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Federal Register

Friday
November 20, 1987

Briefings on How To Use the Federal Register—
For information on briefings in Denver, CO, see announcement on the inside cover of this issue.

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THE FEDERAL REGISTER
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 2 1/2 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.

DENVER, CO

WHEN: December 15; at 9 a.m.
WHERE: Room 239, Federal Building, 1961 Stout Street, Denver, CO.
RESERVATIONS: Call the Denver Federal Information Center, 303-564-6575

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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

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Reg. 660]

Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 660 establishes the quantity of California-Arizona navel oranges that may be shipped to market during the period November 20 through November 26, 1987. Such action is needed to balance the supply of fresh navel oranges with the demand for such oranges during the period specified due to the marketing situation confronting the orange industry.

DATES: Regulation 660 (§ 907.960) is effective for the period November 20 through November 26, 1987.

FOR FURTHER INFORMATION CONTACT: Raymond C. Martin, Section Head, Volume Control Programs, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2528–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5120.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order 907 (7 CFR Part 907), as amended, regulating the handling of navel oranges grown in Arizona and designated part of California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of the use of volume regulations on small entities as well as larger ones.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 123 handlers of California-Arizona navel oranges subject to regulation under the navel orange marketing order, and approximately 4,065 producers in California and Arizona. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $100,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The great majority of handlers and producers of California-Arizona navel oranges may be classified as small entities.

This action is consistent with the marketing policy for 1987–88 adopted by the Navel Orange Administrative Committee (Committee). The Committee met publicly on November 17, 1987, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended, by a 10 to 1 vote, a quantity of navel oranges deemed advisable to be handled during the specified week. The Committee reports that the market is slow.

Based on consideration of supply and market conditions, and the evaluation of alternatives to the implementation of prorate regulations, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. To effectuate the declared purposes of the Act, it is necessary to make this regulatory provision effective as specified, and handlers have been apprised of such provision and the effective time.

List of Subjects in 7 CFR Part 907

Marketing agreements and orders, California, Arizona, Oranges (navel).

For the reasons set forth in the preamble, 7 CFR Part 907 is amended as follows:

PART 907—[AMENDED]

1. The authority citation for 7 CFR Part 907 continues to read as follows:

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

2. Section 907.960 is added to read as follows:

§ 907.960 Navel Orange Regulation 660.

The quantity of navel oranges grown in California and Arizona which may be handled during the period November 20, 1987, through November 26, 1987, are established as follows:

(a) District 1: 765,000 cartons;

(b) District 2: Unlimited cartons;

(c) District 3: 85,000 cartons;

(d) District 4: Unlimited cartons.

Dated: November 18, 1987.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 87–26946 Filed 11–19–87; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 910

[Lemon Reg. 588]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 588 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 250,000 cartons during the period November 22 through November 28, 1987. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 588 (§ 910.888) is effective for the period November 22 through November 28, 1987.

FOR FURTHER INFORMATION CONTACT: Raymond C. Martin, Section Head, Volume Control Programs, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC. 20090-6456; telephone: (202) 447-5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act", 7 U.S.C. 601-674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1987-88. The committee met publicly on November 17, 1987, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended, by an 11 to 1 vote, a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that the demand for lemons is good.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 910.888 is added to read as follows:

§ 910.888 Lemon Regulation 588.

The quantity of lemons grown in California and Arizona which may be handled during the period November 22 through November 28, 1987, is established at 250,000 cartons.

Dated: November 18, 1987.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 87-26945 Filed 11-19-87; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 204

[INS Number 1051-87]

Addition of New Service Office

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This notice adds New Delhi, India, suboffice of Rome, Italy, District to the list of overseas Service office locations. 8 CFR 204.1(a)(2)(iii) determines the jurisdiction assumed by consular officers who are authorized to approve Forms I-130, Petitions for Alien Relatives. Consular officers located in areas where an Immigration and Naturalization Service office exists are not authorized to adjudicate Forms I-130. The opening of a Service office in New Delhi, India, rescinds the authority of consular officers in India to approve I-130 petitions. This notice clarifies that Form I-130, Petitions for Alien Relatives, which are filed by petitioners who reside in India are to be filed at the INS office at New Delhi and not at the American consulate office located in India.

EFFECTIVE DATE: November 20, 1987.

FOR FURTHER INFORMATION CONTACT: Yolanda Sanchez-K, Senior Immigration Examiner, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536, Telephone: (202) 633-5014.

SUPPLEMENTARY INFORMATION: Compliance with 5 U.S.C. 553 as to proposed rulemaking and delayed effective date is unnecessary as this amendment merely updates the regulations to include the location of the new overseas office.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that the rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 8 CFR Part 204

Administrative practice and procedure, Reporting and recordkeeping requirements.

This order constitutes a notice to the public regarding the organization of the Service's overseas offices, and is not a rule within the definition of section 1(a)(3) of E.O. 12291.

Accordingly, Chapter I of Title 8, Code of Federal Regulations, is amended as follows:

PART 204—PETITION TO CLASSIFY ALIEN AS RELATIVE OF A UNITED STATES CITIZEN OR AS A PREFERENCE IMMIGRANT

1. The authority citation for Part 204 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1255.

2. 8 CFR 204.1(a)(2)(iii) first sentence is amended as follows:

§ 204.1 Petition.

(a) * * *

(2) * * *

(iii) * * * American consular officers assigned to visa-issuing posts abroad except those in Austria, Germany, Greece, Hong Kong, India, Italy, Korea, Mexico, The Philippines, Republic of Panama, Singapore, and Thailand are authorized to approve I-130 petitions only if the petitioner is residing in the area over which these consular officers have jurisdiction. * * *

Dated: August 12, 1987.

Richard E. Norton,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 87-26783 Filed 11-19-87; 8:45 am]

BILLING CODE 4410-10-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 11 and 25

Access Authorization Fee Schedule for Licensee Personnel

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to revise the fee schedule charged for background investigations of licensee personnel who require access to National Security Information and/or Restricted Data and access to or control over Special Nuclear Material. The amendments comply with current regulations in Parts 11 and 25 which provide that NRC will publish fee adjustments concurrent with notification of any change in the rate charged the NRC by the Office of Personnel Management (OPM) for conducting the investigations. The amendments also make a minor office name change in Part 11, and make a conforming change in Part 25.

EFFECTIVE DATE: November 20, 1987.

FOR FURTHER INFORMATION CONTACT: Duane G. Kidd, Chief, Facilities Security and Operational Support Branch, Division of Security, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-4122.

SUPPLEMENTARY INFORMATION: The OPM conducts access authorization background investigations for the NRC and sets the rate charged for these investigations. On May 1, 1987, OPM increased the rate that it charges the NRC for conducting access authorization background investigations. Since the fees that NRC charges its licensees for material access authorizations and personnel security clearances are dependent on the rates charged by OPM for conducting the background investigations, the fee schedules in NRC regulations must be amended to reflect OPM's rate increase. OPM has increased the rate it charges for background investigations approximately 15 percent. NRC is passing this additional cost to the licensees. These changes comply with current regulations in Parts 11 and 25 which provide that NRC will publish fee adjustments concurrently with notification of any change in the rate charged the NRC by the OPM for conducting the investigations.

Additionally, two minor administrative changes have been made. Under paragraph 11.16, the title of the NRC's point of contact for withdrawing or cancelling a request for an access authorization has been changed from Chief, Facilities and Personnel Security Branch to Chief, Personnel Security Branch, NRC Division of Security, and under Appendix A of Part 25, an additional footnote has been added to make it consistent with the fee schedule table in Part 11.

Because these are amendments dealing with agency practice and procedure, the notice and comment provisions of the Administrative Procedure Act do not apply pursuant to 5 U.S.C. 553(b)(A). The amendments are effective upon publication in the **Federal Register.** Good cause exists to dispense with the usual 30-day delay in effective date because the amendments are of a minor and administrative nature dealing with a routine adjustment in access authorization fees and other minor changes.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final regulation is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final regulation.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget, approval numbers 3150-0046 and 3150-0062.

Regulatory Analysis

The Commission has prepared a regulatory analysis on this final regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The analysis is available for inspection in the NRC Public Document Room, 1717 H Street NW., Washington, DC. Single copies of the analysis may be obtained from Duane G. Kidd, Division of Security, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 492-4124.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities. Each NRC licensee or other organization which may require access to classified information or Special Nuclear Material in connection with a license or application for a license will be affected by this final rule. Less than 14 entities are currently required to meet the requirements of 10 CFR Parts 11 and 25. Because none of these has been determined to be small as defined by the Regulatory Flexibility Act of 1980, the Commission finds that this rule will not have significant economic impact upon a substantial number of small entities.

List of Subjects

10 CFR Part 11

Hazardous materials—transportation, Nuclear Materials, Reporting and recordkeeping requirements, Security measures, Special nuclear material, Investigations.

10 CFR Part 25

Classified information, Investigations, Penalty, Reporting and recordkeeping requirements, Security measures.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended,

the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is adopting the following amendments to 10 CFR Parts 11 and 25.

PART 11—CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO OR CONTROL OVER SPECIAL NUCLEAR MATERIAL

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

Authority: Sec. 161, 68 Stat. 948, as amended (42 (U.S.C. 2201): sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Section 11.15(e) also issued under sec. 501, 85 Stat. 290 (31 U.S.C. 483a).

2. Section 11.15(e) is revised to read as follows:

§ 11.15 Application for special nuclear material access authorization.

* * * * *

(e)(1) Each application for special nuclear material access authorization, renewal, or change in level must be accompanied by the licensee's remittance, payable to the U.S. Nuclear Regulatory Commission according to the following schedule:

i.	NRC–U requiring full field investigation.	$1,955
ii.	NRC–U based on certification of comparable full field background investigation.	[1] 0
iii.	NRC–U or R renewal	[1] 15
iv.	NRC–R	[1] 15
v.	NRC–R based on certification of comparable investigation.	[2] 0

[1] If the NRC determines, based on its review of available data, that a full field investigation is necessary, a fee of $1,955 will be assessed prior to the conduct of the investigation.

[2] If the NRC determines, based on its review of available data, that a National Agency Check Investigation is necessary, a fee of $15.00 will be assessed prior to the conduct of the investigation; however, if a full field investigation is deemed necessary by the NRC based on its review of available data, a fee of $1,995 will be assessed prior to the conduct of the investigation.

* * * * *

3. Section 11.16 is revised to read as follows:

§ 11.16 Cancellation of request for special nuclear material access authorization.

When a request for an individual's access authorization is withdrawn or cancelled, the licensee shall immediately notify the Chief, Personnel Security Branch, NRC Division of Security, by telephone, so that the full field investigation or National Agency Check may be discontinued. The caller must provide the full name and date of birth of the individual, the date of request, and the type of access authorization originally requested ("U" or "R"). The licensee shall promptly submit written confirmation or the telephone notification to the Personnel Security Branch, NRC Division of Security. A portion of the fee for the "U" special nuclear material access authorization may be refunded depending upon the status of the full field investigation at the time of withdrawal or cancellation.

PART 25—ACCESS AUTHORIZATION FOR LICENSEE PERSONNEL

4. The authority citation for Part 25 continues to read as follows:

Authority: Secs. 145, 161, 68 Stat. 942, 948, as amended (42 U.S.C. 2165, 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); E.O. 10865, as amended, 3 CFR 1959–1963 Comp., p. 398 (50 U.S.C. 401, note); E.O. 12356, 47 FR 14874, April 6, 1982.

Appendix A also issued under 96 Stat. 1051 (31 U.S.C. 9071). For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 25.13, 25.17(a), 25.33 (b) and (c) are issued under 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 25.13 and 25.33(b) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

5. Appendix A is revised to read as follows:

Appendix A—Fees for NRC Access Authorization

Category	Fee
Initial "L" Access Authorization	[1] $15
Reinstatement of "L" Access Authorization	[1] 15
Extension or Transfer of "L" Access Authorization	[1] 15
Initial "Q" Access Authorization	1,955
Reinstatement of "Q" Access Authorization	[2] 1,955
Extension or Transfer of "Q"	[2] 1,955

[1] If the NRC determines, based on its review of available data, that a full field investigation is necessary, a fee of $1,955 will be assessed prior to the conduct of the investigation.

[2] Full fee will only be charged if investigation is required.

Dated at Bethesda, Maryland this 4th day of November, 1987.

For the Nuclear Regulatory Commission.

Victor Stello, Jr.,

Executive Director for Operations.

[FR Doc. 87–26851 Filed 11–19–87; 8:45 am]

BILLING CODE 7590–01–M

FEDERAL ELECTION COMMISSION

11 CFR Parts 100 and 110

[Notice 1987–14]

Contributions to and Expenditures by Delegates to National Nominating Conventions

AGENCY: Federal Election Commission.

ACTION: Final rule: Announcement of effective date.

SUMMARY: On September 22, 1987 (52 FR 35530), the Commission published the text of revised regulations governing the role of delegates and delegate committees in the Presidential delegate selection process. 11 CFR 110.14. These regulations implement the contribution and expenditure limitations applicable to delegates and delegate committees, and set forth the reporting obligations of delegate committees under the Federal Election Campaign Act of 1971, as amended. 2 U.S.C. 431 *et seq.* The Commission announces that these rules are effective as of November 20, 1987.

EFFECTIVE DATE: November 20, 1987.

FOR FURTHER INFORMATION CONTACT: Susan E. Propper, Assistant General Counsel, 999 E Street NW., Washington, DC 20463, (202) 376–5690 or toll free (800) 424–9530.

SUPPLEMENTARY INFORMATION: Section 438(d) of Title 2, United States Code, requires that any rule or regulation prescribed by the Commission to implement Title 2 of the United States Code be transmitted to the Speaker of the House of Representatives and the President of the Senate prior to final promulgation. The revisions to 11 CFR 110.14 and the conforming amendments to 11 CFR 100.5, 110.1 and 110.2 were transmitted to Congress on September 17, 1987. Thirty legislative days expired in the Senate on November 6, 1987 and in the House of Representatives on November 9, 1987.

Announcement of Effective Date: 11 CFR 100.5(e)(5), 110.1(m), 110.2(j) and 110.14, as published at 52 FR 35530 are effective as of November 20, 1987.

Dated: November 16, 1987.

Thomas J. Josefiak,

Vice Chairman, Federal Election Commission.

[FR Doc. 87–26818 Filed 11–19–87; 8:45 am]

BILLING CODE 6715–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 87-ASO-12]

Proposed Designation of Control Zone and Extension of Transition Area for Mackall Army Airfield, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment designates a control zone to encompass airspace surrounding Mackall Army Airfield near Fort Bragg, North Carolina, and amend the existing transition area with an extension needed to contain an instrument approach procedure. This action will allow positive control of aircraft operations in the vicinity of the airport during instrument meteorological conditions. Airspace affected by designation of the control zone extends upward from the surface of the ground within a five-mile radius of the airport, with an extension needed to contain IFR arrival and departure operations. Airspace affected by amending the transition area extends upward from 700 feet above the surface from the existing 6.5-mile radius of Mackall AAF and three miles either side of the 295° bearing from the Mackall RBN to 9.5 miles northwest of the RBN. The control zone is planned to be effective on a part-time basis as military requirements dictate.

EFFECTIVE DATE: 0901 UTC, March 10, 1988.

FOR FURTHER INFORMATION CONTACT: Mel Brock, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

History

On September 15, 1987, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by designating the Mackall Army Airfield, North Carolina, Control Zone and amending the Transition Area. This action will provide positive control of aircraft operations in the vicinity of the airport during instrument meteorological conditions (52 FR 36585). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. This amendment is the same as that proposed in the notice. Sections 71.171 and 71.181 of Part 71 of the Federal Aviation Regulations were republished in FAA Handbook 7400.6C dated January 2, 1987.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations designates a control zone to encompass airspace surrounding Mackall Army Airfield, North Carolina, and amend the existing transition area for an instrument approach surface.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zone, Transition area.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—[AMENDED]

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

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. § 71.171 is amended as follows:

Mackall AAF, NC [New]

Within a five-mile radius of Mackall AAF (Lat. 35°02'13" N., Long. 79°29'54" W.); within three miles each side of the 295° bearing from the Mackall RBN, extending from the five-mile radius zone to 8.5 miles northwest of the RBN. This control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/ Facility Directory.

§ 71.181 [Amended]

3. § 71.181 is amended as follows:

Mackall AAF, NC [Revised]

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Mackall AAF (Lat. 35°02'13" N., Long. 79°29'54" W.); within three miles each side of the 295° bearing from the Mackall RBN, extending from the 6.5 mile radius to 9.5 miles northwest of the RBN; excluding that portion that coincides with the Southern Pines, North Carolina, transition area.

Issued in East Point, Georgia, on November 5, 1987.

William D. Wood,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 87-26770 Filed 11-19-87; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 376

[Docket No. 71014-7214]

Export of Foreign Products Incorporating U.S. Origin Parts, Components, and Materials

AGENCY: Export Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Final rule.

SUMMARY: On March 23, 1987, Export Administration published a final rule (52 FR 9147) revising the parts and components provision of the Export Administration Regulations. The parts and components revision provided guidance on when authorization is required for shipments of foreign-made products with U.S. origin content and established new criteria for exempting shipments from authorization requirements. This rule was reviewed by other U.S. Government agencies, including the Departments of Defense, State, and Energy, prior to issuance.

