetamine. The amount of ephedrine directly affects the amount of methamphetamine produced. Listed essential chemicals are generally solvents, catalysts, and reagents, and do not become part of the finished product.

§ 2D1.12. Unlawful Possession, Manufacture, Distribution, or Importation of Prohibited Flask or Equipment

(a) Base Offense Level: 12.

(b) Cross Reference.

(1) If the offense involved unlawfully manufacturing a controlled substance, or attempting to manufacture a controlled substance unlawfully, apply § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, Trafficking), or § 2D1.4 (Attempts and Conspiracies), as appropriate, if the resulting offense level is greater than that determined above.

Commentary

Statutory Provisions: 21 U.S.C. 843(a)(6), (7).

Application Notes

1. If the offense involved the large-scale manufacture, distribution, or importation of prohibited flasks or equipment, an upward departure may be warranted.

2. 'Offense involved unlawfully manufacturing a controlled substance or attempting to manufacture a controlled substance unlawfully,' as used in subsection (b)(1), means that the defendant, or a person for whose conduct the defendant is accountable under § 1B1.3 (Relevant Conduct), completed the actions sufficient to constitute the offense of unlawfully manufacturing a controlled substance or attempting to manufacture a controlled substance unlawfully.

§ 2D1.13. Structuring Chemical Transactions or Creating a Chemical Mixture to Evade Reporting or Recordkeeping Requirements; Presenting False or Fraudulent Identification to Obtain a Listed Chemical

(a) Base Offense Level (Apply the greatest):

(1) The offense level from § 2D1.11 (Unlawfully Distributing, Importing, Exporting, or Possessing a Listed Chemical) if the defendant knew or believed that the chemical was to be used to manufacture a controlled substance unlawfully; or

(2) The offense level from § 2D1.11 (Unlawfully Distributing, Importing, Exporting or Possessing a Listed Chemical) reduced by 3 levels if the defendant had reason to believe that the chemical was to be used to manufacture a controlled substance unlawfully; or

(3) 6, otherwise.

Commentary

Statutory Provisions: 21 U.S.C. 841(d)(3), (g)(1), 843(a)(4)(B), (a)(8).

Application Note

1. 'The offense level from § 2D1.11' includes the base offense level and any applicable specific offense characteristic or cross reference; see § 1B1.5 (Interpretation of References to Other Offense Guidelines).".

Chapter Two, part D, subpart 3 is amended by inserting the following additional guideline and accompanying commentary:

"§ 2D3.5. Violation of Recordkeeping or Reporting Requirements for Listed Chemicals and Certain Machines

(a) Base Offense Level: 4.

Commentary

Statutory Provisions: 21 U.S.C. 842(a)(9), (10).".

The Commentary to § 2D1.1 captioned "Application Notes" is amended by inserting the following additional note:

"14. D-lysergic acid, which is generally used to make LSD, is classified as a Schedule III controlled substance (to which § 2D1.1 applies) and as a listed precursor (to which § 2D1.11 applies). Where the defendant is convicted under 21 U.S.C. 841(b)(1)(D) or 860(b)(4) of an offense involving d-lysergic acid, apply § 2D1.1 or § 2D1.11, whichever results in the greater offense level. See Application Note 5 in the Commentary to § 1B1.1 (Application Instructions). Where the defendant is accountable for an offense involving the manufacture of LSD, see Application Note 12 above pertaining to the determination of the scale of the offense.".

Section 3D1.2(d) is amended in the second paragraph by inserting ", 2D1.11, 2D1.13" immediately following "2D1.5".

Reason for Amendment: This amendment makes Chapter Two, Part D more comprehensive by providing additional guidelines to address violations involving listed chemicals, flasks, and certain machines that are used in the manufacture of controlled substances, and by inserting a conforming instruction as Application Note 14 of the Commentary to § 2D1.1.

* * * * *

Chapter Two, Part G (Offenses Involving Prostitution, Sexual Exploitation of Minors, and Obscenity)

10. Amendment: Chapter Two, Part G, Subpart 2 is amended by inserting the following additional guidelines and accompanying commentary:

"§ 2G2.4. Receipt or Possession of Materials Depicting a Minor Engaged in Sexually Explicit Conduct

(a) Base Offense Level: 10.

(b) Specific Offense Characteristic.

(1) If the material involved a prepubescent minor or a minor under the age of twelve years, increase by 2 levels.

(c) Cross References.

(1) If the offense involved causing, transporting, permitting, or offering or seeking by notice or advertisement, a minor to engage in sexually explicit conduct for the purpose of producing a visual depiction of such conduct, apply § 2G2.1 (Sexually Exploiting a Minor by Production of Sexually Explicit Visual or Printed Material; Custodian Permitting Minor to Engage in Sexually Explicit Conduct; Advertisement for Minors to Engage in Production).

(2) If the offense involved trafficking in material involving the sexual exploitation of a minor (including receiving, transporting, advertising, or possessing material involving the sexual exploitation of a minor with intent to traffic), apply § 2G2.2 (Trafficking in Material Involving the Sexual Exploitation of a Minor; Receiving, Transporting, Advertising, or Possessing Material Involving the Sexual Exploitation of a Minor with Intent to Traffic).

Commentary

Statutory Provision: 18 U.S.C. 2252.

Application Note:

This guideline assumes that the offense involved a small number of prohibited items. If the defendant possessed 50 or more books, magazines, periodicals, films, video tapes, or other items containing a visual depiction involving the sexual exploitation of a minor, and subsection (c)(1) or (c)(2) does not apply, an upward departure may be warranted.

§ 2G2.5. Recordkeeping Offenses Involving the Production of Sexually Explicit Materials

(a) Base Offense Level: 6.

(b) Cross References.

(1) If the offense reflected an effort to conceal a substantive offense that involved causing, transporting, permitting, or offering or seeking by notice or advertisement, a minor to engage in sexually explicit conduct for the purpose of producing a visual depiction of such conduct, apply § 2G2.1 (Sexually Exploiting a Minor by Production of Sexually Explicit Visual or Printed Material; Custodian Permitting Minor to Engage in Sexually Explicit Conduct; Advertisement for Minors to Engage in Production).

(2) If the offense reflected an effort to conceal a substantive offense that involved trafficking in material involving the sexual exploitation of a minor (including receiving, transporting, advertising, or possessing material involving the sexual exploitation of a minor with intent to traffic), apply § 2G2.2 (Trafficking in Material Involving the Sexual Exploitation of a Minor; Receiving, Transporting, Advertising, or Possessing Material Involving the Sexual Exploitation of a Minor With Intent to Traffic).

Commentary

Statutory Provision: 18 U.S.C. 2257.".

Section 2G2.2 is amended in the title by deleting "Transporting, Receiving or"; and by inserting at the end "; Receiving, Transporting, Advertising, or Possessing Material Involving the Sexual Exploitation of a Minor With Intent to Traffic".

The Commentary to § 2G2.2 captioned "Statutory Provisions" is amended by deleting "1460,".

Section 2G3.1(c)(1) is amended by deleting "Transporting, Receiving, or", and by inserting immediately before the period at the end of the sentence "; Receiving, Transporting, Advertising, or Possessing Material Involving the Sexual Exploitation of a Minor With Intent to Traffic) or § 2G2.4 (Receipt or Possession of Materials Depicting a Minor Engaged in Sexually Explicit Conduct), as appropriate".

Reason for Amendment: This amendment inserts an additional guideline at § 2G2.4 to address offenses involving receipt or possession of materials depicting a minor engaged in sexually explicit conduct, as distinguished from offenses involving trafficking in such material, which continue to be covered under § 2G2.2. Offenses involving receipt or transportation of such material for the purpose of trafficking are referenced to § 2G2.2 on the basis of the underlying conduct (subsection (c)(2)). Similarly, offenses in which the underlying conduct is more appropriately addressed as sexual exploitation of a minor are referenced to that guideline (subsection (c)(1)). Among the offenses covered by this guideline is a new offense created by section 323 of the Crime Control Act of 1990 (Pub. L. 101–647).

In addition, this amendment inserts an additional guideline at § 2G2.5 to address a recordkeeping offense created by Section 311 of the Crime Control Act of 1990 (Pub. L. 101–647).

Chapter Two, Part K (Offenses Involving Public Safety)

11. Amendment: Sections 2K1.3 and 2K1.6 are deleted in their entirety and the following inserted in lieu thereof:

"§ 2K1.3. Unlawful Receipt, Possession, or Transportation of Explosive Materials; Prohibited Transactions Involving Explosive Materials

(a) Base Offense Level (Apply the Greatest):

(1) 24, if the defendant had at least two prior felony convictions of either a crime of violence or a controlled substance offense; or

(2) 20, if the defendant had one prior felony conviction of either a crime of violence or a controlled substance offense; or

(3) 16, if the defendant is a prohibited person; or knowingly distributed explosive materials to a prohibited person; or

(4) 12, otherwise.

(b) Specific Offense Characteristics.

(1) If the offense involved twenty-five pounds or more of explosive materials, increase as follows: Weight of Explosive Material, Increase in Level.

(A) At least 25 but less than 100 lbs. add 1.

(B) At least 100 but less than 250 lbs. add 2.

(C) At least 250 but less than 500 lbs. add 3.

(D) At least 500 but less than 1,000 lbs. add 4.

(E) 1,000 lbs. or more add 5.

(2) If the offense involved any explosive material that the defendant knew or had reason to believe was stolen, increase by 2 levels.

Provided, That the cumulative offense level determined above shall not exceed level 29.

(3) If the defendant used or possessed any explosive material in connection with another felony offense; or possessed or transferred any explosive material with knowledge, intent, or reason to believe that it would be used or possessed in connection with another felony offense, increase by 4 levels. If the resulting offense level is less than level 18, increase to level 18.

(c) Cross Reference.

(1) If the defendant used or possessed any explosive material in connection with the commission or attempted commission of another offense, or possessed or transferred any explosive material with knowledge or intent that it would be used or possessed in connection with another offense, apply—

(A) § 2X1.1 (Attempt, Solicitation, or Conspiracy) in respect to that other offense if the resulting offense level is greater than that determined above; or

(B) If death resulted, the most analogous offense guideline from Chapter Two, Part A, Subpart 1 (Homicide), if the resulting offense level is greater than that determined above.

Commentary

Statutory Provisions: 18 U.S.C. 842, 844(d), (g); 26 U.S.C. 5865.

Application Notes

1. 'Explosive material(s)' include explosives, blasting agents, and detonators. See 18 U.S.C. 841(c). 'Explosives' is defined at 18 U.S.C. 844(j). A destructive device, defined in the Commentary to § 1B1.1 (Application Instructions), may contain explosive materials. Where the conduct charged in the count of which the defendant was convicted establishes that the offense involved a destructive device, apply § 2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition) if the resulting offense level is greater.

2. 'Crime of violence,' 'controlled substance offense,' and 'prior felony conviction(s),' as used in subsections (a)(1) and (a)(2), are defined at § 4B1.2 (Definitions of Terms Used in Section 4B1.1), subsections (1) and (2), and Application Note 3 of the Commentary, respectively. For purposes of determining the number of such convictions under subsections (a)(1) and (a)(2), count any such prior conviction that receives any points under § 4A1.1 (Criminal History Category).

3. 'Prohibited person,' as used in subsection (a)(3), means anyone who: (i) Is under indictment for, or has been convicted of, a 'crime punishable by imprisonment for a term exceeding one year,' as defined at 18 U.S.C. 841(1); (ii) is a fugitive from justice; (iii) is an unlawful user of, or is addicted to, any controlled substance; or (iv) has been adjudicated as a mental defective or involuntarily committed to a mental institution.

4. 'Felony offense,' as used in subsection (b)(3), means any offense punishable by imprisonment for a term exceeding one year, whether or not a criminal charge was brought, or conviction obtained.

5. For purposes of calculating the weight of explosive materials under subsection (b)(1), include only the weight of the actual explosive material and the weight of packaging material that is necessary for the use or detonation of the explosives. Exclude the weight of any other shipping or packaging materials. For example, the paper and fuse on a stick of dynamite would be included; the box that the dynamite was shipped in would not be included.

6. For purposes of calculating the weight of explosive materials under subsection (b)(1), count only those explosive materials that were unlawfully sought to be obtained, unlawfully possessed, or unlawfully distributed, including any explosive material that a defendant attempted to obtain by making a false statement.

7. If the defendant is convicted under 18 U.S.C. 842(h) (offense involving stolen explosive materials), and is convicted of no other offenses subject to this guideline, do not apply the adjustment in subsection (b)(2) because the base offense level itself takes such conduct into account.

8. Under subsection (c)(1), the offense level for the underlying offense is to be determined under § 2X1.1 (Attempt, Solicitation, or Conspiracy) or, if death results, under the most analogous guideline from Chapter Two, Part A, Subpart 1 (Homicide).

9. Prior felony conviction(s) resulting in an increased base offense level under subsections (a)(1), (a)(2), or (a)(3) are also counted for purposes of determining criminal history points pursuant to Chapter Four, Part A (Criminal History).

10. An upward departure may be warranted in any of the following circumstances: (1) The quantity of explosive materials significantly exceeded 1000 pounds; (2) the explosive materials were of a nature more volatile or dangerous than dynamite or conventional powder explosives (e.g., plastic

explosives); (3) the defendant knowingly distributed explosive materials to a person under twenty-one years of age; or (4) the offense posed a substantial risk of death or bodily injury to multiple individuals.".

Section 2K1.1 is amended in the title by deleting "Explosives" and inserting in lieu thereof "Explosive Materials".

Section 2K1.2 is amended in the title by deleting "Explosives" and inserting in lieu thereof "Explosive Materials".

Chapter Two, Part K, Subpart 1 is amended by inserting the following additional guideline and accompanying commentary:

"§ 2K1.6. Licensee Recordkeeping Violations Involving Explosive Materials

(a) Base Offense Level: 6.

(b) Cross Reference.

(1) If a recordkeeping offense reflected an effort to conceal a substantive explosive materials offense, apply § 2K1.3 (Unlawful Receipt, Possession, or Transportation of Explosives Materials; Prohibited Transactions Involving Explosive Materials).

Commentary

Statutory Provisions: 18 U.S.C. 842(f), (g).

Background: The above-referenced provisions are recordkeeping offenses applicable only to 'licensees,' who are defined at 18 U.S.C. 841(m).".

The Commentary to § 2K1.4 captioned "Application Notes" is amended by inserting the following additional note:

"3. 'Explosives,' as used in the title of this guideline, includes any explosive, explosive material, or destructive device.".

The Commentary to § 4B1.2 captioned "Application Notes" is amended in Note 2 by inserting "(including any explosive material or destructive device)" immediately following "explosives".

Appendix A is amended by deleting:

"18 U.S.C. 842(a)–(i)—2K1.3",

and inserting in lieu thereof:

"18 U.S.C. 842(a)–(e)—2K1.3
18 U.S.C. 842(f)—2K1.6
18 U.S.C. 842(g)—2K1.6
18 U.S.C. 842(h)–(i)—2K1.3";

in the line beginning "18 U.S.C. 844(d)" by deleting "§ 2K1.6" and inserting in lieu thereof "§ 2K1.3";

in the line beginning "18 U.S.C. 1716" by inserting "2K1.3," immediately before "2K3.2";

and in the line beginning 26 U.S.C. 5685 by deleting "2K1.6,".

Reason for Amendment: This amendment consolidates two guidelines, and revises the offense levels and characteristics to more adequately reflect the seriousness of such offenses, including enhancements for defendants previously convicted of felony crimes of violence or controlled substance offenses. In addition, the amendment inserts an additional guideline to cover certain recordkeeping offenses. The amendment also revises the titles of §§ 2K1.1 and 2K1.2, and the Commentary to § 2K1.4 and § 4B1.2, to clarify that the term explosives, as used in those guidelines, includes explosive materials.

* * * * *

12. Amendment: Sections 2K2.1, 2K2.2, and 2K2.3 are deleted in their entirety and the following inserted in lieu thereof:

"§ 2K2.1 Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition

(a) Base Offense Level (Apply the Greatest):

(1) 26, if the defendant had at least two prior felony convictions of either a crime of violence or a controlled substance offense, and the instant offense involved a firearm listed in 26 U.S.C. 5845(a); or

(2) 24, if the defendant had at least two prior felony convictions of either a crime of violence or a controlled substance offense; or

(3) 22, if the defendant had one prior felony conviction of either a crime of violence or a controlled substance offense, and the instant offense involved a firearm listed in 26 U.S.C. 5845(a); or

(4) 20, if the defendant—

(A) had one prior felony conviction of either a crime of violence or a controlled substance offense; or

(B) is a prohibited person, and the offense involved a firearm listed in 26 U.S.C. 5845(a); or

(5) 18, if the offense involved a firearm listed in 26 U.S.C. 5845(a); or

(6) 14, if the defendant is a prohibited person; or

(7) 12, except as provided below; or

(8) 6, if the defendant is convicted under 18 U.S.C. 922 (c), (e), (f), or (m).

(b) Specific Offense Characteristics.

(1) If the offense involved three or more firearms, increase as follows:

Number of firearms	Increase in level
(A) 3–4	add 1.
(B) 5–7	add 2.
(C) 8–12	add 3.
(D) 13–24	add 4.
(E) 25–49	add 5.
(F) 50 or more	add 6.

(2) If the defendant, other than a defendant subject to subsections (a)(1), (a)(2), (a)(3), (a)(4), or (a)(5), possessed all ammunition and firearms solely for lawful sporting purposes or collection, and did not unlawfully discharge or otherwise unlawfully use such firearms or ammunition, decrease the offense level determined above to level 6.

(3) If the offense involved a destructive device, increase by 2 levels.

(4) If any firearm was stolen, or had an altered or obliterated serial number, increase by 2 levels.

Provided, that the cumulative offense level determined above shall not exceed level 29.

(5) If the defendant used or possessed any firearm or ammunition in connection with another felony offense; or possessed or transferred any firearm or ammunition with knowledge, intent, or reason to believe that it would be used or possessed in connection with another felony offense, increase by 4 levels. If the resulting offense level is less than level 18, increase to level 18.

(6) If a recordkeeping offense reflected an effort to conceal a substantive offense involving firearms or ammunition, increase to the offense level for the substantive offense.

(c) Cross Reference.

(1) If the defendant used or possessed any firearm or ammunition in connection with the commission or attempted commission of another offense, or possessed or transferred a firearm or ammunition with knowledge or intent that it would be used or possessed in connection with another offense, apply—

(A) § 2X1.1 (Attempt, Solicitation, or Conspiracy) in respect to that other offense, if the resulting offense level is greater than that determined above; or

(B) if death resulted, the most analogous offense guideline from Chapter Two, Part A, Subpart 1 (Homicide), if the resulting offense level is greater than that determined above.

Commentary

Statutory Provisions: 18 U.S.C. 922, 924 (a), (b), (f), (g); 26 U.S.C. 5861. For additional statutory provisions, see Appendix A (Statutory Index).

Application Notes:

1. 'Firearm' includes (i) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (ii) the frame or receiver of any such weapon; (iii) any firearm muffler or silencer; or (iv) any destructive device. See 18 U.S.C. 921(a)(3).

2. 'Ammunition' includes ammunition or cartridge cases, primer, bullets, or propellent powder designed for use in any firearm. See 18 U.S.C. 921(a)(17)(A).

3. 'Firearm listed in 26 U.S.C. 5845(a), includes: (i) any short-barreled rifle or shotgun or any weapon made therefrom; (ii) a machinegun; (iii) a silencer; (iv) a destructive device; or (v) any 'other weapon,' as that term is defined by 26 U.S.C. 5845(e). A firearm listed in 26 U.S.C. 5845(a) does not include unaltered handguns or regulation-length rifles or shotguns. For a more detailed definition, refer to 26 U.S.C. 5845.

4. 'Destructive device' is a type of firearm listed in 26 U.S.C. 5845(a), and includes any explosive, incendiary, or poison gas—(i) bomb, (ii) grenade, (iii) rocket having a propellant charge of more than four ounces, (iv) missile having an explosive or incendiary charge of more than one-quarter ounce, (v) mine, or (vi) device similar to any of the devices described in the preceding clauses); any type of weapon which will, or which may be readily converted to, expel a projectile by the action of an explosive or other propellant, and which has any barrel with a bore of more than one-half inch in diameter; or any combination of parts either designed or intended for use in converting any device into any destructive device listed above. For a

more detailed definition, refer to 26 U.S.C. 5845(f).

5. 'Crime of violence,' 'controlled substance offense,' and 'prior felony conviction(s),' are defined in § 4B1.2 (Definitions of Terms Used in Section 4B1.1), subsections (1) and (2), and Application Note 3 of the Commentary, respectively. For purposes of determining the number of such convictions under subsections (a)(1), (a)(2), (a)(3), and (a)(4)(A), count any such prior conviction that receives any points under § 4A1.1 (Criminal History Category).

6. 'Prohibited person,' as used in subsections (a)(4)(B) and (a)(6), means anyone who: (i) Is under indictment for, or has been convicted of, a 'crime punishable by imprisonment for more than one year,' as defined by 18 U.S.C. 921(a)(20); (ii) is a fugitive from justice; (iii) is an unlawful user of, or is addicted to, any controlled substance; (iv) has been adjudicated as a mental defective or involuntarily committed to a mental institution; or (v) being an alien, is illegally or unlawfully in the United States.

7. 'Felony offense,' as used in subsection (b)(5), means any offense punishable by imprisonment for a term exceeding one year, whether or not a criminal charge was brought, or conviction obtained.

8. Subsection (a)(7) includes the interstate transportation or interstate distribution of firearms, which is frequently committed in violation of state, local, or other federal law restricting the possession of firearms, or for some other underlying unlawful purpose. In the unusual case in which it is established that neither avoidance of state, local or other federal firearms law, nor any other underlying unlawful purpose was involved, a reduction in the base offense level to no lower than level 6 may be warranted to reflect the less serious nature of the violation.

9. For purposes of calculating the number of firearms under subsection (b)(1), count only those firearms that were unlawfully sought to be obtained, unlawfully possessed, or unlawfully distributed, including any firearm that a defendant obtained or attempted to obtain by making a false statement to a licensed dealer.

10. Under subsection (b)(2), 'lawful sporting purposes or collection' as determined by the surrounding circumstances, provides for a reduction to an offense level of 6. Relevant surrounding circumstances include the number and type of firearms, the amount and type of ammunition, the location and circumstances of possession and actual use, the nature of the defendant's criminal history (e.g., prior convictions for offenses involving firearms), and the extent to which possession was restricted by local law. Note that where the base offense level is determined under subsections (a)(1)–(a)(5), subsection (b)(2) is not applicable.

11. A defendant whose offense involves a destructive device receives both the base offense level from the subsection applicable to a firearm listed in 26 U.S.C. 5845(a) (e.g., subsection (a)(1), (a)(3), (a)(4)(B), or (a)(5)), and a two-level enhancement under subsection (b)(3). Such devices pose a considerably greater risk to the public welfare than other National Firearms Act weapons.

12. If the defendant is convicted under 18 U.S.C. 922 (i), (j), or (k), or 26 U.S.C. 5861 (g) or (h) (offenses involving stolen firearms or ammunition), and is convicted of no other offense subject to this guideline, do not apply the adjustment in subsection (b)(4) because the base offense level itself takes such conduct into account.

13. Subsection (b)(6) applies in situations where the defendant is convicted of a recordkeeping offense subject to subsection (a)(8) (e.g., failure to maintain records, maintaining false records), that reflected an effort to conceal a substantive firearms or ammunition violation subject to subsection (a)(7) (e.g., sale to a prohibited person).

14. Under subsection (c)(1), the offense level for the underlying offense is to be determined under § 2X1.1 (Attempt, Solicitation, or Conspiracy) or, if death results, under the most analogous guideline from Chapter Two, Part A, Subpart 1 (Homicide).

15. Prior felony conviction(s) resulting in an increased base offense level under subsections (a)(1), (a)(2), (a)(3), (a)(4)(A), or (a)(5) are also counted for purposes of determining criminal history points pursuant to Chapter Four, Part A (Criminal History).

16. An upward departure may be warranted in any of the following circumstances: (1) The number of firearms significantly exceeded fifty; (2) the offense involved multiple National Firearms Act weapons (e.g., machineguns, destructive devices), military type assault rifles, non-detectable ('plastic') firearms (defined at 18 U.S.C. 922(p)); (3) the offense involved large quantities of armor-piercing ammunition (defined at 18 U.S.C. 921(a)(17)(B)); or (4) the offense posed a substantial risk of death or bodily injury to multiple individuals.

17. A defendant who is subject to an enhanced sentence under the provisions of 18 U.S.C. 924(e) is an Armed Career Criminal. See § 4B1.4.".

Section 2K2.5 is deleted in its entirety and the following inserted in lieu thereof:

"§ 2K2.5. Possession of Firearm or Dangerous Weapon in Federal Facility; Possession or Discharge of Firearm in School Zone

(a) Base Offense Level: 6.

(b) Specific Offense Characteristic.

(1) If—

(A) The defendant unlawfully possessed or caused any firearm or dangerous weapon to be present in a federal court facility, or

(B) The defendant unlawfully possessed or caused any firearm to be present in a school zone, increase by 2 levels.

(c) Cross Reference.

(1) If the defendant used or possessed any firearm or dangerous weapon in connection with the commission or attempted commission of another offense, or possessed or transferred a firearm or dangerous weapon with knowledge or intent that it would be used or possessed in connection with another offense, apply—

(A) § 2X1.1 (Attempt, Solicitation, or Conspiracy) in respect to that other offense if the resulting offense level is greater than that determined above; or

(B) if death resulted, the most analogous offense guideline from Chapter Two, Part A, Subpart 1 (Homicide), if the resulting offense level is greater than that determined above.

Commentary

Statutory Provisions: 18 U.S.C. 922(q), 930.

Application Notes:

1. 'Dangerous weapon' and 'firearm' are defined in the Commentary to § 1B1.1 (Application Instructions).

2. 'Federal court facility' includes the courtroom; judges' chambers; witness rooms; jury deliberation rooms; attorney conference rooms; prisoner holding cells; offices and parking facilities of the court clerks, the United States attorney, and the United States marshal; probation and parole offices; and adjoining corridors and parking facilities of any court of the United States. See 18 U.S.C. 930(f)(3).

3. 'School zone' is defined at 18 U.S.C. 922(q). A sentence of imprisonment under 18 U.S.C. 922(q) must run consecutively to any sentence of imprisonment imposed for any other offense. In order to comply with the statute, when the guideline range is based on the underlying offense, and the defendant is convicted both of the underlying offense and 18 U.S.C. 922(q), the court should apportion the sentence between the count for the underlying offense and the count under 18 U.S.C. 922(q). For example, if the guideline range is 30–37 months and the court determines 'total punishment' of 36 months is appropriate, a sentence of 30 months for the underlying offense, plus 6 months under 18 U.S.C. 922(q) would satisfy this requirement.

4. Where the firearm was brandished, discharged, or otherwise used, in a federal facility, federal court facility, or school zone, and the cross reference from subsection (c)(1) does not apply, an upward departure may be warranted.".

Section 3D1.2(d) is amended in the second paragraph by deleting "2K2.2" and inserting in lieu thereof "2K2.1".

Appendix A is amended by deleting:

"18 U.S.C. 922(a)(1) 2K2.1, 2K2.2
18 U.S.C. 922(a)(2) 2K2.2
18 U.S.C. 922(a)(3) 2K2.1
18 U.S.C. 922(a)(4) 2K2.1
18 U.S.C. 922(a)(5) 2K2.2
18 U.S.C. 922(a)(6) 2K2.1
18 U.S.C. 922(b)–(d) 2K2.2
18 U.S.C. 922(e) 2K2.1, 2K2.2
18 U.S.C. 922(f) 2K2.1, 2K2.2
18 U.S.C. 922(g) 2K2.1
18 U.S.C. 922(h) 2K2.1
18 U.S.C. 922(i)–(l) 2K2.1, 2K2.2
18 U.S.C. 922(m) 2K2.2
18 U.S.C. 922(n) 2K2.1
18 U.S.C. 922(o) 2K2.1, 2K2.2
18 U.S.C. 923(a) 2K2.2
18 U.S.C. 924(a)(1)(A) 2K2.2
18 U.S.C. 924(a)(1)(C) 2K2.1, 2K2.2
18 U.S.C. 924(a)(3)(A) 2K2.2
18 U.S.C. 924(b) 2K2.3",

and inserting in lieu thereof:

"18 U.S.C. 922(a)–(p) 2K2.1
18 U.S.C. 922(q) 2K2.5
18 U.S.C. 922(r) 2K2.1
18 U S C 923 2K2. 1
18 U.S.C. 924(a) 2K2.1

18 U.S.C. 924(b) 2K2.1";

by deleting:

"18 U.S.C. 924(e) 2K2.1 (see also 4B1.4)
18 U.S.C. 924(f) 2K2.3
18 U.S.C. 924(g) 2K2.3",

and inserting in lieu thereof:

"18 U.S.C. 924(f) 2K2.1
18 U.S.C. 924(g) 2K2.1";

In the line beginning "26 U.S.C. § 5685" by deleting "2K2.2" and inserting in lieu thereof "2K2.1";

and by deleting:

"26 U.S.C. 5861(a) 2K2.2
26 U.S.C. 5861(b) 2K2.1
26 U.S.C. 5861(c) 2K2.1
26 U.S.C. 5861(d) 2K2.1
26 U.S.C. 5861(e) 2K2.2
26 U.S.C. 5861(f) 2K2.2
26 U.S.C. 5861(g) 2K2.2
26 U.S.C. 5861(h) 2K2.1
26 U.S.C. 5861(i) 2K2.1
26 U.S.C. 5861(j) 2K2.1, 2K2.2
26 U.S.C. 5861(k) 2K2.1
26 U.S.C. 5861(l) 2K2.2
26 U.S.C. 5871 2K2.1, 2K2.2",

and inserting in lieu thereof:

"26 U.S.C. 5861(a)–(l) 2K2.1
26 U.S.C. 5871 2K2.1".

Reason for Amendment: This amendment consolidates three firearms guidelines (§§ 2K2.1, 2K2.2, and 2K2.3) and revises the adjustments and offense levels to more adequately reflect the seriousness of such conduct, including enhancements for defendants previously convicted of felony crimes of violence or controlled substance offenses. In addition, § 2K1.5 is amended to address offenses committed within a school zone or federal court facility. The amendment also makes conforming and editorial changes.

Chapter Two, Part L (Offenses Involving Immigration, Naturalization, and Passports)

13. Amendment: Section 2L1.1(a) is amended by deleting "9" and inserting in lieu thereof:

"(1) 20, if the defendant was convicted under 8 U.S.C. 1327 of a violation involving an alien who previously was deported after a conviction for an aggravated felony; or
(2) 9, otherwise.".

Section 2L1.1(b)(1) is amended by inserting "and the base offense level is determined under subsection (a)(2)," immediately before "decrease".

The Commentary to § 2L1.1 captioned "Application Notes" is amended by inserting the following additional note:

"9. 'Aggravated felony' is defined in the Commentary to § 2L1.2 (Unlawfully Entering or Remaining in the United States).".

Section 2L1.2(b) is amended by deleting "Specific Offense Characteristic" and inserting in lieu thereof:

"Specific Offense Characteristics
If more than one applies, use the greater:".

Section 2L1.2(b)(1) is amended by deleting "sustaining" immediately before "a conviction", and by inserting the following additional subdivision:

"(2) If the defendant previously was deported after a conviction for an aggravated felony, increase by 16 levels.".

The Commentary to § 2L1.2 captioned "Statutory Provisions" is amended by deleting "1325" and inserting in lieu thereof "1325(a)".

The Commentary to § 2L1.2 captioned "Application Notes" is amended in Note 1 by deleting "First offenses under 8 U.S.C. 1325 are petty offenses" and inserting in lieu thereof "A first offense under 8 U.S.C. 1325(a) is a Class B misdemeanor".

The Commentary to § 2L1.2 captioned "Application Notes" is amended in Note 3 by deleting "sustaining" immediately before "a conviction", and by deleting "In the case of a defendant previously deported after sustaining a conviction for an aggravated felony as defined in 8 U.S.C. 1101(a), or for any other violent felony, an upward departure may be warranted.".

The Commentary to § 2L1.2 captioned "Application Notes" is amended by deleting Note 4 and inserting in lieu thereof:

"4. A 16-level increase is provided under subsection (b)(2) in the case of a defendant who was previously deported after a conviction for an aggravated felony.

5. An adjustment under subsection (b)(1) or (b)(2) for a prior felony conviction applies in addition to any criminal history points added for such conviction in Chapter Four, Part A (Criminal History).

6. 'Deported after a conviction,' as used in subsections (b)(1) and (b)(2), means that the deportation was subsequent to the conviction, whether or not the deportation was in response to such conviction.

7. 'Aggravated felony,' as used in subsection (b)(2), means murder; any illicit trafficking in any controlled substance (as defined in 21 U.S.C. 802), including any drug trafficking crime as defined in 18 U.S.C. 924(c)(2); any illicit trafficking in any firearms or destructive devices as defined in 18 U.S.C. 921; any offense described in 18 U.S.C. 1956 (relating to laundering of monetary instruments); any crime of violence (as defined in 18 U.S.C. 16, not including a purely political offense) for which the term of imprisonment imposed (regardless of any suspension of such imprisonment) is at least five years; or any attempt or conspiracy to commit any such act. The term 'aggravated felony' applies to offenses described in the previous sentence whether in violation of federal or state law and also applies to offenses described in the previous sentence in violation of foreign law for which the term of imprisonment was completed within the previous 15 years. See 8 U.S.C. 1101(a)(43).".

Reason for Amendment: This amendment provides an increase of 16 levels above the base offense level under § 2L1.2 for defendants who reenter the United States after having been deported subsequent to a conviction for an aggravated felony Previously, such cases were addressed by a recommendation for consideration of an upward departure. In addition, § 2L1.1 is amended to provide a base offense level of 20 for a defendant who is convicted under 8 U.S.C. 1327 for an offense involving the smuggling, transporting, or harboring of an alien who was deported after a conviction for an aggravated felony. The Commission has determined that these increased offense levels are appropriate to reflect the serious nature of these offenses.

Chapter Two, Part N (Offenses Involving Food, Drugs, Agricultural Products, and Odometer Laws)

14. Amendment: Section 2N1.1 is amended in the title by deleting "Serious" and inserting "Bodily" in lieu thereof.

Section 2N1.1 is amended by deleting subsection (b) and inserting in lieu thereof:

"(b) Specific Offense Characteristic.

(1)(A) If any victim sustained permanent or life-threatening bodily injury, increase by 4 levels; (B) if any victim sustained serious bodily injury, increase by 2 levels; or (C) if the degree of injury is between that specified in subdivisions (A) and (B), increase by 3 levels.

(c) Cross References.

(1) If the offense resulted in death, apply § 2A1.1 (First Degree Murder) if the death was caused intentionally or knowingly, or § 2A1.2 (Second Degree Murder) in any other case.

(2) If the offense was tantamount to attempted murder, apply § 2A2.1 (Assault With Intent to Commit Murder; Attempted Murder) if the resulting offense level is greater than that determined above.

(3) If the offense involved extortion, apply § 2B3.2 (Extortion by Force or Threat of Injury or Serious Damage) if the resulting offense level is greater than that determined above.

(d) Special Instruction.

(1) If the defendant is convicted of a single count involving (A) the death or permanent, life-threatening, or serious bodily injury of more than one victim, or (B) conduct tantamount to the attempted murder of more than one victim, Chapter Three, Part D (Multiple Counts) shall be applied as if the defendant had been convicted of a separate count for each such victim.".

The Commentary to § 2N1.1 captioned "Application Notes" is amended by

deleting Note 1 and inserting in lieu thereof:

"1. The base offense level reflects that this offense typically poses a risk of death or serious bodily injury to one or more victims; or causes, or is intended to cause, bodily injury. Where the offense posed a substantial risk of death or serious bodily injury to numerous victims, or caused extreme psychological injury or substantial property damage or monetary loss, an upward departure may be warranted. In the unusual case in which the offense did not cause a risk of death or serious bodily injury, and neither caused nor was intended to cause bodily injury, a downward departure may be warranted.

2. The special instruction in subsection (d)(1) applies whether the offense level is determined under subsection (b)(1) or by use of a cross reference in subsection (c).",

and in the caption by deleting "Note" and inserting in lieu thereof "Notes".

The Commentary to § 2N1.1 captioned "Background" is deleted in its entirety.

Reason for Amendment: This amendment adds a specific offense characteristic for permanent, life-threatening, or serious bodily injury; and adds cross references for cases in which the offense resulted in death or was tantamount to attempted murder. In addition, a special instruction is added to address certain conduct involving multiple victims. Finally, the title of this guideline is revised to reflect more accurately the coverage of the guideline, and the background commentary is revised to clarify the "heartland" conduct to which the guideline applies.

Chapter Two, Part R (Antitrust Offenses)

15. Amendment: Section 2R1.1(a) is amended by deleting "9" and inserting in lieu thereof "10".

Section 2R1.1 is amended in subsection (b)(2) by deleting "less than $1,000,000 or more than $4,000,000" and inserting in lieu thereof "more than $400,000", and by deleting

"(A) Less than $1,000,000—subtract 1
(B) $1,000,000–$4,000,000—no adjustment
(C) More than $4,000,000—add 1
(D) More than $15,000,000—add 2
(E) More than $50,000,000—add 3",

and inserting in lieu thereof:

"(A) More than $400,000—add 1
(B) More than $1,000,000—add 2
(C) More than $2,500,000—add 3
(D) More than $6,250,000—add 4
(E) More than $15,000,000—add 5
(F) More than $37,500,000—add 6
(G) More than $100,000,000—add 7".

Section 2R1.1 is amended by deleting subsection (c) and inserting in lieu thereof the following:

"(c) Special Instructions for Fines

(1) For an individual, the guideline fine range shall be from one to five percent of the volume of commerce, but not less than $20,000.".

The Commentary to § 2R1.1 captioned "Application Notes" is amended by deleting Note 1 and inserting in lieu thereof:

"1. The provisions of § 3B1.1 (Aggravating Role) and § 3B1.2 (Mitigating Role) should be applied to an individual defendant as appropriate to reflect the individual's role in committing the offense. For example, if a sales manager organizes or leads the price-fixing activity of five or more participants, a 4-level increase is called for under § 3B1.1. An individual defendant should be considered for a downward adjustment under § 3B1.2 for a mitigating role in the offense only if he was responsible in some minor way for his firm's participation in the conspiracy.".

The Commentary to § 2R1.1 captioned "Background" is amended in the third paragraph by deleting "four" and inserting in lieu thereof "six".

The Commentary to § 2R1.1 captioned "Background" is amended by deleting the fourth paragraph.

The Commentary to § 2R1.1 captioned "Background" is amended in the seventh sentence of the last paragraph by deleting "$250,000" and inserting in lieu thereof "$350,000", and by deleting "$1,000,000" and inserting in lieu thereof "$10,000,000".

Reason for the Amendment: This amendment increases the offense levels for antitrust violations to make them more comparable to the offense levels for fraud with similar amounts of loss. The base offense level for antitrust violations starts higher than the base offense level for fraud violations to reflect the serious nature of and the difficulty of detecting such violations, but the offense levels for antitrust offenses based on volume of commerce increase less rapidly than the offense levels for fraud, in part, because, on the average, the level of mark-up from an antitrust violation may tend to decline with the volume of commerce involved. The amendment also reduces the minimum guideline fine level based on the volume of commerce to reflect a marginal shift from fines to imprisonment as the more effective means to deter antitrust offenses. The provision addressing fines for organizational defendants in the current guideline is deleted. Such fines are addressed by the provisions pertaining to the sentencing of organizational defendants that are added by another amendment.

Chapter Two, Part S (Money Laundering and Monetary Transaction Reporting)

16. Amendment: Section 2S1.1(a)(1) is amended by deleting "or (a)(2)(A)" and inserting in lieu thereof ", (a)(2)(A), or (a)(3)(A)".

Section 2S1.1(b)(1) is amended by inserting "or believed" immediately following "knew".

The Commentary to § 2S1.1 captioned "Background" is amended in the third paragraph by deleting "or (a)(2)(A)" and inserting in lieu thereof ", (a)(2)(A), or (a)(3)(A)", and by deleting "did not merely conceal a serious crime that had already taken place, but".

Reason for Amendment: In the Anti-Drug Abuse Act of 1988, Congress enacted a new subsection (a)(3) of 18 U.S.C. 1956 that authorizes undercover "sting" operations in money laundering cases. Such cases differ from those prosecuted under subsection (a)(1) in that the money being laundered is not actually criminal proceeds, but is government "sting" money that an undercover officer represents to be criminal proceeds. In all other respects, subsections (a)(1) and (a)(3) are the same. In the Crime Control Act of 1990, Congress extended this "sting" provision to offenses committed under subsection (a)(2). Section 2S1.1(a) currently provides for a base offense level of 23 for offenses committed in violation of subsections (a)(1)(A) and (a)(2)(A). These offenses carry a higher offense level because they involve an intent to promote another criminal offense. This amendment applies the same offense level to subsection (a)(3)(A) because it also involves an intent to promote another criminal offense. In addition, this amendment takes both the 1988 and 1990 statutory amendments into account by expanding the 3-level increase under subsection (b)(1) to cover cases in which the defendant believed that the funds were drug proceeds.

* * * * *

17. Amendment: Section 2S1.3 is amended in subsection (a)(1)(B) by deleting "made false statements to conceal or disguise the evasion of reporting requirements; or" and inserting in lieu thereof "knowingly filed, or caused another to file, a report containing materially false statements; or"; by deleting subsection (a)(1)(C); and in subsection (b)(1) by deleting "5" and inserting in lieu thereof "4", and by inserting "If the resulting offense level is less than level 13, increase to level 13." immediately following "levels.".

The Commentary to § 2S1.3 captioned "Application Notes" is amended by deleting "Notes" and inserting in lieu thereof "Note" and by deleting note 2.

The Commentary to § 2S1.3 captioned "Background" is amended in the second paragraph by deleting ", made false

statements to conceal or disguise the activity, or reasonably should have believed that the funds were criminally derived property" and inserting in lieu thereof "or knowingly filed, or caused another to file, a report containing materially false statements", and by deleting the last sentence; and in the third paragraph by deleting "a 5-level increase in the offense level" and inserting in lieu thereof "the greater of a 4-level increase or an increase to level 13".

The Commentary to § 2S1.3 captioned "Statutory Provisions" is amended by deleting "18 U.S.C. 1005;" and "5316,".

Chapter Two, part S is amended by inserting the following additional guideline and accompanying commentary:

"§ 2S1.4. Failure to File Currency and Monetary Instrument Report

(a) Base Offense Level: 9

(b) Specific Offense Characteristics

(1) If the defendant knew or believed that the funds were criminally derived property, increase by 4 levels.

(2) If the defendant knew or believed that the funds were intended to be used to promote criminal activity, increase by 4 levels.

(3) If the value of the funds exceeded $100,000, increase the offense level as specified in § 2S1.1(b)(2).

Commentary

Statutory Provision: 31 U.S.C. 5316.

Application Note:

1. 'Criminally derived property' means any property constituting, or derived from, proceeds obtained from a criminal offense. See 18 U.S.C. 1957(f)(2).".

Reason for Amendment: This amendment clarifies the intended scope of the specific offense characteristics in § 2S1.3 and modifies subsection (b)(1) so that it does not produce a result that exceeds the comparable offense level under § 2S1.2. In addition, this amendment creates a new guideline for offenses involving Currency and Monetary Instrument Reports (CMIR). Currently, such offenses are covered by § 2S1.3, which deals with all currency transaction reporting requirements. CMIR violations are committed by individuals who, when entering or leaving the country, knowingly conceal $10,000 or more in cash or bearer instruments on their persons or in their personal effects and knowingly fail to file the report required by the U.S. Customs Service. Such criminal conduct is sufficiently different from the other offenses covered by § 2S1.3 (namely, regulatory and structuring offenses) to merit treatment in a separate guideline.

Chapter Two, Part X (Other Offenses)

18. Amendment: Section 2X3.1(a) is amended by inserting the following additional sentence at the end:

"Provided, that where the conduct is limited to harboring a fugitive, the offense level shall not be more than level 20.".

Reason for Amendment: This amendment distinguishes harboring a fugitive from other forms of accessory after the fact by providing a lower maximum offense level for such cases, reflective in part of the lower statutory maximum provided for such offenses.

Chapter Four, Part A (Criminal History)

19. Amendment: The Commentary to § 4A1.1 captioned "Application Notes" is amended in the second sentence of Note 4 by inserting the following immediately before the period at the end of the sentence:

Having a custodial or supervisory component, although active supervision is not required for this item to apply. For example, a term of unsupervised probation would be included; but a sentence to pay a fine, by itself, would not be included.

The Commentary to § 4A1.1 captioned "Application Notes" is amended by inserting the following as the second sentence of Note 4 and the third sentence of Note 5:

Failure to report for service of a sentence of imprisonment is to be treated as an escape from such sentence. See § 4A1.2(n).

The Commentary to § 4A1.1 captioned "Application Notes" is amended in Note 4 by inserting the following additional sentence at the end:

A defendant who commits the instant offense while a violation warrant from a prior sentence is outstanding (e.g., a probation, parole, or supervised release violation warrant) shall be deemed to be under a criminal justice sentence for the purposes of this provision if that sentence is otherwise countable, even if that sentence would have expired absent such warrant. See § 4A1.2(m).

Section 4A1.2(a) is amended by inserting the following additional subdivision:

(4) Where a defendant has been convicted of an offense, but not yet sentenced, such conviction shall be counted as if it constituted a prior sentence under § 4A1.1(c) if a sentence resulting from that conviction otherwise would be countable. In the case of a conviction for an offense set forth in § 4A1.2(c)(1), apply this provision only where the sentence for such offense would be countable regardless of type or length.

'Convicted of an offense,' for the purposes of this provision, means that the guilt of the defendant has been established, whether by guilty plea, trial, or plea of nolo contendere.

Section 4A1.2(k)(2) is amended by deleting the last sentence; by inserting "(A)" immediately after "(2)"; and by inserting the following additional subdivision:

(B) Revocation of probation, parole, supervised release, special parole, or mandatory release may affect the time period under which certain sentences are counted as provided in § 4A1.2 (d)(2) and (e). For the purposes of determining the applicable time period, use the following: (i) in the case of an adult term of imprisonment totaling more than one year and one month, the date of last release from incarceration on such sentence (see § 4A1.2(e)(1)); (ii) in the case of any other confinement sentence for an offense committed prior to the defendant's eighteenth birthday, the date of the defendant's last release from confinement on such sentence (see § 4A1.2(d)(2)(A)); and (iii) in any other case, the date of the original sentence (see § 4A1.2 (d)(2)(B) and (e)(2)).

Section 4A1.2 is amended by inserting the following additional subsections:

(l) Sentences on Appeal.

Prior sentences under appeal are counted except as expressly provided below. In the case of a prior sentence, the execution of which has been stayed pending appeal, § 4A1.1 (a), (b), (c), (d), and (f) shall apply as if the execution of such sentence had not been stayed; § 4A1.1(e) shall not apply.

(m) Effect of a Violation Warrant.

For the purposes of § 4A1.1(d), a defendant who commits the instant offense while a violation warrant from a prior sentence is outstanding (e.g., a probation, parole, or supervised release violation warrant) shall be deemed to be under a criminal justice sentence if that sentence is otherwise countable, even if that sentence would have expired absent such warrant.

(n) Failure to Report for Service of Sentence of Imprisonment.

For the purposes of § 4A1.1 (d) and (e), failure to report for service of a sentence of imprisonment shall be treated as an escape from such sentence.

(o) Felony Offense.

For the purposes of § 4A1.2(c), a 'felony offense' means any federal, state, or local offense punishable by death or a term of imprisonment exceeding one year, regardless of the actual sentence imposed.".

The Commentary to § 4A1.2 captioned "Application Notes" is amended in Note 2 by inserting, immediately after "stated maximum", the following:

(e.g., in the case of a determinate sentence of five years, the stated maximum is five years; in the case of an indeterminate sentence of one to five years, the stated maximum is five years; in the case of an indeterminate sentence for a term not to exceed five years, the stated maximum is five years; in the case of an indeterminate sentence for a term not to exceed the defendant's twenty-first birthday, the stated maximum is the amount of time in pre-trial detention plus the amount of time between the date of sentence and the defendant's twenty-first birthday).

The Commentary to § 4A1.2 is amended in Note 11 by inserting the following additional paragraph at the end:

Where a revocation applies to multiple sentences, and such sentences are counted separately under § 4A1.2(a)(2), add the term of imprisonment imposed upon revocation to the sentence that will result in the greatest increase in criminal history points. Example: A defendant was serving two probationary sentences, each counted separately under § 4A1.2(a)(2); probation was revoked on both sentences as a result of the same violation conduct; and the defendant was sentenced to a total of 45 days of imprisonment. If one sentence had been a 'straight' probationary sentence and the other had been a probationary sentence that had required service of 15 days of imprisonment, the revocation term of imprisonment (45 days) would be added to the probationary sentence that had the 15-day term of imprisonment. This would result in a total of 2 criminal history points under § 4A1.1(b) (for the combined 60-day term of imprisonment) and 1 criminal history point under § 4A1.1(c) (for the other probationary sentence).

Section 4A1.3(d) is amended by deleting ", sentencing, or appeal" and inserting in lieu thereof "or sentencing".

Section 4B1.2(2) is amended by deleting "or distribution" and inserting in lieu thereof "distribution, or dispensing", and by deleting "or distribute" and inserting in lieu thereof "distribute, or dispense".

Reason for Amendment: This amendment clarifies the meaning of the term "under a criminal justice sentence" as used in § 4A1.1; inserts a new subdivision in § 4A1.2(a) to address the case in which the defendant has been convicted of a prior offense, but has not yet been sentenced for that offense; inserts an additional subdivision in § 4A1.2(k) to clarify the determination of the applicable time periods in revocation cases; inserts additional subsections in § 4A1.2 to address the counting of sentences stayed pending appeal, the effect of a violation warrant on the counting of points under § 4A1.1(d), the counting of a failure to report for service of sentence under § 4A1.1 (d) and (e), and the definition of a felony offense as used in § 4A1.2(c); adds an example to Application Note 2 in the Commentary to § 4A1.2 to illustrate the meaning of "stated maximum" sentence; adds an additional application note in the Commentary to § 4A1.2 addressing the counting of points in complex revocation cases; makes the definition in § 4B1.2(2) more comprehensive; and conforms the Commentary of § 4A1.3 to the addition of § 4A1.2(1).

20. Amendment: Section 4A1.1 is amended by inserting the following additional subsection:

(f) Add 1 point for each prior sentence resulting from a conviction of a crime of violence that did not receive any points under (a), (b), or (c) above because such sentence was considered related to another sentence resulting from a conviction of a crime of violence, up to a total of 3 points for this item. Provided, that this item does not apply where the sentences are considered related because the offenses occurred on the same occasion.

Section 4A1.1 is amended in the first sentence by deleting "(e)" and inserting in lieu thereof "(f)".

Section 4A1.1(c) is amended by deleting "included" and inserting in lieu thereof "counted".

Section 4A1.2(a)(2) is amended by deleting "the criminal history" and inserting in lieu thereof "§ 4A1.1 (a), (b), and (c)".

Section 4A1.2 is amended by inserting the following additional subsection:

(p) Crime of Violence Defined

For the purposes of § 4A1.1(f), the definition of 'crime of violence' is that set forth in § 4B1.2(1).

The Commentary to § 4A1.2 captioned "Application Notes" is amended in Note 3 by deleting "Cases" and inserting in lieu thereof:

Prior sentences are not considered related if they were for offenses that were separated by an intervening arrest (i.e., the defendant is arrested for the first offense prior to committing the second offense). Otherwise, prior sentences,

By inserting "resulted from offenses that" immediately following "related if they", by deleting "a single" and inserting in lieu thereof "the same", and by deleting:

For example, if the defendant commits a number of offenses on independent occasions separated by arrests, and the resulting criminal cases are consolidated and result in a combined sentence of eight years, counting merely three points for this factor will not adequately reflect either the seriousness of the defendant's criminal history or the frequency with which he commits crimes. In such circumstances, the court should consider whether departure is warranted. See § 4A1.3.,

and inserting in lieu thereof:

For example, if a defendant was convicted of a number of serious non-violent offenses committed on different occasions, and the resulting sentences were treated as related because the cases were consolidated for sentencing, the assignment of a single set of points may not adequately reflect the seriousness of the defendant's criminal history or the frequency with which he has committed crimes. In such circumstances, an upward departure may be warranted. Note that the above example refers to serious non-violent offenses. Where prior related sentences result from convictions of crimes of violence, § 4A1.1(f) will apply.

Section 4B1.2(3) is amended by deleting "Part A of this Chapter" and inserting in lieu thereof "§ 4A1.1 (a), (b), or (c)".

Reason for Amendment: This amendment provides for a specific enhancement under § 4A1.2(f) in a case having prior convictions of crimes of violence not arising from the same incident that otherwise would be treated as related under § 4A1.2. In addition, the definition of related cases in Application Note 3 in the Commentary to § 4A1.2 is amended to provide that cases separated by an intervening arrest for one of the offenses are not treated as related cases.

Chapter Five, Part E (Restitution, Fines, Assessments, Forfeitures)

21. Amendment: Section 5E1.1 is amended by deleting subsection (a), by redesignating subsections (b) and (c) as (c) and (d) respectively, and by inserting the following as subsections (a) and (b):

(a) The court shall—

(1) enter a restitution order if such order is authorized under 18 U.S.C. 3663–3664; or

(2) if a restitution order would be authorized under 18 U.S.C. 3663–3664, except for the fact that the offense of conviction is not an offense set forth in title 18, United States Code, or 49 U.S.C. 1472 (h), (i), (j), or (n), impose a term of probation or supervised release with a condition requiring restitution.

(b) Provided, that the provisions of subsection (a) do not apply when full restitution has been made, or to the extent the court determines that the complication and prolongation of the sentencing process resulting from the fashioning of a restitution requirement outweighs the need to provide restitution to any victims through the criminal process.

The Commentary to § 5E1.1 captioned "Background" is amended in the first paragraph by deleting "An order of restitution may be appropriate in offenses not specifically referenced in 18 U.S.C. 3663 where victims require relief more promptly than the civil justice system provides.".

The Commentary to § 5E1.1 captioned "Background" is amended in the second paragraph by deleting "5E1.1" and inserting in lieu thereof "(a)(1) of this guideline", by inserting ", United States Code," immediately following "Title 18" and by inserting "full restitution has already been made or" immediately after "unless".

The Commentary to § 5E1.1 captioned "Background" is amended in the last paragraph by deleting "how and to whom" and by inserting "the manner in which, and the persons to whom,".

The Commentary to § 5E1.1. captioned "Background" is amended by inserting the following additional paragraph at the end:

Subsection (a)(2) provides for restitution as a condition of probation or supervised release for offenses not set forth in title 18, United States Code, or 49 U.S.C. 1472(h), (i), (j), or (n)).

Reason for Amendment: Currently, § 5E1.1 permits, but does not require, restitution to be ordered as a condition of probation or supervised release for offenses not set forth in Title 18, United States Code, or 49 U.S.C. 1472(h) (i), (j), and (n). This amendment expands § 5E1.1 to require restitution as a condition of probation or supervised release for convictions not set forth in Title 18 and 49 U.S.C. 1472(h), (i), (j), and (n).

22. Amendment: Section 5E1.2 is amended by deleting subsections (c)(1) and (c)(2) and inserting in lieu thereof:

(1) The minimum of the fine range is the amount shown in column A of the table below.

(2) Except as specified in (4) below, the maximum of the fine range is the amount shown in column B of the table below.

The Commentary to § 5E1.2 captioned "Application Notes" is amended in Note 3 by deleting the first two paragraphs.

The Commentary to § 5E1.2 captioned "Application Notes" is amended by deleting Note 4 and inserting in lieu thereof:

The Commission envisions that for most defendants, the maximum of the guideline fine range from subsection (c) will be at least twice the amount of gain or loss resulting from the offense. Where, however, two times either the amount of gain to the defendant or the amount of loss caused by the offense exceeds the maximum of the fine guideline, an upward departure from the fine guideline may be warranted.

Moreover, where a sentence within the applicable fine guideline range would not be sufficient to ensure both the disgorgement of any gain from the offense that otherwise would not be disgorged (e.g., by restitution or forfeiture) and an adequate punitive fine, an upward departure from the fine guideline range may be warranted.

The Commentary to § 5E1.2 captioned "Background" is deleted in its entirety.

Reason for Amendment: This amendment is designed to simplify the operation of this guideline and conserve probation and court resources by eliminating the need for the determination of loss and gain under this section in most cases. Experience has shown that for the vast majority of defendants, the amount from the fine table in subsection (c)(3) or (c)(4), as applicable, is more than twice the gain or loss from the offense. This amendment provides that the guideline fine range is to be determined only under the fine table in subsection (c)(3) or (c)(4), as applicable. In the unusual case in which twice the defendant's gain from the offense or twice the loss caused by the offense exceeds the maximum of the guideline range determined under the amended procedure, an upward departure may be considered.

Chapter Five, Part G (Implementing the Total Sentence of Imprisonment)

23. Amendment: Section 5G1.3 and accompanying commentary is deleted in its entirety and the following inserted in lieu thereof:

"§ 5G1.3. Imposition of a Sentence on a Defendant Subject to an Undischarged Term of Imprisonment

(a) If the instant offense was committed while the defendant was serving a term of imprisonment (including work release, furlough, or escape status) or after sentencing for, but before commencing service of, such term of imprisonment, the sentence for the instant offense shall be imposed to run consecutively to the undischarged term of imprisonment.

(b) If subsection (a) does not apply, and the undischarged term of imprisonment resulted from offense(s) that constituted part of the same course of conduct as the instant offense and have been fully taken into account in the determination of the offense level for the instant offense, or if the prior undischarged term of imprisonment resulted from a federal offense and was imposed pursuant to the Sentencing Reform Act, the sentence for the instant offense shall be imposed to result in a combined sentence equal to the total punishment that would have been imposed under § 5G1.2 (Sentencing on Multiple Counts of Conviction) had all the sentences been imposed at the same time.

(c) In any other case, the sentence for the instant offense shall be imposed to run consecutively to the prior unexpired term of imprisonment to the extent necessary to achieve a reasonable incremental punishment for the instant offense.

Commentary

Application Notes

1. Under subsection (a), the court shall impose a consecutive sentence where the instant offense (or any part thereof) was committed while the defendant was serving an undischarged term of imprisonment or after sentencing for, but before commencing service of, such term of imprisonment.

2. Subsection (b) (which applies only if subsection (a) does not apply), applies in two situations. First, it applies if the sentence resulting in the undischarged term of imprisonment was a federal sentence imposed pursuant to the Sentencing Reform Act. In such cases, the court shall fashion a sentence equal to the total punishment that would have been imposed had both sentences been imposed at the same time. Second, it applies if the conduct resulting in the undischarged term of imprisonment was part of the same course of conduct as the instant offense and has been fully taken into account in determining the offense level for the instant offense (e.g., where a defendant is prosecuted in both federal and state court for the same criminal conduct; or where a defendant is prosecuted in federal and state court for different criminal transactions that are part of the same course of conduct, such as two drug sales, but the conduct underlying both transactions is fully taken into account under § 1B1.3 (Relevant Conduct) in determining the offense level for the instant offense).

3. When a sentence is imposed pursuant to subsection (b), the court should adjust for any term of imprisonment already served as a result of the conduct taken into account in determining the instant sentence (e.g., if the appropriate total punishment determined under this subsection for all offenses is 30 months and the defendant has already served 10 months of the prior undischarged term of imprisonment, the court should impose a sentence of 20 months concurrent with the prior undischarged term).

4. Where the defendant is serving an unexpired term of imprisonment in circumstances other than those set forth in subsections (a) or (b), the court shall impose a consecutive sentence to the extent necessary to fashion a sentence resulting in incremental punishment for the multiple offenses. To the extent practicable, the court shall impose a sentence for the instant offense that results in a combined sentence that approximates the total punishment that would have been imposed under § 5G1.2 (Sentencing on Multiple Counts of Conviction) had all of the offenses been federal offenses for which sentences were being imposed at the same time. Where the defendant is serving a term of imprisonment for a state offense, the information available may permit only a rough estimate of the total punishment that would have been imposed under the guidelines. It is not intended that the above methodology be applied in a manner that unduly complicates or prolongs the sentencing process. In fashioning an appropriate incremental punishment, the court should consider whether the offense was committed while the defendant was on bail or other release status from another offense. In such cases, a reasonable incremental penalty appropriately would include an additional enhancement equivalent to that provided in § 2J1.7 (Commission of Offense While on Release).

Background: This guideline provides direction to the court when a term of imprisonment is imposed on a defendant who is already subject to an undischarged term of imprisonment. See 18 U.S.C. 3584. Except in the cases in which subsection (a) applies, this guideline is intended to result in an appropriate incremental punishment for the instant offense that most nearly approximates the sentence that would have been imposed had all the sentences been imposed at the same time.

Reason for Amendment: The decision to impose a consecutive or concurrent sentence upon a defendant subject to an

undischarged term of imprisonment can have a substantial effect on the total term of imprisonment served by the defendant. Section 5G1.3, as currently drafted, addresses only a small portion of the cases in which the defendant is subject to an undischarged term of imprisonment, leaving the potential for unwarranted disparity in such determinations. This amendment provides additional structure and guidance for these determinations.

Chapter Five, Part H (Specific Offender Characteristics)

24. Amendment: The Introductory Commentary to Chapter Five, Part H is amended in the first paragraph by deleting "Congress has directed the Commission" and inserting in lieu thereof:

The following policy statements address the relevance of certain offender characteristics to the determination of whether a sentence should be outside the applicable guideline range and, in certain cases, to the determination of a sentence within the applicable guideline range. Under 28 U.S.C. 994(d), the Commission is directed,

and by deleting "relevant by the Commission. 28 U.S.C. 994(d)" and inserting in lieu thereof "to be relevant by the Commission".

The Introductory Commentary to Chapter Five, Part H is amended by inserting the following additional paragraph as the second paragraph:

The Commission has determined that certain factors are not ordinarily relevant to the determination of whether a sentence should be outside the applicable guideline range. Unless expressly stated, this does not mean that the Commission views such factors as necessarily inappropriate to the determination of the sentence within the applicable guideline range or to the determination of various other incidents of an appropriate sentence (e.g., the appropriate conditions of probation or supervised release).

Section 5H1.1 is amended by inserting "(including youth)" immediately following "Age" in the first sentence, by deleting "guidelines. Neither is it ordinarily relevant in determining the type of sentence to be imposed when the guidelines provide sentence options" and inserting in lieu thereof "applicable guideline range", by deleting "go below the guidelines" and inserting in lieu thereof "impose a sentence below the applicable guideline range", by deleting "(e.g.,home confinement)" and inserting in lieu thereof "such as home confinement", and by deleting:

If, indepenfent of consideration of age, a defendant is sentenced to probation or supervised release, age may be relevant in the determination of the length and conditions of supervision,

and inserting in lieu thereof:

Physical condition, which may be related to age, is addressed at § 5H1.4 (Physical Condition, Including Drug or Alcohol Dependence or Abuse).

The guidelines are not applicable to a person sentenced as a juvenile delinquent under the provisions of 18 U.S.C. 5037.

Section 5H1.2 is amended by deleting "guidelines" in the first sentence and inserting in lieu thereof "applicable guideline range", by deleting "Neither are education and vocational skills" and all that follows through the end of the section, and by inserting the following additional paragraph:

Education and vocational skills may be relevant in determining the conditions of probation or supervised release for rehabilitative purposes, for public protection by restricting activities that allow for the utilization of a certain skill, or in determining the appropriate type of community service.

Section 5H1.3 is amended by deleting "guidelines" in the first sentence and inserting in lieu thereof "applicable guideline range", by deleting "the general provisions in Chapter Five." and all that follows through the end of the section and inserting in lieu thereof "Chapter Five, Part K, Subpart 2 (Other Grounds for Departure).", and by inserting the following additional paragraph:

Mental and emotional conditions may be relevant in determining the conditions of probation or supervised release; e.g., participation in a mental health program (see recommended condition (24) at § 5B1.4 (Recommended Conditions of Probation and Supervised Release)).

Section 5H1.4 is amended in the first sentence by inserting "or appearance, including physique," immediately after "condition".

Section 5H1.4 is amended by deleting "guidelines or where within the guidelines a sentence should fall" and inserting in lieu thereof "applicable guideline range", by deleting "other than imprisonment" and inserting in lieu thereof:

Below the applicable guideline range; e.g., in the case of a seriously infirm defendant, home detention may be as efficient as, and less costly than, imprisonment;

by inserting, immediately after "appropriate substance abuse program", the following:

(See recommended condition (23) at § 5B1.4 (Recommended Conditions of Probation and Supervised Release))..

and by deleting the last paragraph and inserting in lieu thereof:

Similarly, where a defendant who is a substance abuser is sentenced to probation, it is strongly recommended that the conditions of probation contain a requirement that the defendant participate in an appropriate substance abuse program (see recommended condition (23) at § 5B1.4 (Recommended Conditions of Probation and Supervised Release)).

Section 5H1.4 is amended in the title by deleting "Dependence and" immediately following "Drug" and inserting in lieu thereof "or", and by inserting "Dependence or" immediately following "Alcohol".

Section 5H1.4 is amended in the first sentence of the second paragraph by deleting "dependence or alcohol abuse" and inserting in lieu thereof "or alcohol dependence or abuse".

Section 5H1.5 is amended in the title by deleting "Previous".

Section 5H1.5 is amended by deleting "guidelines or where within the guidelines" and all that follows through the end of the section and inserting in lieu thereof "applicable guideline range.", and by inserting the following additional paragraph:

Employment record may be relevant in determining the conditions of probation or supervised release (e.g., the appropriate hours of home detention).

Section 5H1.6 is amended by deleting "guidelines. Family responsibilities that are" and all that follows through the end of the section and inserting in lieu thereof "applicable guideline range.", and by inserting the following additional paragraph:

Family responsibilities that are complied with may be relevant to the determination of the amount of restitution or fine.

Chapter Five, Part H is amended by inserting the following additional policy statement at the end:

"§ 5H1.11. Military, Civic, Charitable, or Public Service; Employment-Related Contributions; Record of Prior Good Works (Policy Statement)

Military, civic, charitable, or public service; employment-related contributions; and similar prior good works are not ordinarily relevant in determining whether a sentence should be outside the applicable guideline range.

Reason for Amendment: This amendment expresses the Commission's intent that the factors set forth in §§ 5H1.1–5H1.6 are not ordinarily relevant in determining whether a sentence should be outside the applicable guideline range, but that unless expressly stated, these policy statements do not mean that the Commission views such factors as necessarily inappropriate to the determination of the sentence within the applicable guideline range. The language within these sections is revised for clarity and consistency. In addition, this amendment adds language that expressly states that the

guidelines do not apply to defendants sentenced as juvenile delinquents; sets forth the Commission's position that physical appearance, including physique, is not ordinarily relevant in determining whether a sentence should be outside the applicable guideline range; and sets forth the Commission's position that military, civic, charitable, or public service, employment-related contributions, and record of prior good works are not ordinarily relevant in determining whether a sentence should be outside the applicable guideline range.

Chapter Six, Part A (Sentencing Procedures)

25. Amendment: The Commentary to § 6A1.3 is amended by inserting the following additional paragraph at the end:

"The Commission believes that use of a preponderance of the evidence standard is appropriate to meet due process requirements and policy concerns in resolving disputes regarding application of the guidelines to the facts of a case.".

Reason for Amendment: This amendment expresses the Commission's approval of the use of a preponderance of the evidence standard in resolving disputes regarding application of the guidelines to the facts of a case.

Miscellaneous Substantive, Clarifying, and Conforming Amendments

26. Amendment: The Commentary to § 1B1.1 captioned "Application Notes" is amended in Note 1(e) by deleting:

" 'Firearm' means any weapon which is designed to or may readily be converted to expel any projectile by the action of an explosive.",

and inserting in lieu thereof:

" 'Firearm' means (i) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (ii) the frame or receiver of any such weapon; (iii) any firearm muffler or silencer; or (iv) any destructive device.",

and by inserting "a" immediately before " 'BB' or pellet gun".

The Commentary to § 1B1.1 captioned "Application Notes" is amended in Note 1(k) by deleting "proceeding" and inserting in lieu thereof "preceding".