Among the features of that ule is an exemption from control if the U.S. content does not exceed 25% by value and the destination is listed in Supplement Nos. 2 or 3 to Part 373 of the Export Administration Regulations.

This rule amends the Export Administration Regulations by stipulating that the 25% exemption does not apply to nationals of countries in Country Groups Q, W, Y or Z, to entitles controlled in fact by countries in Country Groups Q, W, Y or Z, or to entities controlled in fact by nationals of countries in Country Group Q, W, Y or Z. Shipments to these nationals or entities are exempt from control only if the U.S. content is both 10% or less *and* $10,000 or less.

Another feature of the March 23 rule was an exemption from obtaining prior written approval for the shipment of foreign-made products containing U.S. origin parts, components, and materials if the total U.S. content in a single unit of the foreign product does not exceed the highest General License *GLV* dollar value limit for Country Groups T and V that applies to the content, regardless of the new country of destination. However, since the publication of the March 23 rule, the *GLV* dollar value limit for computers has been raised and other GLV increases are likely, resulting in the eligibility of some products not intended to be included under this exemption. Therefore, this rule also removes this exemption provision from the Regulations.

EFFECTIVE DATES: This rule is effective November 20, 1987, except that the revision to § 376.12(a)(2) is effective December 21, 1987.

FOR FURTHER INFORMATION CONTACT: John Black or Patricia Muldonian, Office of Technology and Policy Analysis, Export Administration, Department of Commerce, Washington, DC 20230 (Telephone: (202) 377-2440).

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. This rule does not contain a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*)

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedures Act (5 U.S.C. 553) or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. app., 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 552), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs functions of the United States. Further, no other law requires that a notice or proposed rulemaking and an opportunity for public comment be given for this rule. Accordingly, it is being issued in final form. However, as with other Department of Commerce rules comments from the public are always welcome. Comments should be submitted to Vincent Greenwald, Office of Technology and Policy Analysis, Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Part 376

Exports, Reporting and recordkeeping requirements.

Accordingly, the Export Administration Regulations (15 CFR Parts 368-399) are amended as follows:

PART 376—[AMENDED]

1. The authority citation for Part 376 continues to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97-145 of December 29, 1981 and by Pub. L. 99-64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985).

2. Section 376.12 is amended by revising paragraphs (a)(2) and (a)(3) and adding paragraphs (a)(4) and (h), as follows:

§ 376.12 Parts, components, and materials in foreign-made products.

* * * * *

(a) * * *

(2) If at the time of export of the foreign product to the new country of destination, the U.S. content could be exported from the United States to the new destination under General License *G-DEST* or to an eligible country under *G-COM*;

(3) If the U.S. content value is both 10% or less *and* $10,000 or less[3]; or

(4) If the U.S. content value is 25% or less, *and* the ultimate destination of the foreign product is a country listed in Supplement Nos. 2 or 3 to Part 373 (excluding Ethiopia, Lebanon, and Nicaragua), *and* the ultimate consignee of the foreign product is *not* one of the following:

(i) An entity that the exporter knows or has reason to know is controlled in fact by a government in Country Groups Q, W, Y or Z;

(ii) A national of a country in Country Groups Q, W, Y or Z; and

(iii) An entity controlled in fact by nationals of a country in Country Groups Q, W, Y or Z.

Note: * * *

* * * * * *

(h) *Controlled in fact.* (1) For purposes of this section, "controlled in fact" means the authority or ability of a government or national to establish, directly or indirectly, the general policies or to control, directly or indirectly, the day-to-day operations of the entity.

(2) An entity will be presumed to be controlled in fact by a government or national, subject to rebuttal by competent evidence, when such government:

(i) Owns or controls more than 50% of the outstanding voting stock of the corporation;

(ii) Has the authority and the ability to name or control the votes of a majority of the members of the board of directors of the corporation;

(iii) Has control or other powers to name the management of the corporation; or

(iv) Has powers similar to those listed in paragraphs (h)(2), (i), (ii) or (iii) of this section with regard to unincorporated entities.

(3) An agency, department, diplomatic mission, or consular mission of a government will be presumed to be controlled in fact by such government.

Dated: November 17, 1987.

Vincent F. DeCain,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 87-26826 Filed 11-19-87; 8:45 am]

BILLING CODE 3510-DT-M

[3] In calculating the U.S. content value for these exemptions, do not include parts, components, or materials that could be exported from the United States to the new country of destination under General License G-DEST.

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1015

Exemption on Investigatory Records

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Freedom of Information Reform Act of 1986 changed the statutory provision concerning the investigatory records exemption. The Commission is changing a part of its regulations to reflect the statutory change.

EFFECTIVE DATE: December 21, 1987.

FOR FURTHER INFORMATION CONTACT: Daniel L. Jennings, Office of the General Counsel, Consumer Product Safety

Commission, Washington, DC 20207; telephone (301) 492-6980.

SUPPLEMENTARY INFORMATION: On October 27, 1986, Congress enacted the Freedom of Information Reform Act of 1986. (Pub. L. 99-570, Title I, Subtitle N, sections 1801 to 1802, 100 Stat. 3207-48) This Act changed the language of exemption 7 of the Freedom of Information Act. 5 U.S.C. 552(b)(7). Since the Commission's regulation pertaining to exemption 7 follows the language of the statute, it is necessary to revise the regulation.

List of Subjects in 16 CFR Part 1015

Information, Records, Administrative practice and procedure.

Accordingly, the Commission amends 16 CFR Part 1015 as follows:

PART 1015—[AMENDED]

(1) The authority citation for 16 CFR Part 1015 continues to read as follows:

Authority: 15 U.S.C. 2051, 15 U.S.C. 1261, 15 U.S.C. 1471, 15 U.S.C. 1211, 15 U.S.C. 1191, 5 U.S.C. 552.

(2) In § 1015.16, paragraph (g) is revised to read as follows:

§ 1015.16 Exemptions (5 U.S.C. 552(b)).

* * * * *

(g) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (1) could reasonably be expected to interfere with enforcement proceedings, (2) would deprive a person of a right to a fair trial or an impartial adjudication, (3) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (4) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (5) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (6) could reasonably be expected to endanger the life or physical safety of any individual.

* * * * *

Dated: November 16, 1987.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 87-26782 Filed 11-19-87; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 891

Civilian Personnel, Security Program

AGENCY: Department of the Air Force, Department of Defense.

ACTION: Final rule.

SUMMARY: The Department of the Air Force is amending Title 32, Chapter VII of the CFR by removing Part 891, Civilian Personnel, Security Program. The source document, AFR 40-732, has been revised. This rule is removed because it has limited applicability to the general public. This action is the result of departmental review. The intended effect is to insure that only regulations which substantially affect the public are maintained in the Air Force portion of the Code of Federal Regulations.

EFFECTIVE DATE: December 21, 1987.

FOR FURTHER INFORMATION CONTACT: Ms. Patsy J. Conner, Air Force Federal Register Liaison Officer, SAF/AADAQD, Pentagon, Washington, DC 20330-1000, telephone (202) 693-2166.

Authority: 10 U.S.C. 8013.

SUPPLEMENTARY INFORMATION:

PART 891—[REMOVED]

Accordingly, 32 CFR, Chapter VII, is amended by removing Part 891.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 87-26775 Filed 11-19-87; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 675

[Docket No. 61225-7052]

Groundfish of the Bering Sea and Aleutian Islands Area

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

ACTION: Notice of closure and request for comments.

SUMMARY: NOAA announces the following closures to prevent overfishing for sablefish and "other rockfish" under provisions of the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands (BSAI) Area (FMP): (1) Close the Bering Sea area to foreign and domestic fishing for these species, (2) prohibit foreign trawling in area 51, and (3) prohibit foreign longlining south of 55° north latitude and east of 170° west longitude. Groundfish are apportioned according to the regulations implementing the FMP. The intent of this action is to assure optimum use of these groundfish while conserving sablefish and rockfish stocks.

DATES: This notice is effective at noon, November 16, 1987, Alaska Standard Time (AST), until midnight, AST, December 31, 1987. Comments will be accepted through December 2, 1987.

ADDRESS: Comments should be mailed to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802, or be delivered to Room 453, Federal Building, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Janet E. Smoker (Resource Management Specialist, NMFS), 907-586-7230.

SUPPLEMENTARY INFORMATION: The FMP governs the groundfish fishery in the exclusive economic zone under the Magnuson Fishery Conservation and Management Act (Magnuson Act). The FMP was developed by the North Pacific Fishery Management Council (Council) and implemented by rules appearing at 50 CFR 611.93 and Part 675. The total allowable catches (TACs) for various groundfish species are apportioned initially among domestic annual harvest (DAH), reserves, and total allowable level of foreign fishing (TALFF). The reserve amount, in turn, is to be apportioned to DAH and/or TALFF during the fishing year, under 50 CFR 611.93(b) and 675.20(b). As soon as practicable after April 1, June 1, August 1, and on such other dates as are necessary, the Secretary of Commerce apportions to DAH all or part of the reserve that he finds will be harvested by U.S. vessels during the remainder of the year, except that part or all of the reserve may be withheld, if an apportionment would adversely affect the conservation of groundfish resources or prohibited species.

The initial specifications of domestic annual processing (DAP) for 1987 were based on the needs of the U.S. industry as projected by the Director, Alaska Region, NMFS (Regional Director). Certain species, including sablefish and rockfish, are considered fully utilized by

DAP; and bycatch amounts, only, are made available to JVP and TALFF. After fifteen percent of TAC was placed in the non-specific reserve, as required at § 675.20(a)(3), the initial specification for the Bering Sea subarea sablefish DAP was determined to be 3,145 mt and for the Bering Sea subarea rockfish DAP, 382 mt (52 FR 37464, October 7, 1987).

Directed DAP fishing for sablefish in the Bering Sea subarea was closed on August 15, 1987 (52 FR 31032, August 19, 1987). Up to a dozen catcher/processor trawlers, several catcher/processor longliners, and an unknown number of trawlers and longliners delivering fish to shore plants have continued to fish for pollock, Pacific cod, Greenland turbot and Pacific ocean perch (POP). In recent weeks, substantial bycatch amounts of sablefish and rockfish have been reported; the current DAP amounts for each of these species has been exceeded, and current TAC amounts have been reached. When the TAC of any Bering Sea subarea species is taken, regulations require that all domestic vessels operating in that area discard that species in the same manner as required for prohibited species.

The current Resource Assessment Document (RAD) for the BSAI indicates that for Bering Sea area sablefish, abundance has increased and the stocks are at historical highs; the recommended acceptable biological catch (ABC) for next year is 3,900 mt. Bering Sea rockfish stocks are considered stable, but due to changes in calculation procedures the recommended TAC for 1988 is only 350 mt.

Notice of Closure

Under § 675.20(a)(8), when the Regional Director determines that the TAC of any target species has been achieved prior to the end of the fishing year, the Secretary will publish a notice in the **Federal Register** requiring that species be treated as prohibited species for the remainder of the fishing year. The Regional Director has determined that the TACs for sablefish and for rockfish have been reached. Based on information in the RAD and an analysis of bycatches in ongoing DAP fisheries, he has also determined that further catches of each species should be avoided. Therefore, further retention of sablefish and rockfish by DAH fishermen in the Bering Sea subarea must cease effective noon, AST, November 16, 1987.

Under § 675.20(a)(9), the Secretary may also limit directed fishing for other groundfish by any method that will prevent overfishing of the species for which TAC is achieved. Substantial sablefish bycatch amounts, in many cases just short of the percentage (20 percent) of catch that legally constitutes directed fishing, have been reported by certain vessels in virtually every DAP fishery (all gear types and target species) after the August 15 closure to directed fishing for sablefish. However, recent catch reports from other domestic vessels, and observer data from foreign and joint venture vessels suggest that such high bycatches are not necessary. It is considered probable that if domestic vessels are not given the opportunity to retain sablefish, but are forced to promptly sort them and return them to the sea, sablefish bycatches would be on the order of one to five percent. For this reason, and given the improved status of sablefish stocks described in the current RAD, the Regional Director is allowing fishing for other groundfish to continue based on his findings that (1) there is no significant risk of biological harm to sablefish, and (2) there is no risk of socioeconomic harm to authorized users of sablefish. Should later evidence be received that sablefish catches and discards remain high in certain fisheries, the Secretary could, under § 675.20(a)(9), limit directed fishing for other groundfish by any method including area closures, gear restrictions, or prohibition of directed fishing on certain species in order to prevent overfishing of sablefish.

The only domestic fishery which could be expected to take more than insignificant amounts of rockfish is that for POP. However, recent DAP catch reports indicate that it is possible to conduct target fisheries on POP in the Bering Sea subarea without significant bycatches of rockfish. Therefore, the Regional Director is allowing fishing to continue for POP based on his findings that (1) there is no significant risk of biological harm to rockfish, and (2) the risk of socioeconomic harm to authorized users of rockfish, who are also the chief users of POP, is less than if directed fishing for POP were closed.

Under § 611.93(b)(3)(ii)(A), if the amount of "other species" or any target species except sablefish, turbots, or Pacific cod that is apportioned to the fishery will be reached, the Secretary will prohibit foreign trawling in all or part of the management area until January 1. If the amount of sablefish, turbots or Pacific cod that is apportioned to the fishery will be reached, the Secretary will prohibit foreign fishing in all or part of the management area until January 1.

Although the foreign fishery catch to-date of sablefish is only 8 mt of a TALFF apportionment of 40 mt, and of rockfish is only 2.3 mt of an apportionment of 9 mt, under current NOAA interpretation of the Magnuson Act, U.S. harvesters have priority access to available amounts of TAC including amounts apportioned to TALFF. Under this interpretation, amounts of the TAC apportioned to DAH fisheries are not limited on those fisheries as long as amounts apportioned to TALFF remain unharvested. Since DAH harvests of sablefish and rockfish have reached their respective TACs established for the Bering Sea subarea, the amounts of sablefish and rockfish apportioned to the fishery have been reached.

Historical data indicate that in the fourth quarter of the year significant foreign trawl catches of sablefish and rockfish have been made only in the area south of 53 degrees north latitude and west of 172 degrees west longitude, an area already closed to foreign fishing. Based on areas of reported domestic catch and U.S. observer data on foreign catches, the most likely area in which sablefish and rockfish catches may be encountered by the foreign trawl fleet is in area 51 of the Bering Sea. Foreign trawling in other areas of the Bering Sea is expected to result in insignificant catches of sablefish or rockfish. Therefore, in order to protect sablefish and rockfish stocks, foreign trawling in area 51 is prohibited effective noon, AST, November 16, 1987, for the remainder of the year.

Historical data indicate that in the fourth quarter of the year catches of sablefish by foreign longliners in the area north of 55 degrees north latitude and west of 170 degrees west longitude are statistically insignificant. Therefore, in order to protect sablefish stocks, foreign longlining is prohibited south of 55 degrees north latitude and east of 170 degrees west longitude, effective noon, AST, November 16 for the remainder of the year.

Under 50 CFR 611.11(c), all species of fish which a foreign fishing vessel has not been specifically allocated or authorized to retain, including fish caught or received in excess of any allocation or authorization, are prohibited species. The total catch of sablefish and rockfish has reached their authorized TACs; therefore further sablefish and rockfish catches by foreign vessels must be treated as prohibited species and discarded in accordance with § 611.11, effective noon, AST, November 16, 1987, for the remainder of the year.

Comments and Responses

The Assistant Administrator for Fisheries, NOAA, finds for good cause that it is impractical and contrary to the

public interest to provide prior notice and comment. Immediate effectiveness of this notice is necessary to prevent possible harm to sablefish and rockfish stocks and to allow U.S. and foreign fishermen to continue fishing for groundfish. However, interested persons are invited to submit comments in writing to the address above for 15 days after the effective date of this notice.

Classification

This action is taken under the authority of 50 CFR 611.93(b)(3)(ii)(A), 675.20(b) and 675.20(a)(7) and complies with Executive Order 12291.

List of Subjects in 50 CFR Parts 611 and 675

Fish, Fisheries, Reporting and recordkeeping requirements.

Authority: 16 J.S.C. 180 *et seq.*

Dated: November 17, 1987.

Bill Powell,

Executive Director, National Marine Fisheries Service.

[FR Doc. 87-26811 Filed 11-17-87; 1:02 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 52, No. 224
Friday, November 20, 1987

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

Farmers Home Administration

7 CFR Parts 1864, 1900, 1927, 1951, 1955, and 1956

Debt Settlement; Community and Business Programs

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) is proposing to amend the Agency's policies and procedures governing the debt settlement of Community Program Loans and insured Business and Industry Loans. The proposed rule is necessary to comply with section 1309 of the Food Security Act of 1985, Public Law (Pub. L.) 99–198. The intended effect of this action is to remove debt settlement actions appropriate to Community and Business Programs from the present regulation to a new regulation. The new Community and Business Programs regulation will eliminate the numerous restrictions and time intervals for debt settlement contained in the present regulation.

DATES: Comments must be received on or before December 21, 1987.