The Commentary to § 1B1.1 captioned "Application Notes" is amended in Note 1 by inserting the following additional subdivision:

"(1) 'Offense' means the offense of conviction and all relevant conduct under § 1B1.3 (Relevant Conduct) unless a different meaning is specified or is otherwise clear from the context."

Reason for Amendment: This amendment modifies the definition of firearm in Note 1(e) to track more closely the definition of firearm in 18 U.S.C. 921, corrects clerical errors, and inserts an additional subdivision in Note 1 (subdivision (1)) that describes how the term "offense" is used in the guidelines.

27. Amendment: The Commentary to § 1B1.3 captioned "Application Notes" is amended by inserting the following additional note:

"6. In the case of a partially completed offense (e.g., an offense involving an attempted theft of $800,000 and a completed theft of $30,000), the offense level is to be determined in accordance with § 2X1.1 (Attempt, Solicitation, or Conspiracy) whether the conviction is for the substantive offense, the inchoate offense (attempt, solicitation, or conspiracy), or both. See Application Note 4 in the Commentary to § 2X1.1. Note, however, that Application Note 4 is not applicable where the offense level is determined under § 2X1.1(c)(1).".

The Commentary to § 1B1.3 captioned "Application Notes" is amended in Note 4 by inserting "; Property Damage by Use of Explosives" immediately following "Arson"; and in Note 5 by deleting "E.g., in § 2K2.2, a base offense level of 16 is used 'if the defendant is convicted under 18 U.S.C. 922(o) or 26 U.S.C. 5861.'" and inserting in lieu thereof "For example, in § 2K1.5, subsection (b)(1) applies 'If the defendant is convicted under 49 U.S.C. 1472(1)(2).'", and by deleting "Examples of this usage are found in § 2K1.3(b)(4) ('If the defendant was a person prohibited from receiving explosives under 18 U.S.C. 842(i) or if the defendant knowingly distributed explosives to a person prohibited from receiving explosives under 18 U.S.C. 842(i), increase by 10 levels'); and" and inserting in lieu thereof "An example of this usage is found in".

Reason for Amendment: This amendment inserts an additional application note that highlights the provision in § 2X1.1 dealing with cases of partially completed conduct, conforms examples to amended guidelines, and conforms a reference to a guideline title.

28. Amendment: The Commentary to § 1B1.8 captioned "Application Notes" is amended by inserting the following additional notes:

"5. This guideline limits the use of certain incriminating information furnished by a defendant in the context of a defendant-government agreement for the defendant to provide information concerning the unlawful activities of other persons. The guideline operates as a limitation on the use of such incriminating information in guideline application, and not merely as a restriction of the government's presentation of such information (e.g., where the defendant, subsequent to having entered into a cooperation agreement, repeats such information to the probation officer preparing the presentence report, the use of such information remains protected by this section).

6. Unless the cooperation agreement relates to the provision of information concerning the unlawful activities of others, this guideline does not apply (i.e., an agreement by the defendant simply to detail the extent of his own unlawful activities, not involving an agreement to provide information concerning the unlawful activity of another person, is not covered by this guideline).".

Reason for Amendment: This amendment clarifies the operation of this guideline.

29. Amendment: The Commentary to § 2A2.1 captioned "Application Notes" is amended by inserting the following additional note:

"3. If the offense created a substantial risk of death or serious bodily injury to more than one person, an upward departure may be warranted.".

Reason for Amendment: This amendment adds commentary to address the case in which an attempted murder results in a substantial risk of death or serious bodily injury to more than one person.

30. Amendment: Section 2A3.2(b)(1) is amended by deleting "1 level" and inserting in lieu thereof "2 levels".

The Commentary to § 2A3.2 captioned "Application Notes" is amended by inserting the following additional note:

"2. If the adjustment in subsection (b)(1) applies, do not apply § 3B1.3 (Abuse of Position of Trust or Use of Special Skill).",

and in the caption by deleting "Note" and inserting in lieu thereof "Notes".

Section 2A3.4(b) is amended by inserting the following additional subdivision:

"(3) If the victim was in the custody, care, or supervisory control of the defendant, increase by 2 levels.".

The Commentary to § 2A3.4 captioned "Application Notes" is amended by inserting the following additional note:

"3. If the adjustment in subsection (b)(3) applies, do not apply § 3B1.3 (Abuse of Position of Trust or Use of Special Skill).".

The Commentary to § 2A3.1 captioned "Application Notes" is amended by inserting the following additional note:

"3. If the adjustment in subsection (b)(3) applies, do not apply § 3B1.3 (Abuse of Position of Trust or Use of Special Skill).".

Reason for Amendment: This amendment provides for consistency among §§ 2A3.1, 2A3.2, and 2A3.4 with respect to an adjustment for a victim in the custody, care, or supervisory control of the defendant. In addition, the amendment adds an application note clarifying that when this adjustment

applies, an adjustment from § 3B1.3 will not apply.

31. Amendment: The Commentary to § 2B1.1 captioned "Application Notes" is amended in Note 2 by beginning a new paragraph with the fifth sentence; in the fifth sentence by deleting "cases of partially completed conduct, the loss" and inserting in lieu thereof "the case of a partially completed offense, the offense level", and by inserting immediately before the period at the end of the sentence "; see Application Note 4 in the Commentary to § 2X1.1"; by deleting the sixth and seventh sentences; and by inserting the following at the end of the first paragraph:

"*Examples:* (1) In the case of a theft of a check or money order, the loss is the loss that would have occurred if the check or money order had been cashed. (2) In the case of a defendant apprehended taking a vehicle, the loss is the value of the vehicle even if the vehicle is recovered immediately.".

The Commentary to § 2B1.1 captioned "Application Notes" is amended in Note 4 by deleting "Attempts" and inserting in lieu thereof "Attempt, Solicitation, or Conspiracy", and by inserting "and Deceit" immediately following "Fraud".

The Commentary to § 2F1.1 captioned "Application Notes" is amended in Note 7 by inserting "If the offense consisted of selling or attempting to sell fraudulently overvalued stock, the loss would be the amount by which the stock was overvalued." at the end of the first paragraph, and by inserting the following as an additional paragraph:

"In the case of a partially completed offense, the offense level is to be determined in accordance with the provisions of § 2X1.1 (Attempt, Solicitation, or Conspiracy); see Application Note 4 in the Commentary to § 2X1.1.".

Reason for Amendment: This amendment provides a more precise reference in the commentary of these guidelines to the discussion in § 2X1.1 that applies in the case of a partially completed offense. In addition, the amendment reorders the material in these notes, and divides them into separate paragraphs for greater clarity. The amendment also conforms the wording of Application Note 7 of the Commentary to § 2F1.1 to Application Note 2 of the Commentary to § 2B1.1 to make clear that the treatment of attempts in cases of fraud and theft is identical. The language of the Application Note in § 2B1.1 is the more precise instruction. In addition, this amendment inserts additional examples to illustrate the determination of loss, and makes editorial improvements.

32. Amendment: Section 2D1.1(b)(1) is amended by deleting "during commission of the offense".

The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 3 by deleting "The adjustment is to be applied even if several counts are involved and the weapon was present in any one of them.".

The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 3 by inserting ", 2D1.6, 2D1.7(b)(1)" immediately following "2D1.5".

Section 2D1.8(b)(1) is amended by deleting "during commission of the offense".

Reason for Amendment: This amendment clarifies that the provisions of § 1B1.3(a)(2) apply to this adjustment, and conforms the list of referenced offense guidelines in Application Note 3 of the Commentary to § 2D1.1.

33. Amendment: Section 2D1.1(c) is amended in the Drug Quantity Table by deleting "Pure PCP" wherever it appears and inserting in lieu thereof "PCP (actual)", and by deleting "Pure Methamphetamine" wherever it appears and inserting in lieu thereof "Methamphetamine (actual)".

Section 2D1.1(c) is amended in the note designated by a single asterisk by inserting the following additional sentence as the third sentence "The terms 'PCP (actual)' and 'Methamphetamine (actual)' refer to the weight of the controlled substance, itself, contained in the mixture or substance. For example, a mixture weighing 10 grams containing PCP at 50% purity contains 5 grams of PCP (actual).''; and in the last sentence by deleting "pure PCP or methamphetamine" and inserting in lieu thereof "PCP (actual) or methamphetamine (actual)".

Section 2D1.1 is amended by deleting "Schedule I or II Depressants" wherever it appears and inserting in lieu thereof "Secobarbital (or the equivalent amount of other Schedule I or II Depressants)".

Reason for Amendment: This amendment clarifies the operation of the guideline in cases involving methamphetamine or PCP by amending the terms "Pure PCP" and "pure methamphetamine" to read "PCP (actual)" and "methamphetamine (actual)," and by providing an example of their application. This amendment also clarifies the interaction of the guideline and drug equivalency tables with respect to Schedule I and II Depressants by using Secobarbital as the referenced substance.

34. Amendment: The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 10 in the first paragraph by deleting "grams of a substance containing heroin" and inserting in lieu thereof "kilograms of marihuana"; in the second paragraph by deleting "If all the drugs are 'equivalents' of the same drug, e.g., stimulants that are grouped with cocaine, convert them to that drug. In other cases," and inserting in lieu thereof "In each case,", by deleting "either the heroin or marihuana equivalents" and inserting in lieu thereof "its marihuana equivalent", and by deleting the last two sentences; in the fourth paragraph by deleting "Both PCP and LSD are grouped together in the Drug Equivalency Tables under the heading 'LSD, PCP, and Other Schedule I and II Hallucinogens,' which provide PCP equivalencies. The 250 milligrams of LSD is equivalent to 25 grams of PCP." and inserting in lieu thereof "The PCP converts to 70 kg of marihuana; the LSD converts to 25 kg of marihuana.", by inserting "equivalent to" immediately before "ninety-five", by deleting "grams of PCP" and inserting in lieu thereof "kilograms of marihuana", by deleting "grams" immediately following "sixteen" and inserting in lieu thereof "kilograms", by deleting "heroin; the marihuana, to five grams of heroin" and inserting in lieu thereof "marihuana", and by deleting "grams of heroin" and inserting in lieu thereof "kilograms of marihuana".

The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 10 by deleting the subsection titled "Drug Equivalency Tables" and inserting in lieu thereof:

"**Drug Equivalency Tables**

Schedule I or II Opiates

1 gm of Heroin = 1 kg of marihuana
1 gm of Alpha-Methylfentanyl = 10 kg of marihuana
1 gm of Dextromoramide = 670 gm of marihuana
1 gm of Dipipanone = 250 gm of marihuana
1 gm of 3-Methylfentanyl = 10 kg of marihuana
1 gm of 1-Methyl-4-phenyl-4-propionoxypiperidine/MPPP = 700 gm of marihuana
1 gm of 1-(2-Phenylethyl)-4-phenyl-4-acetyloxypiperidine/PEPAP = 700 gm of marihuana
1 gm of Alphaprodine = 100 gm of marihuana
1 gm of Fentanyl (N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] Propanamide) = 2.5 kg of marihuana
1 gm of Hydromorphone/Dihydromorphinone = 2.5 kg of marihuana
1 gm of Levorphanol = 2.5 kg of marihuana
1 gm of Meperidine/Pethidine = 50 gm of marihuana
1 gm of Methadone = 500 gm of marihuana
1 gm of 6-Monoacetylmorphine = 1 kg of marihuana
1 gm of Morphine = 500 gm of marihuana

1 gm of Oxycodone = 500 gm of marihuana
1 gm of Oxymorphone = 5 kg of marihuana
1 gm of Racemorphan = 800 gm of marihuana
1 gm of Codeine = 80 gm of marihuana
1 gm of Dextropropoxyphene/Propoxyphene-Bulk = 50 gm of marihuana
1 gm of Ethylmorphine = 165 gm of marihuana
1 gm of Hydrocodone/Dihydrocodeinone = 500 gm of marihuana
1 gm of Mixed Alkaloids of Opium/Papaveretum = 250 gm of marihuana
1 gm of Opium = 50 gm of marihuana

Cocaine and Other Schedule I and II Stimulants (and their immediate precursors).

1 gm of Cocaine = 200 gm of marihuana
1 gm of N-Ethylamphetamine = 80 gm of marihuana
1 gm of Fenethylline = 40 gm of marihuana
1 gm of Amphetamine = 200 gm of marihuana
1 gm of Dextroamphetamine = 200 gm of marihuana
1 gm of Methamphetamine = 1 kg of marihuana
1 gm of Methamphetamine (Actual) = 10 kg of marihuana
1 gm of "Ice" = 10 kg of marihuana
1 gm of L-Methamphetamine/Levo-methamphetamine/L-Desoxyephedrine = 40 gm of marihuana
1 gm of 4-Methylaminorex ("Euphoria") = 100 gm of marihuana
1 gm of Methylphenidate (Ritalin) = 100 gm of marihuana
1 gm of Phenmetrazine = 80 gm of marihuana
1 gm Phenylacetone/P_2P (when possessed for the purpose of manufacturing methamphetamine) = 416 gm of marihuana
1 gm Phenylacetone/P_2P (in any other case) = 75 gm of marihuana
1 gm of Cocaine Base ("Crack") = 20 kg of marihuana

LSD, PCP, and Other Schedule I and II Hallucinogens (and their immediate precursors).

1 gm of Bufotenine = 70 gm of marihuana
1 gm of D-Lysergic Acid Diethylamide/Lysergide/LSD = 100 kg of marihuana
1 gm of Diethyltryptamine/DET = 80 gm of marihuana
1 gm of Dimethyltryptamine/DMT = 100 gm of marihuana
1 gm of Mescaline = 10 gm of marihuana
1 gm of Mushrooms containing Psilocin and/or Psilocybin (Dry) = 1 gm of marihuana
1 gm of Mushrooms containing Psilocin and/or Psilocybin (Wet) = 0.1 gm of marihuana
1 gm of Peyote (Dry) = 0.5 gm of marihuana
1 gm of Peyote (Wet) = 0.05 gm of marihuana
1 gm of Phencyclidine/PCP = 1 kg of marihuana
1 gm of Phencyclidine (actual) /PCP (actual) = 10 kg of marihuana
1 gm of Psilocin = 500 gm of marihuana
1 gm of Psilocybin = 500 gm of marihuana
1 gm of Pyrrolidine Analog of Phencyclidine/PHP = 1 kg of marihuana
1 gm of Thiophene Analog of Phencyclidine/TCP = 1 kg of marihuana
1 gm of 4-Bromo-2,5-Dimethoxyamphetamine/DOB = 2.5 kg of marihuana
1 gm of 2,5-Dimethoxy-4-methylamphetamine/DOM = 1.67 kg of marihuana
1 gm of 3,4-Methylenedioxyamphetamine/MDA = 50 gm of marihuana
1 gm of 3,4-Methylenedioxymethamphetamine/MDMA = 35 gm of marihuana
1 gm of 3,4-Methylenedioxy-N-ethylamphetamine/MDEA = 30 gm of marihuana
1 gm of 1-Piperidinocyclohexanecarbonitrile/PCC = 680 gm of marihuana

Schedule I Marihuana

1 gm of Marihuana/Cannabis, granulated, powdered, etc. = 1 gm of marihuana
1 gm of Hashish Oil = 50 gm of marihuana
1 gm of Cannabis Resin or Hashish = 5 gm of marihuana
1 gm of Tetrahydrocannabinol, Organic = 167 gm of marihuana
1 gm of Tetrahydrocannabinol, Synthetic = 167 gm of marihuana

Secobarbital and Other Schedule I or II Depressants*

1 gm of Methaqualone = 0.7 gm of marihuana
1 gm of Amobarbital = 2 gm of marihuana
1 gm of Pentobarbital = 2 gm of marihuana
1 gm of Secobarbital = 2 gm of marihuana

Schedule III Substances**

1 gm of a Schedule III Substance = 2 gm of marihuana

Schedule IV Substances***

1 gm of a Schedule IV Substance = 0.125 gm of marihuana

Schedule V Substances****

1 gm of a Schedule V Substance = 0.0125 gm of marihuana

Reason for Amendment: This amendment substitutes a single conversion for all Schedule III substances (1 gm of a Schedule III substance = 2 gms of marihuana) that will simplify application of the guidelines as well as address currently unlisted Schedule III substances. Because the equivalencies for Schedule III substances are not statutorily based, nor are the pharmacological equivalencies as clear as with Schedule I or II Substances, a generic listing was deemed appropriate. Similarly, this amendment provides a single conversion for all Schedule IV substances (1 gm of a Schedule IV substance = 0.125 gm of marihuana) and all Schedule V substances (1 gm of a Schedule V substance = 0.0125 gm of marihuana).

In addition, this amendment adds footnotes to the Drug Equivalency Tables for Schedule I or II depressants and Schedule III, IV, and V substances to remove an ambiguity in guideline application by expressly limiting the combined equivalent weight of such substances to the marihuana amount consistent with the highest offense level for such substances provided in the Drug Quantity Table. See *United States* v. *Gurgliolo*, 894 F.2d 56 (3d Cir. 1990).

Finally, this amendment simplifies the application of the Drug Equivalency Table by referencing the conversions to one substance (marihuana) rather than to four substances; this results in no substantive change but will make the required computations easier and reduce the likelihood of computational error.

35. Amendment: Section 2D1.7 is amended in the title by deleting "Interstate Sale and Transporting" and inserting in lieu thereof "Sale or Transportation".

Section 2D1.7 is amended by inserting the following additional subsection:

"(b) Cross Reference.

If the offense involved a controlled substance, apply § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking) or § 2D2.1 (Unlawful Possession), as appropriate, if the resulting offense level is greater than that determined above.".

The Commentary to § 2D1.7 is amended by inserting the following at the end:

"*Application Note:*

1. The typical case addressed by this guideline involves small-scale trafficking in drug paraphernalia (generally from a retail establishment that also sells items that are not unlawful). In a case involving a large-scale dealer, distributor, or manufacturer, an upward departure may be warranted. Conversely, where the offense was not committed for pecuniary gain (e.g., transportation for the defendant's personal use), a downward departure may be warranted.".

Reason for Amendment: This amendment revises the title of the guideline to address the expanded coverage of the underlying statute, as amended by Section 2401 of the Crime Control Act of 1990 (Public Law 101-647); adds a cross reference to address cases in which the underlying conduct involves a controlled substance offense; and adds an application note to specify the "heartland" types of cases addressed by the offense level set forth in the guideline.

36. Amendment: Section 2E2.1 is amended in the title by deleting ", Financing, or Collecting an Extortionate Extension of Credit" and inserting in lieu thereof "or Financing an Extortionate Extension of Credit; Collecting an Extension of Credit by Extortionate Means".

*Provided, that the combined equivalent weight of all Schedule I or II depressants, Schedule III substances, Schedule IV substances, and Schedule V substances shall not exceed 59.99 kilograms of marihuana.

**Provided, that the combined equivalent weight of all Schedule III substances, Schedule I or II depressants, Schedule IV substances, and Schedule V substances shall not exceed 59.99 kilograms of marihuana.

***Provided, that the combined equivalent weight of all Schedule IV and V substances shall not exceed 4.99 kilograms of marihuana.

****Provided, that the combined equivalent weight of Schedule V substances shall not exceed 999 grams of marihuana.".

Section 2E2.1(b)(3)(A) is amended by deleting "the commission of the offense or an escape from the scene of the crime" and inserting in lieu thereof "commission of the offense or to facilitate escape".

Reason for Amendment: This amendment corrects an error in the title of this section, and conforms the wording in subsection (b)(3)(A) with the wording used in subsection (b)(3)(B) and other guidelines.

37. Amendment: The Commentary to § 2E5.2 captioned "Application Notes" is amended in Note 1 by deleting "had a fiduciary obligation under the Employee Retirement Income Security Act" and inserting in lieu thereof "was a fiduciary of the benefit plan", and by deleting "would" and inserting in lieu thereof "will".

The Commentary to § 2E5.2 captioned "Application Notes" is amended in Note 2 by deleting "2.", and by inserting the text of this note at the end of Note 1; and, in the caption, by deleting "Notes" and inserting in lieu thereof "Note".

Reason for Amendment: This amendment makes an editorial improvement in the language of this commentary.

38. Amendment: Section 2G1.2(b) is amended by inserting the following additional subsection:

"(4) If the defendant was a parent, relative, or legal guardian of the minor involved in the offense, or if the minor was otherwise in the custody, care, or supervisory control of the defendant, increase by 2 levels.".

Sections 2G1.2 (c) and (d) are transposed and redesignated accordingly.

Section 2G1.2(c) (formerly § 2G1.2(d)) is amended in the caption by deleting "Reference" and inserting in lieu thereof "References", and by inserting the following additional subsections:

"(2) If the offense involved criminal sexual abuse, attempted criminal sexual abuse, or assault with intent to commit criminal sexual abuse, apply § 2A3.1 (Criminal Sexual Abuse; Attempt or Assault with the Intent to Commit Criminal Sexual Abuse).

(3) If neither subsection (c)(1) nor (c)(2) is applicable, and the offense did not involve transportation for the purpose of prostitution, apply § 2A3.2 (Criminal Sexual Abuse of a Minor or Attempt to Commit Such Acts) or § 2A3.4 (Abusive Sexual Contact or Attempt to Commit Abusive Sexual Contact), as appropriate.".

Section 2G1.2(d)(1) is amended by deleting "the defendant".

The Commentary to § 2G1.2 captioned "Application Notes" is amended in Note 1 by deleting "(c)(1)" and inserting in lieu thereof "(d)(1)", and in Note 5 by deleting "(d)(1)" and inserting in lieu thereof "(c)(1)".

The Commentary to § 2G1.2 captioned "Application Notes" is amended by renumbering Note 5 as Note 7, and by inserting the following additional notes:

"5. Subsection (b)(4) is intended to have broad application and includes offenses involving a minor entrusted to the defendant, whether temporarily or permanently. For example, teachers, day care providers, baby-sitters, or other temporary caretakers are among those who would be subject to this enhancement. In determining whether to apply this adjustment, the court should look to the actual relationship that existed between the defendant and the child and not simply to the legal status of the defendant-child relationship.

6. If the adjustment in subsection (b)(4) applies, do not apply § 3B1.3 (Abuse of Position of Trust or Use of Special Skill).".

The Commentary to § 2G2.1 captioned "Application Notes" is amended in Note 2 by deleting "Specific Offense Characteristic" and inserting in lieu thereof "Subsection".

The Commentary to § 2G2.1 captioned "Application Notes" is amended by deleting Note 3 and inserting in lieu thereof:

"3. If the adjustment in subsection (b)(2) applies, do not apply § 3B1.3 (Abuse of Position of Trust or Use of Special Skill).".

Reason for Amendment: This amendment provides consistent treatment for similar conduct among the guidelines in this part. The specific offense characteristic relating to abuse of a position of trust found at § 2G2.1(b)(2) is inserted in § 2G1.2. In addition, consistent with other guidelines, the amendment adds an application note in §§ 2G2.1 and 2G2.2 stating that where this subsection applies, § 3B1.3 (Abuse of Position of Trust or Use of Special Skill) is not applied. This amendment also conforms the lanquage used in § 2G1.2(d)(1) with the language used elsewhere in the guidelines.

In addition, statutes referenced to § 2G1.2 may be used as "jurisdictional" statutes in some cases to prosecute conduct that is more appropriately covered under other guidelines (§§ 2A3.1, 2A3.2, and 2A3.4). This amendment inserts a cross reference to provide consistent offense levels in such cases.

39. Amendment: The Commentary to § 2J1.2 captioned "Application Notes" is amended by inserting the following additional note:

"5. The inclusion of 'property damage' under subsection (b)(1) is designed to address cases in which property damage is caused or threatened as a means of intimidation or retaliation (e.g., to intimidate a witness from, or retaliate against a witness for, testifying). Subsection (b)(1) is not intended to apply, for example, where the offense consisted of destroying a ledger containing an incriminating entry.".

The Commentary to § 2J1.2 captioned "Background" is amended in the second paragraph by inserting "avoid punishment for an offense that the defendant has committed or to" immediately after "effort to", and by deleting "a crime he has committed, an alternative reference to the guideline for accessory after the fact is made" and inserting in lieu thereof "an offense, a cross reference to § 2X3.1 (Accessory After the Fact) is provided. Use of this cross reference will provide an enhanced offense level when the obstruction is in respect to a particularly serious offense, whether such offense was committed by the defendant or another person".

The Commentary to § 2J1.2 captioned "Application Notes" is amended in Note 1 by deleting the first and last commas and inserting in lieu thereof semicolons and by deleting "or verdict" and inserting in lieu thereof ", verdict, or any judicial determination".

The Commentary to § 2J1.3 captioned "Application Notes" is amended in Note 1 by deleting the first and last commas and inserting in lieu thereof semicolons and by deleting "or verdict" and inserting in lieu thereof ", verdict, or any judicial determination".

The Commentary to § 2J1.5 captioned "Application Notes" is amended in Note 1 by deleting the first and last commas and inserting in lieu thereof semicolons and by deleting "or verdict" and inserting in lieu thereof ", verdict, or any judicial determination".

The Commentary to § 2J1.8 captioned "Application Notes" is amended in Note 1 by deleting the first and last commas and inserting in lieu thereof semicolons and by deleting "or verdict" and inserting in lieu thereof ", verdict, or any judicial determination".

Reason for Amendment: This amendment clarifies the type of circumstances to which the enhancement in § 2J1.2(b)(1) applies. This amendment also corrects a clerical error, and clarifies the intended scope of the enhancement for "substantial interference with the administration of justice."

40. Amendment: Section 2J1.3 is amended by inserting the following additional subsection:

"(d) Special Instruction.

(1) In the case of counts of perjury or subornation of perjury arising from testimony given, or to be given, in separate proceedings, do not group the counts together under § 3D1.2 (Groups of Closely-Related Counts)."

The Commentary to § 2J1.3 captioned "Application Notes" is amended by inserting the following additional note:

"5. 'Separate proceedings,' as used in subsection (d)(1), includes different proceedings in the same case or matter (e.g., a grand jury proceeding and a trial, or a trial and retrial), and proceedings in separate cases or matters (e.g., separate trials of codefendants), but does not include multiple grand jury proceedings in the same case.".

Reason for Amendment: This amendment provides a special instruction addressing the appropriate treatment of multiple instances of perjury under Chapter Three, Part D (Multiple Counts).

41. Amendment: The Commentary to § 2J1.6 captioned "Application Notes" is amended by deleting Note 2, by renumbering Note 3 as Note 2, and by inserting the following additional notes:

"3. Any term of imprisonment for a failure to appear by a defendant (18 U.S.C. 3146(b)(1)) must be imposed consecutively to any other sentence of imprisonment (18 U.S.C. 3146(b)(2)). Therefore, the provisions of §§ 3D1.2–3D1.5 do not apply in respect to such counts (see § 3D1.1(b)), and the guideline range for the failure to appear count is to be determined independently of the guideline range for the underlying offense (the offense in respect to which the defendant failed to appear).

4. In some cases, the defendant may be sentenced on the underlying offense (the offense in respect to which the defendant failed to appear) before being sentenced on the failure to appear offense. In such cases, criminal history points for the sentence imposed on the underlying offense are to be counted in determining the guideline range on the failure to appear offense only where the offense level is determined under subsection (a)(1) (i.e., where the offense constituted a failure to report for service of sentence).".

Reason for Amendment: This amendment addresses a complex issue of the interaction of two guideline provisions (§§ 2J1.6 and 4A1.1). The question has arisen as to whether, in a sentencing proceeding for failure to appear by a defendant, criminal history points for any sentence imposed on the underlying offense (the offense in respect to which the defendant failed to appear) should be applied in the determination of this guideline. By statute, any term of imprisonment imposed under 18 U.S.C. 3146(b)(1) must run consecutively to any other term of imprisonment imposed. Consequently, the multiple count rules do not apply in such cases and two separate guideline ranges are calculated. The answer consistent with the overall structure of the guidelines, and the least subject to the extraneous factors of whether the sentence for the failure to appear precedes, follows, or is imposed at the same time as the sentence for underlying offense, is that criminal history points for any sentence imposed on the underlying offense should not be counted with respect to the failure to appear, except where the failure to appear is based upon a failure to report for the service of sentence on the underlying offense.

42. Amendment: Section 2K1.5(c)(1) is amended by inserting "or possessed" immediately following "used"; and by inserting ", as appropriate," immediately before "if the".

Reason for Amendment: This amendment is an editorial amendment to clarify application of the cross reference in subsection (c)(1).

43. The Commentary to § 2K2.4 captioned "Application Notes" is amended in Note 2 by inserting "(A)–(F)" immediately before "(Robbery)", and by inserting the following additional paragraphs:

"Provided, that where the maximum of the guideline range from Chapter Five, Part A (Sentencing Table) determined by an offense level adjusted under the procedure described in the preceding paragraph, plus the term of imprisonment required under 18 U.S.C. 924(c) or 929(a), is less than the maximum of the guideline range that would apply to the underlying offense absent such adjustment, the procedure described in the preceding paragraph does not apply. Instead, the guideline range applicable to the underlying offense absent such adjustment is to be used after subtracting the term of imprisonment imposed under 18 U.S.C. 924(c) or 929(a) from both the minimum and maximum of such range.

Example: A defendant, is to be sentenced under the robbery guideline; his unadjusted offense level from § 2B3.1 is 30, including a 7-level enhancement for discharging a firearm; no Chapter Three adjustments are applicable; and his criminal history category is Category IV. His unadjusted guideline range from Chapter Five, Part A (Sentencing Table) is 135–168 months. This defendant has also been convicted under 18 U.S.C. 924(c) arising from the possession of a weapon during the robbery, and therefore must be sentenced to an additional consecutive five-year term of imprisonment. The defendant's adjusted guideline range, which takes into account the conviction under 18 U.S.C. 924(c) by eliminating the 7-level weapon enhancement, is 70–87 months. Because the maximum of the defendant's adjusted guideline range plus the five year consecutive sentence (87 months + 60 months = 147 months) is less than the maximum of the defendant's unadjusted guideline range (168 months), the defendant is to be sentenced using the unadjusted guideline range after subtracting the 60 month sentence to be imposed under 18 U.S.C. 924(c) from both the minimum and maximum of the unadjusted range (e.g., 135 months − 60 months = 75 months; 168 months − 60 months = 108 months). A sentence imposed for the underlying offense using the guideline range determined in this manner (75–108 months) when combined with the consecutive sentence imposed under 18 U.S.C. 924(c) or 929(a), will produce the appropriate total term of imprisonment.".

Reason for Amendment: This amendment provides an additional instruction for the determination of the offense level in cases in which the defendant is convicted under 18 U.S.C. 924(c) or 929(a) in addition to a count for the offense in respect to which the firearm was used or possessed. The amendment is designed to prevent the anomalous result of the total punishment being less when there are convictions on both such counts than if the defendant was convicted only of the offense in respect to which the weapon was used or possessed.

44. Amendment: The Commentary to § 2P1.1 captioned "Application Notes" is amended by inserting the following additional note:

"6. If the adjustment is subsection (b)(1) applies as a result of conduct that involves an official victim, do not apply § 3A1.2 (Official Victim).".

Reason for Amendment: This amendment addresses the issue raised in *United States* v. *Dugan*, 912 F.2d 942 (8th Cir. 1990) concerning the interaction between § 2P1.1(b)(1) and § 3A1.2 by expressly providing that where an enhancement from subsection (b)(1) applies, § 3A1.2 does not apply.

45. Amendment: Section 2Q2.1(b)(3)(A) is amended by deleting "specially protected".

Reason for Amendment: This amendment removes language inadvertently retained when this guideline was consolidated with the former § 2Q2.2.

46. Amendment: The Commentary to § 2T1.2 captioned "Background" is amended in the third paragraph by deleting "difficulty of computing" and all that follows through the end of the paragraph, and inserting in lieu thereof "potential difficulty of determining the amount of tax the taxpayer owed. It is expected that this alternative measure generally will understate the amount of tax owed.".

Reason for Amendment: This amendment clarifies the meaning of the commentary and deletes surplus material.

47. Amendment: Section 2T1.6 is amended by inserting the following additional subsection:

"(b) Cross reference.

(1) Where the offense involved embezzlement by withholding tax from an employee's earnings and willfully failing to account to the employee for it, apply § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft) if the resulting offense level is greater than that determined above.".

The Commentary to § 2T1.6 captioned "Application Notes" is amended in Note 1 by deleting "In such instances, an upward departure may be warranted" and inserting in lieu thereof "Subsection (b)(1) addresses such cases".

Reason for Amendment: The Commentary to § 2T1.6 currently recommends consideration of an upward departure where the court finds that this offense involved embezzlement of an employee's funds. This amendment inserts a cross reference that provides for the application of § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft) in such cases where that guideline results in the greater offense level.

48. Amendment: Sections 2T3.1 is amended by deleting "Level from § 2T4.1 (Tax Table) corresponding to the tax loss." and inserting in lieu thereof:

"(1) The level from § 2T4.1 (Tax Table) corresponding to the tax loss, if the tax loss exceeded $1,000; or

(2) 5, if the tax loss exceeded $100 but did not exceed $1,000; or

(3) 4, if the tax loss did not exceed $100.",

and by inserting the following additional subsection:

"(b) Specific offense characteristic.

(1) If sophisticated means were used to impede discovery of the nature or existence of the offense, increase by 2 levels.".

Sections 2T3.2 is amended by deleting "Level from § 2T4.1 (Tax Table) corresponding to the tax loss." and inserting in lieu thereof:

"(1) The level from § 2T4.1 (Tax Table) corresponding to the tax loss, if the tax loss exceeded $1,000; or

(2) 5, if the tax loss exceeded $100 but did not exceed $1,000; or

(3) 4, if the tax loss did not exceed $100.",

and by inserting the following additional subsection:

"(b) Specific Offense Characteristic

(1) If sophisticated means were used to impede discovery of the nature or existence of the offense, increase by 2 levels.".

Reason for Amendment: This amendment adds an adjustment for "sophisticated means" to conform with other tax evasion guidelines (e.g., § 2T1.1). In addition, it lowers the offense level for the least serious offenses (evasion of import duty of $1,000 or less without use of sophisticated means) to provide an offense level equal to the offense level for theft without more than minimal planning of the same amount.

49. Amendment: Section 2X1.1 and accompanying Commentary are amended by deleting "object" wherever it appears and inserting in lieu thereof in each instance "substantive"

Section 2X1.1(b)(1) is amended by inserting "substantive" immediately before "offense".

Section 2X1.1(b)(2) is amended by inserting "substantive" immediately before "offense".

Section 2X1.1(b)(3) is amended by deleting "the offense" the first two times it appears and inserting in lieu thereof in each instance "the substantive offense".

The Commentary to § 2X1.1 captioned "Application Notes" is amended in Note 2 by deleting the first sentence and inserting in lieu thereof: "Substantive offense, as used in this guideline, means the offense that the defendant was convicted of soliciting, attempting, or conspiring to commit. Under § 2X1.1(a), the base offense level will be the same as that for the substantive offense.".

The Commentary to § 2X1.1 captioned "Application Notes" is amended in Note 4 by deleting "or (2)" and inserting in lieu thereof ", (2), or (3)(A)".

The Commentary to § 2X1.1 captioned "Background" is amended by deleting "necessary acts of" and inserting in lieu thereof "acts necessary for".

Reason for Amendment: This is a technical amendment to enhance clarity by replacing the term "object offense" with the more commonly used term "substantive offense" and to conform the language used in the various subsections of this guideline. Greater clarity in the guideline language should reduce the likelihood of litigation over the meaning of this language. See e.g., *United States* v. *Rothman,* 914 F.2d 708 (5th Cir. 1990).

50. Amendment: Section 2X5.1 is amended by inserting immediately before the period at the end of the second sentence:

", except that any guidelines and policy statements that can be applied meaningfully in the absence of a Chapter Two offense guideline shall remain applicable".

The Commentary to § 2X5.1 is amended by inserting immediately after "Commentary" the following:

"Application Note:

1. Guidelines and policy statements that can be applied meaningfully in the absence of a Chapter Two offense guideline include: § 5B1.3 (Conditions of Probation); § 5B1.4 (Recommended Conditions of Probation and Supervised Release); § 5D1.1 (Imposition of a Term of Supervised Release); § 5D1.2 (Term of Supervised Release); § 5D1.3 (Conditions of Supervised Release); § 5E1.1 (Restitution); subsection (c)(1)(B) of § 5E1.2 (Fines for Individual Defendants) as a lower limit; § 5E1.3 (Special Assessments); § 5E1.4 (Forfeiture); Chapter Five, Part F (Sentencing Options); § 5G1.3 (Imposition of a Sentence on a Defendant Subject to an Undischarged Term of Imprisonment); Chapter Five, Part H (Specific Offender Characteristics); Chapter Five, Part J (Relief from Disability); Chapter Five, Part K (Departures); Chapter Six, Part A (Sentencing Procedures); Chapter Six, Part B (Plea Agreements).".

The Commentary to § 2X5.1 captioned "Background" is amended by inserting the following additional paragraph:

"The sentencing guidelines apply to convictions under 18 U.S.C. 13 (Assimilative Crimes Act) and 18 U.S.C. 1153 (Indian Major Crimes Act); see 18 U.S.C. 3551(a), as amended by section 1602 of Public Law 101–647.".

Reason for Amendment: This amendment inserts an application note to clarify that, in the case of an offense for which there is no sufficiently analogous offense guideline, any guidelines and policy statements that can be meaningfully applied in the absence of a Chapter Two offense guideline remain applicable. This amendment also clarifies the applicability of the sentencing guidelines to convictions under 18 U.S.C. 13 (Assimilative Crimes Act) and 1153 (Indian Major Crimes Act). Section 1602 of the Crime Control Act of 1990 (Public Law 101–647) definitively resolved this question by amending 18 U.S.C. 3551(a) to provide expressly that Chapter 227 of Title 18, United States Code (including the sentencing guidelines) applies to convictions under these statutes.

51. Amendment: The Commentary to § 3A1.3 captioned "Application Notes" is amended by deleting Note 2 and inserting in lieu thereof:

"2. Do not apply this adjustment where the offense guideline specifically incorporates this factor, or where the unlawful restraint of a victim is an element of the offense itself (e.g., this adjustment does not apply to offenses covered by § 2A4.1 (Kidnapping, Abduction, Unlawful Restraint)).".

Reason for Amendment: This amendment clarifies the application of this guideline.

52. Amendment: The Commentary to § 3B1.1 captioned "Application Notes" is amended in Note 1 by inserting the following additional sentence at the end:

"A person who is not criminally responsible for the commission of the offense (e.g., an undercover law enforcement officer) is not a participant.".

Reason for Amendment: This amendment clarifies the operation of this guideline in accord with the holding in *United States* v. *Carroll,* 893 F.2d 1502 (6th Cir. 1990).

53. Amendment: The Commentary to § 3C1.1 captioned "Application Notes" is amended in Note 1 in the last sentence by deleting ", the defendant's" and inserting in lieu thereof "in respect to alleged false testimony or statements

by the defendant, such"; and by deleting "and" and inserting in lieu thereof "or".

Reason for Amendment: This amendment more precisely states the meaning of this commentary.

54. The Commentary to § 3C1.2 captioned "Application Notes" is amended by redesignating note 3 as note 4 and by inserting the following additional note:

"3. 'During flight' is to be construed broadly and includes preparation for flight. Therefore, this adjustment also is applicable where the conduct occurs in the course of resisting arrest.".

Reason for Amendment: This amendment clarifies that reckless endangerment in the course of resisting arrest that does not receive a 3-level enhancement under § 3A1.2 (Official Victim) may be considered under this section.

55. Amendment: The Commentary to § 3D1.2 captioned "Application Notes" is amended in the second paragraph of Note 5 by deleting "accessory after the fact for" and inserting in lieu thereof "a conspiracy to commit".

The Commentary following § 3D1.5 captioned "Illustrations of the Operation of the Multiple-Count Rules" is amended in example 1 by deleting "discharged" and inserting in lieu thereof "displayed".

The Commentary following § 3D1.5 captioned "Illustrations of the Operation of the Multiple-Count Rules" is amended in example 2 by deleting the last three sentences and inserting in lieu thereof:

"The base offense level is 6; 1 level is added because of the value of the property (§ 2F1.1(b)(1)); and 2 levels are added because the conduct involved repeated acts with some planning (§ 2F1.1(b)(2)(A)). The resulting offense level is 9.".

Reason for Amendment: This amendment conforms two illustrations of the operation of the guidelines to the guidelines, as amended, and corrects an inaccurate illustration.

56. Amendment: The Commentary to Chapter Five, Part A (Sentencing Table) captioned "Application Notes" is amended in Note 3 by inserting ", except as provided in §§ 4B1.1 (Career Offender) and 4B1.4 (Armed Career Criminal)" immediately before the period at the end of the first sentence.

Reason for Amendment: This amendment is a technical amendment to conform the commentary of this section to the provisions concerning the determination of the criminal history category set forth in §§ 4B1.1 and 4B1.4. No substantive change results.

57. Amendment: Section 5F1.3 is amended by deleting:

"If the defendant was convicted of a felony and sentenced to probation, the court must order one or more of the following sanctions: a fine, restitution, or community service. 18 U.S.C. 3563(a)(2).".

Reason for Amendment: This amendment deletes a sentence in this guideline that is unnecessary and no longer accurate because of a change in the statute. The correct reference is found at § 5B1.3(a).

58. Amendment: Chapter Five, part K, subpart 2 is amended by inserting the following additional section:

"§ 5K2.16. Voluntary Disclosure of Offense (Policy Statement)

If the defendant voluntarily discloses to authorities the existence of, and accepts responsibility for, the offense prior to the discovery of such offense, and if such offense was unlikely to have been discovered otherwise, a departure below the applicable guideline range for that offense may be warranted. For example, a downward departure under this section might be considered where a defendant, motivated by remorse, discloses an offense that otherwise would have remained undiscovered. This provision does not apply where the motivating factor is the defendant's knowledge that discovery of the offense is likely or imminent, or where the defendant's disclosure occurs in connection with the investigation or prosecution of the defendant for related conduct.".

Reason for Amendment: This amendment sets forth an additional policy statement regarding a mitigating factor that may warrant a downward departure.

59. Amendment: Appendix A (Statutory Index) is amended by inserting, in the appropriate place by title and section, the following:

"8 U.S.C. 1160(b)(7)(A), 2L2.1, 2L2.2";
"18 U.S.C. 225, 2B1.1, 2B4.1, 2F1.1";
"18 U.S.C. 403, 2J1.1";
"18 U.S.C. 1032, 2B4.1, 2F1.1";
"18 U.S.C. 1346, 2C1.7";
"18 U.S.C. 1517, 2J1.2";
"18 U.S.C. 2257, 2G2.5";
"21 U.S.C. 841(g)(1), 2D1.11, 2D1.13";
"21 U.S.C. 843(a)(4)(B), 2D1.13";
"21 U.S.C. 843(a) (6), (7), 2D1.12";
"21 U.S.C. 843(a)(8), 2D1.13";
"42 U.S.C. 1320(a)-7(b), 2B1.1, 2B4.1, 2F1.1".

Appendix A (Statutory Index) is amended:

In the line beginning "18 U.S.C. 371" by inserting "2C1.7," immediately before "2D1.4";

In the line beginning "18 U.S.C. 1005" by deleting ", 2S1.3";

In the line beginning "18 U.S.C. 1341" by inserting "2C1.7," immediately before "2F1.1";

In the line beginning "18 U.S.C. 1342" by inserting "2C1.7," immediately before "2F1.1";

In the line beginning "18 U.S.C. 1343" by inserting "2C1.7," immediately before "2F1.1";

In the line beginning "18 U.S.C. 1460" by deleting "2G2.2,";

In the line beginning "18 U.S.C. 1543" by inserting "2L2.3," immediately before "2L2.4";

In the line beginning "18 U.S.C. 2252" by inserting ", 2G2.4" immediately following "2G2.2";

By deleting:

"21 U.S.C. 841(d), 2D1.1",

And inserting in lieu thereof:

"21 U.S.C. 841(d) (1), (2), 2D1.11
21 U.S.C. 841(d)(3), 2D1.13";

By deleting:

"21 U.S.C. 842(a), 2D3.1, 2D3.2, 2D3.3",

And inserting in lieu thereof:

"21 U.S.C. 842(a)(1), 2D3.1
21 U.S.C. 842(a)(2), 2D3.3
21 U.S.C. 842(a) (9), (10), 2D3.5";

In the line beginning "21 U.S.C. 843(a)(1)" by deleting ", (4)";

By deleting:

"21 U.S.C. 960, 2D1.1",

And inserting in lieu thereof:

"21 U.S.C. 960 (a), (b), 2D1.1
21 U.S.C. (d) (1), (2), 2D1.11";

In the line beginning "31 U.S.C. 5316(a)" by deleting "2S1.3" and inserting in lieu thereof "2S1.4";

By deleting:

"46 U.S.C. App. 1903, 2D1.1",

And inserting in lieu thereof:

"46 U.S.C. App. 1903(a), 2D1.1
46 U.S.C. App. 1903(g), 2D1.1
46 U.S.C. App. 1903(j), 2D1.4"; and

In the line beginning "47 U.S.C. 605" by inserting "2B5.3," immediately before "2H3.1".

Reason for Amendment: This amendment makes the statutory index more comprehensive, and conforms it to the guidelines, as amended.

Addition of Chapter Eight—Sentencing of Organizations

60. Amendment. The guidelines are amended by adding the following additional chapter:

"CHAPTER EIGHT—SENTENCING OF ORGANIZATIONS

Introductory Commentary

The guidelines and policy statements in this chapter apply when the convicted defendant is an organization. Organizations can act only through agents and, under federal criminal law, generally are vicariously liable for offenses committed by their agents. At the same time, individual agents are responsible for their own criminal conduct. Federal prosecutions of organizations therefore frequently involve individual and organizational co-defendants. Convicted individual agents of organizations are sentenced in accordance with the

guidelines and policy statements in the preceding chapters. This chapter is designed so that the sanctions imposed upon organizations and their agents, taken together, will provide just punishment, adequate deterrence, and incentives for organizations to maintain internal mechanisms for preventing, detecting, and reporting criminal conduct.

This chapter reflects the following general principles: First, the court must, whenever practicable, order the organization to remedy any harm caused by the offense. The resources expended to remedy the harm should not be viewed as punishment, but rather as a means of making victims whole for the harm caused. Second, if the organization operated primarily for a criminal purpose or primarily by criminal means, the fine should be set sufficiently high to divest the organization of all its assets. Third, the fine range for any other organization should be based on the seriousness of the offense and the culpability of the organization. The seriousness of the offense generally will be reflected by the highest of the pecuniary gain, the pecuniary loss, or the amount in a guideline offense level fine table. Culpability generally will be determined by the steps taken by the organization prior to the offense to prevent and detect criminal conduct, the level and extent of involvement in or tolerance of the offense by certain personnel, and the organization's actions after an offense has been committed. Fourth, probation is an appropriate sentence for an organizational defendant when needed to ensure that another sanction will be fully implemented, or to ensure that steps will be taken within the organization to reduce the likelihood of future criminal conduct.

Part A—General Application Principles

§ 8A1.1. Applicability of Chapter Eight

This chapter applies to the sentencing of all organizations for felony and Class A misdemeanor offenses.

Commentary

Application Notes

1. "Organization" means "a person other than an individual." 18 U.S.C. 18. The term includes corporations, partnerships, associations, joint-stock companies, unions, trusts, pension funds, unincorporated organizations, governments and political subdivisions thereof, and nonprofit organizations.

2. The fine guidelines in §§ 8C2.2 through 8C2.9 apply only to specified types of offenses. The other provisions of this chapter apply to the sentencing of all organizations for all felony and Class A misdemeanor offenses. For example, the restitution and probation provisions in parts B and D of this chapter apply to the sentencing of an organization, even if the fine guidelines in §§ 8C2.2 through 8C2.9 do not apply.

§ 8A1.2. Application Instructions—Organizations

(a) Determine from Part B (Remedying Harm from Criminal Conduct) the sentencing requirements and options relating to restitution, remedial orders, community service, and notice to victims.

(b) Determine from Part C (Fines) the sentencing requirements and options relating to fines:

(1) If the organization operated primarily for a criminal purpose or primarily by criminal means, apply § 8C1.1 (Determining the Fine—Criminal Purpose Organizations).

(2) Otherwise, apply § 8C2.1 (Applicability of Fine Guidelines) to identify the counts for which the provisions of §§ 8C2.2 through 8C2.9 apply. For such counts:

(A) Refer to § 8C2.2 (Preliminary Determination of Inability to Pay Fine) to determine whether an abbreviated determination of the guideline fine range may be warranted.

(B) Apply § 8C2.3 (Offense Level) to determine the offense level from Chapter Two (Offense Conduct) and Chapter Three, Part D (Multiple Counts).

(C) Apply § 8C2.4 (Base Fine) to determine the base fine.

(D) Apply § 8C2.5 (Culpability Score) to determine the culpability score.

(E) Apply § 8C2.6 (Minimum and Maximum Multipliers) to determine the minimum and maximum multipliers corresponding to the culpability score.

(F) Apply § 8C2.7 (Guideline Fine Range—Organizations) to determine the minimum and maximum of the guideline fine range.

(G) Refer to § 8C2.8 (Determining the Fine Within the Range) to determine the amount of the fine within the applicable guideline range.

(H) Apply § 8C2.9 (Disgorgement) to determine whether an increase to the fine is required.

For any count or counts not covered under § 8C2.1 (Applicability of Fine Guidelines), apply § 8C2.10 (Determining the Fine for Other Counts).

(3) Apply the provisions relatinq to the implementation of the sentence of a fine in part C, subpart 3 (Implementing the Sentence of a Fine).

(4) For grounds for departure from the applicable guideline fine range, refer to part C, subpart 4 (Departures from the Guideline Fine Range).

(c) Determine from part D (Organizational Probation) the sentencing requirements and options relating to probation.

(d) Determine from Part E (Special Assessments, Forfeitures, and Costs) the sentencing requirements relating to special assessments, forfeitures, and costs.

Commentary

Application Notes

1. Determinations under this chapter are to be based upon the facts and information specified in the applicable guideline. Determinations that reference other chapters are to be made under the standards applicable to determinations under those chapters.

2. The definitions in the Commentary to § 1B1.1 (Application Instructions) and the guidelines and commentary in §§ 1B1.2 through 1B1.8 apply to determinations under this chapter unless otherwise specified. The adjustments in chapter Three, Parts A (Victim-Related Adjustments), B (Role in the Offense), C (Obstruction), and E (Acceptance of Responsibility) do not apply. The provisions of Chapter Six (Sentencing Procedures and Plea Agreements) apply to proceedings in which the defendant is an organization.

Guidelines and policy statements not referenced in this chapter, directly or indirectly, do not apply when the defendant is an organization; e.g., the policy statements in Chapter Seven (Violations of Probation and Supervised Release) do not apply to organizations.

3. The following are definitions of terms used frequently in this chapter:

(a) 'Offense' means the offense of conviction and all relevant conduct under § 1B1.3 (Relevant Conduct) unless a different meaning is specified or is otherwise clear from the context.

(b) 'High-level personnel of the organization' means individuals who have substantial control over the organization or who have a substantial role in the making of policy within the organization. The term includes: A director; an executive officer; an individual in charge of a major business or functional unit of the organization, such as sales, administration, or finance; and an individual with a substantial ownership interest. 'High-level personnel of a unit of the organization' is defined in the Commentary to § 8C2.5 (Culpability Score).

(c) 'Substantial authority personnel' means individuals who within the scope of their authority exercise a substantial measure of discretion in acting on behalf of an organization. The term includes high-level personnel, individuals who exercise substantial supervisory authority (e.g., a plant manager, a sales manager), and any other individuals who, although not a part of an organization's management, nevertheless exercise substantial discretion when acting within the scope of their authority (e.g., an individual with authority in an organization to negotiate or set price levels or an individual authorized to negotiate or approve significant contracts). Whether an individual falls within this category must be determined on a case-by-case basis.

(d) 'Agent' means any individual, including a director, an officer, an employee, or an independent contractor, authorized to act on behalf of the organization.

(e) An individual 'condoned' an offense if the individual knew of the offense and did not take reasonable steps to prevent or terminate the offense.

(f) 'Similar misconduct' means prior conduct that is similar in nature to the conduct underlying the instant offense, without regard to whether or not such conduct violated the same statutory provision. For example, prior Medicare fraud would be misconduct similar to an instant offense involving another type of fraud.

(g) 'Prior criminal adjudication' means conviction by trial, plea of guilty (including an Alford plea), or plea of nolo contendere.

(h) 'Pecuniary gain' is derived from 18 U.S.C. 3571(d) and means the additional before-tax profit to the defendant resulting from the relevant conduct of the offense. Gain can result from either additional revenue or cost savings. For example, an offense involving odometer tampering can produce additional revenue. In such a case,

the pecuniary gain is the additional revenue received because the automobiles appeared to have less mileage, i.e., the difference between the price received or expected for the automobiles with the apparent mileage and the fair market value of the automobiles with the actual mileage. An offense involving defense procurement fraud related to defective product testing can produce pecuniary gain resulting from cost savings. In such a case, the pecuniary gain is the amount saved because the product was not tested in the required manner.

(i) 'Pecuniary loss' is derived from 18 U.S.C. 3571(d) and is equivalent to the term 'loss' as used in Chapter Two (Offense Conduct), except that pecuniary loss includes, for purposes of Chapter Eight, all damages from the offense that were caused intentionally, knowingly, or recklessly. See Commentary to §§ 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft), 2F1.1 (Fraud and Deceit), and definitions of 'tax loss' in Chapter Two, Part T (Offenses Involving Taxation). For example, in a case of fraud upon the government involving product substitution or defective testing, loss may include (1) the government's costs of making substitute transactions and handling or disposing of the product delivered, or retrofitting the product so that it can be used for its intended purpose, and (2) the government's cost of rectifying the actual or potential disruption to government operations caused by the product substitution.

(j) An individual was 'willfully ignorant of the offense' if the individual did not investigate the possible occurrence of unlawful conduct despite knowledge of circumstances that would lead a reasonable person to investigate whether unlawful conduct had occurred.

(k) An 'effective program to prevent and detect violations of law' means a program that has been reasonably designed, implemented, and enforced so that it generally will be effective in preventing and detecting criminal conduct. Failure to prevent or detect the instant offense, by itself, does not mean that the program was not effective. The hallmark of an effective program to prevent and detect violations of law is that the organization exercised due diligence in seeking to prevent and detect criminal conduct by its employees and other agents. Due diligence requires at a minimum that the organization must have taken the following types of steps:

(1) The organization must have established compliance standards and procedures to be followed by its employees and other agents that are reasonably capable of reducing the prospect of criminal conduct.

(2) Specific individual(s) within high-level personnel of the organization must have been assigned overall responsibility to oversee compliance with such standards and procedures.

(3) The organization must have used due care not to delegate substantial discretionary authority to individuals whom the organization knew, or should have known through the exercise of due diligence, had a propensity to engage in illegal activities.

(4) The organization must have taken steps to communicate effectively its standards and procedures to all employees and other agents, e.g., by requiring participation in training programs or by disseminating publications that explain in a practical manner what is required.

(5) The organization must have taken reasonable steps to achieve compliance with its standards, e.g., by utilizing monitoring and auditing systems reasonably designed to detect criminal conduct by its employees and other agents and by having in place and publicizing a reporting system whereby employees and other agents could report criminal conduct by others within the organization without fear of retribution.

(6) The standards must have been consistently enforced through appropriate disciplinary mechanisms, including, as appropriate, discipline of individuals responsible for the failure to detect an offense. Adequate discipline of individuals responsible for an offense is a necessary component of enforcement; however, the form of discipline that will be appropriate will be case specific.

(7) After an offense has been detected, the organization must have taken all reasonable steps to respond appropriately to the offense and to prevent further similar offenses—Including any necessary modifications to its program to prevent and detect violations of law.

The precise actions necessary for an effective program to prevent and detect violations of law will depend upon a number of factors. Among the relevant factors are:

(i) Size of the organization—The requisite degree of formality of a program to prevent and detect violations of law will vary with the size of the organization: The larger the organization, the more formal the program typically should be. A larger organization generally should have established written policies defining the standards and procedures to be followed by its employees and other agents.

(ii) Likelihood that certain offenses may occur because of the nature of its business—If because of the nature of an organization's business there is a substantial risk that certain types of offenses may occur, management must have taken steps to prevent and detect those types of offenses. For example, if an organization handles toxic substances, it must have established standards and procedures designed to ensure that those substances are properly handled at all times. If an organization employs sales personnel who have flexibility in setting prices, it must have established standards and procedures designed to prevent and detect price-fixing. If an organization employs sales personnel who have flexibility to represent the material characteristics of a product, it must have established standards and procedures designed to prevent fraud.

(iii) Prior history of the organization—An organization's prior history may indicate types of offenses that it should have taken actions to prevent. Recurrence of misconduct similar to that which an organization has previously committed casts doubt on whether it took all reasonable steps to prevent such misconduct.

An organization's failure to incorporate and follow applicable industry practice or the standards called for by any applicable governmental regulation weighs against a finding of an effective program to prevent and detect violations of law.

Part B—Remedying Harm from Criminal Conduct

Introductory Commentary

As a general principle, the court should require that the organization take all appropriate steps to provide compensation to victims and otherwise remedy the harm caused or threatened by the offense. A restitution order or an order of probation requiring restitution can be used to compensate identifiable victims of the offense. A remedial order or an order of probation requiring community service can be used to reduce or eliminate the harm threatened, or to repair the harm caused by the offense, when that harm or threatened harm would otherwise not be remedied. An order of notice to victims can be used to notify unidentified victims of the offense.

§ 8B1.1. Restitution—Organizations

(a) The court shall—(1) Enter a restitution order if such order is authorized under 18 U.S.C. 3663–3664; or

(2) if a restitution order would be authorized under 18 U.S.C. 3663–3664, except for the fact that the offense of conviction is not an offense set forth in title 18, United States Code, or 49 U.S.C. 1472 (h), (i), (j), or (n), sentence the organization to probation with a condition requiring restitution.

(b) *Provided,* That the provisions of subsection (a) do not apply when the organization has made full restitution, or to the extent the court determines that the complication and prolongation of the sentencing process resulting from the fashioning of a restitution requirement outweighs the need to provide restitution to any victims through the criminal process.

Commentary

Background: This guideline provides for restitution either as a sentence under 18 U.S.C. 3663–3664 or as a condition of probation.

§ 8B1.2. Remedial Orders—Organizations (Policy Statement)

(a) To the extent not addressed under § 8B1.1 (Restitution—Organizations), a remedial order imposed as a condition of probation may require the organization to remedy the harm caused by the offense and to eliminate or reduce the risk that the instant offense will cause future harm.

(b) If the magnitude of expected future harm can be reasonably estimated, the court may require the organization to create a trust fund sufficient to address that expected harm.

Commentary

Background: The purposes of a remedial order are to remedy harm that has already occurred and to prevent future harm. A remedial order requiring corrective action by the organization may be necessary to prevent future injury from the instant offense, e.g., a product recall for a food and drug violation or

a clean-up order for an environmental violation. In some cases in which a remedial order potentially may be appropriate, a governmental regulatory agency, e.g., the Environmental Protection Agency or the Food and Drug Administration, may have authority to order remedial measures. In such cases, a remedial order by the court may not be necessary. If a remedial order is entered, it should be coordinated with any administrative or civil actions taken by the appropriate governmental regulatory agency.

§ 8B1.3. Community Service—Organizations (Policy Statement)

Community service may be ordered as a condition of probation where such community service is reasonably designed to repair the harm caused by the offense.

Commentary

Background: An organization can perform community service only by employing its resources or paying its employees or others to do so. Consequently, an order that an organization perform community service is essentially an indirect monetary sanction, and therefore generally less desirable than a direct monetary sanction. However, where the convicted organization possesses knowledge, facilities, or skills that uniquely qualify it to repair damage caused by the offense, community service directed at repairing damage may provide an efficient means of remedying harm caused.

In the past, some forms of community service imposed on organizations have not been related to the purposes of sentencing. Requiring a defendant to endow a chair at a university or to contribute to a local charity would not be consistent with this section unless such community service provided a means for preventive or corrective action directly related to the offense and therefore served one of the purposes of sentencing set forth in 18 U.S.C. 3553(a).

§ 8B1.4. Order of Notice to Victims—Organizations

Apply § 5F1.4 (Order of Notice to Victims).

Part C—Fines

1. Determining the Fine—Criminal Purpose Organizations

§ 8C1.1. Determining the Fine—Criminal Purpose Organizations

If, upon consideration of the nature and circumstances of the offense and the history and characteristics of the organization, the court determines that the organization operated primarily for a criminal purpose or primarily by criminal means, the fine shall be set at an amount (subject to the statutory maximum) sufficient to divest the organization of all its net assets. When this section applies, Subpart 2 (Determining the Fine—Other Organizations) and § 8C3.4 (Fines Paid by Owners of Closely-Held Organizations) do not apply.

Commentary

Application Note

1. *Net assets,* as used in this section, means the assets remaining after payment of all legitimate claims against assets by known innocent bona fide creditors.

Background: This guideline addresses the case in which the court, based upon an examination of the nature and circumstances of the offense and the history and characteristics of the organization, determines that the organization was operated primarily for a criminal purpose (e.g., a front for a scheme that was designed to commit fraud; an organization established to participate in the illegal manufacture, importation, or distribution of a controlled substance) or operated primarily by criminal means (e.g., a hazardous waste disposal business that had no legitimate means of disposing of hazardous waste). In such a case, the fine shall be set at an amount sufficient to remove all of the organization's net assets. If the extent of the assets of the organization is unknown, the maximum fine authorized by statute should be imposed, absent innocent bona fide creditors.

2. Determining the Fine—Other Organizations

§ 8C2.1. Applicability of Fine Guidelines

The provisions of §§ 8C2.2 through 8C2.9 apply to each count for which the applicable guideline offense level is determined under:
(a) §§ 2B1.1, 2B1.2, 2B1.3, 2B2.3, 2B4.1, 2B5.3, 2B5.4, 2B6.1;
§§ 2C1.1, 2C1.2, 2C1.4, 2C1.6, 2C1.7;
§§ 2D1.7, 2D3.1, 2D3.2, 2D3.4;
§§ 2E3.1, 2E3.2, 2E3.3, 2E4.1, 2E5.1, 2E5.2, 2E5.3, 2E5.4, 2E5.5, 2E5.6;
§§ 2F1.1, 2F1.2;
§ 2G3.1;
§§ 2K1.1, 2K1.2, 2K2.1;
§ 2L1.1;
§ 2N3.1;
§ 2R1.1;
§§ 2S1.1, 2S1.2, 2S1.3, 2S1.4;
§§ 2T1.1, 2T1.2, 2T1.3, 2T1.4, 2T1.5, 2T1.6, 2T1.7, 2T1.8, 2T1.9, 2T2.1, 2T2.2, 2T3.1, 2T3.2; or
(b) §§ 2E1.1, 2X1.1, 2X2.1, 2X3.1, 2X4.1, with respect to cases in which the offense level for the underlying offense is determined under one of the guideline sections listed in subsection (a) above.

Commentary

Application Notes

1. If the chapter Two offense guideline for a count is listed in subsection (a) or (b) above, and the applicable guideline results in the determination of the offense level by use of one of the listed guidelines, apply the provisions of §§ 8C2.2 through 8C2.9 to that count. For example, §§ 8C2.2 through 8C2.9 apply to an offense under § 2K2.1 (an offense guideline listed in subsection (a)), unless the cross reference in that guideline requires the offense level to be determined under an offense guideline section not listed in subsection (a).

2. If the chapter Two offense guideline for a count is not listed in subsection (a) or (b) above, but the applicable guideline results in the determination of the offense level by use of a listed guideline, apply the provisions of §§ 8C2.2 through 8C2.9 to that count. For example, where the conduct set forth in a count of conviction ordinarily referenced to § 2N2.1 (an offense guideline not listed in subsection (a)) establishes § 2F1.1 (Fraud and Deceit) as the applicable offense guideline (an offense guideline listed in subsection (a)], §§ 8C2.2 through 8C2.9 would apply because the actual offense level is determined under § 2F1.1 (Fraud and Deceit).

Background: The fine guidelines of this subpart apply only to offenses covered by the guideline sections set forth in subsection (a) above. For example, the provisions of §§ 8C2.2 through 8C2.9 do not apply to counts for which the applicable guideline offense level is determined under Chapter Two, Part Q (Offenses Involving the Environment). For such cases, § 8C2.10 (Determining the Fine for Other Counts) is applicable.

§ 8C2.2. Preliminary Determination of Inability to Pay Fine

(a) Where it is readily ascertainable that the organization cannot and is not likely to become able (even on an installment schedule) to pay restitution required under § 8B1.1 (Restitution—Organizations), a determination of the guideline fine range is unnecessary because, pursuant to § 8C3.3(a), no fine would be imposed.

(b) Where it is readily ascertainable through a preliminary determination of the minimum of the guideline fine range (see §§ 8C2.3 through 8C2.7) that the organization cannot and is not likely to become able (even on an installment schedule) to pay such minimum guideline fine, a further determination of the guideline fine range is unnecessary. Instead, the court may use the preliminary determination and impose the fine that would result from the application of § 8C3.3 (Reduction of Fine Based on Inability to Pay).

Commentary

Application Notes

1. In a case of a determination under subsection (a), a statement that 'the guideline fine range was not determined because it is readily ascertainable that the defendant cannot and is not likely to become able to pay restitution' is recommended.

2. In a case of a determination under subsection (b), a statement that 'no precise determination of the guideline fine range is required because it is readily ascertainable that the defendant cannot and is not likely to become able to pay the minimum of the guideline fine range' is recommended.

Background: Many organizational defendants lack the ability to pay restitution. In addition, many organizational defendants who may be able to pay restitution lack the ability to pay the minimum fine called for by § 8C2.7(a). In such cases, a complete determination of the guideline fine range may be a needless exercise. This section provides for an abbreviated determination of the guideline fine range that can be applied where it is readily ascertainable that the fine within the guideline fine range determined under § 8C2.7 (Guideline Fine Range—Organizations) would be reduced under § 8C3.3 (Reduction of Fine Based on Inability to Pay).

§ 8C2.3. Offense Level

(a) For each count covered by § 8C2.1 (Applicability of Fine Guidelines), use the

applicable chapter Two guideline to determine the base offense level and apply, in the order listed, any appropriate adjustments contained in that guideline.

(b) Where there is more than one such count, apply chapter Three, part D (Multiple Counts) to determine the combined offense level.

Commentary

Application Notes

1. In determining the offense level under this section, 'defendant,' as used in chapter Two, includes any agent of the organization for whose conduct the organization is criminally responsible.

2. In determining the offense level under this section, apply the provisions of §§ 1B1.2 through 1B1.8. Do not apply the adjustments in chapter Three, parts A (Victim-Related Adjustments), B (Role in the Offense), C (Obstruction), and E (Acceptance of Responsibility).

§ 8C2.4. Base Fine

(a) The base fine is the greatest of:

(1) The amount from the table in subsection (d) below corresponding to the offense level determined under § 8C2.3 (Offense Level); or

(2) The pecuniary gain to the organization from the offense; or

(3) The pecuniary loss from the offense caused by the organization, to the extent the loss was caused intentionally, knowingly, or recklessly.

(b) *Provided,* That if the applicable offense guideline in chapter Two includes a special instruction for organizational fines, that special instruction shall be applied, as appropriate.

(c) *Provided, further,* That to the extent the calculation of either pecuniary gain or pecuniary loss would unduly complicate or prolong the sentencing process, that amount, i.e., gain or loss as appropriate, shall not be used for the determination of the base fine.

(d) Offense level fine Table

Offense level	Amount
6 or less	$5,000
7	7,500
8	10,000
9	15,000
10	20,000
11	30,000
12	40,000
13	60,000
14	85,000
15	125,000
16	175,000
17	250,000
18	350,000
19	500,000
20	650,000
21	910,000
22	1,200,000
23	1,600,000
24	2,100,000
25	2,800,000
26	3,700,000
27	4,800,000
28	6,300,000
29	8,100,000
30	10,500,000
31	13,500,000
32	17,500,000
33	22,000,000
34	28,500,000
35	36,000,000
36	45,500,000
37	57,500,000
38 or more	72,500,000

Commentary

Application Notes

1. *Pecuniary gain* and *pecuniary loss* are defined in the Commentary to § 8A1.2 (Application Instructions—Organizations).

2. Under 18 U.S.C. 3571(d), the court is not required to calculate pecuniary loss or pecuniary gain to the extent that determination of loss or gain would unduly complicate or prolong the sentencing process. Nevertheless, the court may need to approximate loss in order to calculate offense levels under chapter Two. See Commentary to § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft). If loss is approximated for purposes of determining the applicable offense level, the court should use that approximation as the measure of pecuniary loss under this section.