ADDRESSES: Submit written comments, in duplicate, to the Office of the Chief, Directives and Forms Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6348, South Agriculture Building, Washington, DC 20250. All written comments made pursuant to this notice will be available for public inspection during regular work hours at the above address. The collection of information requirements contained in this rule have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Farmers Home Administration, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Susan G. Wieferich, Senior Loan Officer, Program Management Branch, Community Facilities Division, Farmers Home Administration, U.S. Department of Agriculture, Room 6316, South Agriculture Building, Washington, DC 20250; telephone (202) 382–1490.

SUPPLEMENTARY INFORMATION:

Classification

This proposed action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined to be nonmajor. The proposed action is not likely to result in any of the following: (a) An annual effect on the economy of $100 million or more, (b) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions, or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Environmental Impact

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." FmHA has determined 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, Pub. L. 91–190; an Environmental Impact Statement is not required.

Intergovernmental Review

This change affects the following FmHA programs as listed in the catalog of Federal Domestic Assistance:

Sec.
10.414 Resource, Conservation and Development Loans.
10.418 Water and Waste Disposal Systems for Rural Communities.
10.419 Watershed and Flood Prevention Loans.
10.422 Business and Industry Loans.
10.423 Community Facility Loans.

These programs are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (Cite 7 CFR Part 3015, Subpart V, 48 FR 29112, June 24, 1983; 49 FR 22675, May 31, 1984; 50 FR 14088, April 10, 1985, as appropriate and any subsequent notices that may apply).

Regulatory Flexibility Act

FmHA has determined that this action will not have a significant economic impact on a substantial number of small entities, because the action will not affect a significant number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601).

Background

Debt settlement for Community and Business Programs is governed by the Consolidated Farm and Rural Development Act (CONACT) (7 U.S.C. 1921–1996). The major reason for removing debt settlement actions appropriate to Community and Business Programs from the present regulation to a new regulation is to comply with section 1309 of the Food Security Act of 1985 (Pub. L. 99–198). Pub. L. 99–198 provides the Secretary with greater flexibility in administering the debt settlement claims for Community and Business Programs, including compromise, adjustment, cancellation, and chargeoff actions. In addition, the proposed action will correct inconsistencies, delete obsolete material, clarify wording and, where applicable, update references in other program regulations. The changes will result in more efficient service to the public, while continuing protection of the Government's interest.

A summary of proposed major changes are as follows:

(1) Part 1864 (FmHA Instruction 456.1) is revised to remove settlement of debts owed under Community and Business Programs. These programs are now covered under a new Subpart C of Part 1956 of this chapter.

(2) The following regulations are to be amended to reference the new Subpart C of Part 1956 of this chapter:

Subpart B of Part 1900
Subpart A of Part 1927
Subpart A of Part 1951
Subpart A of Part 1955

(3) Subpart C of Part 1956 will be added. The policy and authority for the settlement of debts and claims for

Community and Business Programs in Part 1864 (FmHA Instruction 456.1) will now be in Subpart C of Part 1956. Provisions of section 1309 of the Food Security Act of 1985 (Pub. L. 99–198) are to be added and the general policies will be further clarified. The major proposed changes from Part 1864 are:

(a) Section 1956.105 clarifies the definitions of settlement, compromise, adjustment, cancellation, chargeoff, debtor, security, servicing official, and United States Attorney.

(b) Section 1956.109(a) states that a debt, to be eligible for settlement, must be due and payable under the terms of the note or other instrument, or because of acceleration by written notice, unless the debt is to be cancelled without application or charged off.

(c) Section 1956.109(b) provides additional guidance on the disposition of security prior to the date of application for settlement.

(d) Section 1956.109(d) provides for County Committee review and approval of all proposed settlement actions except the cancellation of debts discharged in bankruptcy or when a claim has been referred to a United States Attorney under § 1956.112(d).

(e) Section 1956.109(f) provides for the use of Form FmHA 1956–1, "Application for Settlement of Indebtedness," for all settlement actions.

(f) Section 1956.110 clarifies the settlement of accounts where joint debtors are involved.

(g) Section 1956.111 provides guidance on the adjustment of debts when debtors are in bankruptcy.

(h) Section 1956.112 has been expanded to provide that a settlement will not be approved when an investigation of fiscal irregularity is pending.

(i) Section 1956.118 expands the approval authority of the State Director from $25,000 to $50,000.

(j) Section 1956.124 eliminates the $20.000 limitation on debts that can be compromised or adjusted even though the debtor may have the ability to pay in full.

(k) Section 1956.124(a) revises the maximum period of time during which payments on adjustment offers should be made from three to five years.

(l) Section 1956.124(d) authorizes an increase from $250 to $600 in the discount for cost of litigation and administration when the cost of collecting the debt does not justify enforced collection of the entire amount.

(m) Section 1956.130 eliminates the requirement that debts be due and payable five years before they can be cancelled.

(n) Section 1956.130(b)(1) clarifies that in cases of bankruptcy the debt is not discharged if the debtor has executed a new promise to pay prior to discharge.

(o) Section 1956.130(b)(4) eliminates the requirement that disappeared debtors be absent for at least five years before debt can be cancelled.

(p) Section 1956.136(b) eliminates the consideration of good faith and the requirement that nonjudgment debts of more than $20,000 be due and payable five years before chargeoff.

(q) Section 1956.136(b)(3) provides clarification for chargeoff of nonjudgment debts of deceased or disappeared debtors, or when it is impossible or impractical to obtain the debtor's signature.

(r) Section 1956.138 clarifies the steps to be taken in processing the approval or rejection of debt settlement applications.

(s) Section 1956.139 clarifies the methods for receipt and application of collections from debt settlement agreements.

(t) Section 1956.148 provides an exception authority whereby the administrator may, in individual cases, make an exception to any provision when it is determined that application of the provision would adversely affect the Government's interest.

List of Subjects

7 CFR Part 1864

Accounting, Loan programs—Agriculture, Rural areas.

7 CFR Part 1900

Appeals, Credit.

7 CFR Part 1927

Accounting, Administrative practice and procedure, Credit, Loan programs—Agriculture, Rural areas.

7 CFR Part 1951

Account Servicing, Credit, Loan programs—Housing and community development, Mortgages.

7 CFR Part 1955

Foreclosure, Government acquired property.

7 CFR Part 1956

Accounting, Loan programs—Agriculture, Rural areas.

Accordingly, FmHA proposes to amend Chapter XVIII, Title 7, Code of Federal Regulations as follows:

PART 1864—DEBT SETTLEMENT

1. The authority citation for Part 1864 continues to read as follows:

Authority: 7 U.S. C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 31 U.S.C. 3711; 7 CFR 2.23; 7 CFR 2.70.

2. Section 1864.1 is revised to read as follows:

§ 1864.1 Purpose and scope.

This part sets forth the policies and procedures for settlement of debts owed the United States and administered by the Farmers Home Administration (FmHA) under any of its programs, except Farmer Program loans, Housing loans, Community Program loans, insured Business and Industry loans, nonprogram (NP) loans, Economic Opportunity (EO) loans, and claims against third party converters. This regulation does not cover releases from personal liability in transfer or voluntary conveyance cases. Debts owed under Farmer Programs or Single Family Housing programs will be settled in accordance with Subpart B of Part 1956 of this chapter. Debts owed under Community Programs and the insured Business snd Industry Program will be settled in accordance with Subpart C of Part 1956 of this chapter. Settlement of claims against third party converters and settlement of nonprogram (NP) loans, Economic Opportunity (EO) loans, and Housing loans other than Single Family Housing is not authorized under this part and proposed settlements of these types of claims should be submitted to the National Office for settlement pursuant to the Federal Claims Collection Standards, 4 CFR Parts 101–105.

PART 1900—GENERAL

3. The authority citation for Part 1900 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; 7 CFR 2.70.

Subpart B—Farmers Home Administration Appeal Procedure

4. Section 1900.51 is amended by revising paragraph (b) to read as follows:

§ 1900.51 General.

* * * * *

(b) Debt settlement actions found in Part 1864 (FmHA Instruction 456.1), Subpart B of Part 1956 of this chapter or Subpart C of Part 1956 of this chapter.

* * * * *

PART 1927—FEDERAL STATUTE OF LIMITATIONS

5. The authority citation for Part 1927 continues to read as follows:

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

Subpart A—Federal Statute of Limitations

6. Section 1927.7 is amended by revising paragraph (c)(3) to read as follows:

§ 1927.7 Servicing contract claims.

* * * * *

(c) * * *

(3) Settling the debt according to Part 1864 of this chapter (FmHA Instruction 456.1) or Subpart C of Part 1956 of this chapter when the borrower is eligible; or

* * * * *

PART 1951—SERVICING AND COLLECTIONS

7. 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; 7 CFR 2.70.

Subpart A—Account Servicing Policies

8. Section 1951.15 is amended by revising paragraph (e) to read as follows:

§ 1951.15 Return of paid-in-full or satisfied notes to borrower.

* * * * *

(e) *Debt settlement case.* See Part 1864 of this chapter (FmHA Instruction 456.1) or Subpart B or C of Part 1956 of this chapter for the handling of notes in debt settlement cases.

* * * * *

Subpart B—Collections

9. Section 1951.51 is amended by revising paragraph (a) to read as follows:

§ 1951.51 Purpose.

(a) Checks, money orders, and similar items to be remitted as payments on accounts of Farmers Home Administration (FmHA) should be made payable to the FmHA, except that offers in compromise of judgment accounts authorized in Part 1864 of this chapter (FmHA Instruction 456.1), or Subparts B and C of Part 1956 of this chapter, will be made payable to the Treasurer of the United States and transmitted to the State Director for referral to the appropriate United States Attorney through the representative of the Office of the General Counsel (OGC). All collection items in any form other than coin and currency will be accepted subject to collection, that is, subject to the items being paid. Any remittance items which currently are not payable including postdated checks, will not be accepted for payment on indebtedness due FmHA. When such items are received, they will be returned immediately to the remitter.

* * * * *

PART 1955—PROPERTY MANAGEMENT

10. The authority citation of 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 2.2223; 7 CFR 2.70.

Subpart A—Liquidation of Loans Secured by Real Estate and Acquisition of Real and Chattel Property

11. Section 1955.18 is amended by revising paragraph (f) to read as follows:

§ 1955.18 Actions required after acquisition of property.

* * * * *

(f) *Unsatisfied account.* Farmer Program loan borrowers will be sent a letter similar to exhibit F of this subpart (available in any FmHA office). If unsatisfied account balances cannot be settled in accordance with Part 1864 of this chapter (FmHA Instruction 456.1) or Subpart C of Part 1956 of this chapter the account will be reclassified to collection-only by submitting Form FmHA 404–1, "Case Reclassification," to the Finance Office. After reclassification to collection-only, Form FmHA 450–10, "Advice of Borrower's Change of Address or Name," or for Multiple Family Housing, Form FmHA 1944–54, "Multiple Family Housing Change of Borrower Name/Case Number/Project Number/Loan Number," will be submitted to the Finance Office to furnish the borrower's new address, if known. Collection-only accounts will be serviced in accordance with § 1951.7 of Subpart A of Part 1951 of this chapter.

* * * * *

PART 1956—DEBT SETTLEMENT

12. The Authority citation of Part 1956 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 31 U.S.C. 3711; 7 CFR 2.23; 7 CFR 2.70.

13. Subpart C of Part 1956 consisting of §§ 1956.101 through 1956.148, is added to read as follows:

Subpart C—Debt Settlement—Community and Business Programs

Sec.

1956.101 Purpose.
1956.102 Application of policies.
1956.103–1956.104 [Reserved]
1956.105 Definitions.
1956.106–1956.108 [Reserved]
1956.109 General requirements for debt settlement.
1956.110 Joint debtors.
1956.111 Debtors in bankruptcy.
1956.112 Debts ineligible for settlement.
1956.113–1956.117 [Reserved]
1956.118 Approval authority.
1956.119–1956.123 [Reserved]
1956.124 Compromise and adjustment.
1956.125–1956.129 [Reserved]
1956.130 Cancellation.
1956.131–1956.135 [Reserved]
1956.136 Chargeoff.
1956.137 [Reserved]
1956.138 Processing.
1956.139 Collections.
1956.140–1956.141 [Reserved]
1956.142 Delinquent adjustment agreements.
1956.143–1956.144 [Reserved]
1956.145 Disposition of essential FmHA records.
1956.146–1956.147 [Reserved]
1956.148 Exception authority.
1956.149–1956.150 [Reserved]

Subpart C—Debt Settlement—Community and Business Programs

§ 1956.101 Purpose.

This subpart delegates authority and prescribes policies and procedures for debt settlement of Water and Waste Disposal System loans; Community Facility loans; Association Recreation loans; Watershed loans and advances; Resource, Conservation and Development loans; Rural Renewal loans; and insured Business and Industry loans.

§ 1956.102 Application of policies.

If a debt is eligible for settlement, the debt settlement authorities of the Farmers Home Administration (FmHA) should be explained and the privileges thereof extended to the debtor. All debtors are entitled to impartial treatment and uniform consideration under this subpart. Accordingly, FmHA personnel charged with any responsibility in connection with debt settlement will adhere strictly to the authorizations, requirements, and limitations in this subpart.

§§ 1956.103–1956.104 [Reserved]

§ 1956.105 Definitions.

(a) *Settlement.* The compromise, adjustment, cancellation, or chargeoff of a debt owed to FmHA. The term "settlement" is used for convenience in referring to compromise, adjustment, cancellation, or chargeoff actions, individually or collectively.

(b) *Compromise.* The satisfaction of a debt, including a release of liability, by the acceptance of a lump-sum payment of less than the total amount owed on the debt.

(c) *Adjustment.* The satisfaction of a debt, including a release of liability, when acceptance is conditioned upon completion of payment of the adjusted amount at a specific future time or times, with or without the payment of any consideration when the adjustment offer is approved. An adjustment is not a final settlement until all payments under the adjustment agreement have been made.

(d) *Cancellation.* The final discharge of a debt with a release of liability.

(e) *Chargeoff.* To write off a debt and terminate all servicing activity *without* a release of liability. This is not a final discharge of the debt, but rather a decision upon the part of the agency to remove the debt from agency receivables.

(f) *Debtor.* The borrower of loan funds under any of the FmHA programs specified in § 1956.101 of this subpart.

(g) *Security.* All that serves as collateral for the FmHA loan(s), including, but not limited to, revenues, tax levies, municipal bonds, and real and chattel property.

(h) *Servicing official.* The FmHA official who is primarily responsible for servicing the account.

(i) *United States Attorney.* An attorney for the United States Department of Justice.

§§ 1956.106-1956.108 [Reserved]

§ 1956.109 General requirements for debt settlement.

(a) *Debt due and payable.* The debt or any extension thereof on which settlement is requested must be due and payable under the terms of the note or other instrument, or because of acceleration by written notice prior to the date of application for settlement, unless the debt is to be cancelled without application under § 1956.130(b) or charged off under § 1956.136 of this subpart.

(b) *Disposition of security.* Ordinarily, all security will be disposed of prior to the date of application for settlement. There are exceptions:

(1) It may be necessary to abandon security through the debt settlement process. For example, a community may be rendered uninhabitable by a toxic or hazardous substance. In such cases, debt settlement may proceed provided the servicing official determines:

(i) That further collection efforts with respect to the security in question would be ineffective or uneconomical,

(ii) That it is in the best interests of the Government to proceed with debt settlement,

(iii) That the proposal otherwise meets the requirements appropriate to the type of settlement under consideration, and

(iv) The approval of the Administrator is obtained.

(2) A servicing action may have been carried out which resulted in a less than complete disposition of security. For example, the Government may have consented to a voluntary sale of a debtor's real and chattel property without reference to other security, which might include, but is not limited to: An additional lien on revenue, a third party pledge of security, or a pledge of personal liability. In such cases, debt settlement may proceed provided the requirements of § 1956.109(b)(1) of this subpart are met.

(3) Security can be retained under the compromise and adjustment offers as specified in § 1956.124 of this subpart.

(4) Settlement of a claim against an estate will be based on the recovery that may reasonably be expected, taking into consideration such items as the security, costs of administration, allowances of minor children and surviving spouse, allowable funeral expenses, dower and courtesy rights, and specific encumbrances on the property having priority over claims of the Government.

(c) *Proceeds from the sale of security.* Proceeds from the sale of security must be applied on the debtor's account, taking into consideration the disposition requirements of any grant agreement, prior to the date of application for settlement, except when security is retained as provided for in § 1956.109(b) of this subpart. Debtors will not be allowed to sell security and use the proceeds as part or all of the debt settlement offer.

(d) *County Committee review.* Proposed settlement actions will be reviewed by the County Committee except for the cancellation of debts discharged in bankruptcy under § 1956.130(b)(1) of this subpart or when a claim has been referred to a United States Attorney under § 1956.112(d)of this subpart. No settlement shall be approved if it is more favorable to the debtor than recommended by the County Committee.

(e) *Assistance from Office of General Counsel (OGC).* When necessary, State Directors will obtain advice from OGC in handling proposed debt settlement actions.

(f) *Format.* Form FmHA 1956-1, "Application for Settlement of Indebtedness," will be utilized for all settlement actions under this subpart.