3. In a case of an attempted offense or a conspiracy to commit an offense, pecuniary loss and pecuniary gain are to be determined in accordance with the principles stated in § 2X1.1 (Attempt, Solicitation, or Conspiracy).

4. In a case involving multiple participants (i.e., multiple organizations, or the organization and individual(s) unassociated with the organization), the applicable offense level is to be determined without regard to apportionment of the gain from or loss caused by the offense. See § 1B1.3 (Relevant Conduct). However, if the base fine is determined under subsections (a)(2) or (a)(3), the court may, as appropriate, apportion gain or loss considering the defendant's relative culpability and other pertinent factors.

5. Special instructions regarding the determination of the base fine are contained in: § 2B4.1 (Bribery in Procurement of Bank Loan and Other Commercial Bribery); § 2C1.1 (Offering, Giving, Soliciting, or Receiving a Bribe; Extortion Under Color of Official Right); § 2C1.2 (Offering, Giving, Soliciting, or Receiving a Gratuity); § 2E5.1 (Offering, Accepting, or Soliciting a Bribe or Gratuity Affecting the Operation of an Employee Welfare or Pension Benefit Plan); § 2R1.1 (Bid-Rigging, Price-Fixing or Market-Allocation Agreements Among Competitors); § 2S1.1 (Laundering of Monetary Instruments); § 2S1.2 (Engaging in Monetary Transactions in Property Derived from Specified Unlawful Activity); § 2S1.3 (Failure to Report Monetary Transactions; Structuring Transactions to Evade Reporting Requirements); and § 2S1.4 (Failure to File Currency and Monetary Instrument Report).

Background: Under this section, the base fine is determined in one of three ways: (1) The pecuniary gain to the organization from the offense; (2) the pecuniary loss caused by the organization; and (3) the amount, based on the offense level, from the table in subsection (d). In certain cases, special instructions for determining the loss, gain, or offense level amount apply. As a general rule, the base fine measures the seriousness of the offense. The determinants of the base fine are selected so that, in conjunction with the multipliers derived from the culpability score in § 8C2.5 (Culpability Score), they will result in guideline fine ranges appropriate to deter organizational criminal conduct and to provide incentives for organizations to maintain internal mechanisms for deterring, detecting, and reporting criminal conduct. In order to deter organizations from seeking to obtain financial reward through criminal conduct, this section provides that, when greatest, pecuniary gain to the organization is used to determine the base fine. In order to ensure that organizations will seek to prevent losses intentionally, knowingly, or recklessly caused by their agents, this section provides that, when greatest, pecuniary loss is used to determine the base fine in such circumstances.

Chapter Two provides special instructions for fines that include specific rules for determining the base fine in connection with certain types of offenses in which the calculation of loss or gain is difficult, e.g., price-fixing and money laundering. For these offenses, the special instructions tailor the base fine to circumstances that occur in connection with such offenses and that generally relate to the magnitude of loss or gain resulting from such offenses. The offense level fine table in subsection (d) provides a residual or 'fall-back' method for setting the base fine.

§ 8C2.5. Culpability Score

(a) Start with 5 points and apply subsections (b) through (g) below.

(b) Involvement in or Tolerance of Criminal Activity

If more than one applies, use the greatest:

(1) If—

(A) The organization had 5,000 or more employees and

(i) An individual within high-level personnel of the organization participated in, condoned, or was willfully ignorant of the offense; or

(ii) Tolerance of the offense by substantial authority personnel was pervasive throughout the organization; or

(B) The unit of the organization within which the offense was committed had 5,000 or more employees and

(i) An individual within high-level personnel of the unit participated in, condoned, or was willfully ignorant of the offense; or

(ii) Tolerance of the offense by substantial authority personnel was pervasive throughout such unit, add 5 points; or

(2) If—

(A) the organization had 1,000 or more employees and

(i) An individual within high-level personnel of the organization participated in, condoned, or was willfully ignorant of the offense; or

(ii) Tolerance of the offense by substantial authority personnel was pervasive throughout the organization; or

(B) The unit of the organization within which the offense was committed had 1,000 or more employees and

(i) An individual within high-level personnel of the unit participated in, condoned, or was willfully ignorant of the offense; or

(ii) Tolerance of the offense by substantial authority personnel was pervasive throughout such unit,

Add 4 points; or

(3) If—

(A) The organization had 200 or more employees and

(i) An individual within high-level personnel of the organization participated in, condoned, or was willfully ignorant of the offense; or

(ii) Tolerance of the offense by substantial authority personnel was pervasive throughout the organization; or

(B) The unit of the organization within which the offense was committed had 200 or more employees and

(i) An individual within high-level personnel of the unit participated in, condoned, or was willfully ignorant of the offense; or

(ii) Tolerance of the offense by substantial authority personnel was pervasive throughout such unit,

Add 3 points; or

(4) If the organization had 50 or more employees and an individual within substantial authority personnel participated in, condoned, or was willfully ignorant of the offense, add 2 points; or

(5) If the organization had 10 or more employees and an individual within substantial authority personnel participated in, condoned, or was willfully ignorant of the offense, add 1 point.

(c) Prior History

If more than one applies, use the greater:

(1) If the organization (or separately-managed line of business) committed any part of the instant offense less than 10 years after (A) a criminal adjudication based on similar misconduct; or (B) civil or administrative adjudication(s) based on two or more separate instances of similar misconduct, add 1 point; or

(2) If the organization (or separately-managed line of business) committed any part of the instant offense less than 5 years after (A) a criminal adjudication based on similar misconduct; or (B) civil or administrative adjudication(s) based on two or more separate instances of similar misconduct, add 2 points.

(d) Violation of an Order

If more than one applies, use the greater:

(1) (A) If the commission of the instant offense violated a judicial order or injunction, other than a violation of a condition of probation; or (B) if the organization (or separately-managed line of business) violated a condition of probation by engaging in similar misconduct, i.e., misconduct similar to that for which it was placed on probation, add 2 points; or

(2) If the commission of the instant offense violated a condition of probation, add 1 point.

(e) Obstruction of Justice

If the organization willfully obstructed or impeded, attempted to obstruct or impede, or aided, abetted, or encouraged obstruction of justice during the investigation, prosecution, or sentencing of the instant offense, or, with knowledge thereof, failed to take reasonable steps to prevent such obstruction or impedance or attempted obstruction or impedance, add 3 points.

(f) Effective Program to Prevent and Detect Violations of Law

If the offense occurred despite an effective program to prevent and detect violations of law, subtract 3 points.

Provided, that this subsection does not apply if an individual within high-level personnel of the organization, a person within high-level personnel of the unit of the organization within which the offense was committed where the unit had 200 or more employees, or an individual responsible for the administration or enforcement of a program to prevent and detect violations of law participated in, condoned, or was willfully ignorant of the offense. Participation of an individual within substantial authority personnel in an offense results in a rebuttable presumption that the organization did not have an effective program to prevent and detect violations of law.

Provided, further, That this subsection does not apply if, after becoming aware of an offense, the organization unreasonably delayed reporting the offense to appropriate governmental authorities.

(g) Self-Reporting, Cooperation, and Acceptance of Responsibility

If more than one applies, use the greatest:

(1) If the organization (A) prior to an imminent threat of disclosure or government investigation; and (B) within a reasonably prompt time after becoming aware of the offense, reported the offense to appropriate governmental authorities, fully cooperated in the investigation, and clearly demonstrated recognition and affirmative acceptance of responsibility for its criminal conduct, subtract 5 points; or

(2) If the organization fully cooperated in the investigation and clearly demonstrated recognition and affirmative acceptance of responsibility for its criminal conduct, subtract 2 points; or

(3) If the organization clearly demonstrated recognition and affirmative acceptance of responsibility for its criminal conduct, subtract 1 point.

Commentary

Application Notes

1. 'Substantial authority personnel,' 'condoned,' 'willfully ignorant of the offense,' 'similar misconduct,' 'prior criminal adjudication,' and 'effective program to prevent and detect violations of law,' are defined in the Commentary to § 8A1.2 (Application Instructions—Organizations).

2. For purposes of subsection (b), 'unit of the organization' means any reasonably distinct operational component of the organization. For example, a large organization may have several large units such as divisions or subsidiaries, as well as many smaller units such as specialized manufacturing, marketing, or accounting operations within these larger units. For purposes of this definition, all of these types of units are encompassed within the term 'unit of the organization.'

3. 'High-level personnel of the organization' is defined in the Commentary to § 8A1.2 (Application Instructions—Organizations). With respect to a unit with 200 or more employees, 'high-level personnel of a unit of the organization' means agents within the unit who set the policy for or control that unit. For example, if the managing agent of a unit with 200 employees participated in an offense, three points would be added under subsection (b)(3); if that organization had 1,000 employees and the managing agent of the unit with 200 employees were also within high-level personnel of the entire organization, four points (rather than three) would be added under subsection (b)(2).

4. Pervasiveness under subsection (b) will be case specific and depend on the number, and degree of responsibility, of individuals within substantial authority personnel who participated in, condoned, or were willfully ignorant of the offense. Fewer individuals need to be involved for a finding of pervasiveness if those individuals exercised a relatively high degree of authority. Pervasiveness can occur either within an organization as a whole or within a unit of an organization. For example, if an offense were committed in an organization with 1,000 employees but the tolerance of the offense was pervasive only within a unit of the organization with 200 employees (and no high-level personnel of the organization participated in, condoned, or was willfully ignorant of the offense), three points would be added under subsection (b)(3). If, in the same organization, tolerance of the offense was pervasive throughout the organization as a whole, or an individual within high-level personnel of the organization participated in the offense, four points (rather than three) would be added under subsection (b)(2).

5. A 'separately-managed line of business,' as used in subsections (c) and (d), is a subpart of a for-profit organization that has its own management, has a high degree of autonomy from higher managerial authority, and maintains its own separate books of account. Corporate subsidiaries and divisions frequently are separately-managed lines of business. Under subsection (c), in determining the prior history of an organization with separately-managed lines of business, only the prior conduct or criminal record of the separately-managed line of business involved in the instant offense is to be used. Under subsection (d), in the context of an organization with separately-managed lines of business, in making the determination whether a violation of a condition of probation involved engaging in similar misconduct, only the prior misconduct of the separately-managed line of business involved in the instant offense is to be considered.

6. Under subsection (c), in determining the prior history of an organization or separately-managed line of business, the conduct of the underlying economic entity shall be considered without regard to its legal structure or ownership. For example, if two companies merged and became separate divisions and separately-managed lines of

business within the merged company, each division would retain the prior history of its predecessor company. If a company reorganized and became a new legal entity, the new company would retain the prior history of the predecessor company. In contrast, if one company purchased the physical assets but not the ongoing business of another company, the prior history of the company selling the physical assets would not be transferred to the company purchasing the assets. However, if an organization is acquired by another organization in response to solicitations by appropriate federal government officials, the prior history of the acquired organization shall not be attributed to the acquiring organization.

7. Under subsections (c)(1)(B) and (c)(2)(B), the civil or administrative adjudication(s) must have occurred within the specified period (ten or five years) of the instant offense.

8. Adjust the culpability score for the factors listed in subsection (e) whether or not the offense guideline incorporates that factor, or that factor is inherent in the offense.

9. Subsection (e) applies where the obstruction is committed on behalf of the organization; it does not apply where an individual or individuals have attempted to conceal their misconduct from the organization.

10. The second proviso in subsection (f) contemplates that the organization will be allowed a reasonable period of time to conduct an internal investigation. In addition, no reporting is required by this proviso if the organization reasonably concluded, based on the information then available, that no offense had been committed.

11. 'Appropriate governmental authorities,' as used in subsections (f) and (g)(1), means the federal or state law enforcement, regulatory, or program officials having jurisdiction over such matter. To qualify for a reduction under subsection (g)(1), the report to appropriate governmental authorities must be made under the direction of the organization.

12. To qualify for a reduction under subsection (g)(1) or (g)(2), cooperation must be both timely and thorough. To be timely, the cooperation must begin essentially at the same time as the organization is officially notified of a criminal investigation. To be thorough, the cooperation should include the disclosure of all pertinent information known by the organization. A prime test of whether the organization has disclosed all pertinent information is whether the information is sufficient for law enforcement personnel to identify the nature and extent of the offense and the individual(s) responsible for the criminal conduct. However, the cooperation to be measured is the cooperation of the organization itself, not the cooperation of individuals within the organization. If, because of the lack of cooperation of particular individual(s), neither the organization nor law enforcement personnel are able to identify the culpable individual(s) within the organization despite the organization's efforts to cooperate fully, the organization may still be given credit for full cooperation.

13. Entry of a plea of guilty prior to the commencement of trial combined with truthful admission of involvement in the offense and related conduct ordinarily will constitute significant evidence of affirmative acceptance of responsibility under subsection (g), unless outweighed by conduct of the organization that is inconsistent with such acceptance of responsibility. This adjustment is not intended to apply to an organization that puts the government to its burden of proof at trial by denying the essential factual elements of guilt, is convicted, and only then admits guilt and expresses remorse. Conviction by trial, however, does not automatically preclude an organization from consideration for such a reduction. In rare situations, an organization may clearly demonstrate an acceptance of responsibility for its criminal conduct even though it exercises its constitutional right to a trial. This may occur, for example, where an organization goes to trial to assert and preserve issues that do not relate to factual guilt (e.g., to make a constitutional challenge to a statute or a challenge to the applicability of a statute to its conduct). In each such instance, however, a determination that an organization has accepted responsibility will be based primarily upon pretrial statements and conduct.

14. In making a determination with respect to subsection (g), the court may determine that the chief executive officer or highest ranking employee of an organization should appear at sentencing in order to signify that the organization has clearly demonstrated recognition and affirmative acceptance of responsibility.

Background: The increased culpability scores under subsection (b) are based on three interrelated principles. First, an organization is more culpable when individuals who manage the organization or who have substantial discretion in acting for the organization participate in, condone, or are willfully ignorant of criminal conduct. Second, as organizations become larger and their managements become more professional, participation in, condonation of, or willful ignorance of criminal conduct by such management is increasingly a breach of trust or abuse of position. Third, as organizations increase in size, the risk of criminal conduct beyond that reflected in the instant offense also increases whenever management's tolerance of that offense is pervasive. Because of the continuum of sizes of organizations and professionalization of management, subsection (b) gradually increases the culpability score based upon the size of the organization and the level and extent of the substantial authority personnel involvement.

§ 8C2.6 Minimum and Maximum Multipliers

Using the culpability score from § 8C2.5 (Culpability Score) and applying any applicable special instruction for fines in chapter Two, determine the applicable minimum and maximum fine multipliers from the table below.

Culpability score	Minimum multiplier	Maximum multiplier
10 or more	2.00	4.00
9	1.80	3.60
8	1.60	3.20
7	1.40	2.80
6	1.20	2.40
5	1.00	2.00
4	0.80	1.60
3	0.60	1.20
2	0.40	0.80
1	0.20	0.40
0 or less	0.05	0.20

Commentary

Application Note

1. A special instruction for fines in § 2R1.1 (Bid-Rigging, Price-Fixing or Market-Allocation Agreements Among Competitors) sets a floor for minimum and maximum multipliers in cases covered by that guideline.

§ 8C2.7 Guideline Fine Range—Organizations

(a) The minimum of the guideline fine range is determined by multiplying the base fine determined under § 8C2.4 (Base Fine) by the applicable minimum multiplier determined under § 8C2.6 (Minimum and Maximum Multipliers).

(b) The maximum of the guideline fine range is determined by multiplying the base fine determined under § 8C2.4 (Base fine) by the applicable maximum multiplier determined under § 8C2.6 (Minimum and Maximum Multipliers).

§ 8C2.8. Determining the Fine Within the Range (Policy Statement)

(a) In determining the amount of the fine within the applicable guideline range, the court should consider:

(1) The need for the sentence to reflect the seriousness of the offense, promote respect for the law, provide just punishment, afford adequate deterrence, and protect the public from further crimes of the organization;

(2) The organization's role in the offense;

(3) Any collateral consequences of conviction, including civil obligations arising from the organization's conduct;

(4) Any nonpecuniary loss caused or threatened by the offense;

(5) Whether the offense involved a vulnerable victim;

(6) Any prior criminal record of an individual within high-level personnel of the organization or high-level personnel of a unit of the organization who participated in, condoned, or was willfully ignorant of the criminal conduct;

(7) Any prior civil or criminal misconduct by the organization other than that counted under § 8C2.5(c);

(8) Any culpability score under § 8C2.5 (Culpability Score) higher than 10 or lower than 0;

(9) Partial but incomplete satisfaction of the conditions for one or more of the mitigating or aggravating factors set forth in § 8C2.5 (Culpability Score); and

(10) Any factor listed in 18 U.S.C. 3572(a).

(b) In addition, the court may consider the relative importance of any factor used to

determine the range, including the pecuniary loss caused by the offense, the pecuniary gain from the offense, any specific offense characteristic used to determine the offense level, and any aggravating or mitigating factor used to determine the culpability score.

Commentary

Application Notes

1. Subsection (a)(2) provides that the court, in setting the fine within the guideline fine range, should consider the organization's role in the offense. This consideration is particularly appropriate if the guideline fine range does not take the organization's role in the offense into account. For example, the guideline fine range in an antitrust case does not take into consideration whether the organization was an organizer or leader of the conspiracy. A higher fine within the guideline fine range ordinarily will be appropriate for an organization that takes a leading role in such an offense.

2. Subsection (a)(3) provides that the court, in setting the fine within the guideline fine range, should consider any collateral consequences of conviction, including civil obligations arising from the organizations' conduct. As a general rule, collateral consequences that merely make victims whole provide no basis for reducing the fine within the guideline range. If criminal and civil sanctions are unlikely to make victims whole, this may provide a basis for a higher fine within the guideline fine range. If punitive collateral sanctions have been or will be imposed on the organization, this may provide a basis for a lower fine within the guideline fine range.

3. Subsection (a)(4) provides that the court, in setting the fine within the guideline fine range, should consider any nonpecuniary loss caused or threatened by the offense. To the extent that nonpecuniary loss caused or threatened (e.g., loss of or threat to human life; psychological injury; threat to national security) by the offense is not adequately considered in setting the guideline fine range, this factor provides a basis for a higher fine within the range. This factor is more likely to be applicable where the guideline fine range is determined by pecuniary loss or gain, rather than by offense level, because the Chapter Two offense levels frequently take actual or threatened nonpecuniary loss into account.

4. Subsection (a)(6) provides that the court, in setting the fine within the guideline fine range, should consider any prior criminal record of an individual within high-level personnel of the organization or a unit of the organization. Since an individual within high-level personnel either exercises substantial control over the organization or a unit of the organization or has a substantial role in the making of policy within the organization or a unit of the organization, any prior criminal misconduct of such an individual may be relevant to the determination of the appropriate fine for the organization.

5. Subsection (a)(7) provides that the court, in setting the fine within the guideline fine range, should consider any prior civil or criminal misconduct by the organization other than that counted under § 8C2.5(c). The civil and criminal misconduct counted under § 8C2.5(c) increases the guideline fine range. Civil or criminal misconduct other than that counted under § 8C2.5(c) may provide a basis for a higher fine within the range. In a case involving a pattern of illegality, an upward departure may be warranted.

6. Subsection (a)(8) provides that the court, in setting the fine within the guideline fine range, should consider any culpability score higher than ten or lower than zero. As the culpability score increases above ten, this may provide a basis for a higher fine within the range. Similarly, as the culpability score decreases below zero, this may provide a basis for a lower fine within the range.

7. Under subsection (b), the court, in determining the fine within the range, may consider any factor that it considered in determining the range. This allows for courts to differentiate between cases that have the same offense level but differ in seriousness (e.g., two fraud cases at offense level 12, one resulting in a loss of $21,000, the other $40,000). Similarly, this allows for courts to differentiate between two cases that have the same aggravating factors, but in which those factors vary in their intensity (e.g., two cases with upward adjustments to the culpability score under § 8C2.5(c)(2) (prior criminal adjudications within 5 years of the commencement of the instant offense, one involving a single conviction, the other involving two or more convictions).

Background: Subsection (a) includes factors that the court is required to consider under 18 U.S.C. 3553(a) and 3572(a) as well as additional factors that the Commission has determined may be relevant in a particular case. A number of factors required for consideration under 18 U.S.C. 3572(a) (e.g., pecuniary loss, the size of the organization) are used under the fine guidelines in this subpart to determine the fine range, and therefore are not specifically set out again in subsection (a) of this guideline. In unusual cases, factors listed in this section may provide a basis for departure.

§ 8C2.9. Disgorgement

The court shall add to the fine determined under § 8C2.8 (Determining the Fine Within the Range) any gain to the organization from the offense that has not and will not be paid as restitution or by way of other remedial measures.

Commentary

Application Note

1. This section is designed to ensure that the amount of any gain that has not and will not be taken from the organization for remedial purposes will be added to the fine. This section typically will apply in cases in which the organization has received gain from an offense but restitution or remedial efforts will not be required because the offense did not result in harm to identifiable victims, e.g., money laundering, obscenity, and regulatory reporting offenses. Money spent or to be spent to remedy the adverse effects of the offense, e.g., the cost to retrofit defective products, should be considered as disgorged gain. If the cost of remedial efforts made or to be made by the organization equals or exceeds the gain from the offense, this section will not apply.

§ 8C2.10. Determining the Fine for Other Counts

For any count or counts not covered under § 8C2.1 (Applicability of Fine Guidelines), the court should determine an appropriate fine by applying the provisions of 18 U.S.C. 3553 and 3572. The court should determine the appropriate fine amount, if any, to be imposed in addition to any fine determined under § 8C2.8 (Determining the Fine Within the Range) and § 8C2.9 (Disgorgement).

Commentary

Background: The Commission has not promulgated guidelines governing the setting of fines for counts not covered by § 8C2.1 (Applicability of Fine Guidelines). For such counts, the court should determine the appropriate fine based on the general statutory provisions governing sentencing. In cases that have a count or counts not covered by the guidelines in addition to a count or counts covered by the guidelines, the court shall apply the fine guidelines for the count(s) covered by the guidelines, and add any additional amount to the fine, as appropriate, for the count(s) not covered by the guidelines.

3. Implementing the Sentence of a Fine

§ 8C3.1. Imposing a Fine

(a) Except to the extent restricted by the maximum fine authorized by statute or any minimum fine required by statute, the fine or fine range shall be that determined under § 8C1.1 (Determining the Fine—Criminal Purpose Organizations); § 8C2.7 (Guideline Fine Range—Organizations) and § 8C2.9 (Disgorgement); or § 8C2.10 (Determining the Fine for Other Counts), as appropriate.

(b) Where the minimum guideline fine is greater than the maximum fine authorized by statute, the maximum fine authorized by statute shall be the guideline fine.

(c) Where the maximum guideline fine is less than a minimum fine required by statute, the minimum fine required by statute shall be the guideline fine.

Commentary

Background: This section sets forth the interaction of the fines or fine ranges determined under this chapter with the maximum fine authorized by statute and any minimum fine required by statute for the count or counts of conviction. The general statutory provisions governing a sentence of a fine are set forth in 18 U.S.C. 3571(c).

When the organization is convicted of multiple counts, the maximum fine authorized by statute may increase. For example, in the case of an organization convicted of three felony counts related to a $200,000 fraud, the maximum fine authorized by statute will be $500,000 on each count, for an aggregate maximum authorized fine of $1,500,000.

§ 8C3.2. Payment of the Fine—Organizations

(a) If the defendant operated primarily for a criminal purpose or primarily by criminal means, immediate payment of the fine shall be required.

(b) In any other case, immediate payment of the fine shall be required unless the court finds that the organization is financially unable to make immediate payment or that

such payment would pose an undue burden on the organization. If the court permits other than immediate payment, it shall require full payment at the earliest possible date, either by requiring payment on a date certain or by establishing an installment schedule.

Commentary

Application Note

1. When the court permits other than immediate payment, the period provided for payment shall in no event exceed five years. 18 U.S.C. 3572(d).

§ 8C3.3. Reduction of Fine Based on Inability to Pay

(a) The court shall reduce the fine below that otherwise required by § 8C1.1 (Determining the Fine—Criminal Purpose Organizations), or § 8C2.7 (Guideline Fine Range—Organizations) and § 8C2.9 (Disgorgement), to the extent that imposition of such fine would impair its ability to make restitution to victims.

(b) The court may impose a fine below that otherwise required by § 8C2.7 (Guideline Fine Range—Organizations) and § 8C2.9 (Disgorgement) if the court finds that the organization is not able and, even with the use of a reasonable installment schedule, is not likely to become able to pay the minimum fine required by § 8C2.7 (Guideline Fine Range—Organizations) and § 8C2.9 (Disgorgement).

Provided, that the reduction under this subsection shall not be more than necessary to avoid substantially jeopardizing the continued viability of the organization.

Commentary

Application Note

1. For purposes of this section, an organization is not able to pay the minimum fine if, even with an installment schedule under § 8C3.2 (Payment of the Fine—Organizations), the payment of that fine would substantially jeopardize the continued existence of the organization.

Background: Subsection (a) carries out the requirement in 18 U.S.C. 3572(b) that the court impose a fine or other monetary penalty only to the extent that such fine or penalty will not impair the ability of the organization to make restitution for the offense; however, this section does not authorize a criminal purpose organization to remain in business in order to pay restitution.

§ 8C3.4. Fines Paid by Owners of Closely-Held Organizations

The court may offset the fine imposed upon a closely-held organization when one or more individuals, each of whom owns at least a 5 percent interest in the organization, has been fined in a federal criminal proceeding for the same offense conduct for which the organization is being sentenced. The amount of such offset shall not exceed the amount resulting from multiplying the total fines imposed on those individuals by those individuals' total percentage interest in the organization.

Commentary

Application Notes

1. For purposes of this section, an organization is closely held, regardless of its size, when relatively few individuals own it. In order for an organization to be closely held, ownership and management need not completely overlap.

2. This section does not apply to a fine imposed upon an individual that arises out of offense conduct different from that for which the organization is being sentenced.

Background: For practical purposes, most closely-held organizations are the alter egos of their owner-managers. In the case of criminal conduct by a closely-held corporation, the organization and the culpable individual(s) both may be convicted. As a general rule in such cases, appropriate punishment may be achieved by offsetting the fine imposed upon the organization by an amount that reflects the percentage ownership interest of the sentenced individuals and the magnitude of the fines imposed upon those individuals. For example, an organization is owned by five individuals, each of whom has a twenty percent interest; three of the individuals are convicted; and the combined fines imposed on those three equals $100,000. In this example, the fine imposed upon the organization may be offset by up to 60 percent of their combined fine amounts, i.e., by $60,000.

4. Departures From the Guideline Fine Range

Introductory Commentary

The statutory provisions governing departures are set forth in 18 U.S.C. 3553(b). Departure may be warranted if the court finds 'that there exists an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence different from that described.' This subpart sets forth certain factors that, in connection with certain offenses, may not have been adequately taken into consideration by the guidelines. In deciding whether departure is warranted, the court should consider the extent to which that factor is adequately taken into consideration by the guidelines and the relative importance or substantiality of that factor in the particular case.

To the extent that any policy statement from chapter Five, part K (Departures) is relevant to the organization, a departure from the applicable guideline fine range may be warranted. Some factors listed in chapter Five, part K that are particularly applicable to organizations are listed in this subpart. Other factors listed in chapter Five, part K may be applicable in particular cases. While this subpart lists factors that the Commission believes may constitute grounds for departure, the list is not exhaustive.

§ 8C4.1. Substantial Assistance to Authorities—Organizations (Policy Statement)

(a) Upon motion of the government stating that the defendant has provided substantial assistance in the investigation or prosecution of another organization that has committed an offense, or in the investigation or prosecution of an individual not directly affiliated with the defendant who has committed an offense, the court may depart from the guidelines.

(b) The appropriate reduction shall be determined by the court for reasons stated on the record that may include, but are not limited to, consideration of the following:

(1) The court's evaluation of the significance and usefulness of the organization's assistance, taking into consideration the government's evaluation of the assistance rendered;

(2) The nature and extent of the organization's assistance; and

(3) the timeliness of the organization's assistance.

Commentary

Application Note

1. Departure under this section is intended for cases in which substantial assistance is provided in the investigation or prosecution of crimes committed by individuals not directly affiliated with the organization or by other organizations. It is not intended for assistance in the investigation or prosecution of the agents of the organization responsible for the offense for which the organization is being sentenced.

§ 8C4.2. Risk of Death or Bodily Injury (Policy Statement)

If the offense resulted in death or bodily injury, or involved a foreseeable risk of death or bodily injury, an upward departure may be warranted. The extent of any such departure should depend, among other factors, on the nature of the harm and the extent to which the harm was intended or knowingly risked, and the extent to which such harm or risk is taken into account within the applicable guideline fine range.

§ 8C4.3. Threat to National Security (Policy Statement)

If the offense constituted a threat to national security, an upward departure may be warranted.

§ 8C4.4. Threat to the Environment (Policy Statement)

If the offense presented a threat to the environment, an upward departure may be warranted.

§ 8C4.5. Threat to a Market (Policy Statement)

If the offense presented a risk to the integrity or continued existence of a market, an upward departure may be warranted. This section is applicable to both private markets (e.g., a financial market, a commodities market, or a market for consumer goods) and public markets (e.g., government contracting).

§ 8C4.6. Official Corruption (Policy Statement)

If the organization, in connection with the offense, bribed or unlawfully gave a gratuity to a public official, or attempted or conspired to bribe or unlawfully give a gratuity to a public official, an upward departure may be warranted.

§ 8C4.7. Public Entity (Policy Statement)

If the organization is a public entity, a downward departure may be warranted.

§ 8C4.8. Members or Beneficiaries of the Organization as Victims (Policy Statement)

If the members or beneficiaries, other than shareholders, of the organization are direct victims of the offense, a downward departure may be warranted. If the members or beneficiaries of an organization are direct victims of the offense, imposing a fine upon the organization may increase the burden upon the victims of the offense without achieving a deterrent effect. In such cases, a fine may not be appropriate. For example, departure may be appropriate if a labor union is convicted of embezzlement of pension funds.

§ 8C4.9. Remedial Costs that Greatly Exceed Gain (Policy Statement)

If the organization has paid or has agreed to pay remedial costs arising from the offense that greatly exceed the gain that the organization received from the offense, a downward departure may be warranted. In such a case, a substantial fine may not be necessary in order to achieve adequate punishment and deterrence. In deciding whether departure is appropriate, the court should consider the level and extent of substantial authority personnel involvement in the offense and the degree to which the loss exceeds the gain. If an individual within high-level personnel was involved in the offense, a departure would not be appropriate under this section. The lower the level and the more limited the extent of substantial authority personnel involvement in the offense, and the greater the degree to which remedial costs exceeded or will exceed gain, the less will be the need for a substantial fine to achieve adequate punishment and deterrence.

§ 8C4.10. Mandatory Programs to Prevent and Detect Violations of Law (Policy Statement)

If the organization's culpability score is reduced under § 8C2.5(f) (Effective Program to Prevent and Detect Violations of Law) and the organization had implemented its program in response to a court order or administrative order specifically directed at the organization, an upward departure may be warranted to offset, in part or in whole, such reduction.

§ 8C4.11. Exceptional Organizational Culpability (Policy Statement)

If the organization's culpability score is greater than 10, an upward departure may be appropriate.

If no individual within substantial authority personnel participated in, condoned, or was willfully ignorant of the offense; the organization at the time of the offense had an effective program to prevent and detect violations of law; and the base fine is determined under § 8C2.4(a)(1), § 8C2.4(a)(3), or a special instruction for fines in Chapter Two (Offense Conduct), a downward departure may be warranted. In a case meeting these criteria, the court may find that the organization had exceptionally low culpability and therefore a fine based on loss, offense level, or a special Chapter Two instruction results in a guideline fine range higher than necessary to achieve the purposes of sentencing. Nevertheless, such fine should not be lower than if determined under § 8C2.4(a)(2).

Part D—Organizational Probation

Introductory Commentary

Section 8D1.1 sets forth the circumstances under which a sentence to a term of probation is required. Sections 8D1.2 through 8D1.5 address the length of the probation term, conditions of probation, and violations of probation conditions.

§ 8D1.1. Imposition of Probation—Organizations

(a) The court shall order a term of probation:

(1) If such sentence is necessary to secure payment of restitution (§ 8B1.1), enforce a remedial order (§ 8B1.2), or ensure completion of community service (§ 8B1.3);

(2) If the organization is sentenced to pay a monetary penalty (e.g., restitution, fine, or special assessment), the penalty is not paid in full at the time of sentencing, and restrictions are necessary to safeguard the organization's ability to make payments;

(3) If, at the time of sentencing, an organization having 50 or more employees does not have an effective program to prevent and detect violations of law;

(4) If the organization within five years prior to sentencing engaged in similar misconduct, as determined by a prior criminal adjudication, and any part of the misconduct underlying the instant offense occurred after that adjudication;

(5) If an individual within high-level personnel of the organization or the unit of the organization within which the instant offense was committed participated in the misconduct underlying the instant offense and that individual within five years prior to sentencing engaged in similar misconduct, as determined by a prior criminal adjudication, and any part of the misconduct underlying the instant offense occurred after that adjudication;

(6) If such sentence is necessary to ensure that changes are made within the organization to reduce the likelihood of future criminal conduct;

(7) If the sentence imposed upon the organization does not include a fine; or

(8) If necessary to accomplish one or more of the purposes of sentencing set forth in 18 U.S.C. 3553(a)(2).

Commentary

Background: Under 18 U.S.C. 3561(a), an organization may be sentenced to a term of probation. Under 18 U.S.C. 3551(c), imposition of a term of probation is required if the sentence imposed upon the organization does not include a fine.

§ 8D1.2. Term of Probation—Organizations

(a) When a sentence of probation is imposed—

(1) In the case of a felony, the term of probation shall be at least one year but not more than five years.

(2) In any other case, the term of probation shall be not more than five years.

Commentary

Application Note

1. Within the limits set by the guidelines, the term of probation should be sufficient, but not more than necessary, to accomplish the court's specific objectives in imposing the term of probation. The terms of probation set forth in this section are those provided in 18 U.S.C. 3561(b).