§ 1956.110 Joint debtors.

Settlements may not be approved for one joint debtor unless approved for all debtors. Joint debtors includes all parties, individuals, and organizations, who are legally liable for payment of the debt.

(a) Individual settlement offers from joint debtors can be accepted and processed only as a joint offer. A separate Form FmHA 1956-1 will be completed by each debtor unless the debtors are members of the same family and all necessary financial information on each debtor can be shown clearly on a single application.

(b) If one of the joint debtors is deceased or has received a dischsrge of the debt in bankruptcy, or if the whereabouts of one of the debtors is unknown, or it is otherwise impossible or impractical to obtain the signature of the debtor, the application for settlement may be "accepted without that debtor's signature if it contains adequate information on each of the debtors to justify settlement of the debt as to each of the debtors. The name of the debtor requesting settlement will be shown at the top of Form FmHA 1956-1 followed by name and status of the other debtor. For example, "John Doe, joint debtor with Bill Doe, deceased."

(c) Joint debtors must be advised that all debtors will remain liable for the balance of the debt until any payment(s) due under the joint offer have been made.

§ 1956.111 Debtors in bankruptcy.

FmHA personnel do not have the authority to accept or reject a reorganization plan on behalf of the United States for debtors filing under Chapter 9, Chapter 11, or Chapter 13 when the plan calls for a part of the FmHA debt to be forgiven.

(a) Plans submitted by debtors under Chapters 9, 11, and 13 must be sent by the servicing official to the State Director who will refer them to the United States Attorney through OGC. When the plan calls for the adjustment of a debt to FmHA, the State Director will obtain the advice of the Administrator before providing OGC with a recommendation on acceptance or rejection of the plan.

(b) The United States Attorney will advise the State Director, through OGC, as to approval or rejection of the debtor's reorganization plan. The State Director will then notify the Finance Office by memorandum of the terms and conditions of the bankruptcy reorganization plan, including any adjustment of the debt.

§ 1956.112 Debts ineligible for settlement.

Debts will not be settled:

(a) If referral to the Office of Inspector General (OIG) and/or to the OGC is

contemplated or pending because of suspected criminal violation, or

(b) If civil action to protect the interests of the Government is contemplated or pending, or

(c) If an investigation for suspected fiscal irregularity is contemplated or pending, or

(d) When a claim has been referred to or a judgment has been obtained by the United States Attorney and the debtor requests settlement, the servicing official will explain to the debtor that the United States Attorney has exclusive jurisdiction over the claim or judgment, and therefore, FmHA has no authority to agree to a settlement offer. If the debtor wishes to make a settlement offer, it must be submitted with any related payment directly to the United States Attorney for consideration.

§§ 1956.113–1956.117 [Reserved]

§ 1956.118 Approval authority.

District Directors cannot approve debt settlement actions. Therefore, they will make no statements to a debtor concerning the action that may be taken upon a debtor's application. Subject to this subpart, the compromise, adjustment, cancellation, or chargeoff of debts will be approved or rejected:

(a) By the State Director when the outstanding balance of the indebtedness involved in the settlement is less then $50,000, including principal, interest, and other charges.

(b) By the Administrator or his designee when the outstanding balance of the indebtedness involved in the settlement is $50,000 or more, including principal, interest, and other charges.

§ 1956.119–1956.123 [Reserved]

§ 1956.124 Compromise and adjustment.

Nonjudgment debts may be compromised or adjusted upon application of the debtor(s), or if the debtor is an individual and unable to act, upon application of the guardian, executor, or administrator of the debtor's estate.

(a) *General provisions.* Debts, regardless of the amount, may be compromised or adjusted subject to the following:

(1) The debt or any extension thereof on which compromise or adjustment is requested is due and payable under the terms of the note or other instrument, or because of acceleration by written notice, prior to the date of application for settlement.

(2) The period of time during which payments on adjustment offers are to be made cannot exceed five years without the approval of the Administrator.

(3) Efforts will be made to avoid applications for settlement in which debtors offer a specified amount payable upon notice of approval of the proposed settlement.

(b) *Debtor's ability to pay.* In evaluating the debtor's settlement application, it is essential that reliable information be obtained in sufficient detail to assure that the offer accurately reflects the debtor's ability to pay. The debtor's income, expenses, and nonsecurity assets are critical factors in determining the type of settlement and the amount which the debtor can reasonably be expected to offer. Critical information should include the following:

(1) The debtor's total present income from all sources will be determined. In addition, careful consideration will be given to the probable sources, amount, and stability of income to be received over a reasonable period of years. For individuals, public welfare assistance and pensions, including old age pensions and pensions received by veterans for pensionable disabilities will not be considered as sources of funds with which to make compromise and adjustment offers.

(2) The debtor's operation and maintenance expenses, and, in the case of individuals, probable living expenses.

(3) The priority of payments on debts to third parties.

(4) When the debtor is largely dependent on income from an occupation in which manual labor is required, age and health of the individual are vital factors in determining the ability to pay. The number in the debtor's family, their ages and condition of health, will also be weighed in determining the ability to pay. However, when the debtor's income is from investments, business enterprises, or management efforts, age and health of both individual and family are of less importance.

(5) The value of the debtor's assets in relation to debts and liens of third parties is important in determining the debtor's ability to pay. It is recognized that debtors must retain a reasonable equity in essential nonsecurity property in order to continue normal operations and, in the case of an individual, to meet family living expenses over a period of years. Under this policy a reasonable equity in a modest nonsecurity homestead occupied by the debtor, whether or not exempt from levy and execution will not be considered as available for offer in settlement. Nonsecurity property which is in excess of minimum business and/or family living needs and which is not exempt from levy and execution should be considered when determining the debtor's ability to pay.

(c) *Debtor unable to pay in full.* Debts may be compromised or adjusted and security property retained by the debtor, provided:

(1) The debtor is unable to pay the indebtedness in full, and

(2) The debtor has offered an amount equal to the present fair market value of all security or facility financed, and

(3) The debtor has offered any additional amount which the debtor is able to pay, and

(4) The total amount offered represents a reasonable determination of the debtor's ability to pay.

(d) *Debtor able to pay in full but refuses to do so.* If the debtor has the ability to pay in full but refuses to do so, debts may be compromised or adjusted and security property retained by the debtor under certain conditions:

(1) The OGC advises that the Government is unable to enforce collection in full within a reasonable time by enforced collection proceedings, and the amount offered represents a reasonable settlement considering:

(i) Availability of assets or income which may be realized by enforced collection proceedings, considering the applicable exemptions available to the debtor under State and Federal law, and

(ii) Inheritance prospects within 5 years, and

(iii) Likelihood of debtor obtaining nonexempt property or income within 5 years out of which there could be collected a substantially larger sum than the amount of the present offer, and

(iv) Uncertainty as to the price that the security or other property will bring at forced sale, *or*

(2) There is a real doubt concerning the Government's ability to prove its case in court for the full amount of the debt, and the amount offered represents a reasonable settlement considering:

(i) The probability of prevailing on the legal issues involved, and

(ii) The probability of proving facts to establish full or partial recovery, with due regard to the availability of witnesses and other pertinent factors, and

(iii) The probable amount of court costs and attorney's fees which may be assessed against the Government if it is unsuccessful in litigation, *or*

(3) When the cost of collecting the debt does not justify enforced collection of the full amount. In such cases, the amount accepted in compromise or adjustment may reflect an appropriate discount for administrative and litigious costs of collection. Such discount will not exceed $600 unless the OGC advises

that in the particular case a larger discount is appropriate. The cost of collecting may be a substantial factor in settling small debts but normally will not carry great weight in settling large debts.

§§ 1956.125-1956.129 [Reserved]

§ 1956.130 Cancellation.

Nonjudgment debts, regardless of the amount, may be cancelled with or without application by the debtor.

(a) *With application by debtor.* Debts may be cancelled upon application of the debtor(s), or if the debtor is an individual and unable to act, upon application of the guardian, executor, or administrator of the debtor's estate. The following conditions apply:

(1) The servicing official furnishes a favorable recommendation concerning the cancellation, and

(2) There is no known security for the debt and the debtor has no other assets from which the debt could be collected, and

(3) The debtor is unable to pay any part of the debt and has no reasonable prospect of being able to do so, and

(4) The debt or any extension thereof is due and payable under the terms of the note or other instrument, or because of acceleration by written notice prior to the date of application.

(b) *Without application by debtor.* Debts may be cancelled upon a favorable recommendation of the servicing official in the following instances:

(1) *Debtors discharged in bankruptcy.* If there is no security for the debt, debts discharged in bankruptcy shall be cancelled by the use of Form FmHA 1956-1 with a copy of the Bankruptcy Court's Discharge Order attached. No attempt will be made to obtain the debtor's signature and County Committee review is unnecessary. If the debtor has executed a new promise to pay prior to discharge and has otherwise accomplished a valid reaffirmation of the debt in accordance with advice from OGC, the debt is not discharged.

(2) *Impossible or impractical to obtain debtor's signature.* Debts may be cancelled if it is impossible or impractical to obtain a signed application and the requirements of § 1956.130(a) (1), (2), and (3) *only* of this subpart are met. Form FmHA 1956-1 will document:

(i) The sources of information obtained.

(ii) That a current effort was made to obtain the debtor's application and the date of such effort.

(iii) The specific reasons why it was impossible or impracticable to obtain the signature of the debtor and, if the debtor refused to sign, the reason(s) given.

(3) *Deceased debtors (individuals only).* The following conditions must exist:

(i) There is no known security,

(ii) An administrator or executor has not been appointed to settle the debtor's estate but the financial condition of the estate has been investigated and it has been established that there is no reasonable prospect of recovery, *or*

(iii) An administrator or executor has been appointed to settle the estate of the debtor, and

(A) A final settlement has been made and confirmed by the probate court and the Government's claim was recognized properly and the Government has received all funds it was entitled to, or

(B) A final settlement has not been made and confirmed by the probate court, but there are no assets in the estate from which there is any reasonable prospect of recovery, or

(C) Regardless of whether a final settlement has been made, there were assets in the estate from which recovery might have been effected but such assets have been disposed of or lost in a manner which the OGC advises will preclude any reasonable prospect of recovery by the Government.

(4) *Disappeared debtor (individuals only).* The following conditions must exist:

(i) The debtor has disappeared and cannot be found without undue expense. Reasonable efforts either in person or in writing will be made to locate the debtor. These efforts, including the names and dates of contacts, and the information furnished by each person, will be fully documented on Form FmHA 1956-1,

(ii) There is no known security for the debt and the debtor has no other assets from which the debt could be collected, and

(iii) The debtor is unable to pay any part of the debt and has no reasonable prospect of being able to do so.

§§ 1956.131-1956.135 [Reserved]

§ 1956.136 Chargeoff.

(a) *Judgment debts.* Subject to the provisions of § 1956.112(d) of this subpart, judgment debts, regardless of the amount, may be charged off without the debtor's signature upon a favorable recommendation of the servicing official provided:

(1) The United States Attorney's file is closed, and

(2) The requirements of § 1956.130(b)(1), (2), (3), or (4) of this subpart have been met, as appropriate, *or* two years have elapsed since any collections were made on the judgment and the debtor(s) has no equity in property on which the judgment is a lien or on which it presently be made a lien.

(b) *Nonjudgment debts.* Debts which cannot be settled under other sections of this subpart may be charged off without the debtor's signature upon a favorable recommendation of the servicing official in the following instances:

(1) When the OGC advises in writing that the claim is legally without merit, or that evidence necessary to prove the claim in court cannot be produced.

(2) When there is no known security for the debt, the debtor has no other assets from which the debt could be collected, and the debtor:

(i) Is unable to pay any part of the debt and has no reasonable prospect of being able to do so, or

(ii) Is able to pay part or all of the debt but refuses to do so, and an opinion is received from OGC to the effect that the Government cannot enforce collection of a significant amount from assets or income.

(3) When the debtor is deceased (individuals only), disappeared (individuals only), or when it is impossible or impractical to obtain the debtor's signature, and the conditions of § 1956.136(b)(2) of this subpart are met.

§ 1956.137 [Reserved]

§ 1956.138 Processing.

(a) *Approval.* When a debt settlement application is approved, the State Director will:

(1) Send the original approved Form FmHA 1956-1 to the Finance Office.

(2) Notify debtors in writing of settlement approval, including the specific amount and terms of the offer that were accepted, for compromise and adjustment offers under § 1956.124 and cancellations with application under § 1956.130(a) of this subpart.

(3) Not be required to notify debtors of settlement approval when debts are cancelled without application under § 1956.130(b) or charged off under § 1956.136 of this subpart.

(b) *Requesting additional information.* When rejection appears to be necessary either because of lack of information or because the amount of a compromise or adjustment offer is inadequate, the State Director may request the servicing official to obtain the additional information or make an effort to obtain a more acceptable offer, as the circumstances justify. Notice of rejection

of an offer will be withheld in such cases until sufficient time has elapsed to enable the debtor to present further information or a new offer.

(c) *Rejection.* When a debt settlement application is rejected, the State Director will:

(1) Insert the reasons for rejection on the Form FmHA 1956–1.

(2) Retain the original Form FmHA 1956–1 in the State Office and return case files and copies of Form FmHA 1956–1 to the servicing official.

(3) Request the Finance Office to return any adjustment or compromise payment held by the Finance Office to the borrower, in care of the servicing official.

(4) Return any adjustment or compromise payment held by the State Office to the borrower, in care of the servicing official.

(5) Notify the debtor in writing of the reasons for the rejection for compromise and adjustment offers under § 1956.124 and cancellations with application under § 1956.130(a) of this subpart.

(d) *Appeal rights.* In accordance with Subpart B of Part 1900 of this chapter, the debtor will be given the right to appeal the rejection of any debt settlement offer made by the debtor under this subpart.

§ 1956.139 Collections.

(a) When the debtor offers a lump-sum payment in compromise or an initial payment on an adjustment offer, that payment will accompany the settlement application at the time the application is filed with the servicing official.

(b) Except as provided in paragraph (c) of this section, debt settlement payments will be deposited and transmitted as required in Subpart B of Part 1951 of this chapter.

(c) Checks or check transmittal letters containing restrictive notations such as "Settlement in full" or "Payment in full," will be forwarded to the State Office where they will be retained until approval or rejection of the offer. The use of restrictive notations will be discouraged to the fullest extent possible.

(d) All payments evidenced by Form FmHA 451–2, "Schedule of Remittances," bearing the legend "Compromise Offer—FmHA" or "Adjustment Offer—FmHA," will be held in the Deposits Fund Account by the Finance Office until notification is received from the State Office of the approval or rejection of the offer.

(1) Upon receipt of an approved Form FmHA 1956–1, remittances will be applied in accordance with established policies, beginning with the oldest loan included in the settlement, except that when the request for settlement includes loans made from different revolving funds, the Finance Office will prorate the amount received on the basis of the total principal balance due the respective revolving funds.

(2) Upon notification of a rejection of a debtor's offer and receipt of a request from the State Director for a refund, the Finance Office will refund to the debtor, in care of the servicing official, the amount held in the Deposits Fund Account.

(e) When a debtor's adjustment offer is approved, the accounts involved will not be adjusted in the records of the Finance Office until all payments have been made. Form FmHA 1956–1 will be held in a suspense file pending payment of the full amount of the approved offer.

(f) If an approved debt settlement agreement is later voided by the State Director, any payments which have been received shall be retained as payments on the debt owed at the time the compromise or adjustment offer was approved.

§§ 1956.140–1956.141 [Reserved]

§ 1956.142 Delinquent adjustment agreements.

(a) The servicing official is responsible for notifying debtors in advance of the due dates of payments on debt settlement agreements and for monitoring compliance with the terms of settlement agreements. If a payment is delinquent, the servicing official should contact the debtor promptly to determine the reason for the delinquency and the debtor's plan for completing the agreement.

(b) Delinquencies of 30 days or more will be reported to the State Director along with other pertinent information and the recommendation of the servicing official regarding further handling of the case.

(c) The State Director may extend, for ninety days, the time for making the payments when the circumstances of the case justify an extension. Extensions for a greater period of time may be made by the State Director upon the recommendation of the County Committee and the servicing official.

(d) When the debtor is financially unable to meet the terms of the debt settlement agreement, the State Director may void the existing agreement and process a new settlement more consistent with the debtor's repayment ability, provided the facts in the case justify such action.

(e) If the State Director determines that the debtor cannot or will not meet the terms of the settlement agreement and if the facts do not justify approval of a new settlement agreement, the State Director will void the existing agreement and direct the servicing official to take other servicing actions appropriate to the circumstances of the case.

(f) When an adjustment agreement is voided, the State Director will notify the debtor giving the reasons in writing, with a copy to the Finance Office and to the servicing official. Upon receipt, the Finance Office will return the original Form FmHA 1956–1 to the State Office.

§§ 1956.143–1956.144 [Reserved]

§ 1956.145 Disposition of essential FmHA records.

Subpart A of Part 2033 available at any FmHA office identifies an "essential FmHA record" as the original of any document or record which provides evidence of indebtedness or obligation to FmHA and includes, but is not limited to: promissory notes, assumption agreements and valuable documents, such as bonds fully registered as to principal and interest.

(a) Essential FmHA records evidencing debts settled by compromise, completed adjustment or cancelled with application will be returned to the debtor or to the debtor's legal representative. The appropriate legend, such as "Satisfied by Approved Compromise," and the date of the final action will be stamped or typed on the original document. This same information plus the date the original document is returned to the debtor will be shown on a copy to be placed in the debtor's case folder.

(b) Essential FmHA records evidencing debts cancelled without application will be placed in the debtor's case folder and disposed of pursuant to Subpart A of Part 2033. However, if the debtor requests the document(s), they may be stamped "Satisfied by Approved Cancellation" and returned.

(c) Essential FmHA records evidencing charged off debts will be retained in the servicing office and will not be stamped or returned to the debtor. They will be destroyed six years after chargeoff pursuant to Subpart A of Part 2033.

§§ 1956.146–1956.147 [Reserved]

§ 1956.148 Exception authority.

The Administrator may make an exception to any requirement or provision of this subpart which is not inconsistent with the authorizing statute or other applicable law if the Administrator determines that application of the requirement or

provision would adversely affect the Government's interest. Requests for exceptions must be made in writing by the State Director and supported with documentation to explain the adverse effect on the Government's interest, propose alternative courses of action, and show how the adverse effect will be eliminated or minimized if the exception is granted. Any settlement actions approved by the Administrator under this section will be documented on Form FmHA 1956–1 and returned to the State Office for submission to the Finance Office.

§§ 1956.149–1956.150 [Reserved]

Date: October 29, 1987.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 87–26795 Filed 11–19–87; 8:45 am]

BILLING CODE 3410–07–M

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7 CFR Part 1951

Account Servicing Policies

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to amend its regulations to eliminate the necessity for borrowers to attempt voluntary debt adjustment prior to being considered for deferral. The action is consistent with loan making and other loan servicing regulations, and is necessary to comply with the Court decision in *Coleman v. Lyng*, 663 F. Supp 1315 (DND 1987). The intended effect is to provide a more rapid response to applicant's requests, assist in the establishment of a good working relationship with other lenders, and achieve greater consistency with other FmHA regulations.

DATES: Comments must be received on or before December 21, 1987.

ADDRESSES: Submit written comments, in duplicate, to the Office of the Chief, Directives and Forms Management Branch, Farmers Home Administration, USDA, Room 6348, South Agriculture Building, 14th Street and Independence Avenue, SW., Washington, DC 20250. All written comments made pursuant to this notice will be available for public inspection during working hours at the above address.

FOR FURTHER INFORMATION CONTACT: Robert E. Bonnet, Senior Loan Officer, Farmer Programs Loan Servicing and Property Management Division, Farmers Home Administration, USDA, Room 5444, South Agriculture Building, 14th Street and Independence Avenue, SW., Washington, D.C. 20250, telephone (202) 475–4020.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined to be non-major, because there will not be an annual effect on the economy of $100 million or more; a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Intergovernmental Consultation

1. 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), Emergency Loans, Farm Operating Loans, and Farm Ownership Loans are excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

2. The Soil and Water Loan Program is subject to the provisions of Executive Order 12372 and FmHA Instruction 1940–J.

Programs Affected

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

10.404—Emergency Loans

10.406—Farm Operating Loans

10.407—Farm Ownership Loans

10.416—Soil and Water 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 Proposed Rule

The purpose of this proposed rule is to eliminate regulation inconsistencies concerning voluntary debt adjustment in deferral processing. The current FmHA procedure contained in Subpart A of Part 1951, § 1951.44(b)(5), requires that the borrower must have attempted voluntary debt adjustment and/or rescheduling of payments with other creditors in accordance with Subpart A of Part 1903 in order to be considered for a deferral. This is in conflict with loan making and other servicing regulations where negotiation with other lenders occurs after considering other available servicing techniques.

Farmer Programs regulations allow unequal, balloon or partially set-aside installments without first attempting voluntary debt adjustment. FmHA special debt set-aside regulations found in Subpart A of Part 1951, § 1951.41, allow for a partial interest-free set-aside with debt adjustment of the other creditors pursued only if FmHA authorities are insufficient to produce a positive cash flow.

FmHA voluntary debt adjustment regulation found in Subpart A of Part 1903 states that it is not the policy to assist borrowers or entities in avoiding the payment of any obligation, which is within their reasonable ability to pay and it is the debtors' responsibility to negotiate with their creditors after considering all available resources and income.

The option of voluntary debt adjustment is best used after all servicing options are tried and the borrower still needs additional help to allow the farm plan to cash flow.

The proposed rule will also assist in developing good working relationships with the other lenders and will increase the incentive for them to cooperate in debt adjustments after the FmHA has attempted to assist the borrower to the full extent of its ability. Under the old regulation, the lenders would often initially refuse to adjust their debts, knowing that the FmHA must then proceed to consider deferral and negotiate for adjustment only when the plan still required it.

This policy will not directly injure the FmHA, due to loan interest continuing to accrue during the deferral; however, it will place more of the burden and associated loan risk of debt restructure on the Government and less on the other lenders.

Nevertheless, this result is necessary to comply with the court decision in *Coleman v. Lyng*, 663 F. Supp 1315 (DND 1987), which states, it would be arbitrary

and capricious for FmHA to have a regulation which attempts to have private lenders share in adjusting borrowers' debts before borrowers can qualify for an FmHA loan deferral.

List of Subjects in 7 CFR Part 1951

Accounting servicing, Credit, Loan programs—Agriculture, Loan programs—Housing and community development, Mortgages.

Accordingly, FmHA proposes to amend Chapter XVIII, Title 7, Code of Federal Regulations as follows:

PART 1951—SERVICING AND COLLECTIONS

1. 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: 7 CFR 270.

Subpart A—Account Servicing Policies

§ 1951.44 [Amended]

2. Section 1951.44 is amended by removing paragraph (b)(5).

Dated: October 30, 1987.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 87-26796 Filed 11-19-87; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-NM-144-AD]

Airworthiness Directives; Boeing Model 767 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to Boeing Model 767 series airplanes, which would require inspection, and modification, if necessary, of certain pneumatic system 8th stage check valves. This proposal is prompted by reports of valves being shipped from the factory with improperly swaged fasteners. This condition, if not corrected, could lead to failure of the valve and engine shutdown, engine damage, or damage to the pneumatic system.

DATES: Comments must be received no later than January 19, 1988.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-144-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Robert C. McCracken, Systems and Equipment Branch, ANM-130S; telephone (206) 431-1947. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-144-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. Discussion: The manufacturer of the pneumatic system 8th stage check valve recently discovered that one swaging tool used to assemble the valve had an oversize anvil. Valves assembled using this tool are subject to excessive wear and premature failure. Failure of a fastener swaged using the discrepant tool could result in separation of the valve, with parts of the valve migrating into the pneumatic duct and into the compressor stage of the engine. This can lead to damage to the engine and/or the pneumatic system. Additionally, failure of the valve allows air from the high stage bleed system to feed back into the 8th stage compressor, which could lead to compressor stall and engine shutdown. As more than one swaging tool was in use by the manufacturer, it is not possible to know which of the valves manufactured has an improperly swaged fastener.

The FAA has reviewed and approved Boeing Service Bulletin 767-36-0021, dated September 17, 1987, and Hamilton Standard Service Bulletin 36-2056, dated June 29, 1987, which describe inspection and modification, if necessary, of the pneumatic system 8th stage check valve.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require inspection and modification, if necessary, of the pneumatic system 8th stage check valve in accordance with the service bulletins previously mentioned.

It is estimated that 75 airplanes of U.S. registry would be affected by this AD, that it would take approximately 10 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $30,000.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Boeing Model 767 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 767 series airplanes, as listed in Boeing Service Bulletin 767-36-0021, dated September 17, 1987, certificated in any category. Compliance required as indicated, unless already accomplished.

To preclude engine or pneumatic system damage caused by failure of the pneumatic system 8th stage check valve, accomplish the following:

A. Within the next 6 months after the effective date of this AD, inspect the pneumatic system 8th stage check valves on both engines, in accordance with Boeing Service Bulletin 767-36-0021, dated September 17, 1987, or later FAA-approved revision, to determine if the serial numbers are among those listed in Hamilton Standard Service Bulletin 36-2056, dated June 29, 1987, or later FAA-approved revision, as requiring further inspection.

B. If any valve is identified by serial number as requiring further inspection, prior to further flight, remove the valve from the airplane, inspect the valve retention collar, and, if necessary, modify the valve in accordance with the above-mentioned service bulletins.

C. Valves not installed on an airplane must be inspected, and modified if necessary, in accordance with the above-mentioned service bulletins, prior to their installation on airplanes.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, and which has the concurrence of an FAA Principal Maintenance Inspector, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the rework required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124-2207. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on November 12, 1987.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87-26771 Filed 11-19-87; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 37

[Docket No. RM87-35-000]

Generic Determination of Rate of Return on Common Equity for Public Utilities; Staff Submittal

November 5, 1987.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking, Notice of staff submittal.

SUMMARY: On September 30, 1987, the Commission issued a notice of proposed rulemaking involving the generic determination of rate of return on common equity for public utilities (52 FR 37,326, October 6, 1987). By memorandum dated November 4, 1987, the Commission staff has placed in the record (1) Computer printouts of selected Electric Utility Growth Rate Statistics and related computer programs; (2) Value Line Investment Survey Reports on Electric Utilities for selected months; (3) Consensus Analyst Forecasts of 5-year Earnings per Share Growth Rate Statistics; (4) Selected Utility Financial Statistics from Merrill Lynch Reports.

DATES: These documents were made available November 4, 1987.

ADDRESS: These documents are available for inspection through the Commission's Public Reference Room, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Marvin Rosenberg, Chief, Financial Analysis Branch, Office of Economic Policy, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-8283.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-26879 Filed 11-19-87; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[INTL-153-86]

FSC Transfer Pricing Rules, Distributions, Foreign Tax Credit and Other Special Rules for FSCs; Public Hearing on Proposed Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to rules for application of the foreign sales corporation (FSC) transfer pricing rules.

DATES: The public hearing will be held on Tuesday January 19, 1988, beginning at 10:00 a.m. Outlines of oral comments must be delivered on or mailed by Wednesday, January 5, 1988.

ADDRESS: The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The requests to speak and outlines of oral comments should be submitted to the Commissioner of Internal Revenue, Room 4429, Attn: INTL-153-86, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Carol Savage of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, telephone (202) 566-3935, not a toll-free call.

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under sections 921, and 923 through 927 of the Internal Revenue Code of 1986. The proposed regulations appeared in the **Federal Register** for Tuesday, March 3, 1987, at page 6467 (52 FR 6467).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit, not later than Tuesday, January 5, 1988, an outline of the oral comments to be presented at the hearing and the time they wish to devote to each subject.

Each speaker will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

D. Kevin Dolan,

Associate Chief Counsel, Technical and International.

[FR Doc. 87-26774 Filed 11-19-87; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2580

Proposed Regulation Exempting Certain Broker-Dealers and Investment Advisers From Bonding Requirements; Extension of Comment Period

AGENCY: Department of Labor.

ACTION: Notice of extension of comment period.

SUMMARY: This document extends the comment period regarding a proposed regulation under the Employee Retirement Income Security Act of 1974 (ERISA) which would provide certain broker-dealers and investment advisers with an exemption from the requirement for a bond set forth in section 412 of ERISA. The proposed regulation was set forth in a notice of proposed rulemaking published in the **Federal Register** at 52 FR 31039 (August 19, 1987).

DATES: The comment period is extended through January 18, 1988.

ADDRESSES: Written comments (preferably at least three copies) should be submitted to the Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, Room N-5669, U.S. Department of Labor, Washington, DC 20210, and marked "Attention: Proposed Bonding Regulation." All submissions will be available for public inspection in the Public Documents Room, Pension and Welfare Benefits Administration, Room N-5507, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Linda Shore, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor, Washington, DC 20210, (202) 523-8671 (not a toll free number).

SUPPLEMENTARY INFORMATION: On August 19, 1987, the Department of Labor, (the Department), published a notice of proposed rulemaking in the **Federal Register** (52 FR 31039) which would provide certain broker-dealers and investment advisers with an exemption from the requirement for a bond set forth in section 412 of ERISA. In that notice the Department invited all interested persons to submit written comments concerning the proposed regulation on or before October 19, 1987.

The Department has received a request from the Securities Industry Association for additional time to prepare comments, and the Department believes that it is appropriate to grant such additional time. Accordingly, this notice extends the comment period during which comments on the proposed regulation will be received through January 18, 1988.

Notice of Extension of Comment Period

Notice is hereby given that the period of time for the submission of public comments on the proposed regulation exempting certain broker-dealers and investment advisers from the bond otherwise required under section 412 of ERISA (proposed at 52 FR 31039, August 19, 1987), is hereby extended through Monday, January 18, 1988.

Signed at Washington, DC this 16th day of November, 1987.

David M. Walker,

Assistant Secretary of Labor, Pension and Welfare Benefits Administration, United States Department of Labor.

[FR Doc. 87-26845 Filed 11-19-87; 8:45 am]

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COPYRIGHT ROYALTY TRIBUNAL

37 CFR Part 304

[Docket No. CRT 87-4 PBRA]

1987 Adjustment of the Public Broadcasting Royalty Rates and Terms

AGENCY: Copyright Royalty Tribunal.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Copyright Act of 1976 requires the Copyright Royalty Tribunal to conduct proceedings from June 30, 1987 to December 31, 1987 to establish or adjust reasonable terms and rates of royalty payments with respect to certain uses by public broadcasting entities of published nondramatic musical works, and published pictorial, graphic, and sculptural works. This notice announces that the Tribunal is considering certain regulations to apply to such terms and rates for the five-year period 1988-1992.

DATES: All comments are due by December 15, 1987. The written rebuttal cases on the PBS/NPR/SESAC issue are due December 7, 1987, and proposed findings are due December 11, 1987.

ADDRESS: Comments and written rebuttal cases are to be filed with: Chairman, Copyright Royalty Tribunal, 1111 20th Street, NW., Suite 450, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Robert Cassler, General Counsel, Copyright Royalty Tribunal, 1111 20th Street, NW., Suite 450, Washington, DC 20036 (202-653-5175).

SUPPLEMENTARY INFORMATION:

Authority

17 U.S.C. 118 establishes a copyright compulsory license for the use by public broadcasting entities of published nondramatic musical works and published pictorial, graphic and sculptural works. 17 U.S.C. 118(c) provides that between June 30 and December 31 of every year ending in a 2 or a 7, the Tribunal shall conduct a proceeding for the determination of reasonable rates of royalty payments for the use of these works. 17 U.S.C. 118(b) requires that the Tribunal adopt regulations by which copyright owners may receive reasonable notice of the use of their works and for the keeping by public broadcasting entities of records of such use.

This Proceeding—Background and Chronology

The Tribunal has engaged in public broadcasting ratesetting twice before, once in 1978 shortly after the Tribunal was constituted, and once in 1982. 43 FR 25068; 47 FR 57923. Part 304 of the Tribunal's current rules constitutes the rates and terms by which public broadcasting entities may use certain copyrighted works for the period beginning January 1, 1983 and ending December 31, 1987. The purpose of the current proceeding is to determine the rates and terms which shall apply to the period beginning January 1, 1988 and ending December 31, 1992.

Accordingly, the Tribunal commenced the 1987 public broadcasting rate adjustment on June 30, 1987. 52 FR 24326. Prior to commencement of proceedings, on May 1, 1987, the

Tribunal sent a letter to all the parties who had participated in either of the two previous ratesetting hearings urging private settlement.

Notices of appearance in this proceeding were filed August 14, 1987. Written direct cases were filed September 21, 1987. Testimony on the written direct cases was heard on October 8, 1987 and the record in the proceeding was closed the same day. Proposed Rates were filed November 6, 1987. Reply Proposed Rates were filed November 10, 1987.

The Parties

Eleven parties filed notices of appearance with the Tribunal. Representing users of the copyrighted works were: Public Broadcasting Services (PBS), National Public Radio (NPR), the American Council on Education (ACE), the National Federation of Community Broadcasters (NFCB), and National Religious Broadcasters Radio Music License Committee (NRB). Representing owners of the copyrighted works were: American Society of Composers, Authors and Publishers (ASCAP), Broadcast Music, Inc. (BMI), SESAC, Inc. (SESAC), Harry Fox Agency, Inc., National Music Publishers Association, Inc. (NMPA), and the Coalition of Visual Artists Organizations (CVAO).

Performance of Musical Works by PBS and NPR

The Tribunal has been notified that voluntary agreements have been reached by PBS and NPR with ASCAP, and by PBS and NPR with BMI. 17 U.S.C. 118(b)(2) provides that license agreements voluntarily negotiated at any time between one or more copyright owners and one or more public broadcasting entities shall be given effect in lieu of any determination by the Tribunal. Therefore, the Tribunal proposes no regulation to govern the use by PBS and NPR of musical compositions found in the catalogues of ASCAP and BMI.