§ 8D1.3. Conditions of Probation—Organizations

(a) Pursuant to 18 U.S.C. 3563(a)(1), any sentence of probation shall include the condition that the organization shall not commit another federal, state, or local crime during the term of probation.

(b) Pursuant to 18 U.S.C. 3563(a)(2), if a sentence of probation is imposed for a felony, the court shall impose as a condition of probation at least one of the following: A fine, restitution, or community service, unless the court finds on the record that extraordinary circumstances exist that would make such condition plainly unreasonable, in which event the court shall impose one or more other conditions set forth in 18 U.S.C. 3563(b).

(c) The court may impose other conditions that (1) are reasonably related to the nature and circumstances of the offense or the history and characteristics of the organization; and (2) involve only such deprivations of liberty or property as are necessary to effect the purposes of sentencing.

§ 8D1.4. Recommended Conditions of Probation—Organizations (Policy Statement)

(a) The court may order the organization, at its expense and in the format and media specified by the court, to publicize the nature of the offense committed, the fact of conviction, the nature of the punishment imposed, and the steps that will be taken to prevent the recurrence of similar offenses.

(b) If probation is imposed under § 8D1.1(a)(2), the following conditions may be appropriate to the extent they appear necessary to safeguard the organization's ability to pay any deferred portion of an order of restitution, fine, or assessment:

(1) The organization shall make periodic submissions to the court or probation officer, at intervals specified by the court, reporting on the organization's financial condition and results of business operations, and accounting for the disposition of all funds received.

(2) The organization shall submit to: (A) A reasonable number of regular or unannounced examinations of its books and records at appropriate business premises by the probation officer or experts engaged by the court; and (B) interrogation of knowledgeable individuals within the organization. Compensation to and costs of any experts engaged by the court shall be paid by the organization.

(3) The organization shall be required to notify the court or probation officer immediately upon learning of (A) any material adverse change in its business or financial condition or prospects, or (B) the commencement of any bankruptcy

proceeding, major civil litigation, criminal prosecution, or administrative proceeding against the organization, or any investigation or formal inquiry by governmental authorities regarding the organization.

(4) The organization shall be required to make periodic payments, as specified by the court, in the following priority: (1) Restitution; (2) fine; and (3) any other monetary sanction.

(c) If probation is ordered under § 8D1.1(a) (3), (4), (5), or (6), the following conditions may be appropriate:

(1) The organization shall develop and submit to the court a program to prevent and detect violations of law, including a schedule for implementation.

(2) Upon approval by the court of a program to prevent and detect violations of law, the organization shall notify its employees and shareholders of its criminal behavior and its program to prevent and detect violations of law. Such notice shall be in a form prescribed by the court

(3) The organization shall make periodic reports to the court or probation officer, at intervals and in a form specified by the court, regarding the organization's progress in implementing the program to prevent and detect violations of law. Among other things, such reports shall disclose any criminal prosecution, civil litigation, or administrative proceeding commenced against the organization, or any investigation or formal inquiry by governmental authorities of which the organization learned since its last report.

(4) In order to monitor whether the organization is following the program to prevent and detect violations of law, the organization shall submit to: (A) A reasonable number of regular or unannounced examinations of its books and records at appropriate business premises by the probation officer or experts engaged by the court; and (B) interrogation of knowledgeable individuals within the organization. Compensation to and costs of any experts engaged by the court shall be paid by the organization.

Commentary

Application Notes

1. In determining the conditions to be imposed when probation is ordered under § 8D1.1(a) (3) through (6), the court should consider the views of any governmental regulatory body that oversees conduct of the organization relating to the instant offense. To assess the efficacy of a program submitted by the organization, the court may employ appropriate experts who shall be afforded access to all material possessed by the organization that is necessary for a comprehensive assessment of the proposed program. The court should approve any program that appears reasonably calculated to prevent and detect violations of law, provided it is consistent with any applicable statutory or regulatory requirement.

2. Periodic reports submitted in accordance with subsection (c)(3) should be provided to any governmental regulatory body that oversees conduct of the organization relating to the instant offense.

§ 8D1.5. Violations of Conditions of Probation—Organizations (Policy Statement)

Upon a finding of a violation of a condition of probation, the court may extend the term of probation, impose more restrictive conditions of probation, or revoke probation and resentence the organization.

Commentary

Application Note

1. In the event of repeated, serious violations of conditions of probation, the appointment of a master or trustee may be appropriate to ensure compliance with court orders.

Part E—Special Assessments, Forfeitures, and Costs

§ 8E1.1 Special Assessments—Organizations

A special assessment must be imposed on an organization in the amount prescribed by statute.

Commentary

Background: Pursuant to 18 U.S.C. 3013(a), the court is required to impose assessments in the following amounts:

$50, if the organization is convicted of a Class B misdemeanor;

$125, if the organization is convicted of a Class A misdemeanor; and

$200, if the organization is convicted of a felony. 18 U.S.C. 3013.

The Act does not authorize the court to waive imposition of the assessment.

§ 8E1.2. Forfeiture—Organizations

Apply § 5E1.4 (Forfeiture).

§ 8E1.3. Assessment of Costs—Organizations

As provided in 28 U.S.C. § 1918, the court may order the organization to pay the costs of prosecution. In addition, specific statutory provisions mandate assessment of costs.".

Section 2B4.1 is amended by inserting the following additional subsection:

"(c) Special Instruction for Fines—Organizations.

In lieu of the pecuniary loss under subsection (a)(3) of § 8C2.4 (Base Fine), use the greatest of: (1) the value of the unlawful payment; (2) the value of the benefit received or to be received in return for the unlawful payment; or (3) the consequential damages resulting from the unlawful payment.".

Section 2C1.1 is amended by inserting the following additional subsection:

"(d) Special Instruction for Fines—Organizations.

In lieu of the pecuniary loss under subsection (a)(3) of § 8C2.4 (Base Fine), use the greatest of: (1) the value of the unlawful payment; (2) the value of the benefit received or to be received in return for the unlawful payment; or (3) the consequential damages resulting from the unlawful payment.".

Section 2C1.2 is amended by inserting the following additional subsection:

"(c) Special Instruction for Fines—Organizations.

In lieu of the pecuniary loss under subsection (a)(3) of § 8C2.4 (Base Fine), use the value of the unlawful payment.".

Section 2E5.1 is amended by inserting the following additional subsection:

"(c) Special Instruction for Fines—Organizations.

In lieu of the pecuniary loss under subsection (a)(3) of § 8C2.4 (Base Fine), use the greatest of: (1) The value of the unlawful payment; (2) if a bribe, the value of the benefit received or to be received in return for the unlawful payment; or (3) if a bribe, the consequential damages resulting from the unlawful payment.".

Section 2E5.6 is amended by inserting the following additional subsection:

"(c) Special Instruction for Fines—Organizations

In lieu of the pecuniary loss under subsection (a)(3) of § 8C2.4 (Base Fine), use the greatest of: (1) The value of the unlawful payment; (2) if a bribe, the value of the benefit received or to be received in return for the unlawful payment; or (3) if a bribe, the consequential damages resulting from the unlawful payment."

The Commentary to section 2F1.1 captioned "Application Notes" is amended at Application Note 7 by inserting the following penultimate paragraph:

"For offenses involving diversion of government program payments, loss is the value of the monetary benefits diverted from intended recipients or uses.".

Section 2R1.1 is amended by inserting the following additional subsection:

"(d) Special Instructions for Fines—Organizations.

(1) In lieu of the pecuniary loss under subsection (a)(3) of § 8C2.4 (Base Fine), use 20 percent of the volume of affected commerce.

(2) When applying § 8C2.6 (Minimum and Maximum Multipliers), neither the minimum nor maximum multiplier shall be less than 0.75.

(3) In a bid-rigging case in which the organization submitted one or more complementary bids, use as the organization's volume of commerce the greater of (A) the volume of commerce done by the organization in the goods or services that were affected by the violation, or (B) the largest contract on which the organization submitted a complementary bid in connection with the bid-rigging conspiracy.".

The Commentary to § 2R1.1 captioned "Application Notes" is amended by deleting Application Note 3 and inserting in lieu thereof:

"3. The fine for an organization is determined by applying Chapter Eight (Sentencing of Organizations). In selecting a fine for an organization within the guideline fine range, the court should consider both the gain to the organization from the offense and the loss caused by the organization. It is estimated that the average gain from price-fixing is 10 percent of the selling price. The loss from price-fixing exceeds the gain because, inter alia, injury is inflicted upon

consumers who are unable or for other reasons do not buy the product at the higher prices. Because the loss from price-fixing exceeds the gain, subsection (d)(1) provides that 20 percent of the volume of affected commerce is to be used in lieu of the pecuniary loss under § 8C2.4(a)(3). The purpose for specifying a percent of the volume of commerce is to avoid the time and expense that would be required for the court to determine the actual gain or loss. In cases in which the actual monopoly overcharge appears to be either substantially more or substantially less than 10 percent, this factor should be considered in setting the fine within the guideline fine range.".

The Commentary to § 2R.1 is amended by deleting the final paragraph of Background and inserting in lieu thereof:

"Substantial fines are an essential part of the sentence. For an individual, the guideline fine range is from one to five percent of the volume of commerce, but not less than $20,000. For an organization, the guideline fine range is determined under Chapter Eight (Sentencing of Organizations), but pursuant to subsection (d)(2), the minimum multiplier is 0.75. This multiplier allows a minimum fine of 15 percent of the volume of commerce for the least serious case. The minimum multiplier of 0.75 was selected to provide an effective deterrent to antitrust offenses. At the same time, this minimum multiplier maintains incentives for desired organizational behavior. Because the Department of Justice has a well-established amnesty program for organizations that self-report antitrust offenses, no lower minimum multiplier is needed as an incentive for self-reporting. A minimum multiplier of 0.75 ensures that fines imposed in antitrust cases will exceed the average monopoly overcharge.

The Commission believes that most antitrust defendants have the resources and earning capacity to pay the fines called for by this guideline, at least over time on an installment basis. The statutory maximum fine is $350,000 for individuals and $1,000,000 for organizations, but is increased when there are convictions on multiple counts.".

Section 2S1.1 is amended by inserting the following additional subsection:

"(c) Special Instructions for Fines—Organizations.

In lieu of the applicable amount from the table in subsection (d) of § 8C2.4 (Base Fine), use:

(1) The greater of $250,000 or 100 percent of the value of the funds if subsections (a)(1) and (b)(1) are used to determine the offense level; or

(2) The greater of $200,000 or 70 percent of the value of the funds if subsections (a)(2) and (b)(1) are used to determine the offense level; or

(3) The greater of $200,000 or 70 percent of the value of the funds if subsection (a)(1) but not (b)(1) is used to determine the offense level; or

(4) The greater of $150,000 or 50 percent of the value of the funds if subsection (a)(2) but not (b)(1) is used to determine the offense level.".

Section 2S1.2 is amended by inserting the following additional subsection:

"(c) Special Instructions for Fines—Organizations.

In lieu of the applicable amount from the table in subsection (d) of § 8C2.4 (Base Fine), use:

(1) The greater of $175,000 or 60 percent of the value of the funds if subsection (b)(1)(A) is used to determine the offense level; or

(2) The greater of $150,000 or 50 percent of the value of the funds if subsection (b)(1)(B) is used to determine the offense level.".

Section 2S1.3 is amended by inserting the following additional subsection:

"(c) Special Instructions for Fines—Organizations.

In lieu of the applicable amount from the table in subsection (d) of § 8C2.4 (Base Fine), use:

(1) The greater of $125,000 or 30 percent of the value of the funds if subsections (a)(1) and (b)(1) are used to determine the offense level; or

(2) The greater of $50,000 or 20 percent of the value of the funds if subsection (a)(1) but not (b)(1) is used to determine the offense level.".

Section 2S1.4 is amended by inserting the following additional subsection:

"(c) Special Instructions for Fines—Organizations.

In lieu of the applicable amount from the table in subsection (d) of § 8C2.4 (Base Fine), use:

(1) The greater of $50,000 or 20 percent of the value of the funds if subsection (b)(1) or (b)(2) is used to determine the offense level; or

(2) The greater of $15,000 or 10 percent of the value of the funds, otherwise.".

Reason for the Amendment: Pursuant to its authority and in accord with its responsibilities under 28 U.S.C. 994(a), the Commission has promulgated guidelines and policy statements for the sentencing of organizational defendants. The Commentary contained within chapter Eight, particularly the Introductory and Background Commentary, provides a basic statement of the reasons for the Commission's recommendations.

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May 16, 1991

Part III

Department of Labor

Employment and Training Administration

20 CFR Part 625

Disaster Unemployment Assistance Program; Amendments to Regulations; Final Rule

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 625

RIN 1205-AA50

Disaster Unemployment Assistance Program; Amendments to Regulations

AGENCY: Employment and Training Administration, Labor.

ACTION: Final rule.

SUMMARY: The Employment and Training Administration of the Department of Labor is issuing this notice of final rulemaking implementing the statutory amendments affecting the Disaster Unemployment Assistance Program. These amendments made significant changes in the statute governing the program of unemployment assistance to people unemployed because of a major disaster. The major amendments reduce the maximum duration of disaster unemployment assistance from one year to 26 weeks, disqualify an individual who is entitled to any unemployment insurance or waiting period credit, and provide a statutory right of appeal and fair hearing from decisions on eligibility for disaster unemployment assistance.

DATES: *Effective date:* The effective date of this final rule is May 16, 1991.

FOR FURTHER INFORMATION CONTACT: Barbara Ann Farmer, Director, Office of Program Management in the Unemployment Insurance Service, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210: Telephone (202) 535-0610 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Section 407 of the Disaster Relief Act of 1974 (hereafter the DRA) set forth the amended outlines of the Disaster Unemployment Assistance Program (hereafter the "DUA Program"). The President was authorized by section 407 to provide to any individual unemployed as a result of a major disaster declared by the President under the Act "such benefit assistance as he deems appropriate while such individual is unemployed." Other terms of section 407 provided that disaster unemployment assistance (hereafter "DUA") was to be furnished to individuals for no longer than one year after the major disaster was declared; and for any week of unemployment a DUA payment was not to exceed the maximum weekly benefit amount authorized under the unemployment compensation law of the State in which the disaster occurred; and any DUA payment was to be reduced by the amount of any unemployment compensation or private income protection insurance compensation available to the individual for the same week of unemployment. The President was directed by section 407 to provide DUA through agreements with States which, in his judgment, had an adequate system for administering the DUA Program through existing State agencies.

Pursuant to a delegation of authority to the Secretary of Labor, United States Department of Labor, initially from the Secretary of Housing and Urban Development, and subsequently from the Director of the Federal Emergency Management Agency (hereafter FEMA), the DUA Program authorized by section 407 of the DRA was implemented in regulations promulgated by the Department of Labor and published at part 625 of title 20 of the Code of Federal Regulations (20 CFR part 625).

Title I of Public Law 100-707, approved on November 23, 1988, is cited as The Disaster Relief and Emergency Assistance Amendments of 1988 (hereafter the "DREA"). In title I, extensive amendments were made to the Disaster Relief Act of 1974. The short title of the Act was changed to The Robert T. Stafford Disaster Relief and Emergency Assistance Act (hereafter the "Stafford Act"); section 407 was redesignated as section 410; significant changes were made in redesignated section 410; and other changes and provisions were made affecting the DUA Program.

Section 113 of Public Law 100-707 directs that regulations implementing the amended Stafford Act shall be issued no later than the 180th day after the date of enactment (that is, November 23, 1988). Section 112 of Public Law 100-707 provides that the amendments in title I "shall not affect the administration of any assistance for a major disaster * * * declared by the President before the date of the enactment of this Act."

In view of the application of the amended Stafford Act to major disasters declared on and after November 23, 1988, and the statutory direction to issue regulations not later than the 180th day after November 23, 1988, the Department determined it was necessary to issue an interim final rule amending 20 CFR part 625, which became effective upon publication in the **Federal Register** (55 FR 550, January 5, 1990) and provided a 30-day comment period following such publication (ending February 5, 1990).

Since the amendments to section 410 took effect on November 23, 1988, and major disaster declarations were issued by the President soon after enactment, and it was necessary to apply the amendments in the DREA to such disasters, the Department determined, pursuant to 5 U.S.C. 553(b)(3)(B), that good cause existed for publishing the amendments to 20 CFR part 625 as an interim final rule, with a post-publication comment period, because a pre-publication comment period was impracticable and contrary to the public interest. For the same reasons the Department determined, pursuant to 5 U.S.C. 553(d), that good cause existed for making the amendments to 20 CFR part 625 effective upon publication in the **Federal Register.**

Further, in order to effectuate the amendments to the DUA Program in a timely fashion, pending the publication of the interim final rule, the Department issued Unemployment Insurance Program Letter No. (hereafter "UIPL") 16-89 to the States, and entered into modified agreements with the States to implement the amendments. UIPL 16-89 sets forth operating instructions to the States for implementing the amended DUA Program, and was published in the **Federal Register** on March 24, 1989, at 54 FR 12295. Change 1 to UIPL 16-89, containing further operating instructions, was published in the **Federal Register** on June 23, 1989, at 54 FR 26448.

The provisions of section 410 of the Stafford Act supersede the prior statute and regulations for the DUA Program, to the extent that the provisions of the Stafford Act are inconsistent with the prior statute and regulations. Therefore, the provisions of the Stafford Act are given effect as of their effective date, as is required by section 112 of the Stafford Act. In no case may any determination of entitlement to DUA Program benefits that are affected by the Stafford Act be based upon the prior statute or the regulations implementing the prior statute. The UIPLs discussed above govern decisions and agency actions from November 23, 1988, through January 4, 1990, with respect to major disasters declared on and after November 23, 1988. The interim final rule governs decisions and agency actions from January 5, 1990, to the day before the effective date of this final rule, with respect to major disasters declared on and after November 23, 1988, and this final rule governs decisions and agency actions on and after the date of publication of this document, with respect to major disasters declared on and after November 23, 1988. Although different documents govern different time periods

with respect to major disasters declared on and after November 23, 1988, substantively these documents are the same. There were no substantive changes in the rules from the UIPLs to the interim final rule, or in this final rule. This final rule is changed only to the extent of adding details to the definition of "State", making conforming amendments to other sections of part 625, and for clarification of §§ 625.5 (a)(1) and (b)(1). However, the administration of the DUA Program with respect to any major disaster declared by the President prior to November 23, 1988, continues to be controlled by the regulations at 20 CFR part 625 (42 FR 46712, September 16, 1977) that were in effect prior to the publication of the interim final rule.

The significant DREA amendments to the Stafford Act affecting the DUA Program are:

Section 106(f)(1) of the DREA amends section 410(a) of the Stafford Act to provide that DUA is payable to an individual for a week of unemployment only if "the individual is not entitled to any other unemployment compensation (as that term is defined in section 85(b) of the Internal Revenue Code of 1986) or waiting period credit."

Section 106(f)(2) of the DREA amends section 410(a) of the Stafford Act to provide that DUA cannot be paid for any period longer than "26 weeks after the major disaster is declared."

Section 106(f)(3) of the DREA amends section 410(a) of the Stafford Act by repealing the provision that the DUA amount calculated and payable to an individual for a week of unemployment "shall be reduced by any amount of unemployment compensation or of private income protection insurance compensation available to such individual for such week of unemployment."

Section 106(f)(4) of the DREA amends section 410(b) of the Stafford Act to provide under subsection (b)(1) that "(a) State shall provide, without reimbursement from any funds provided under this Act, reemployment assistance services under any other law administered by the State to individuals receiving benefits under this section." Subsection (b)(2) provides that "(t)he President may provide (Federal) reemployment assistance services under other laws to individuals who are unemployed as a result of a major disaster and who reside in a State which does not provide such services."

Section 106(1) of the DREA amends title IV of the Stafford Act by adding a new section, section 423. This section provides a right of appeal from any decision regarding "eligibility for, from, or amount of assistance" under title IV, within 60 days after the date on which the applicant is notified of the award or denial of such assistance. Subsection (b) of this new section requires that a decision regarding such an appeal will be rendered within 90 days after the date on which the Federal official designated to administer such appeals receives notice of the appeal. Subsection (c) of this new section requires the President to issue rules which provide for the fair and impartial consideration of these appeals.

Section 103(d) of the DREA amends paragraphs (3) and (4) of section 102 of the Stafford Act to delete "the Canal Zone" from the definitions of "United States" and "State".

In addition, since publication of 20 CFR part 625 in 1977, several amendments were made to title III of the Social Security Act (hereafter "SSA") (42 U.S.C. 501 *et seq.*) and the Federal Unemployment Tax Act (hereafter "FUTA") (26 U.S.C. 3301 *et seq.*). These amendments relate to requirements that each State unemployment compensation law must contain in order for covered employers within the State to receive credits against the Federal unemployment tax imposed under section 3301, FUTA, and for the certification of payment of granted funds to the State under, title III of the SSA. This necessitated amending part 625 to reflect the current statutes as discussed in the preamble of the interim final rule published on January 5, 1990 (55 FR 550).

Amendments Made by the Interim Final Rule

The DRA was renamed "The Robert T. Stafford Disaster Relief and Emergency Assistance Act" by section 102(a) of the DREA. Conforming changes were made, where required, throughout the regulations.

Section 106(e) of the DREA redesignated section 407 of the Stafford Act, which established the DUA Program, as section 410. Conforming changes were made, where required, throughout the regulations.

The definition of "Disaster Assistance Period" under § 625.2(f) was revised to reflect the amendment to section 410(a) of the Stafford Act by section 106(f)(2) of the DREA. Under the amended section 410(a) DUA may not be paid for any period longer than "26 weeks after the major disaster is declared." This was a change from the previous 1-year period. In addition, the definition was revised to remove authority to prescribe a shorter DUA period. The Department has given additional consideration to removal of the authority to prescribe a shorter DUA period and believes that because the period was shortened to 26 weeks by the DREA, when taken in conjunction with the amendment to section 410(a) of the Stafford Act by section 106(f)(1), that DUA is payable to an individual for a week of unemployment only if "the individual is not entitled to any other unemployment compensation * * * or waiting period credit", there is no need to prescribe a shortened "Disaster Assistance Period." Under the previous provisions in section 407 (now 410) there may have been a need to shorten the period from one year because, not only was the payment period lengthy when compared to the payment period for weeks of total unemployment under State unemployment compensation laws, DUA was paid for the unemployment compensation waiting week, and also supplemented any unemployment compensation payable if the weekly DUA calculated amount was higher than the weekly unemployment compensation amount. A shortened period meant that all individuals receiving DUA ceased to be eligible for DUA as of the determined cut-off date. Now, inequities could be created by shortening the period to less than 26 weeks, in that some individuals could still be unemployed due to the disaster, but would no longer be eligible for DUA, whereas, individuals eligible for unemployment compensation and still unemployed due to the disaster would continue to receive benefits because, under the majority of State laws, the maximum period that an individual could claim weeks for being totally unemployed is generally 26 weeks of regular benefits, plus any additional or extended benefits. The Department believes deletion of the provision makes the DUA Program more closely akin to provisions of the unemployment compensation program; hence, the removal of the provision is appropriate.

Sections 625.2 (p), (q), and (r), 625.6 and 625.12 were modified by deleting the Canal Zone for treatment as a "State" for purposes of the DUA Program as required by amended section 102 of the Stafford Act. These sections are amended, and other conforming changes are made, to specifically identify all of the "States" that are included in the DUA Program, as discussed below.

In accordance with section 410(b) of the Stafford Act, § 625.3 was expanded to provide that a State shall provide, without reimbursement from any funds provided under the Act, reemployment assistance services under any other law administered by the State to individuals receiving DUA. For "States" that do not offer any reemployment assistance

services, the Department of Labor, in consultation with the Federal Emergency Management Agency, will determine what services or programs are needed, and if any available Federal programs of reemployment services can be implemented in that jurisdiction.

Section 625.4 was modified by adding a paragraph (i) to provide that an individual shall not be eligible for DUA for any week the individual is eligible to receive any other unemployment compensation or is eligible for a waiting period credit for such week under any other unemployment compensation program. Also, § 625.13(a) was modified to delete the provision that unemployment compensation is deductible from weekly DUA payable. The term "unemployment compensation" is as it is defined in section 85(b) of the Internal Revenue Code of 1986 and further defined in § 625.2(d) of this part.

These changes mean that DUA is not payable for any week the individual is eligible for unemployment compensation or waiting period credit under any State law or any Federal law other than the Stafford Act. As set out in § 625.4(i), an individual is considered eligible for compensation (and thus ineligible for DUA) if payment (or credit) was denied because of the receipt of disqualifying income. An individual shall be considered ineligible for compensation (and thus potentially eligible for DUA) if the individual is under a disqualification for compensation for a cause (other than receipt of disqualifying income) that occurred before the individual's disaster related unemployment. An individual shall be considered eligible for DUA if the individual is ineligible for compensation for any other reason that is a direct result of the major disaster, including cases such as ineligibility for compensation because of an injury resulting from the disaster, or because of inability to reach the place of employment due to damage caused by the disaster.

Section 625.10 was changed significantly. The period for filing an appeal from a determination or redetermination is changed from the amount of time permitted by the applicable State unemployment compensation law to 60 days. The fair and impartial hearing and decision will continue to be administered by State unemployment compensation hearing officers except in Guam, American Samoa, and the Trust Territory of the Pacific Islands. However, it will be necessary for all DUA appeals to be decided by State hearing officers within 30 days of receipt of the appeal. The applicant will be allowed to appeal the State hearing officer's decision to the appropriate Regional Administrator within 15 days after the hearing officer's decision is delivered or mailed to the individual. The Regional Administrator will have 45 days to obtain the record from the State and to issue a decision on the appeal, but the decision by the Regional Administrator must in every case be issued within 90 days after the day on which the applicant's original appeal was received by the State agency, as is required by section 423(b) of the Stafford Act.

The definition of "compensation" contained in § 625.2(d) was revised to delete references to types of "compensation" no longer in existence because the authorizing statute expired or was repealed by the State. These references are "Emergency Compensation," "Special Unemployment Assistance," and the "Hawaii Agricultural Unemployment Compensation Law." The definition was also revised to incorporate the definition of "unemployment compensation" as that term is defined in section 85(b) of the Internal Revenue Code of 1986. As defined in section 85(b), the term "* * * means any amount received under a law of the United States or of a State which is in the nature of unemployment compensation." Under the cited provision of the Internal Revenue Code, the Internal Revenue Service (IRS) has the responsibility for implementing the provision, which they have defined in their regulations at 26 CFR 1.85–1. The Department followed the provisions of the IRS regulations in this definition as directed by Section 410(a) of the Stafford Act.

Sections 625.5 (a)(1) and (b)(1), relative to the reasons for unemployment being caused by the disaster, were clarified to conform with the definition of the term "week of unemployment," and to affirm that individuals who become partially unemployed as a result of the disaster are eligible for DUA benefits for the reasons discussed below.

A new § 625.30 was added to provide appeal procedures for Guam, American Samoa, and the Trust Territory of the Pacific Islands. This section and § 625.10 are amended in this final rule to conform to the amended definition of "State" as discussed below.

A discussion of the above and other changes that were required was presented in the **SUPPLEMENTARY INFORMATION** section in the interim final rule published January 5, 1990 (55 FR 550).

Other changes and technical corrections were made throughout Part 625 in the interim final rule to update the regulations and to conform the words and phrases to changes made in the Stafford Act. In addition, Appendices were added to include the Secretary of Labor's standards on claim filing, claim determinations, and fraud and overpayment detection, which were and are referred to in part 625.

Additionally, the Department provides, for the purpose of clarification of the eligibility of aliens for DUA, the following discussion of the requirement at § 625.4(g). This section, which was not changed by the interim final rule, provides that an individual, in order to be considered eligible for DUA for a week, must be able and available for work within the meaning of the applicable State law.

Section 625.4, in relevant part, provides:

> An individual shall be eligible to receive a payment of DUA with respect to a week of unemployment, in accordance with the provisions of the Act and this part if:
> * * * * *
> (g) The individual is able to work and available for work within the meaning of the applicable State law: *Provided,* That an individual shall be deemed to meet this requirement if any injury caused by the major disaster is the reason for inability to work or engage in self-employment * * *.

This provision derives from section 410(a) of the Stafford Act, authorizing the President to—

> provide to any individual *unemployed as a result of a major disaster such benefit assistance* as he deems appropriate while such individual is *unemployed* for the weeks of such *unemployment* with respect to which the individual is not entitled to any other *unemployment compensation* (as that term is defined in section 85(b) of the Internal Revenue Code of 1986) or waiting period credit. [Emphasis added.]

Thus, the DUA Program provides for a type of unemployment compensation in which cash benefits are payable to individuals with respect to their unemployment resulting from a major disaster. This is analogous to the basis under which compensation is awarded under the Federal-State unemployment compensation program. Under section 3304(a)(4), FUTA, and, section 303(a)(5), SSA, a conforming State law must provide that all money withdrawn from the unemployment fund of the State shall be used solely "in the payment of unemployment compensation", with certain exceptions not relevant here. FUTA section 3306(h) defines "compensation" as "cash benefits payable to individuals with respect to

their unemployment." Taken together, these provisions of Federal law limit the payment of compensation to individuals who are unemployed and able and available for work. As stated in Unemployment Compensation Program Letter No. 103, issued by the Social Security Board on December 10, 1945:

> Unemployment compensation is intended to provide an income to those persons who would ordinarily earn an income, but who lack the opportunity to do so because they cannot obtain suitable work. If a claimant, for whatever reason, is *unable to work, or is not available for employment,* he is not entitled to unemployment benefits since he would not be earning an income even if suitable work were obtainable. [Emphasis added.]

The requirement is equally applicable to the DUA Program because, for the same reasons, an individual is not "unemployed as a result of a major disaster" if the individual is "unable to work, or is not available for employment * * *."

Accordingly, in implementing section 410(a) of the Stafford Act, § 625.4(g) adapted the able and available requirement from the Federal-State unemployment compensation program by requiring the individual to be able and available "within the meaning of the applicable State law * * *" and by further providing that the requirement is met "if any injury caused by the major disaster is the reason for inability to work or engage in self employment * * *."

This able and available requirement pertains to all applicants for DUA, including aliens. The Department addressed the availability requirement for unemployment compensation as it pertains to aliens in UIPL 1–86 (51 FR 29713, August 20, 1986) and UIPLs 12–87 (54 FR 10102), and 12–87, Change 1 (54 FR 10113) and 6–89 (54 FR 10116) all published on March 9, 1989. The Department stated in these documents that an alien must be authorized to work by the Immigration and Naturalization Service (INS) to be available for work.

Congress' concern with the payment of benefits to certain aliens is expressed in two other provisions of Federal unemployment compensation law. Section 303(f), SSA, requires States to administer an income and eligibility verification system which meets the requirements of section 1137 of the SSA. Section 1137(d) provides that, as a condition of eligibility for unemployment compensation, a State shall require each individual to sign a declaration, under penalty of perjury, whether the individual is a citizen or national of the United States, and, if not, whether he/she is in "satisfactory immigration status." In the latter case, an individual must present proof of satisfactory immigration status and States are required to verify the status with the INS.

As discussed above, the able and available provisions of State law apply to the DUA Program; hence, an alien must be authorized by the INS to work for those weeks for which DUA is claimed in order to be eligible for DUA payments. If an alien is unable to work because of an injury due to the disaster, which would meet the exception condition of § 625.4(g), such individual must still be authorized by INS to work for those weeks for which DUA is claimed in order to be eligible for DUA. An alien who is not in "satisfactory immigration status" has no eligibility status for the payment of DUA. An injury due to the disaster does not confer "satisfactory immigration status" on such alien. The exception provision of § 625.4(g) only waives the State law able to work and availability requirement during the period the individual is unable to work.

Further, section 3304(a)(14)(A), FUTA, provides that unemployment compensation may not be paid on the basis of services performed by an alien unless such alien was lawfully admitted for permanent residence in the United States at the time such services were performed, was lawfully present for purposes of performing such services, or was permanently residing in the United States under color of law at the time such services were performed. This provision is equally applicable to the DUA Program because § 625.6(a)(1) provides, in computing the DUA weekly amount, that wages used in the computation "shall not include employment or self employment, or wages earned or paid for employment or self–employment, which is contrary to or prohibited by any Federal law." Since FUTA prohibits the use of wages earned by an alien unless such alien is in one of the three eligible categories under section 3304(a)(14)(A), wages earned by an alien who is not at the time in a "satisfactory immigration status" cannot be used in computing the DUA weekly amount because such wages are "contrary to or prohibited by any Federal law."

Comments Received

The interim final rule amending the DUA regulations at part 625 was published in the **Federal Register** on January 5, 1990 (55 FR 550), and comments were solicited through February 5, 1990. Three timely comments were received from State Employment Security Agencies. The interim final rule was further reviewed by the Department in light of the comments received. A summary of the comments received and the Department's responses are set out below.

The first comment received was from the Department for Human Resources, Cabinet for Human Resources, Commonwealth of Kentucky, stating that, after review by the Director, Division of Unemployment Insurance, and program staff, that "as a concensus. we have no comments."

The second comment received was from the Employment Development Department, Health and Welfare Agency, State of California. The agency proposed that § 625.2(w)(2), defining a "week of unemployment" for a self-employed individual be amended. It suggested language to clarify that a self-employed individual performing full-time services in a week is not totally unemployed during that week, even in the absence of earnings. Specifically, the agency suggested adding the phrase "without respect to earnings received or not received", to the second sentence of the definition after the words, "(a) week of total unemployment is a week during which the individual performs no services in self-employment * * *."

The agency believed the addition of the phrase would clarify that employment and earnings are two separate issues and that a self-employed individual can be fully employed in a given week without receiving any earnings, and conversely, that an individual can be in receipt of earnings from previous work while being totally unemployed.

Section 625.2(w)(2) was not amended by the interim final rule published on January 5, 1990. To amend the provision in this final rule is not appropriate as the public and other interested parties would have no opportunity to comment on the change.

Further, the Department does not believe the amendatory language suggested by the California agency is necessary. The current wording of § 625.2(w)(2) is sufficient to deny DUA benefits to any self-employed individual for any week the individual performs full-time services, irrespective of earnings. A "(w)eek of unemployment" is defined at § 625.2(w)(2) for an unemployed self-employed individual as "any week during which the individual is totally, part-totally, or partially unemployed." An individual will not satisfy the definition within § 625.2(w)(2) of "totally, part-totally, or partially unemployed" during any week the individual performs full time services. In particular, a "week of total

unemployment" is defined as "a week during which the individual performs no services in self-employment or in an employer-employee relationship, or performs services less than full-time and earns wages not exceeding the minimum earnings allowance prescribed in the applicable State law." (Emphasis added.) Thus, an individual cannot experience a "week of total unemployment" during any week he or she performs full-time service. Neither will such individual satisfy the definitions of "part-totally" or "partially unemployed". Accordingly, no change will be made to the regulations.