At the time of the hearing, the Tribunal was informed that an agreement in principle by PBS and NPR with SESAC had been reached. Counsel for PBS stated that because of the agreement, SESAC's direct case and PBS' direct case on that issue were withdrawn. NPR similarly withdrew Exhibit A from its direct case. Tr. 20–21, 35. However, at the time of filing the proposed rates, the Tribunal was informed that the PBS/NPR/SESAC voluntary agreement has not been finalized.

Absent such an agreement the Tribunal has decided to reinstate the written direct case testimony of all parties on that issue, and orders that the parties shall file their written rebuttal testimony by December 7, 1987 and their proposed findings based thereon by December 11, 1987, unless a voluntary agreement has been reached and finalized before then. The testimony shall be supported by the affidavit of a sponsoring witness.

The Tribunal intends to render a final determination on the PBS/NPR/SESAC issue based upon the written record by the December 31, 1987 statutory deadline.

Regarding § 304.4 of the rules, which applies to use of musical compositions not subject to a voluntary license agreement, PBS and NPR have proposed new rates which increase arithmetically at a rate similar to the increases established in prior rates. The Tribunal finds the proposed rates reasonable and proposes to adopt them.

Performances of Musical Works by Public Broadcasting Entitles Licensed to Colleges and Universities Not Affiliated with NPR

ASCAP and ACE have submitted a joint proposal which would increase the rate which applies to public broadcasting entities licensed to colleges and universities not affiliated with NPR according to the change in the Consumer Price Index (CPI), yearly, each December 1, as the Tribunal has done under the current § 304.5 and 304.10. The proposal is supported by BMI.

The difference between a joint proposal and a voluntary agreement is: In a voluntary agreement, both parties to the agreement represent all persons who would be affected by the agreement and both parties have the authority to bind their members. In a joint proposal, at least one of the parties to the agreement either does not represent all persons who would be affected by the agreement, or does not have the authority to bind its members. Consequently, in a joint proposal the Tribunal has a role to assure that the rates and terms are in the interest of all potentially affected persons.

In reviewing the ASCAP/ACE joint proposal, the Tribunal is concerned with the language, "On December 1, 1988, the CRT shall publish in the **Federal Register** a notice of the change in the cost of living as determined by the Consumer Price Index (all urban consumers, all items) during the period from the first Index published subsequent to December 1, 1987 to the last Index published prior to December 1, 1988. On each December 1 thereafter the CRT shall publish a notice of the change in the cost of living during the period from the first Index published subsequent to the previous notice, to the last Index published prior to December 1 of that year." Taking the first sentence, the language requires the Tribunal to look at the first Index published subsequent to December 1, 1987—for example, December 23—and compare that to the last Index published prior to December 1, 1988—for example, November 23. What results is an "eleven month" cost of living adjustment. Each year that the calculation is performed, one month of the year is not included. The Tribunal proposes to adopt the ASCAP/ACE joint proposal, but with an appropriate change in the language to make the cost-of-living adjustment each year a twelve month adjustment.

ASCAP/ACE also proposed that the Tribunal make the cost of living adjustment this December 1 based on the change in the CPI from last year. The Tribunal proposes to do this, however, it does not have the CPI figures yet for the last Index to be published prior to December 1. Therefore, the Tribunal will list, temporarily, in the text of the proposed rules the dollar amounts that are currently in effect, intending to replace those figures with the inflation adjusted figures at the time the final rulemaking is published in the **Federal Register**.

In proposing to adopt the joint proposal, the Tribunal recognizes that the joint proposal does not reflect any assessment by either party of the absolute or relative value of the right of performance of music in the ASCAP repertory by college radio stations.

Performances of Musical Compositions by Public Broadcasting Stations Other Than NPR or College Stations

A joint proposal was submitted to adjust the rates which apply to public broadcasting radio stations which are not licensed to colleges and universities and which are not affiliated with NPR by ASCAP, NFCB and NRB. The joint proposal continues generally the rate of increase in the rates which are in the current § 304.6. The Tribunal finds the proposal reasonable and proposes to adopt it.

In proposing to adopt the joint proposal, the Tribunal recognizes that the joint proposal does not reflect any assessment by any of the parties of the absolute or relative value of the right of performance of music in the ASCAP repertory by community radio stations.

Recording Rates and Terms

The Tribunal has been notified that voluntary agreements have been

reached between PBS and NPR, and the Harry Fox Agency, and between PBS and the American Mechanical Rights Agency. Therefore, § 304.7 of the Tribunal's rules will be amended to establish rates and terms for the use of musical works not represented by the Harry Fox Agency or the American Mechanical Rights Agency.

PBS, NPR, The Harry Fox Agency and the National Music Publishers Association have proposed rates for recording rights which correspond to the rates contained in the voluntary license agreements with Harry Fox Agency and American Mechanical Rights Agency. The parties have also proposed certain improvements in the text of the regulations, such as a new definition for "concert feature," and how certain royalty fees are to be calculated. The Tribunal finds the proposed rates reasonable and proposes to adopt them.

One of the rates in § 304.7 received no recommendation from any of the parties, and that is the rate found in § 304.7(b)(4) which applies to uses on radio other than in a NPR-produced radio program. The Tribunal has reviewed the rate and proposes to adjust it on the basis of the change of the cost of living over the past five years, rounded off to the nearest five cents. Hence, a feature use would increase from $.50 to $.60, a concert feature use would increase from $1.00 to $1.20, and a background use would increase from $:25 to $.30.

Visual Works Rates and Terms

The Tribunal has been informed that a voluntary license agreement has been reached between PBS and Artists Rights Society, Inc. (ARS).

In addition, PBS has proposed for the Tribunal's consideration rates which would apply to those visual works not represented by ARS. PBS proposal would increase the current rates arithmetically at the same rate they had been increasing over the past several years.

PBS' proposal was opposed by CVAO. CVAO is a coalition which represents the following organizations: American Society of Magazine Photographers, The Graphic Artists Guild, Inc., National Cartoonists Society, Cartoonists Guild, Inc., Artists Equity Association, Inc., Association of American Editorial Cartoonists, Foundation for the Community of Artists, and Society of Illustrators, Inc.

CVAO asks the Tribunal to reconsider the rates which CVAO recommended in the 1982 proceeding, which were based on established rates set by photographic stock houses.

CVAO also recommends that the Tribunal require, in addition to the provision of cue sheets every six months, that a summary of the data in the cue sheets be provided in chart form showing the compulsory licensing fees paid to owners, the compulsory licensing fees paid into trust, the amount of dollars paid out of trust, the number of stations reporting use of the compulsory license, and the number of original broadcast hours covered in the cue sheets, and that all the data should be broken down between PBS and non-PBS.

CVAO further requests that PBS should be required to publish lists of art works by unknown copyright owners in leading magazines which reach audiences of visual artists, the exact magazines to be determined at a later date.

CVAO also believes that the fees for unknown copyright owners should not be paid back to PBS after three years. CVAO recommends that the funds be used in a way which is beneficial to visual artists, such as funding the publishing of lists referred to in their earlier suggestion, paying the expenses of the visual arts organizations to appear in the rate adjustment proceedings, or donating such monies to the Visual Arts Program of the National Endowment for the Arts.

The Tribunal has reviewed the arguments of PBS and CVAO, and proposes to adopt the rates recommended by PBS. As a general rule, the Tribunal has stated that it is not inclined to change previous decisions in the absence of changed circumstances or improved evidence that justify such a change. Here, the Tribunal has made two previous decisions, consistent with each other, establishing a certain level of rates for the use of visual works. In the last proceeding, the Tribunal rejected the use of stock photo house rates and rates published by the American Society of Magazine Photographers as the basis for visual works rates. We found no clear or credible evidence linking the New York City stock photo house letters or the ASMP booklet rates to television use of photographs. CVAO has, in this proceeding, offered no new evidence to alter the Tribunal's conclusions.

The Tribunal also declines to propose any change in the terms of the use of the visual works. CVAO's allegations of insufficiency in the manner and production of cue sheets is unsupported. Similarly, CVAO's belief that PBS has been lax in its attempts at locating the proper copyright owner has not been demonstrated. PBS notes, and we concur, that there has not been any recorded instance or experience with the present procedures which would indicate that they are not working properly.

Regarding CVAO's suggestion for equitable uses of the money that does not get distributed to the rightful copyright owner within three years, the Tribunal doubts that it has such equitable powers. Section 118 assigns to the Tribunal the task of determining how much the user of the copyright shall pay the owner of the copyright but it does not provide for payments of money to persons or entities who are not the copyright owner.

The public is invited to comment on the proposed rule changes described above and the actual text which is provided below, including editorial changes which we propose, by December 15, 1987.

Accordingly, it is announced that the Tribunal proposes to revise Part 304 of the Tribunal's rules, as shown below:

List of Subjects in 37 CFR Part 304

Copyright, Music, Radio, Television.

For the reasons set forth in the preamble, the Tribunal proposes to revise 37 CFR Part 304 as follows:

PART 304—USE OF CERTAIN COPYRIGHTED WORKS IN CONNECTION WITH NONCOMMERCIAL BROADCASTING

Sec.

304.1 General.
304.2 Definition of public broadcasting entity.
304.3 [Reserved]
304.4 Performance of musical compositions by PBS, NPR and other public broadcasting entities engaged in the activities set forth in 17 U.S.C. 118(d).
304.5 Performance of musical compositions by public broadcasting entities licensed to colleges and universities.
304.6 Performance of musical compositions by other public broadcasting entities.
304.7 Recording rights, rates and terms.
304.8 Terms and rates of royalty payments for the use of published pictorial, graphic, and sculptural works.
304.9 Unknown copyright owners.
304.10 Cost of living adjustment.
304.11 Notice of restrictions on use of reproductions of transmission programs.
304.12 Amendment of certain regulations.
304.13 Issuance of interpretative regulations.

Authority: 17 U.S.C. 118, 801(b)(1) and 804.

§ 304.1 General.

This Part 304 establishes terms and rates of royalty payments for certain activities using published nondramatic musical works and published pictorial, graphic and sculptural works during a period beginning on January 1, 1988 and ending on December 31, 1992. Upon compliance with 17 U.S.C. 118, and the

terms and rates of this part, a public broadcasting entity may engage in the activities with respect to such works set forth in 17 U.S.C. 118 (d).

§ 304.2 Definition of public broadcasting entity.

As used in this part, the term "public broadcasting entity" means a noncommercial educational broadcast station as defined in section 397 of Title 47 and any nonprofit institution or organization engaged in the activities described in 17 U.S.C. 118(d) (2).

§ 304.3 [Reserved]

§ 304.4 Performance of musical compositions by PBS, NPR and other public broadcasting entities engaged in the activities set forth in 17 U.S.C. 118(d).

The following schedule of rates and terms shall apply to the performance by PBS, NPR and other public broadcasting entities engaged in the activities set forth in 17 U.S.C. 118(d) of copyrighted published nondramatic musical compositions, except for public broadcasting entities covered by §§ 304.5 and 304.6, and compositions which are the subject of voluntary license agreements such as the PBS/NPR/ASCAP and the PBS/NPR/BMI license agreements.

(a) *Determination of royalty rate.*

For the performance of such a work in a feature presentation of PBS:

1988-1989	1990-1991	1992
$166.00	$175.00	$184.00

For the performance of such a work as background or theme music in a PBS program:

1988-1989	1990-1991	1992
$42.00	$44.35	$46.70

For the performance of such a work in a feature presentation of a station of PBS:

1988-1989	1990-1991	1992
$14.00	$15.00	$16.00

For the performance of such a work as background or theme music in a program of a station of PBS:

1988-1989	1990-1991	1992
$3.00	$3.15	$3.30

For the performance of such a work in a feature presentation of NPR:

1988-1989	1990-1991	1992
$16.80	17.75	$18.70

For the performance of such a work as background or theme music in an NPR program:

1988-1989	1990-1991	1992
$4.10	$4.30	$4.50

For the performance of such a work in a feature presentation of a station of NPR:

1988-1989	1990-1991	1992
$1.20	$1.25	1.30

For the performance of such a work as background or theme music in a program of a station of NPR:

1988-1989	1990-1991	1992
$0.40	$0.45	$0.50

For the purpose of this schedule the rate for the performance of theme music in an entire series shall be double the single program theme rate. In the event the work is first performed in a program of a station of PBS or NPR, and such program is subsequently distributed by PBS or NPR, an additional royalty payment shall be made equal to the difference between the rate specified in this section for a program of a station of PBS or NPR, respectively, and the rate specified in this section for a PBS or NPR program, respectively.

(b) *Payment of royalty rate.* The required royalty rate shall be paid to each known copyright owner not later than July 31 of each calendar year for uses during the first six months of that calendar year, and not later than January 31 for uses during the last six months of the preceding calendar year.

(c) *Records of use.* PBS and NPR shall, upon request of a copyright owner of a published musical work who believes a musical composition of such owner has been performed under the terms of this schedule, permit such copyright owner a reasonable opportunity to examine their standard cue sheets listing the nondramatic performances of musical compositions on PBS and NPR programs. Any local PBS and NPR station that is required by paragraph 4b of the PBS/NPR/ASCAP license agreement dated October 5, 1987 to prepare a music use report shall, upon request of a copyright owner who believes a musical composition of such owner has been performed under the terms of this schedule, permit such copyright owner to examine the report.

(d) *Terms of use.* The applicable fee in this schedule shall be the fee for the time period during which the first performance in a program occurred, and shall cover performances of such work in such program for a period of three years following the first performance.

§ 304.5 Performance of musical compositions by public broadcasting entities licensed to colleges and universities.

(a) *Scope.* This section applies to the performance of copyrighted published nondramatic musical compositions by noncommercial radio stations which are licensed to colleges, universities, or other nonprofit educational institutions and which are not affiliated with National Public Radio.

(b) *Voluntary license agreements.* Notwithstanding the schedule of rates and terms established by this section, the rates and terms of any license agreements entered into by copyright owners and colleges, universities, and other nonprofit educational institutions concerning the performance of copyrighted musical compositions, including performances by noncommercial radio stations, shall apply in lieu of the rates and terms of this section.

(c) *Royalty rate.* A public broadcasting entity within the scope of this section may perform published nondramatic musical compositions subject to the following schedule of royalty rates:

For all such compositions in the repertory of ASCAP annually.....$152
For all such compositions in the repertory of BMI annually.....$152
For all such compositions in the repertory of SESAC annually.....$35
For the performance of any other such composition.....$1

(d) *Payment of royalty rate.* The public broadcasting entity shall pay the required royalty rate to ASCAP, BMI and SESAC not later than January 31 of each year.

(e) *Records of use.* A public broadcasting entity subject to this section shall furnish to ASCAP, BMI and SESAC, upon request, a music-use report during one week of each calendar year. ASCAP, BMI and SESAC shall not in any one calendar year request more than 10 stations to furnish such reports.

§ 304.6 Performance of musical compositions by other public broadcasting entities.

(a) *Scope.* This section applies to the performance of copyrighted published nondramatic muscial compositions by radio stations not licensed to colleges, universities, or other nonprofit educational institutions and which are not affiliated with National Public Radio.

(b) *Voluntary license agreements.* Notwithstanding the schedule of rates and terms established by this section, the rates and terms of any license agreements entered into by copyright owners and noncommercial radio stations within the scope of this section concerning the performance of copyrighted muscial compositions, including performances by noncommercial radio stations, shall apply in lieu of the rates and terms of this section.

(c) *Royalty rate.* A public broadcasting entity within the scope of this section may perform published nondramatic musical compositions subject to the following schedule of royalty rates:

For all such compositions in the repertory of ASCAP,
in 1988, $230;
in 1989, $240;
in 1990, $250;
in 1991, $265;
in 1992, $280

For all such compositions in the repertory of BMI,
in 1988, $230;
in 1989, $240;
in 1990, $250;
in 1991, $265;
in 1992, $280

For all such compositions in the repertory of SESAC,
in 1988, $50;
in 1989, $52;
in 1990, $54;
in 1991, $57;
in 1982, $60

For the performance of any other such compositions, in 1988 through 1992, $1.

(d) *Payment of royalty rate.* The public broadcasting entity shall pay the required royalty rate to ASCAP, BMI, and SESAC not later than January 31 of each year.

(e) *Records of use.* A public broadcasting entity subject to this section shall furnish to ASCAP, BMI, and SESAC, upon request, a music-use report during one week of each calendar year. ASCAP, BMI and SESAC each shall not in any one calendar year request more than 5 stations to furnish such reports.

§ 304.7 Recording rights, rates and terms.

(a) *Scope.* This section establishes rates and terms for the recording of nondramatic performances and displays of musical works, other than compositions subject to voluntary license agreements, on and for the radio and television programs of public broadcasting entities, whether or not in synchronization or timed relationship with the visual or aural content, and for the making, reproduction, and distribution of copies and phonorecords of public broadcasting programs containing such nondramatic performances and displays of musical works solely for the purpose of transmission by public broadcasting entities. The rates and terms established in this schedule include the making of the reproduction described in 17 U.S.C. 118(d)(3).