The third comment received was from the Georgia Department of Labor. Generally the agency felt the changes set out in the regulations appear to simplify management of the program, with one exception. The agency commented that the 60-day appeal period in which to appeal a determination or redetermination by a State agency "is not in line with the 'usual' appeal rights period and would not appear necessary." The agency stated that a 30-day appeal period would be adequate.

This 60-day appeal period at § 625.10(a) is required by section 423 of the Stafford Act. Section 106(1) of the DREA amended title IV of the Stafford Act by adding new section 423. Section 423(a) explicitly mandates that, "(a)ny decision regarding eligibility for, from, or amount of assistance under this title may be appealed within 60 days after the applicant for assistance is notified of the award or denial of award of such assistance." Therefore, the Department was required to provide a 60-day appeal period and cannot accept the Georgia agency's suggestion for a 30-day appeal period.

Therefore, no change will be made in the regulations based on the comments for the reasons explained above.

Reasons for Amendments to the Final Rule

After Departmental consideration, however, the definition of "State" and related sections of part 625 are being amended to coincide with the definition of "State" utilized by the FEMA as discussed below. All of these changes are consistent with the interim final rule, and merely add details to the applicability of the DUA Program to certain South Pacific "States".

The FEMA published a final rule on January 23, 1990 (55 FR 2284) amending certain subparts of their regulations at 44 CFR part 206. Specifically at 44 CFR 206.2(a)(22) the definition of "State" reads "Any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, or the Republic of the Marshall Islands."

The definition of "State", as set forth in the interim final rule at § 625.2(p), does not specifically list the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia or the Republic of the Marshall Islands as "States". The reason was that these jurisdictions were formerly part of the Trust Territory of the Pacific Islands and the Department followed the definition of "State" provided in section 102(3) of the Stafford Act (42 U.S.C. 5122), pending a determination whether the three independent "States" were included in the DUA Program. The FEMA's change in their final regulations caused the Department to investigate the status of the jurisdictions and determine whether the definition of "State" in part 625 should be amended. The Department's conclusion is that the following Public Laws and discussion are the basis for amending § 625.2(p) and conforming amendments to other sections of part 625.

Public Law 94–241 established the "Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America". Section 502(a)(1) of the Public Law provides that the following laws of the United States in existence that apply to the Commonwealth of the Northern Mariana Islands, shall include "those laws which provide federal services and financial assistance programs * * * as they apply to Guam * * *." This includes all programs under the Stafford Act, including DUA.

Public Law 99–239 created a "Compact of Free Association" for the Federated States of Micronesia and the Republic of the Marshall Islands. Section 221(a)(2) of the Compact, as set forth in the Public Law, provides:

> (a) The Government of the United States shall make available to the Marshall Islands and the Federated States of Micronesia, in accordance with and to the extent provided in the separate agreements referred to in section 232, without compensation and at the levels equivalent to those available to the Trust Territory of the Pacific Islands during the year prior to the effective date of this Compact, the services and related programs:
>
> * * * * *
>
> (2) of the United States Federal Emergency Management Agency * * *.

The separate agreement, entitled "Article X", "Federal Emergency Management Agency Services and Related Programs", provides:

> 1. The Federal Emergency Management Agency of the United States (FEMA) shall make available disaster assistance in the Marshall Islands or the Federated States of Micronesia at the levels equivalent to those available to the Trust Territory of the Pacific Islands during the year prior to the effective date of the Compact.
>
> 2. These disaster assistance services and related programs shall be provided pursuant to:
>
> (a) The provisions of the Disaster Relief Act of 1974, 42 U.S.C. 5121, *et seq.*;
>
> (b) Applicable Executive Orders of the President of the United States; and
>
> (c) Implementing FEMA regulations.
>
> 3. Assistance under the Disaster Relief Act of 1974 shall be made available to the Marshall Islands or the Federated States of Micronesia in the same manner as assistance is made available to a "State". Solely for the purpose of applying the Disaster Relief Act of 1974 pursuant to this Article, the Marshall Islands or the Federated States of Micronesia shall be considered included within the definitions of "United States" and "State" as those terms are defined in 42 U.S.C. 5122 * * *.

The above Agreement was implemented in 1987 prior to the enactment of the DREA in 1988. Therefore, any reference to the DRA is now to the Stafford Act, and this includes the DUA Program.

Accordingly, the Department includes in the final regulations the definition of "State" as used in the FEMA regulations at 44 CFR 206.2(a)(22) and as stipulated in paragraph 3. of Article X of the "Compact" Agreement defining "State", and the "Covenant", that requires application of DUA as applied to Guam. Conforming amendments are made to other sections of part 625 as discussed below.

In addition, the Department is clarifying §§ 625.5 (a)(1) and (b)(1), which provide reasons for unemployment caused by a major disaster, to remove any doubt that an individual who becomes unemployed in any week after the "date the disaster began" directly due to the disaster is unemployed due to the disaster. These sections were amended by the interim final rule to conform with the definition of the term "week of unemployment", so that individuals who became partially unemployed as a result of the disaster will be eligible for DUA benefits. However, in amending the sections in the interim final rule, the wording that an individual has unemployment caused by the major disaster if such individual has a "week of unemployment" during the week immediately following the "date the major disaster began" was inserted. This could be interpreted to

mean that only if an individual became unemployed during the first week after the "date the major disaster began" would such individual be eligible for DUA. Unemployment beginning in subsequent weeks could not be considered as unemployment due to the disaster.

This interpretation is contrary to the Department's operating instructions implementing the DUA Program and the Department's intent in amending those sections. Therefore, to remove this unintended restriction, the Department is amending §§ 625.5 (a)(1) and (b)(1) as indicated below.

Amendments to the Final Rule

The phrase "Commonwealth of the Northern Mariana Islands, Federated States of Micronesia, Republic of the Marshall Islands," is inserted after the term "American Samoa," in the following sections of part 625:

—In the table of contents heading for § 625.30.
—In the definition of "State", "State agency" and "State law" at §§ 625.2(p), (q)(1), (q)(2) and (r)(1)(ii) respectively.
—In § 625.3(b) providing for Federal reemployment assistance.

Section 625.6(a)(1) is appropriately amended to provide that in all States except Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, Federated States of Micronesia, Republic of the Marshall Islands, and the Trust Territory of the Pacific Islands, the computation of the weekly DUA amount shall be in accordance with the provisions of the applicable State law for regular compensation, with certain exceptions.

Section 625.6(b), computation of the DUA weekly amount for Guam, is amended to include the Commonwealth of the Northern Mariana Islands since the "Covenant" provides that programs be administered as they apply to Guam,

Section 625.6(c) is amended in order that the Federated States of Micronesia and the Republic of the Marshall Islands be included in the method for determining the weekly DUA amount payable for the Trust Territory of the Pacific Islands as provided in section 221(a)(2) of the "Compact" and "Article X" of the separate agreements.

Conforming changes are made to §§ 625.10 (a)(1) and (b)(1) in order to provide DUA appeal and review rights for these newly defined "States". Sections 625.30 (heading), 625.30 (a) and (b)(1), appeal procedures to be followed, are also revised accordingly.

Sections 625.5 (a)(1) and (b)(1) are amended by removing the phrase "during the week immediately" following the appropriate citation of § 625.2(w) defining a "week of unemployment".

Effective Date

For purposes of the above amendments, the Department has determined, pursuant to 5 U.S.C. 553(b)(3)(B), that good cause exists for publishing the amendments to 20 CFR part 625 as a final rule because publication for comment is impracticable, unnecessary, and contrary to the public interest. For the same reasons, and because the amendments remove restrictive conditions, the Department has determined, pursuant to 5 U.S.C. 553(d), that good cause exists for making the amendments effective on publication.

Drafting Information

This document was prepared under the direction and control of the Director, Unemployment Insurance Service, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210: Telephone (202) 523–7831 (this is not a toll-free number).

Classification—Executive Order 12291

The final rule in this document is not classified as a "major rule" under Executive Order 12291 on Federal Regulations, because it is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. Ch 35, these regulations do not increase paperwork burden. Previous approval has been obtained from the Office of Management and Budget (OMB) for the recordkeeping and reporting requirements required by nonamended sections of 20 CFR part 625 under OMB control numbers 1205–0234 and 1205–0051.

Regulatory Flexibility Act

No regulatory flexibility analysis is required where the rule "will not * * * have a significant economic impact on a substantial number of small entities" (5 U.S.C. 605(b)). The definition of the term "small entity" under 5 U.S.C. 601(6) does not include States. Since these regulations involve an entitlement program administered by the States, and are directed to the States, no regulatory flexibility analysis is required. The Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect.

Catalog of Federal Domestic Assistance Number

This program is listed in the Catalog of Federal Domestic Assistance at No. 17.225, "Disaster Unemployment Assistance (DUA)."

Lists of Subjects in 20 CFR Part 625

Disaster Unemployment Assistance, Labor, reemployment services, unemployment compensation.

Words of Issuance

Accordingly, for the reasons set out in the preamble, chapter V of title 20, Code of Federal Regulations, the interim final rule amending 20 CFR part 625, which was published at 55 FR 550–563 on January 5, 1990, is adopted as a final rule with the following changes:

PART 625—DISASTER UNEMPLOYMENT ASSISTANCE

1. The authority citation for part 625 continues to read as follows:

Authority: 42 U.S.C. 1302; 42 U.S.C. 5164; 42 U.S.C. 5189a(c); 42 U.S.C. 5201(a); Executive Order 12673 of March 23, 1989 (54 FR 12571); delegation of authority from the Director of the Federal Emergency Management Agency to the Secretary of Labor, effective December 1, 1985 (51 FR 4988); Secretary's Order No. 4–75 (40 FR 18515).

2. In the following sections of 20 CFR part 625 following the comma after the phrase "American Samoa," within the phrase "Guam, American Samoa, and the Trust Territory of the Pacific Islands" add the phrase "Commonwealth of the Northern Mariana Islands, Federated States of Micronesia, Republic of the Marshall Islands,":

§§ 625.2, 625.6, 625.10, 625.30 [Amended]

Table of Contents at § 625.30;
(b) Section 625.2(p);
(c) Section 625.2 (q)(1) and (q)(2);
(d) Section 625.2(r)(1)(ii);
(e) Section 625.6(a)(1);
(f) Section 625.10(a)(1);
(g) Section 625.10(b)(1);
(h) Section 625.30 heading;
(i) Section 625.30(a);
(j) Section 625.30(b)(1).

§ 625.3 [Amended]

3. In the following section add the phrase ", Commonwealth of the Northern Mariana Islands, Federated States of Micronesia, Republic of the Marshall Islands," after the term "American Samoa":

(a) Section 625.3(b).

§ 625.6 [Amended]

4. In the following section add the phrase "and Commonwealth of the Northern Mariana Islands" after the term "Guam":

(a) Section 625.6(b) heading and first sentence.

§ 625.6 [Amended]

5. In the following section add the phrase ", Federated States of Micronesia, Republic of the Marshall Islands" after the term "American Samoa":

(a) Section 625.6(c) heading and first sentence.

§ 625.5 [Amended]

6. In the following section remove the phrase "during the week immediately" after the citation "§ 625.2(w)(1)" and before the word "following":

(a) Section 625.5(a)(1).

§ 625.5 [Amended]

7. In the following section remove the phrase "during the week immediately" after the citation "§ 625.2(w)(2)" and before the word "following":

(a) Section 625.5(b)(1).

Signed at Washington, DC, on May 8, 1991.

Roberts T. Jones,

Assistant Secretary of Labor.

[FR Doc. 91–11412 Filed 5–15–91; 8:45 am]

BILLING CODE 4510–30–M

federal register

Thursday
May 16, 1991

Part IV

Department of the Interior

Bureau of Indian Affairs

25 CFR Part 11

Law and Order on Indian Reservations; Proposed Rules

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 11

Law and Order on Indian Reservations

RIN 1076–AC56

April 17, 1991.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Indian Affairs (BIA) proposes amending the regulations contained in 25 CFR part 11 to add the Muskogee Area Tribes (Eastern Oklahoma) to the list of "Indian reservations" in § 11.1(a) where Courts of Indian Offenses are established to render law and order over "Indian Country", within the meaning of 18 U.S.C. 1151, outside the jurisdiction of state courts insofar as offenses committed by Indians are concerned. It is necessary to establish a Court of Indian Offenses for the Muskogee area in order to protect lives and property until the question of state jurisdiction is resolved.

DATES: Comments from all interested parties must be received on or before July 16, 1991.

ADDRESSES: Mail or hand-deliver comments and materials concerning this proposal to the Area Director, Muskogee Area Office, Bureau of Indian Affairs, Old Federal Building and Courthouse, Muskogee, OK 74401. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Dennis Springwater, Assistant Area Director, Muskogee Area Office, Bureau of Indian Affairs (see **ADDRESSES**) at (918) 687–2296, or FTS 736–2296; or Hilda Manuel, Chief, Branch of Judicial Services, Office of Tribal Services, Bureau of Indian Affairs, 1849 C St. NW., MS 2614–MIB, Washington, DC 20240, at (202) 208–4400, or FTS 268–4400.

SUPPLEMENTARY INFORMATION: The authority to issue these rules and regulations is vested in the Secretary of the Interior by 5 U.S.C. 301 and 25 U.S.C. 2 and 9; and 25 U.S.C. 13, which authorizes appropriations for "Indian judges." See *Tillett* v. *Hodel*, 730 F.Supp. 381 (W.D.Okla. 1990). This proposed rule is published in exercise of the rulemaking authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs in the Departmental Manual at 209 DM 8.

Recent decisions by both federal and state courts have raised serious questions whether the State of Oklahoma possesses criminal jurisdiction over offenses committed by Indians on certain Indian lands in the former Indian Territory, the historic realm of the five Civilized Tribes, and what now constitutes 40 counties in eastern Oklahoma, within the jurisdiction of the Muskogee Area Office of the Bureau of Indian Affairs (BIA). For example, a recent decision of the U.S. Court of Appeals for the 10th Circuit, *Ross* v. *Neff*, 905 F.2d 1349 (June 4, 1990), held that state law enforcement officers had no authority to arrest an Indian for an offense committed on Indian tribal lands in Adair County, Oklahoma. Consequently, some state officials have been reluctant or unwilling to prosecute Indian crimes committed on Indian lands. Furthermore, none of the Indian tribes in the Muskogee Area has a tribal court currently exercising criminal jurisdiction over misdemeanors committed by Indians on Indian lands. In addition to the 40 counties of the former Indian Territory, Osage County is also under the jurisdiction of the Muskogee Area, and the State of Oklahoma has been held to lack criminal jurisdiction over Indians committing crimes in Indian Country in that county as well. [*State* v. *Burnett*, 671 P.2d 1165 (Ok. Crim. app. 1983)].

Thus, it is immediately necessary for the BIA to establish a Court of Indian Offenses for the Muskogee Area to protect the lives, persons, and property of people residing on Indian country lands, until the question of state jurisdiction is finally resolved or until the local Indian tribes establish tribal courts to exercise criminal jurisdiction over their own members. Judges of the Court of Indian Offenses shall be authorized to exercise all the authority provided under 25 CFR part 11, including issuance of arrest and search warrants pursuant to 25 CFR 11.14 and 11.16 and section 4(2)(A) of the Indian Law Enforcement Reform Act of 1990, Public Law 101–379, 104 Stat. 473 (August 18, 1990). Officials of the BIA had already begun to set up a provisional Court of Indian Offenses pursuant to 25 CFR 11.3(f) for the Muskogee Area to address this law enforcement need. This proposed rule is intended to solicit comments on the permanent establishment of such a Court of Indian Offenses.

It is the policy of the Department of the Interior, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding the proposed rule to the location identified in the addresses section of this preamble.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*).

The Department of the Interior has determined that this proposed rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

This rule does not contain information collection requirements which require the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

The primary author of this document is Tim Vollmann, Regional Solicitor, Southwest Region, U.S. Department of the Interior, 333 W. 4th Street, room 3068, Tulsa, OK 74103; Telephone (918) 581–7502; FTS 745–7502.

List of Subjects in 25 CFR Part 11

Courts, Indians—law, Law enforcement, Penalties.

For the reasons set out in the preamble, part 11 of title 25, chapter I of the Code of the Federal Regulations is proposed to be amended as set forth below.

PART 11—LAW AND ORDER ON INDIAN RESERVATIONS

1. The authority citation for 25 CFR part 11 continues to read as follows:

Authority: R.S. 463; 25 U.S.C. 2. Interpret or apply sec. 1, 38 Stat. 586; 25 U.S.C. 200, unless otherwise noted.

2. Section 11.1(a) is amended by adding paragraph (a)(23) to read as follows:

§ 11.1 Application of regulations and information collection.

(a) * * *

(23) Muskogee Area Tribes (Oklahoma).

* * * * *

Eddie F. Brown,

Assistant Secretary—Indian Affairs.

[FR Doc. 91–11558 Filed 5–15–91; 8:45 am]

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federal register

Thursday
May 16, 1991

Part V

Department of the Interior

Fish and Wildlife Service

50 CFR Part 91

Migratory Bird Hunting and Conservation Stamp (Duck Stamp) Contest; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 91

RIN 1018-AB54

Migratory Bird Hunting and Conservation Stamp (Duck Stamp) Contest

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final Rule.

SUMMARY: The Service is revising the regulations governing the conduct of the annual Migratory Bird Hunting and Conservation Stamp (Federal Duck Stamp) Contest. The amendments include the following changes: (1) Revising the Display Agreement; (2) listing the eligible species; (3) changing the scoring system; (4) establishing criteria for the selection of judges; and (5) listing the display locations.

DATES: These amendments are effective June 17, 1991. This year's contest will be held on November 5 and 6, 1991, beginning at 11 a.m. on Tuesday, and 9 a.m. on Wednesday. Persons wishing to enter this year's contest may submit entries anytime after July 1, but all must be postmarked no later than midnight September 15.

ADDRESSES: Requests for contest entry information should be addressed to: Federal Duck Stamp Office, Department of the Interior, U.S. Fish and Wildlife Service, Suite 2058, Washington, DC 20240. The contest will be conducted in the following location: Department of the Interior Building Auditorium, 1849 C Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Norma E. Opgrand, Chief, Federal Duck Stamp Program, U.S. Fish and Wildlife Service, Suite 2058, Washington, DC 20240. Telephone: (202) 208-4354 or 208-5508.

SUPPLEMENTARY INFORMATION: Proposed revisions to the regulations governing the conduct of the Migratory Bird Hunting and Conservation Stamp (Federal Duck Stamp) Contest were published in the **Federal Register** on February 5, 1991 (56 FR 4591). Eleven hundred copies of the proposed revisions for the Federal Duck Stamp Contest were sent to artists, former Duck Stamp Contest judges, wildlife art publishers and dealers, stamp dealers, editors and publishers of wildlife art magazines, editors and publishers of outdoor magazines, as well as the general public.

Seventy-one responses were received, sixty-four through the mail, six by telephone and one by fax. These comments are located in the Federal Duck Stamp Office, 1849 C Street NW., Suite 2058, Washington, DC 20240 and are available for review by the public at that location between 8 am and 4:30 pm, Monday through Friday.

The majority of comments agreed with the proposed changes. Numerous commenters indicated appreciation for providing the opportunity to participate in this decision-making process, and praised changes made in recent years.

Following are the proposed revisions that were published in the February 5 **Federal Register**, an analysis of the comments received on each issue, and the final decision and explanation for that decision on each issue:

1. Revising the Display Agreement

The name of The Display Agreement will be changed to The Display and Participation Agreement.

The winning artist must agree to promote the Federal Duck Stamp Program at the following events at the artist's expense. (1) The Waterfowl Festival, Easton, Maryland—immediately following the contest. The festival will pay for lodging; (2) The Wildlife West Festival—the weekend before Thanksgiving. The festival will pay for transportation and lodging expenses; (3) Signing of the Duck Stamp Ceremony at the Bureau of Engraving and Printing, Washington, DC—April; (4) First Day Ceremony, Smithsonian Institution—June 30; (5) First Day of Sale Ceremony—in the home town area of the artist—July 1; (6) Two days at the American Philatelic Society—mid August; (7) Two days at the BALPEX Show, Baltimore, Maryland—over Labor Day weekend; (8) Two days at the J.N. Ding Darling National Wildlife Refuge—mid October. The J.N. Ding Darling Society will pay for transportation and lodging; (9) Two days at the National Postage Show, New York, New York—first week in November; (10) Three days at the Federal Duck Stamp Contest, Washington, DC—first part of November; (11) Two days at INTERPEX, New York, New York—middle of March; (12) Two days at WESTPEX, San Francisco, California—first of May; and (13) Two days at COMPEX, Chicago, Illinois—over Memorial Day weekend.

The artist must agree to make brief remarks at all events where the artist is promoting the Federal Duck Stamp Program, as well as provide autographs without charge to the public or the Federal Government.

The artist must agree to sketch two designs to be used for the First Day of Sale postal cancellations.

The artist must agree to design the Australian Duck Stamp if requested to do so.

Comments: Fifty-seven commenters addressed issues relating to The Display and Participation Agreement.

No comments were received on the name change from "The Display Agreement" to "The Display and Participation Agreement."

Fifty of the fifty-seven comments addressing The Display and Participation agreement related to promotion of the Duck Stamp Program. Ten commenters supported the promotion, with statements such as "I do feel that it is not only important, but also imperative for the winning artist to promote the Federal Duck Stamp Program. The artist promotion effort is simply a must for keeping the program alive and successful." Six of the comments were neutral or asked for clarification concerning the promotion. Thirty-four commenters opposed the proposed requirement because of too much time away from the artist's main job, the expense involved which might preclude the average individual from participating, and those living in remote areas of the country could not easily meet the time commitment or absorb the personal expense involved.

Four commenters addressed the public speaking requirement. One had no problem, the other three opposed it, with one individual stating that artists are not articulate speakers.

Of the eight comments directed to the postal cancellation, four favored the requirement and four opposed it.

Twenty-three people commented on designing the Australian Duck Stamp. Six favored designing the stamp, while seventeen opposed participating in the Australian program.

Decision: The final agreement will be revised to read: "The Display and Participation Agreement."

"The winning artist must agree to promote the Federal Duck Stamp Program at the following events with expenses paid by the organizations indicated:

"(1) *Waterfowl Festival,* Easton, Maryland—immediately following the contest. The festival will pay for lodging; the Federal Duck Stamp Program will pay for transportation. Three days.

(2) *The Wildlife West Festival,* Redlands, California—the weekend before Thanksgiving. The festival will pay for transportation and lodging. Three days.

(3) *Signing of the Duck Stamp Ceremony*—Bureau of Engraving and Printing, Washington, DC—April or May. The Federal Duck Stamp Program will pay for transportation and lodging according to current Federal Government Per Diem rates. Two days.

(4) *J.N. "Ding" Darling Birthday Event*, J.N. "Ding" Darling National Wildlife Refuge—Weekend nearest the 20th of October. The J.N. "Ding" Darling Society will pay for transportation and lodging. Three days.

(5) *First Day Ceremony*, Smithsonian Institution, Washington, DC—June 30. The Federal Duck Stamp Program will pay for transportation and lodging according to current Federal Government Per Diem rates. One day.

(6) *First Day of Sale Ceremony*, Home town area of the artist—July 1. Event in the home town area of the artist—no travel costs involved. One day.

(7) *Federal Duck Stamp Contest*—Department of the Interior, Washington, DC—first part of November. The Federal Duck Stamp Program will pay for transportation and lodging according to current Federal Government Per Diem rates. Three days.

"The winning artist will be invited and encouraged to promote the Federal Duck Stamp Program at at least three of the following five events at the artist's expense:

(1) *American Philatelic Society*, located in a different city each year—mid August. Two days.

(2) *Balpex Stamp Show*, Baltimore, Maryland—Labor Day weekend. Two days.

(3) *INTERPEX Stamp Show*, New York City, New York—mid March. Two days.

(4) *WESTPEX Stamp Show*, San Francisco, California—end of April. Two days.

(5) *COMPEX Stamp Show*, Chicago, Illinois—Memorial Day weekend. Two days.

"The winning artist will be asked to make brief remarks at seven events while promoting the Federal Duck Stamp Program.

"The artist will assist in promoting the Federal Duck Stamp Program by providing autographs without charge to the public or the Federal Government.

"The artist will be invited to provide line drawings for the postal cancellations for the first two days of sale of the Duck Stamp.

"All requirements cited in this section will be subject to negotiation when extenuating circumstances exist for the artist. Although all examples of extenuating circumstances are not listed in this document, some examples of such circumstances are as follows: (1) The health of the artist does not permit the artist to travel to some or any of the events identified; (2) the home of the artist is located in such a remote area that the schedule identified could not be met as stipulated; (3) emergencies prohibit the artist from participating."

Explanation: All requirements cited in this section have been carried out on a volunteer basis by the five most recent Federal Duck Stamp Artists. It is at their suggestion that these events be stipulated in the regulations. Without exception, these artists have willingly participated in the events and stated that they are important for promotion of wetlands and waterfowl conservation and the Federal Duck Stamp Program; and that the events have benefited them personally. Some artists have said that seeing their Duck Stamp design come off the press at the Bureau of Engraving and Printing is one of the highlights of their career. These same artists have individually expressed the desire to contribute to the program because it enabled them to enjoy a lucrative financial return. Beyond these requirements, the current Duck Stamp artist, along with her publisher, are contributing a significant financial donation to wetlands conservation. Those funds will be matched 2 or 3 times by other individuals and/or organizations.

Although there was concern raised in some of the comments about the expense involved to the artist in attending the events, it is estimated that these costs represent no more than one to two percent (and perhaps less) of the revenue that the artist receives as a result of winning the Duck Stamp Contest. With the changes indicated, this percentage will be even less.

The number of required public appearances has decreased and other events are now identified as optional. Funding for the artist will be covered for seven events.

The public looks forward to meeting the Federal Duck Stamp artist and hearing him or her speak. The winning artist becomes an overnight celebrity. The remarks made, whether brief or extensive are valued by the public. Each artist brings a different perspective to the program which is reflected in these public appearances. Extensive guidance and assistance is provided to the artist by the Federal Duck Stamp Office staff and, to date, public speaking has not proven to be a burden to the artist. The artists who have participated in the past have grown through this experience; however, if the speaking is a problem for any particular artist, the necessary accommodations will be made.

The two line drawings are simple sketches that are reproduced in the form of a postal cancellation. In past years they have often been a replication of the bird or birds from the winning design. These line drawings neither represent a large investment of time nor are they comparable to the Duck Stamp design. The postal cancellations are each used by the U.S. Postal Service for the official cancellation for the two days and are prized by the collecting world. Many past artists enjoyed having the opportunity to design the postal cancellations; however, if the winning artist does not want to participate, another designer will be secured.

Although several individuals favored the idea of designing the Australian Duck Stamp, a number of commenters strongly opposed it. Duck Stamp artists who are invited by the Australian Wildlife Fund to design the stamp have the option to participate. To date, three former Federal Duck Stamp artists have designed the first three Australian Duck Stamps. During the last three years, the Australian Wildlife Fund and the Federal Duck Stamp Program have worked closely together in an effort to strengthen international relations in the conservation world and to promote public awareness of wetlands and waterfowl conservation. It was in that spirit of cooperation that the regulation was proposed, with the understanding that the artist would be compensated. The Australian Wildlife Fund, as a licensee of the Federal Duck Stamp Program, has generously provided a 30% royalty—20% more than the normal fee received for the Migratory Bird Conservation Fund—on all sales of a licensed product that contains the Australian Duck Stamp and the U.S. Duck Stamp. However, due to the number of comments in opposition to a requirement to design the Australian Duck Stamp, the proposal is not included in the final regulations.

2. Listing the Eligible Species

The species for the ten forthcoming Duck Stamp Contests will be listed in the supplementary portion of the Duck Stamp Contest regulations:

1991: (1) Black Scoter (2) Spectacled Eider (3) Barrow's Golden Eye (4) Red-Breasted Merganser (5) Surf Scoter.

1992: (1) Canada Goose (2) Mallard (3) Canvasback (4) Greater Scaup (5) Northern pintail.

1993: The four remaining species from 1991 plus the Mottled Duck.

1994: The four remaining species from 1992 plus the Greenwinged Teal.

1995: The four remaining species from 1993.

1996: The four remaining species from 1994 plus the Black Duck.

1997: The three remaining species from 1995.

1998: The four remaining species from 1996 plus the Ruddy Duck.

1999: The two remaining species from 1997.

2000: The four remaining species from 1998 plus the American Widgeon.

Comments: Twenty-one individuals commented on Listing the Eligible Species. Of those, thirteen favored the proposed change, three suggested that only one species be eligible each year, and five requested a return to the old method of allowing 37 to be eligible each year. Several stated that they were pleased that the more familiar species will be eligible every other year.

Decision: The final eligible species will be the same as those listed in the proposed rule.

Explanation: Part of the mission of the Federal Duck Stamp Program involves educating the public about the 42 eligible species for the contest. Exposing the public to the lesser-known species has allowed many people to become familiar with birds they have never seen. Many individuals commented that they were pleased to learn of these species. Many artists said they have grown by being forced to do research on species that they would not have explored if they could select one with which they were familiar. Six species have not appeared on a Duck Stamp, and until all have been selected to be on the stamp, an elimination process will take place every other year to achieve that goal. In the year 2001, there will be only one species eligible for the contest. At that time, the contest will be closely evaluated to determine the merits of continuing with only one species, as many of the State contests do. Numerous artists have suggested that the contest would be more fair if only one species were eligible because the judges would be comparing "apples to apples". Others have stated that the contest would be very dull if all entries were of the same species and that the judges would get bored and perhaps not be as careful with the judging if they reviewed 600–1200 entries of the same species. The elimination process will be closely monitored to determine whether there should be a change to one species on a permanent basis. At present, there will be five species eligible and the winning species will be an ineligible entry for 37 years.

3. Changing the Scoring System

The scores used will be one to five for all rounds except that the first round will remain as in the past, judged in or out. In addition, the score of each judge will be tallied to give the score for each entry. The previous method of dropping the high and low score will be eliminated.

Comments: Thirty commenters addressed the scoring system. Thirteen people stated that they favored the change. Four stated that they favored keeping the old method of judging. The other comments recommended additional changes such as: Separate the scoring for habitat and the species; have each judge vote for the area of expertise that he or she represents; adopt the scoring system used by the Leigh Yawkey Woodson Museum; drop the "birds in action" criteria; concerns were also expressed that too many ties would occur in the last round if the scoring was changed to one to five. Several comments were general in nature.

Decision: The proposed scoring system will be adopted.

Explanation: The new scoring system will be closely monitored and if there is an indication that further changes need to be made, they will be addressed in 1992. Judges currently spend several hours studying the paintings the day before the judging begins. The two technical advisors are the head designer from the Bureau of Engraving and Printing and a waterfowl biologist from the U.S. Fish and Wildlife Service.

4. Establishing Criteria for the Selection of Judges

The criteria will include some art credentials for a minimum of two judges, with the remaining judges representing the conservation community, the philatelic arena, and the sporting world.

Comments: Twenty-two commenters addressed the selection and qualifications of the contest judges. These comments reflected diverse opinions, some feeling strongly for judges with art credentials, others expressing a strong desire for biologists who could identify anatomical accuracy. Many comments were positive about establishing some criteria for the judges. Some individuals apparently did not understand that the reason for the art contest is to provide a design for the stamp. Several individuals suggested that the previous contest winner should be one of the judges. Suggestions were made to prohibit publishers or persons affiliated with publishers from being selected as judges. A suggestion was made to establish a pool of about 12 outstanding judges and 5 would judge the contest each year. Some stated that the proposed qualifications were too restrictive.

Decision: Based on the concerns raised, the proposed Selection and Qualification of Contest Judges will be changed to read:

"*Qualifications:* The panel of five judges will be made up of individuals, all of whom have one or more of the following prerequisites: Recognized art credentials, knowledge of the anatomical makeup and the natural habitat of the eligible waterfowl species, an understanding of the wildlife sporting world in which the Duck Stamp is used, an awareness of philately and the role the Duck Stamp plays in stamp collecting, and demonstrated support for the conservation of waterfowl and wetlands through active involvement in the conservation community."

Explanation: The final regulations address the substantive issues raised. Several previous winners of the contest were not in favor of the winning artist participating as a judge at the following contest. They indicated that it was too difficult to be objective and that they could recognize the designers of too many entries. The suggestion of a pool of judges will be further evaluated; however, it may be that such a system would place too much control over the winning designs in the hands of too few people. The tradition of the Duck Stamp Contest is important, and the honor of participating as a judge has become a special part of that tradition.

5. Listing the Display Locations

Approximately 100 entries that receive the highest scores by the judges will be displayed at the Wildlife West Festival, San Bernardino, CA—the last two weeks in November. Approximately 20 of the highest ranked entries from the Federal Duck Stamp Contest will appear on display at the following locations as well as the Wildlife West Festival: (1) Waterfowl Festival, Easton, MD—immediately after the Duck Stamp Contest; (2) American Museum of Wildlife Art, Red Wing, MN—month of December; (3) National Firearms Museum, Washington, DC—January and the first half of February; (4) Southeastern Wildlife Exposition, Charleston, SC—middle of February; and (5) World Wildlife Exposition, Gatlinburg, TN—middle of May.

Comments: Ten commented on the Display Locations. All were in favor of displaying the entries. Some suggested that more sites throughout the country should be identified where the entries could be displayed and that 100 entries be considered for display.

Decision: Display locations will remain as proposed.

Explanation: The Federal Duck Stamp Office will look for additional locations where the finalists can be displayed with the goal of a tour lasting until September 30 of each year. The office will also investigate the possibility of a tour consisting of a total of 100 entries, as suggested.

Subpart A

6. Section 91.1 is revised to read as follows:

Section 91.1 Purpose of Regulations

(a) The purpose of these regulations is to establish procedures for selecting a design that will be used for the annual Migratory Bird Hunting and Conservation Stamp (Federal Duck Stamp).

(b) All individuals entering the contest must comply with these regulations. A copy of the regulations along with the

Reproduction Rights and Display and Participation Agreements may be requested from the Federal Duck Stamp Office, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240.

(c) All contestants from the most recent contest will be sent a copy of the regulations, the Display and Participation Agreement, and the Reproduction Rights Agreement.

Comments: No comments were received.

Decision: Section 91.1 remains as proposed.

7. Section 91.2 is amended by removing the definition for display aqreement and adding a definition for display and participation agreement in alphabetical order to read as follows:

Section 91.2 Definitions

* * * * *

Display and Participation Agreement—a document that each contestant must complete, sign and submit with the entry. The signed agreement permits the Service to display the entry at various locations for promotional purposes, and requires the artist to participate in events in behalf of the Federal Duck Stamp Program.

* * * * *

Comments: No comments were received.

Decision: Section 91.2 remains as proposed.

8. In Section 91.4, the introductory text is revised to read as follows:

Section 91.4 Eligible Species

Five or fewer of the species listed below will be identifed as eligible each year; those eligible species will be provided to each contestant with the information provided in section 91.1.

* * * * *

Comments: No comments were received.

Decision: Section 91.4 remains as proposed.

Subpart B—Procedures for Entering the Contest

9. In Section 91.12, the last sentence is revised to read as follows:

Section 91.12 Contest Eligibility

* * * All entrants must submit signed Reproduction Rights and Display and Participation Agreements.

Comments: No comments were received.

Decision: Section 91.12 remains as proposed.

10. In Section 91.14, the first sentence is revised to read as follows:

Section 91.14 Restrictions on Subject Matter of Entry

A live portrayal of any bird(s) of the five or fewer identified eligible species must be the dominant feature of the design.

* * * * *

Comments: No comments were received.

Decision: Section 91.14 remains as proposed.

10a. Section 91.13 Technical Requirements.

Comments: One commented on the technical requirements, requesting more clarification of the section.

Decision: The technical requirements were not proposed to be changed and no revisions will occur at this time.

Explanation: The regulation reads that the design must be 7 inches high and 10 inches wide—this refers to the portion of the design exposed to the viewer's eye and inside the confines of the mat. The actual design may be larger; in fact the design could cover the entire 9 inches by 12 inches maximum outside dimensions of the entry. The one-inch mat, however, will cover that area of the design outside the 7 inch by 10-inch dimension. This clarification addresses the concern raised in the comment.

11. Section 91.15 is revised to read as follows:

Section 91.15 Suitability of Entry for Engraving

All entries should be drawn with fullest attention to clarity of detail and the relationship of tonal values. These prerequisites are important to interpret pictorial elements to hand engraving for printing, as they determine the engrave line techniques and direction. The engraver relies on the accuracy of the artist's work for successful interpretation. The bird or birds shown in the entry will be the only portion of the design that will be engraved. The remaining portion of the design will be done in offset printing. The other engraved portion of the stamp will be the letters and the numerals. The engraver is primarily responsible for line interpretation and discipline, creating the miniature image of bird(s) appearing on the stamp.

Comments: Five comments were received concerning Suitability of the Entry for Engraving. The comment from the Bureau of Engraving and Printing indicated that the engraving on the stamp could include more than the bird, the letters and numerals. Three commenters suggested that the engraving aspect of the stamp be eliminated to allow more artist freedom in the design. One requested clarification on what makes a design suitable for the engraving process.

Decision: The proposal will be changed to read: "All entries should be drawn with fullest attention to clarity of detail and the relationship of tonal values. These prerequisites are important to interpret pictorial elements to hand engraving for printing, as they determine the engraved line techniques and direction. The engraver relies on the accuracy of the artist's work for successful interpretation. The engraver is primarily responsible for the line interpretation and discipline, creating the miniature image of the bird(s) appearing on the stamp."

Explanation: Since it is possible that the Bureau of Engraving and Printing may engrave more than the birds, numerals and letters—even though that has not been done in recent years—the proposal is revised as indicated above. The engraving aspect of the stamp is one of the reasons it has become a popular collector's item. Sales of Duck Stamps to collectors have increased substantially during recent years and for that reason, elimination of the engraving aspect will not be considered at this time.

12. Section 91.16 is revised to read as follows:

Section 91.16 Submission Procedures for Entry

(a) Each contestant may submit only one entry. Each entry must be accompanied by a non-refundable entrance fee and a completed and signed Reproduction Rights Agreement and a completed and signed Display and Participation Agreement. The bottom portion of the Reproduction Rights Agreement must be attached to the back of the entry.

(b) Each entry should be appropriately wrapped to protect the art work and sent by registered mail, certified mail, express mail, overnight delivery service or hand delivered to: Federal Duck Stamp Office, U.S. Fish and Wildlife Service, Suite 2058, Department of the Interior, Washington, DC 20240.

Comments: No comments were received.

Decision: Section 91.16 remains as proposed.

Subpart C—Procedures for Administering the Contest

13. Section 91.21 is revised to read as follows:

Section 91.21 Selection and Qualification of Contest Judges

(a) *Selection:* Five voting judges and one alternate judge will be selected annually by the Secretary of the Interior

Current employees of the Fish and Wildlife Service and their relatives are ineligible to serve as judges for the contest. The judges will be reimbursed for reasonable travel expenses. The judges will be announced on the first day of the contest.

(b) *Qualifications:* At least one of the five judges will have recognized art credentials such as: (1) An academic degree in art, art history or equivalent from an accredited college or university; (2) Practicing as an artist on a professional basis or as an artist as a hobby; (3) Connected with the editing or publishing of a major art publication; and (4) Teaching art. Other judges may represent the conservation community, the philatelic arena, and/or the wildlife sporting community.

Comments: Twenty-two commenters addressed the selection and qualifications of the contest judges. These comments reflected diverse opinions, some feeling strongly for judges with art credentials, others expressing a strong desire for biologists who could identify anatomical accuracy. Many comments were positive about establishing some criteria for the judges. Some individuals apparently did not understand that the reason for the art contest is to provide a design for the stamp. Several individuals suggested that the previous contest winner should be one of the judges. Suggestions were made to prohibit publishers or persons affiliated with publishers from being selected as judges. A suggestion was made to establish a pool of about 12 outstanding judges and 5 would judge the contest each year. Some stated that the proposed qualifications were too restrictive.

Decision: Section 91.21 is revised to read as follows:

Section 91.21 Selection and Qualification of Contest Judges

(a) *Selection:* Five voting judges and one alternate judge will be selected annually by the Secretary of the Interior. Current employees of the Fish and Wildlife Service and their relatives are ineligible to serve as judges for the contest. The judges will be reimbursed for reasonable travel expenses. The judges will be announced on the first day of the contest.

(b) *Qualifications:* The panel of five judges will be made up of individuals, all of whom have one or more of the following prerequisites: recognized art credentials, knowledge of the anatomical makeup and the natural habitat of the eligible waterfowl species, an understanding of the wildlife sporting world in which the Duck Stamp is used, an awareness of philately and the role the Duck Stamp plays in stamp collecting, and demonstrated support for the conservation of waterfowl and wetlands through active involvement in the conservation community.

Explanation: Refer to Item #4—Establishing Criteria for the Selection of Judges.

14. Section 91.24 is amended by revising paragraphs (b), (c), and (f) through (i); and adding new paragraph (j) to read as follows:

Section 91.24 Contest Procedures

* * * * *

(b) Prior to the first round of judging, and prior to the opening of the contest to the public, the judges will spend an additional two hours reviewing the entries.

(c) In the first round of judging, all qualified entries will be shown one at a time to the judges by the Contest Coordinator or a contest staff member. The judges will vote "in" or "out" on each entry; those entries receiving a majority of votes "in" will be eligible for the second round of judging. The remaining entries will be placed on display as a group for public viewing.

* * * * *

(f) The technical advisors from the Department of the Interior and the Bureau of Engraving and Printing will do a critical analysis of the entries that will be judged in the second round and advise the judges of any serious anatomical problems and/or any serious design problems for the engraver.

(g) In the second round of judging, each entry selected in the first round, plus the additional entries selected by judges, will be shown one at a time to the judges by the Contest Coordinator or by a contest staff member. The judges will vote by indicating a numerical score from one to five for each entry. The scores will be totaled to provide the entry score. The entries receiving the five highest scores will be advanced to the third round of judging.

(h) In the third round of judging, the judges will vote on the remaining entries using the same method as in round two. The Contest Coordinator will tabulate the final votes and present them to the Director, U.S. Fish and Wildlife Service, who will announce the winning entry as well as the entries that placed second and third.

(i) In case of a tie vote for first, second, or third place in the third round, the judges will vote again on the entries that are tied. The judges will vote using the same method as in rounds two and three.

(j) The selection of the winning entry by the judges will be final. Each contestant will be notified of the winning artist and the design. The winning artist will receive a pane of Duck Stamps signed by the Secretary of the Interior at the Federal Duck Stamp Contest the following year. The artists placing first, second and third will receive a framed commendation from the Director of the U.S. Fish and Wildlife Service.

Comments: The scoring system was the only subsection addressed by the public in § 91.24. Thirty commenters addressed the scoring system. Thirteen people stated that they favored the change. Four stated that they favored keeping the old method of judging. The other comments recommended additional changes such as: separate the scoring for habitat and the species; have each judge vote for the area of expertise that he or she represents; adopt the scoring system used by the Leigh Yawkey Woodson Museum; drop the "birds in action" criteria; concerns were also expressed that too many ties would occur in the last round if the scoring was changed to one to five. Several comments were general in nature.

Decision: Section 91.24 remains as proposed.

Subpart D—Post-Contest Procedures

15. Section 91.31 is revised to read as follows:

Section 91.31 Return of entries after contest.

All entries will be returned by certified mail to the participating artists within 120 days after the contest, unless the artwork is selected to appear at one or more wildlife art expositions. If artwork is returned to the Service because it is undelivered or unclaimed (this may happen if an artist changes address), the Service will not be obligated to trace the location of the artist to return the artwork. Any artist who changes his or her address is responsible for notifying the Service of the change. All unclaimed entries will be destroyed one year from the date of the contest.

Comments: No comments were received.

Decision: Section 91.31 remains as proposed.

Miscellaneous

Thirty-seven comments were miscellaneous in nature. Several individuals expressed thanks for the opportunity to participate in the decision-making; many provided complimentary remarks concerning the program changes made over the past few years; a number applauded the

proposed changes; two people disapproved of the male/female designation on the entry form; some suggested that the entries be allowed to be 5/16 inch in thickness; there was a suggestion to provide a flat fee for winning the contest with the remaining money from the sale of the prints going to water conservation; one artist offered to do the design for free, with the government picking up the expenses.

Decision: (1) The male/female designation will continue.

(2) The ¼ inch thickness will remain.

(3) The contest will continue, no monetary compensation will be made to the artist, and the artist will retain the publishing rights.

Explanation: Many writers reporting on the Duck Stamp Contest request information about the number of women and men entering the contest because the public enjoys reading this information. Providing accurate information strengthens public knowledge of the program. Prior to establishing the male/female section on the application form, the Federal Duck Stamp Office was guessing as to the gender of the entrant based on the individual's name. Since all names do not allow one to determine gender, it is necessary to request the information on the form. This information is not used in the judging process. The judges are not given any information concerning the artists—they see only the renderings, and have no information about who has drawn the entry until after the winner is selected.

The ¼ inch thickness is an approximate thickness and the 5/16 thickness is acceptable. The display boards have a groove into which the entries must fit. This groove accommodates an entry approximately ¼ inch thick. The groove cannot accommodate a stretched canvas which is ½ inch or more in thickness.

The tradition of the Duck Stamp Contest is something that both the public and the artists support. To change this to commission one artist or provide a flat fee for the winner will not be considered at this time.

The dates and location of this year's contest are also announced above in the dates and addresses sections, and the public is invited to attend.

Analysis of these revisions to 50 CFR part 91 has resulted in the Department's determining that they are not major actions under the provisions of Executive Order 12291. The revisions will not significantly affect a substantial number of small entities under the provisions of the Regulatory Flexibility Act, since entrants are individuals and not small entities as defined in 5 U.S.C. 601, *et seq.* The revisions do not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* No compliance with the National Environmental Policy Act is required because this rule constitutes minor changes or revisions to an approved action (the Duck Stamp Contest), that have no potential for causing substantial environmental impact.

The primary author of this document is: Norma E. Opgrand, Department of the Interior, U.S. Fish and Wildlife Service.

List of Subjects in 50 CFR Part 91

Hunting, Wildlife.

In light of the foregoing, title 50, part 91 of the Code of Federal Regulations is amended as follows:

PART 91—MIGRATORY BIRD HUNTING AND CONSERVATION STAMP CONTEST

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

Authority: 5 U.S.C. 301; 16 U.S.C. 718j; 31 U.S.C. 9701.

Subpart A—Introduction

2. Section 91.1 is revised to read as follows:

§ 91.1 Purpose of regulations.

(a) The purpose of these regulations is to establish procedures for selecting a design that will be used for the annual Migratory Bird Hunting and Conservation Stamp (Federal Duck Stamp).

(b) All individuals entering the contest must comply with these regulations. A copy of the regulations along with the Reproduction Rights and Display and Participation Agreements may be requested from the Federal Duck Stamp Office, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240.

(c) All contestants from the most recent contest will be sent a copy of the regulations, the Display and Participation Agreement, and the Reproduction Rights Agreement.

3. Section 91.2 is amended by removing the definition for "Display Agreement" and adding a definition for "Display and Participation Agreement" in alphabetical order to read as follows:

§ 91.2 Definitions.

* * * * *

Display and participation agreement—a document that each contestant must complete, sign and submit with the entry. The signed agreement permits the Service to display the entry at various locations for promotional purposes, and requires the artist to participate in events in behalf of the Federal Duck Stamp Program.

* * * * *

4. In § 91.4, the introduotory text is revised to read as follows:

§ 91.4 Eligible species.

Five or fewer of the species listed below will be identified as eligible each year; those eligible species will be provided to each contestant with the information provided in § 91.1.

* * * * *

Subpart B—Procedures for Entering the Contest

5. In § 91.12, the last sentence is revised to read as follows:

§ 91.12 Contest eligibility.

* * * All entrants must submit signed Reproduction Rights and Display and Participation Agreements.

6. In § 91.14, the first sentence is revised to read as follows:

§ 91.14 Restrictions on subject matter of entry.

A live portrayal of any bird(s) of the five or fewer identified eligible species must be the dominant feature of the design. * * *

7. Section 91.15 is revised to read as follows:

§ 91.15 Suitability of entry for engraving.

All entries should be drawn with fullest attention to clarity of detail and the relationship of tonal values. These prerequisites are important to interpret pictorial elements to hand engraving for printing, as they determine the engraved line techniques and direction. The engraver relies on the accuracy of the artist's work for successful interpretation. The engraver is primarily responsible for line interpretation and discipline, creating the miniature image of bird(s) appearing on the stamp.

8. Section 91.16 is revised to read as follows:

§ 91.16 Submission procedures for entry.

(a) Each contestant may submit only one entry. Each entry must be accompanied by a non-refundable entrance fee and a completed and signed Reproduction Rights Agreement and a completed and signed Display and Participation Agreement. The bottom portion of the Reproduction Rights Agreement must be attached to the back of the entry.

(b) Each entry should be appropriately wrapped to protect the art work and sent by registered mail, certified mail,

express mail, overnight delivery service or hand delivered to: Federal Duck Stamp Office, U.S. Fish and Wildlife Service, Suite 2058, Department of the Interior, Washington, DC 20240.

Subpart C—Procedures for Administering the Contest

9. Section 91.21 is revised to read as follows:

§ 91.21 Selection and qualification of contest judges.

(a) *Selection.* Five voting judges and one alternate judge will be selected annually by the Secretary of the Interior. Current employees of the Fish and Wildlife Service and their relatives are ineligible to serve as judges for the contest. The judges will be reimbursed for reasonable travel expenses. The judges will be announced on the first day of the contest.

(b) *Qualifications.* The panel of five judges will be made up of individuals, all of whom have one or more of the following prerequisites: recognized art credentials, knowledge of the anatomical makeup and the natural habitat of the eligible waterfowl species, an understanding of the wildlife sporting world in which the Duck Stamp is used, an awareness of philately and the role the Duck Stamp plays in stamp collecting, and demonstrated support for the conservation of waterfowl and wetlands through active involvement in the conservation community.

10. Section 91.24 is amended by revising paragraphs (b), (c), and (f) through (i); and adding new paragraph (j) to read as follows:

§ 91.24 Contest procedures.

* * * * *

(b) Prior to the first round of judging, and prior to the opening of the contest to the public, the judges will spend an additional two hours reviewing the entries.

(c) In the first round of judging, all qualified entries will be shown one at a time to the judges by the Contest Coordinator or a contest staff member. The judges will vote "in" or "out" on each entry; those entries receiving a majority of votes "in" will be eligible for the second round of judging. The remaining entries will be placed on display as a group for public viewing.

* * * * *

(f) The technical advisors from the Department of the Interior and the Bureau of Engraving and Printing will do a critical analysis of the entries that will be judged in the second round and advise the judges of any serious anatomical problems and/or any serious design problems for the engraver.

(g) In the second round of judging, each entry selected in the first round, plus the additional entries selected by judges, will be shown one at a time to the judges by the Contest Coordinator or by a contest staff member. The judges will vote by indicating a numerical score from one to five for each entry. The scores will be totaled to provide the entry score. The entries receiving the five highest scores will be advanced to the third round of judging.

(h) In the third round of judging, the judges will vote on the remaining entries using the same method as in round two. The Contest Coordinator will tabulate the final votes and present them to the Director, U.S. Fish and Wildlife Service, who will announce the winning entry as well as the entries that placed second and third.

(i) In case of a tie vote for first, second, or third place in the third round, the judges will vote again on the entries that are tied. The judges will vote using the same method as in rounds two and three.

(j) The selection of the winning entry by the judges will be final. Each contestant will be notified of the winning artist and the design. The winning artist will receive a pane of Duck Stamps signed by the Secretary of the Interior at the Federal Duck Stamp Contest the following year. The artists placing first, second, and third will receive a framed commendation from the Director of the U.S. Fish and Wildlife Service.

Subpart D—Post-Contest Procedures

11. Section 91.31 is revised to read as follows:

§ 91.31 Return of entries after contest.

All entries will be returned by certified mail to the participating artists within 120 days after the contest, unless the artwork is selected to appear at one or more wildlife art expositions. If artwork is returned to the Service because it is undelivered or unclaimed (this may happen if an artist changes address), the Service will not be obligated to trace the location of the artist to return the artwork. Any artist who changes his or her address is responsible for notifying the Service of the change. All unclaimed entries will be destroyed one year from the date of the contest.

Dated: April 25, 1991.

Constance B. Harriman,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 91–11685 Filed 5–15–91; 8:45 am]

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federal register

Thursday
May 16, 1991

Part VI

The President

Proclamation 6292—Prayer for Peace, Memorial Day, 1991

Presidential Papers

Federal Register
Vol. 56, No. 95
Thursday, May 16, 1991

Presidential Documents

Title 3—

The President

Proclamation 6292 of May 14, 1991

Prayer For Peace, Memorial Day, 1991

By the President of the United States of America

A Proclamation

"What we obtain too cheap, we esteem too lightly," Thomas Paine wrote in 1776, "it is dearness only that gives everything its value. Heaven knows how to put a proper price upon its goods, and it would be strange indeed if so celestial an article as freedom should not be highly rated." The war in the Persian Gulf has reminded all Americans of the value of freedom and the price that many brave men and women have been willing to bear for its sake. Neither "summer soldiers" nor "sunshine patriots," the members of Operation Desert Storm did not shrink from service to their country when the dark clouds of armed conflict gathered in the Persian Gulf, and, like the early patriots of whom Thomas Paine wrote, they deserve our respect and thanks. Those who made the ultimate sacrifice in the effort to liberate Kuwait joined a long line of heroes who have given their lives for our country, and on Memorial Day we remember all of them with solemn pride and heartfelt appreciation.

Whether we engage in quiet prayer or in public ceremony, whether we remember loved ones and neighbors or heroes known only to God, all Americans are united on this day in thanksgiving for the blessings of liberty and for the brave and selfless individuals who have helped to secure them. The sacrifices of those who fell in the Persian Gulf are a fresh and vivid memory, but on this occasion we also remember those who died while serving in places such as Panama, Grenada, Beirut, Korea, and Vietnam. We also honor with undiminished pride and gratitude those who served decades ago, during World Wars I and II.

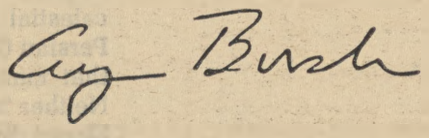
On Memorial Day, we echo in prayer the fervent hope that these Americans expressed with their very lives: the hope for lasting peace among nations. Knowing that any peace purchased by the surrender of principle can be neither genuine nor enduring, we pray for wisdom and resolve in our efforts to avert future conflicts and to establish a new world order based on respect for human rights and the rule of law. Knowing too that our freedom has been obtained at a very high cost, we also pray that we might remain a people worthy of so precious a gift. Declaring that "the times that try men's souls are over," Thomas Paine wrote: "The world has seen [America] great in adversity . . . and rising in resolve as the storm increased . . . . Let the world then see that she can bear prosperity and that her honest virtue in time of peace is equal to the bravest virtue in time of war."

In recognition of those Americans to whom we pay tribute today, the Congress, by a joint resolution approved on May 11, 1950 (64 Stat. 158), has requested the President to issue a proclamation calling upon the people of the United States to observe each Memorial Day as a day of prayer for permanent peace and designating a period on that day when the people of the United States might unite in prayer.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby designate Memorial Day, May 27, 1991, as a day of prayer for permanent peace, and I designate the hour beginning in each locality at 11 o'clock in the morning of that day as a time to unite in prayer. I urge the members of the media to cooperate in this observance.

I also request the Governors of the United States and the Commonwealth of Puerto Rico, and the appropriate officials of all units of government, to direct that the flag be flown at half-staff until noon during this Memorial Day on all buildings, grounds, and naval vessels throughout the United States and in all areas under its jurisdiction and control, and I request the people of the United States to display the flag at half-staff from their homes for the customary forenoon period.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of May, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and fifteenth.



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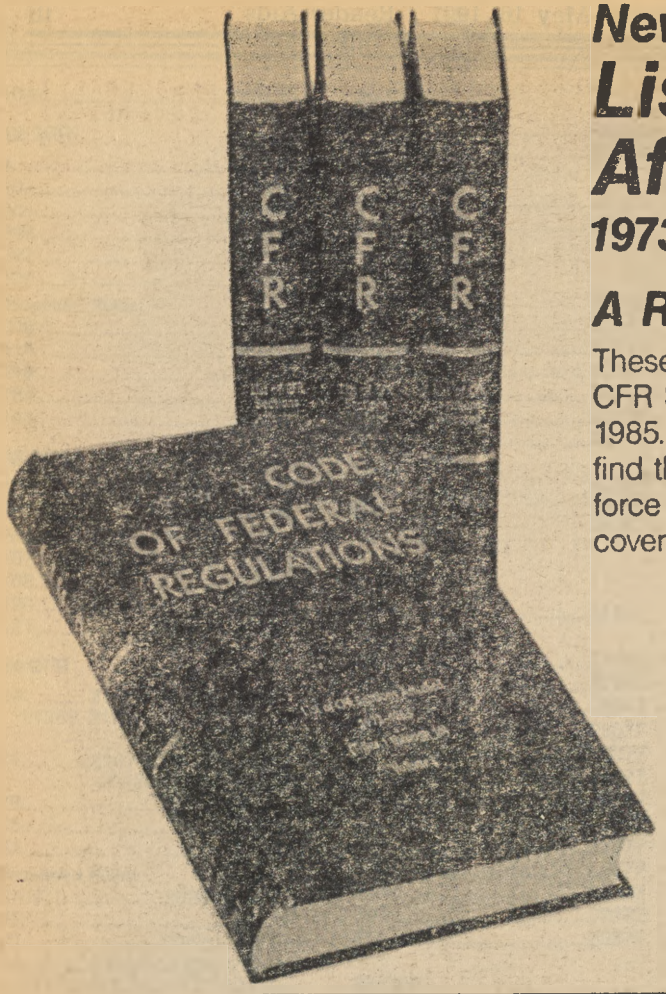

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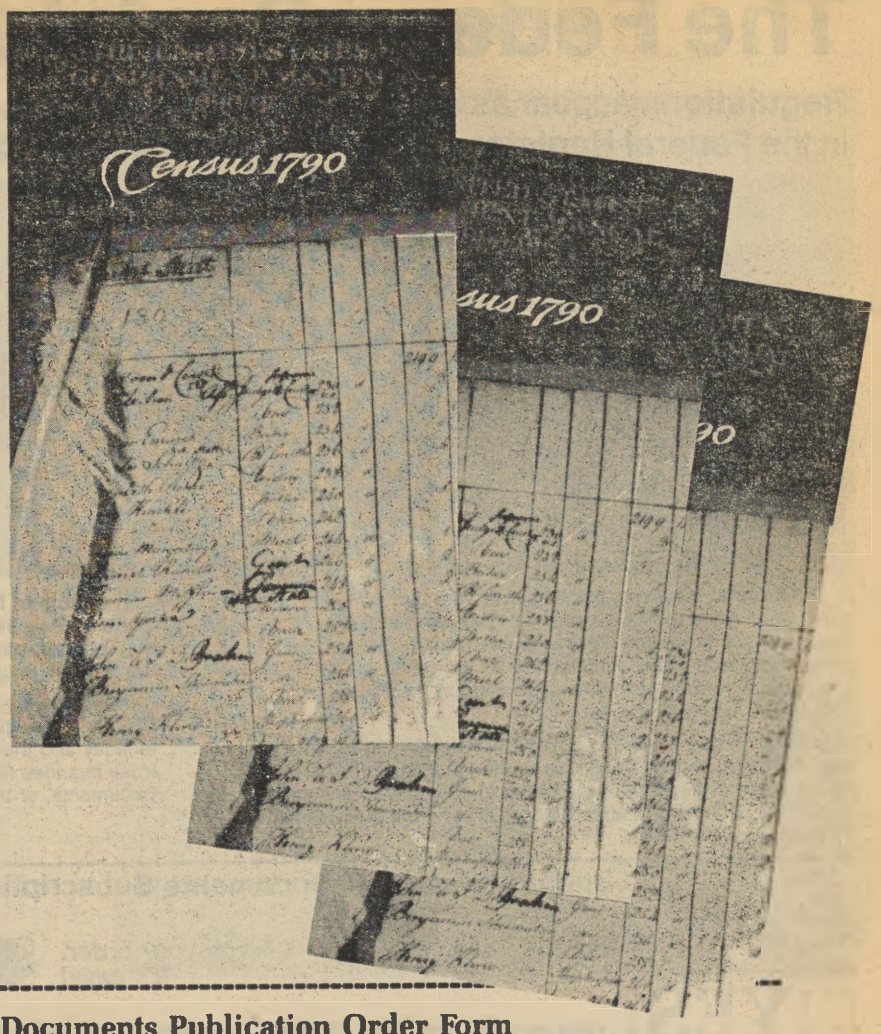

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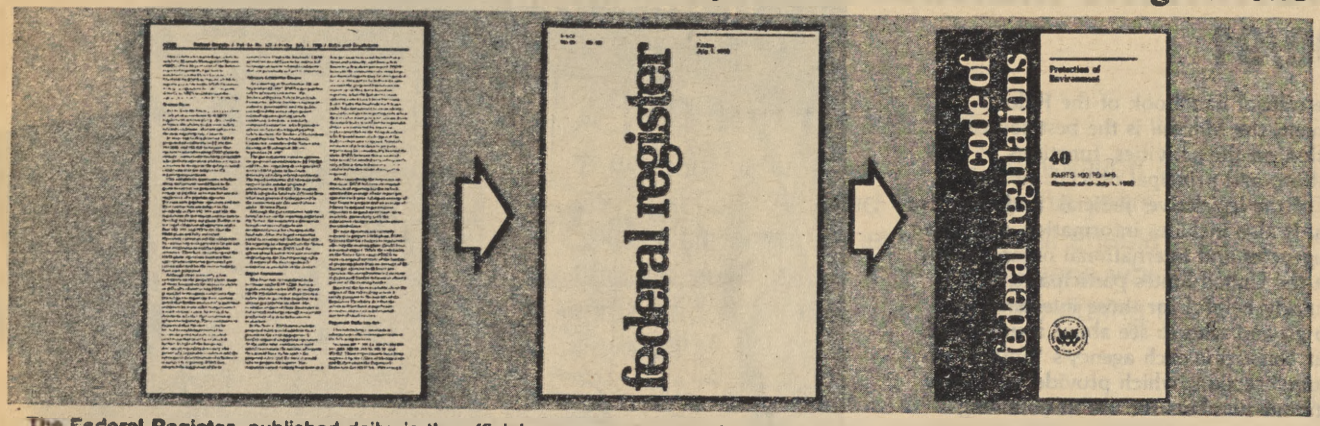

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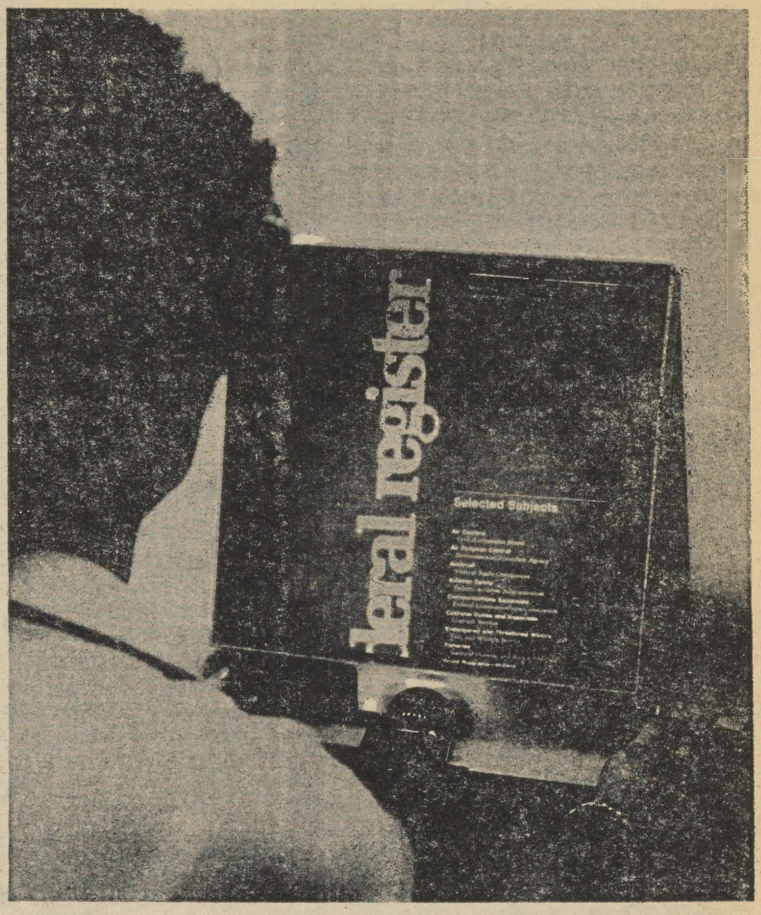

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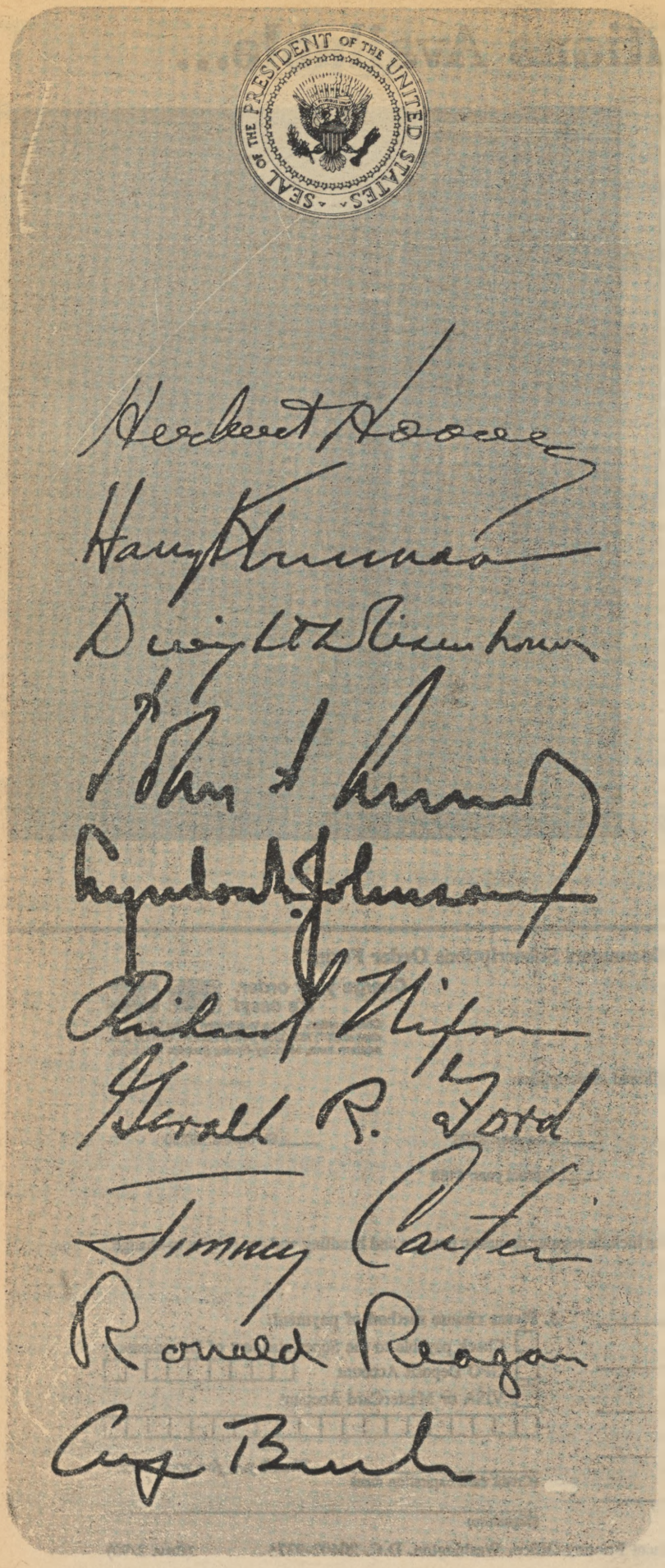

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