(b) *Royalty rate.* (1) For uses described in paragraph (a) of this section of a musical work in a PBS-distributed program, the royalty fees shall be calculated by multiplying the following per-composition rates by the number of different compositions in that PBS-distributed program:

	1988-89	1990-91	1992
Feature	$83.35	$87.70	$92.05
Concert feature (per minute)	24.95	26.35	27.75
Background	42.00	44.35	46.70
Theme:			
Single program or first series program	42.00	44.35	46.70
Other series program	17.05	18.00	18.95

(2) For such uses other than in a PBS-distributed television program, the royalty fee shall be calculated by multiplying the following per-composition rates by the number of different compositions in that program:

	1988-98	1990-91	1992
Feature	$6.65	$7.30	$7.95
Concert feature (per minute)	1.80	1.90	2.00
Background	3.00	3.15	3.30
Theme:			
Single program of first series program	3.00	3.15	3.30
Other series program	1.20	1.25	1.30

(3) For uses licensed herein of a musical work in a NPR program, the royalty fees shall be calculated by multiplying the following per-composition rates by the number of different compositions in any NPR program distribution by NPR. For purposes of this schedule "National Public Radio" programs include all programs produced in whole or in part by NPR, or by any NPR station or organization under contract with NPR.

	1988-89	1990-91	1992
Feature	$9.00	$9.50	$10.00
Concert feature (per half hour)	13.00	14.00	15.00
Background	4.50	4.75	5.00
Theme:			
Single program or first series program	4.50	4.75	5.00
Other series program	1.80	1.90	2.00

(4) For the purposes of this schedule, a "Concert Feature" shall be deemed to be the nondramatic presentation in a program of all or part of a symphony, concerto, or other serious work originally written for concert performance or the nondramatic presentation in a program of portions of a serious work originally written for opera performance.

(5) For such uses other than in a NPR-produced radio program:

Feature.....$.60
Feature (concert) (per half hour).....1.20
Background.....30

(6) The schedule of fees covers broadcast use for a period of three years following the first broadcast. Succeeding broadcast use periods will require the following additional payment: second three-year period—50 percent; each three-year period thereafter—25 percent; provided that a 100 percent additional payment prior to the expiration of the first three-year period will cover broadcast use during all subsequent broadcast use periods without limitation. Such succeeding uses which are subsequent to December 31, 1992 shall be subject to the royalty rates established in this schedule.

(c) *Payment of royalty rates.* The required royalty rate shall be paid to each known copyright owner not later than July 31 of each calendar year for uses during the first six months of that calendar year, and not later than January 31 for uses during the last six months of the preceding calendar year.

(d) *Records of use.* (1) Maintenance of cue sheets. PBS and its stations, NPR or other television public broadcasting entity shall maintain and make available for examination pursuant to paragraph (e) of this section copies of their standard cue sheets or summaries of same listing the recording of the musical works of such copyright owners.

(2) Content of cue sheets or summaries. Such cue sheets or summaries shall include:

(i) The title, composer and author to the extent such information is reasonably obtainable.

(ii) The type of use and manner of performance thereof in each case.

(iii) For Concert Feature music, the actual recorded time period on the program, plus all distribution and broadcast information available to the public broadcasting entity.

(e) *Filing of use reports with the Copyright Royalty Tribunal (CRT).* Deposits of cue sheets or summaries. PBS and its stations, NPR, or other television public broadcasting entity shall deposit with the CRT copies of their standard music cue sheets or summaries of same (which may be in the form of hard copy of computerized reports) listing the recording pursuant to this schedule of the musical work of copyright owners. Such cue sheets or summaries shall be deposited not later than July 31 of each calendar year for recordings during the second six months of the preceding calendar year. PBS and NPR shall maintain at their offices copies of all standard music cue sheets from which music use reports are prepared. Such music cue sheets shall be furnished to the CRT upon its request and also shall be available during regular business hours at the offices of PBS or NPR for examination by a copyright owner who believes a musical composition of such owner has been recorded pursuant to this schedule.

§ 304.8 Terms and rates of royalty payments for the use of published pictorial, graphic, and sculptural works.

(a) *Scope.* This section establishes rates and terms for the use of published pictorial, graphic, and sculptural works by public broadcasting entities for the activities described in 17 U.S.C. 118. The rates and terms established in this schedule include the making of the reproductions described in 17 U.S.C. 118(d)(3).

(b) *Royalty rate.* (1) The following schedule of rates shall apply to the use of works within the scope of this section:

For such uses in a PBS-distributed program: For a featured display of a work.

1988–1989	1990–1991	1992
$55.00	$58.00	$61.00

For background and montage display.

1988–1989	1990–1991	1992
$26.75	$28.25	$29.75

For use of a work for program identification or for thematic use.

1988–1989	1990–1991	1992
$108.25	$114.25	$120.25

For the display of an art reproduction copyrighted separately from the work of fine art from which the work was reproduced, irrespective of whether the reproduced work of fine art is copyrighted so as to be subject also to payment of a display fee under the terms of this schedule.

1988–1989	1990–1991	1992
$35.50	$37.50	$39.50

For such uses in other than PBS-distributed programs: For a featured display of a work.

1988–1989	1990–1991	1992
$35.50	$37.50	$39.50

For background and montage display.

1988–1989	1990–1991	1992
$18.25	$19.25	$20.25

For use of a work for program identification or for thematic use.

1988–1989	1990–1991	1992
$72.75	$76.75	$80.75

For the display of an art reproduction copyrighted separately from the work of fine art from which the work was reproduced, irrespective of whether the reproduced work of fine art is copyrighted so as to be subject also to payment of a display fee under the terms of this schedule.

1988–1989	1990–1991	1992
$18.25	$19.25	$20.25

For the purposes of this schedule the rate for the thematic use of a work in an entire series shall be double the single program theme rate.

In the event the work is first used other than in a PBS-distributed program, and such program is subsequently distributed by PBS, an additional royalty payment shall be made equal to the difference between the rate specified in this section for other than a PBS-distributed program and the rate specified in this section for a PBS-distributed program.

(2) "Featured display" for purposes of this schedule means a full-screen or substantially full-screen display appearing on the screen for more than three seconds. Any display less than full-screen or substantially full-screen, or full-screen for three seconds or less, is deemed to be a "background or montage display".

(3) "Thematic use" is the utilization of the works of one or more artists where the works constitute the central theme of the program or convey a story line.

(4) "Display of an art reproduction copyrighted separately from the work of fine art from which the work was reproduced" means a transparency or other reproduction of an underlying work of fine art.

(c) *Payment of royalty rate.* PBS or other public broadcasting entity shall pay the required royalty fees to each copyrighted owner not later than July 31 of each calendar year for uses during the first six months of that calendar year, and not later than January 31 for uses during the last six months of the preceding calendar year.

(d) *Records of use.* (1) PBS and its stations or other public broadcasting entity shall maintain and furnish either to copyright owners, or to the offices of generally recognized organizations representing the copyright owners of pictorial, graphic, and sculptural works, copies of their standard lists containing the pictorial, graphic, and sculptural works displayed on their programs. Such notice shall include the name of the copyright owner, if known, the specific source from which the work was taken, a description of the work used, the title of the program on which the work was used, and the date of the original broadcast of the program.

(2) Such listings shall be furnished not later than July 31 of each calendar year for displays during the first six months of the calendar year, and not later than January 31 of each calendar year for displays during the second six months of the preceding calendar year.

(e) *Filing of use reports with the CRT.* (1) PBS and its stations or other public broadcasting entity shall deposit with the CRT copies of their standard lists containing the pictorial, graphic, and sculptural works displayed on their programs. Such notice shall include the name of the copyright owner, if known, the specific source from which the work was taken, a description of the work used, the title of the program on which the work was used, and the date of the original broadcast of the program.

(2) Such listings shall be furnished not later than July 31 of each calendar year for displays during the first six months of the calendar year, and not later than January 31 of each calendar year for displays during the second six months of the preceding calendar year.

(f) *Terms of use.* (1) The rates of this schedule are for unlimited broadcast use for a period of three years from the date of the first broadcast use of the work under this schedule. Succeeding broadcast use periods will require the following additional payment: second three-year period—50 percent; each three-year period thereafter—25 percent; provided that a 100 percent additional payment prior to the expiration of the first three-year period will cover broadcast use periods without limitation. Such succeeding uses which are subsequent to December 31, 1992 shall be subject to the rates established in this schedule.

(2) Pursuant to the provisions of 17 U.S.C. 118(f), nothing in this schedule shall be construed to permit, beyond the limits of fair use as provided in 17 U.S.C. 107, the production of a transmission program drawn to any substantial extent from a published compilation of pictorial, graphic, or sculptural works.

§ 304.9 Unknown copyright owners.

If PBS and its stations, NPR and its stations, or other public broadcasting entity is not aware of the identity of, or unable to locate, a copyright owner who is entitled to receive a royalty payment under this Part, they shall retain the required fee in a segregated trust account for a period of three years from the date of the required payment. No claim to such royalty fees shall be valid after the expiration of the three year period. Public broadcasting entities shall make available to the CRT, upon request, information concerning fees deposited in trust funds.

§ 304.10 Cost of living adjustment.

(a) On December 1, 1988 the CRT shall publish in the **Federal Register** a notice of the change in the cost of living as determined by the Consumer Price Index (all consumers, all items) during the period from the first Index published prior to December 1, 1987 to the last Index published prior to December 1, 1988. On each December 1 thereafter the CRT shall publish a notice of the change in the cost of living during the period from the first Index published prior to the previous notice to the last Index published prior to December 1, of that year.

(b) On the same date of the notices published pursuant to paragraph (a) of the section, the CRT shall publish in the **Federal Register** a revised schedule of rates for § 304.5 which shall adjust those royalty amounts established in dollar amounts according to the change in the cost of living determined as provided in paragraph (a) of this section. Such royalty rates shall be fixed at the nearest dollar.

(c) The adjusted schedule of rates for § 304.5 shall become effective thirty days after publication in the **Federal Register.**

§ 304.11 Notice of restrictions on use of reproductions of transmission programs.

Any public broadcasting entity which, pursuant to 17 U.S.C. 118, supplies a reproduction of a transmission program to governmental bodies or nonprofit institutions shall include with each copy of the reproduction a warning notice stating in substance that the reproductions may be used for a period of no more than seven days from the specified date of transmission, that the reproductions must be destroyed by the user before or at the end of such period, and that a failure to fully comply with these terms shall subject the body or institution to the remedies for infringement of copyright.

§ 304.12 Amendment of certain regulations.

Subject to 17 U.S.C. 118, the Administrative Procedure Act and the Rules of Procedure of the Copyright Royalty Tribunal, the CRT may at any time amend, modify or repeal regulations in this part adopted pursuant to 17 U.S.C. 118(b)(3) by which "copyright owners may receive reasonable notices of the use of their works" and "under which records of such use shall be kept by public broadcasting entities."

§ 304.13 Issuance of interpretative regulations.

Subject to 17 U.S.C. 118, the Administrative Procedure Act and the Rules of Procedure of the Copyright Royalty Tribunal, the CRT may at any time, either on its own motion or the motion of a person having a significant interest in the subject matter, issue such interpretative regulations as may be necessary or useful to the implementation of this part. Such regulations may not prior to January 1, 1993 alter the schedule of rates and terms of royalty payments by this part.

Dated: November 17, 1987.

J.C. Argetsinger,

Chairman.

[FR Doc. 87-26885 Filed 11-19-87; 8:45 am]

BILLING CODE 1410-09-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 83-670; FCC 87-338]

Children's Television Commercialization Guidelines

AGENCY: Federal Communications Commission.

ACTION: Further notice of proposed rulemaking/notice of inquiry.

SUMMARY: The decision of the U.S. Court of Appeals for the District of Columbia Circuit in *Action for Childrens Television v. FCC* remanded to the Commission the issue of commercialization guidelines for children's television. This Further Notice of Proposed Rule Making/Notice of Inquiry addresses the Commission's policy with respect to levels of commercialization in children's television programming.

DATES: Comments due January 4, 1988; reply comments due February 18, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Eugenia R. Hull, Mass Media Bureau (202) 632-6302.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Proposed Rule Making/Notice of Inquiry in MM Docket No. 83-670, adopted October 20, 1987 and released November 9, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, Northwest, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3000, 2100 M Street, Northwest, Suite 140, Washington, DC 20037.

Summary of the Further Notice of Proposed Rule Making/Notice of Inquiry

1. On June 26, 1987, the Court of Appeals for the D.C. Circuit remanded to the Commission its decision to eliminate commercialization guidelines for children's television. The children's television commercialization guidelines were first recognized by the Commission in 1974. In 1984, the Commission deleted quantitative commercialization guidelines for television stations in general on the basis that in a highly competitive market, as was found to exist in television broadcasting, there

were constraints external to the regulatory process that would properly contol commercial levels. In 1986, the Commission stated that its action with respect to the commercialization guidelines in general encompassed the guidelines for children's television. Upon review, the court found that the Commission had not given adequate reason for its decision to delete the commercialization guidelines for children's television.

2. In this Further Notice of Proposed Rule Making/Notice of Inquiry, the Commission addresses issues related to the court's concerns. The Commission does not propose specific rules, but instead reopens the record to receive comment on the need for quantitative commercialization guidelines. Specifically, the Commission asks for comment on (1) the existence and definition of market failures which may exist in children's television; (2) the appropriateness and desirability of government regulation to correct any such failures; and (3) whether and to what extent applicable First Amendment principles should affect the Commission's analysis of and response to these issues. In addition, the Commission asked for comment on its existing definition of what constitutes "commercial" matter.

3. Pursuant to the Regulatory Flexibility Act 1980, 5 U.S.C. 603, this proceeding will consider whether commercialization guidelines are needed. The potential impact on small businesses will be dependent on the rules or guidelines adopted, if any. Public comment is requested on the initial regulatory flexibility analysis is set out in full in the Commission's complete decision.

4. This is a non-restricted notice and comment rule making proceeding. *See* § 1.1231 of the Commission's Rules, 47 CFR 1.1231, for rules governing permissible *ex parte* contacts.

5. The proposal contained herein has been analyzed with resepect to the Paperwork Reduction Act of 1980 and has been found to impose no new or modified requirements or burdens on the public.

6. Pursuant to the applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before January 4, 1988; and reply comments on or before February 18, 1988. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

List of Subjects in 47 CFR Part 73

Radio broadcast services.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-26827 Filed 11-19-87; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 52, No. 224
Friday, November 20, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

Rio Grande Electric Cooperative, Inc.; Finding of No Significant Impact

AGENCY: Rural Electrification Administration, USDA.

ACTION: Finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Environmental Policy Act of 1969, as amended, the Council on Environmental Quality Regulations (40 CFR Parts 1500–1508), and REA Environmental Policy and Procedures (7 CFR Part 1794), has made a Finding of No Significant Impact (FONSI) with respect to the construction of a 138 kV transmission line on single pole steel structures in Brewster County, Texas by Rio Grande Electric Cooperative, Inc. (RGEC).

FOR FURTHER INFORMATION CONTACT: Martin G. Seipel, Director, Southwest Area—Electric, Room 0205, South Agriculture Building, Rural Electrification Administration, Washington, DC 20250, telephone (202) 382–8848.

SUPPLEMENTARY INFORMATION: REA, in conjunction with a request for financing assistance from RGEC, required RGEC to develop environmental support information reflecting the potential impacts of the project. Included were the results of three public meetings held in February, March and May, 1987. REA held public meetings, in Texas in June, 1987 with State and Federal agency officials and affected landowners. REA staff personnel visited the project site on October 21, 1987 to receive oral and written comments from the public and affected landowners. The environmental support information and meeting transcripts supplied by RGEC, and input from the public and Federal and State agencies have been used by REA to develop its Environmental Assessment (EA). REA has concluded that the EA represents an accurate assessment of the environmental impacts of the proposed project and that these impacts are acceptable.

The project would replace approximately 87 km (54 mi) of 69 kV transmission line which connects the 69 kV Alpine metering point with the Altuda and Persimmon Gap 69 kV Substations. The existing unshielded line was constructed in 1953 and is in poor physical condition. The new transmission line, which RGEC proposes to place on self-weathering single pole steel structures 28 meters (91 ft) high, would require a 46 meter (150 ft) easement that would parallel the existing line for approximately 60 percent of the route. The project would be constructed in two phases and would be initially energized at 69 kV with eventual operation at 138 kV.

On the basis of existing information, REA had concluded that the proposed project will have no effect on wetlands, floodplains, important farmland, prime forest land or rangeland, threatened or endangered species or critical habitat, or any property listed or eligible for listing in the *National Register of Historic Places*. Certain impacts resulting from the proposed project are unavoidable, such as damage to vegetation by construction vehicles, temporary dislocation of certain wildlife species from the affected area by construction related activities, displacement of avian nesting and perching areas with the removal of the existing line structures and the esthetic impact on the viewshed from U.S. Highway 385 caused by taller support structures.

Alternatives examined for the proposed project included minimal repairs to the existing 69 kV line (no action), a new 69 kV line with a larger conductor, localized generation, alternative line routes and other power distribution scenarios. REA has determined that replacing the existing with a completely new line capable of future 138 kV operation is an environmentally acceptable alternative to RGEC to maintain reliable service for present customers and to provide for current and future load growth. The actual line route would be established within a 610 meter (2000 ft) wide corridor to minimize impacts to wildlife and cultural resources.

In accordance with REA Environmental Policy and Procedures (7 CFR Part 1794), RGEC advertised and requested comments on the environmental aspects of the proposed project in local newspapers. Comments were received from affected landowners and other residents.

Based upon the environmental support information provided, information from the public meetings, agency and public input, and on-site review of the proposed project, REA prepared an EA concerning the proposed project and its impacts. As a result of our independent evaulation, REA has concluded that approval of financing assistance enabling RGEC to construct the proposed project would not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, REA has reached a FONSI with respect to the proposed project.

Copies of REA's EA and FONSI can be obtained from the offices of REA in the South Agriculture Building, Room 0205, 14th and Independence Avenue SW., Washington, DC 20250 or at the office of Rio Grande Electric Cooperative, Inc., (Henry Fuentes, Acting Manager), P.O. Box 1509, Bracketville, Texas 78832, during regular business hours.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.850—Rural Electrification Loans and Loan Guarantees. For the reasons set forth in the final rule related notice to 7 CFR Part 3015 Subpart V., this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Date: November 16, 1987.

Harold V. Hunter,

Administrator.

[FR Doc. 87–26846 Filed 11–19–87; 8:45 am]

BILLING CODE 3410–15–M

DEPARTMENT OF AGRICULTURE
Forest Service
DEPARTMENT OF THE INTERIOR
Bureau of Land Management

[ES-030-08-4133-09; ES-00157-004]

Environmental Impact Statement; Mark Twain National Forest, Carter, Oregon, and Shannon Counties, MO

AGENCY: Forest Service, Department of Agriculture and Bureau of Land Management (BLM), Department of the Interior.

ACTION: Changes in public comment period for Draft Environmental Impact Statement.

SUMMARY: This notice revises the written comment period and the type of public meeting to be held in regard to the Draft Environmental Impact Statement, Hardrock Mineral Leasing, Mark Twain National Forest, Carter, Oregon, and Shannon Counties, Missouri. All other information published in the October 21, 1987 **Federal Register** in relation to this EIS remains unchanged.

DATES: Written comments will be accepted until January 8, 1988, as opposed to the originally published date of December 24, 1987.

ADDRESSES: Public meetings will be held as opposed to public hearings as originally published.

Date: November 14, 1987.

B. Eric Morse,

Forest Supervisor, USDA-Forest Service, Mark Twain National Forest.

Date: November 16, 1987.

Bert Rodgers,

District Manager, Milwaukee District Office, Bureau of Land Management.

[FR Doc. 87-26817 Filed 11-19-87; 8:45 am]

BILLING CODE 4310-GJ-M

CHRISTOPHER COLUMBUS QUINCENTENARY JUBILEE COMMISSION
Meeting

AGENCY: Christopher Columbus Quincentenary Jubilee Commission.

ACTION: Notice of meeting.

SUMMARY: This notice announces a forthcoming meeting of the Christopher Columbus Quincentenary Jubilee Commission, a presidential commission established in 1984 (Pub. L. 98-375). The meeting will be held in Genoa, Italy and will be chaired by Commission Chairman John N. Goudie.

DATES: Friday, December 4, 1987 at 9:00 a.m. (Open). Saturday, December 5, 1987 at 9:00 a.m. (Open).

ADDRESSES: On December 4, from 9:00 a.m. to 1:00 p.m. at the Palazzo Tursi, Via Garibaldi 9. On December 5, from 9:00 a.m. to 1:00 p.m. at the Palazzo San Giorgio, Via della Mercanzia 2.

FOR FURTHER INFORMATION CONTACT: Dr. John Alexander Williams, (202) 632-1992.

SUPPLEMENTARY INFORMATION: On December 4, the Commission will meet with members of the Italian National Commission, officials from the Region of Liguria and the City of Genoa, officials of the Genoa Port Authority and organizers of the 1992 Maritime Expo to discuss Italy and the United States' plans for the Quincentenary, as well as joint projects.

On December 5, the meeting will be open to the public. The agenda for the meeting is as follows:

Evaluations and discussion of proposed projects, finance and fundraising, progress reports on commemorative plans and programs, announcement of project recognition decisions, discussion of international projects, and review and approval of the Regulations for Sponsorship and Project Licensing.

John Alexander Williams,

Director.

[FR Doc. 87-26816 Filed 11-19-87; 8:45 am]

BILLING CODE 6820-RB-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: Employee Benefits Supplement
Form Number: Agency—CPS-1 and CPS-684; OMB—NA
Type of Request: New collection
Burden: 29,000 respondents; 6,000 reporting hours
Needs and Uses: The collected data will be used to measure both the extent to which employers (private and government) offer retirement, disability, and sick leave benefits, and the extent to which workers choose to participate. They will also provide characteristics of persons who do and do not participate in these employer-sponsored programs.
Affected Public: Individuals or households
Frequency: On occasion
Respondent's obligation: Voluntary
OMB desk officer: Francine Picoult. 395-7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3228, New Executive Office Building, Washington, DC 20503.

Dated: November 16, 1987.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 87-26785 Filed 11-19-87; 8:45 am]

BILLING CODE 3510-07-M

Office of the Secretary
Federal Coal Export Commission; Committee Meeting

AGENCY: Office of the Secretary, U.S. Department of Commerce.

ACTION: Notice of committee meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. I (1976), as amended, notice is hereby given that the Federal Coal Export Commission will hold the final meeting of the Committee on Regulatory Issues.

DATE: The meeting will be held on Tuesday, November 24, 1987, 3:30-4:30 p.m.

ADDRESS: The meeting will be held in room 3708 of the U.S. Department of Commerce, Herbert C. Hoover Building, 14th Street and Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert H. Brumley, Executive Director of the Commission, at (202) 377-4772.

SUPPLEMENTARY INFORMATION: At this meeting, the Committee on Regulatory Issues will discuss the final draft report and accompanying materials it has prepared for transmittal to the Commission.

The public is welcome to attend this meeting and will be admitted to the extent that seating is available. Public comments are welcome, and persons wishing to make formal statements should notify the Executive Director of the Commission in advance of the meeting. The Chair retains the right to place reasonable limits on the duration of public comments. Written statements

may be submitted before or after the meeting.

Less than fifteen days' notice of this meeting is being provided in order to permit the timely preparation of the report of the Federal Coal Export Commission to the President and the Congress as required by Pub. L. 99-83.

Signed in Washington, DC this 18th day of November, 1987.

Robert H. Brumley,

Executive Director.

[FR Doc. 87-26907 Filed 11-19-87; 8:45 am]

BILLING CODE 3510-BW-M

Foreign-Trade Zones Board

[Docket No. 31-87]

Foreign-Trade Zone 72—Indianapolis, IN; Application for Subzone; Subaru-Isuzu Auto/Truck Plant, Tippecanoe County, IN

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Indianapolis Airport Authority, grantee of FTZ 72, requesting special-purpose subzone status for the automobile and light truck manufacturing plant of Subaru-Isuzu Automotive, Inc. (SIA), located in Tippecanoe County, Indiana. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on November 6, 1987.

The SIA plant (350 acres), currently under construction, is located on State Road 38 at Interstate 65, some 2 miles southeast of Lafayette and 40 miles northwest of Indianapolis. The facility will employ 1600 persons and will be used to produce automobiles and light trucks. At the outset the company will source approximately half of the value of the vehicles abroad, including engines, transmissions, brake system parts, steering system parts, sheet steel, hubs, shafts, differentials, suspension systems, turbo chargers and weather stripping.

Zone procedures would exempt SIA form Customs duty payments on the components used on products it exports. On its domestic sales of autos, the company would be able to defer duty payments and to pay duties at the rate available to importers of complete autos. The duty rate for autos is 2.5 percent, whereas the rates on the foreign components to be used by SIA range from 3.0 to 4.9 percent. On the trucks (25 percent duty rate) SIA plans to use zone procedures to defer duty payments. The applicant indicates that zone savings will help improve the company's international competitiveness.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Larry Shirk, Assistant District Director, U.S. Customs Service, North Central Region, 610 South Canal St., Chicago, IL 60607; and Colonel Robert L. Oliver, District Engineer, U.S. Army Engineer District Louisville, P.O. Box 59, Louisville, KY 40201.

Comments concerning the proposed subzone are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before January 8, 1988.

A copy of the application is available for public inspection at each of the following locations:

U.S. Dept. of Commerce District Office, 357 U.S. Courthouse & Federal Office Bldg., 46 E. Ohio St., Indianapolis, IN 46204

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania, NW., Washington, DC 20230

Dated: November 12, 1987.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR doc. 87-26842 Filed 11-19-87; 8:45 am]

BILLING CODE 3510-DS-M

[Docket No. 32-87]

Foreign-Trade Zone 39—Dallas/Fort Worth, TX; Application for Subzone; Harvey Industries Television Plant, Athens, TX

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Dallas/Fort Worth International Airport Board, grantee of FTZ 39, requesting special-purpose subzone status for the television assembly plant of Harvey Industries, Inc., in Athens, Texas, some 58 miles southeast of Dallas, Texas. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on November 9, 1987.

The plant is located on Flat Creek Road at Highway 31 in Athens, Texas. The 137-acre facility employs 900 persons and is used to assemble television receivers. Chassis, speakers and miscellaneous hardware, which account for about half the value of the television sets, are sourced abroad. The remaining components are sourced domestically, and the cabinet is produced at the plant. The company plans to increase its exports.

Zone procedures would exempt Harvey from Customs duty payments on the foreign components used in its exports. On its domestic sales, the company would defer duty payments until the products leave the plant. Although Harvey purchases only domestic color picture tubes, it has indicated a willingness to accept the requirement of full duty payments on foreign picture tubes that has been applied by the FTZ Board in past cases (e.g., Board Order 201, 47 FR 44593, 10/8/82—Sanyo, Arkansas).

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Don Gough, Deputy Assistant Regional Commissioner, U.S. Customs Service, Southwest Region, 5850 San Felipe Street, Houston, Texas 77057, and Colonel John E. Schaufelberger, District Engineer, U.S. Army Engineer District Fort Worth, P.O. Box 17300, Fort Worth, Texas 76102.

Comments concerning the proposed subzone are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before January 8, 1988.

A copy of the application is available for public inspection at each of the following locations:

U.S. Department of Commerce District Office, 1100 Commerce Street, Room 7A5, Dallas, Texas 75242

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: November 16, 1987.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 87-26843 Filed 11-19-87; 8:45 am]

BILLING CODE 3510-08-M

International Trade Administration

[A-588-015]

Initiation of Antidumping Duty Administrative Reviews

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of initiation of antidumping duty administrative review.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of certain firms in the antidumping finding on Japanese television receivers. In accordance with the Commerce Regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: November 20, 1987.

FOR FURTHER INFORMATION CONTACT: William L. Matthews, Office of Compliance, Interntional Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5253.

SUPPLEMENTARY INFORMATION:

Background

On August 13, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 32556) a notice outlining the procedures for requesting administrative reviews. The Department has received timely requests, in accordance with § 353.53a(a)(1) of the Commerce Regulations, for administrative reviews of certain firms in the antidumping finding on Japanese television receivers.

Initiation of Reviews

In accordance with § 353.53a(c) of the Commerce Regulations, we are initiating administrative reviews of the following firms in the antidumping finding on Japanese television receivers. We intend to issue the final results of these reviews no later than November 30, 1988.

Antidumping finding to be reviewed	Period to be reviewed
Television recievers, monochrome and color, from Japan:	
Matsushita	03/01/86-02/28/87
Victor	03/01/86-02/28/87

Interested parties are encouraged to submit applications for administrative protective orders as early as possible in the review process.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930 (19 U.S.C. 1675(a)) and § 353.53a(c) of the Commerce Regulations (19 CFR 353.53a(c)).

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

Date: November 13, 1987.

[FR Doc. 87-26844 Filed 11-19-87; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Endangered and Threatened Species; Sea Turtles

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

NOTICE: Extension of comment period.

SUMMARY: On October 15, 1987, a notice was published in the **Federal Register** (52 FR 38253) announcing receipt of a petition to amend NMFS final regulations concerning shrimp trawling requirements to conserve endangered and threatened sea turtles. The comment period is being extended from November 16 to November 30, 1987.

FOR FURTHER INFORMATION CONTACT: Patricia A. Carter, Office of Protected Resources and Habitat Programs, NMFS, Washington, DC 20235 (202/673-5351).

Date: November 16, 1987.

Bill A. Powell,

Executive Director, National Marine Fisheries Service.

[FR Doc. 87-26810 Filed 11-19-87; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Application for Permit; Susan Hamilton Shane (P127C)

Notice is hereby given that an 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), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), the Endangered Species Act of 1973 (16 U.S.C. 1531-1544), and the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR Parts 217-222).

1. *Applicant:* Susan Hamilton Shane, West Coast Whale Research Foundation, U.S., 250 Cottini Way, Santa Cruz, California 95060
2. *Type of Permit:* Scientific Research
3. *Name and number of marine mammals:* Each year up to 2,800 shortfinned pilot whales (*Globicephala macrorhynchus*) will be taken by potential harassment in the course of photo-identifying individual whales and recording whale behavior. An unspecified number of California sea lions (*Zalophus californianus*), up to 5,600 harbor seals (*Phoca vitulina*), 5 northern seals (*Mirounga angustirostris*), up to 5,600 gray whales (*Eschrichtius robustus*), up to 200 bottlenose dolphins (*Tursiops Sp.*), up to 200 Pacific white-sided dolphins (*Lagenorhynchus obliquidens*), up to 1,000 common dolphins (*Delphinus delphis*), up to 200 Risso's dolphins (*Grampus griseus*) and up to 20 Dall's porpoises (*Phocoenoides dalli*) will be observed and photographed on an opportunistic basis during the pilot whale research.
4. *Location of activity:* Southern California Waters
5. *Period of activity:* 5 years

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of the 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, Washington, DC 20235, 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:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Rm 805, Washington, DC; and Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731-7415.

Date: November 12, 1987.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 87-26812 Filed 11-19-87; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Issuance of Permit; Dr. Donald B. Siniff (P5G)

On May 14, 1987, notice was published in the **Federal Register** (52 FR 35299) that an application had been filed by Dr. Donald B. Siniff, Department of Ecology and Behavioral Biology, University of Minnesota, Minneapolis, Minnestoa 55455, to take Weddell seals (*Leptonychotes weddelli*).

Notice is hereby given that on November 12, 1987 as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

The Permit is available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Rm 805, Washington, DC; and

Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930.

Dated: November 12, 1987.

Dr. Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Services.

[FR Doc. 87–26815 Filed 11–19–87; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals; Return of Application; Dr. Howard E. Winn (P12G)

On May 14, 1987, notice was published in the **Federal Register** (52 FR 16296) that an application had been filed by Dr. Howard E. Winn, University of Rhode Island, for a permit to take by tagging up to 500 cetaceans throughout the U.S. coast.

Notice is hereby given that on November 6, 1987 the application was returned because of insufficient information necessary to complete its review by NMFS, the Marine Mammal Commission, and the public. The Applicant may resubmit a complete application at any time according to the guidelines set forth in the Application Instructions, the MMPA and its regulations.

Documents submitted in connection with the above application are available fo review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 1825 Connecticut Avenue NW., Suite 805, Washington, DC;

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731;

Director, Alaska Region, National Marine Fisheries Service, 709 West 9th Street, Federal Building, Juneau, Alaska 99802;

Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930;

Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, Washington 98115; and,

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Date: November 12, 1987.

Dr. Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 87–26814 Filed 11–19–87; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals; Application for Permit; Dr. Bernd Wursig (P36A)

Notice is hereby given that an 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. *Applicant:*

a. Name: Dr. Bernd G. Wursig, Moss Landing Marine Laboratories

b. Address: P.O. Box 450, Moss Landing, California 95039–0450

2. *Type of Permit:* Scientific Research.

3. *Name and Number of Marine Mammals:* Pacific white-sided dolphins *(Lagenorhynchus obliquidens)*

4. *Type of Take:* The applicant requests to harass up to 5,000 animals per week during photo-identification studies and up to 5,000 per month during aerial surveys. Of those numbers four (4) will be tagged with radio tags. These activities are necessary to assess distribution and abundance of Pacific white-sided dolphins on a seasonal basis; determine social structure and behavioral patterns, foraging, resting and travelling on a daily and seasonal basis; and to relate these objectives to ecological factors such as food resources and physical characteristics of the environment.

5. *Location of Activity:* Monterey Bay, California.

6. *Period of Activity:* 2 Years beginning December 15, 1987.

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, Washington, DC 20235, 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:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue NW., Rm 805, Washington, DC;

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731–7415.

Date: November 12, 1987.

Dr. Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 87–26813 Filed 11–19–87; 8:45 am]

BILLING CODE 3510–22–M

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The New England Fishery Management Council will convene a public meeting at the Holiday Inn, downtown, 88 Spring Street, Portland, ME, to discuss reports of the groundfish, foreign fishing, scallop and large pelagics oversight committees; the status of the Surf Clam/Ocean Quahog and Bluefish Fishery Management Plans; the "Fisheries Research Funding Act of 1987" (H.R. 3341, Young/R–AK), a bill to establish a saltwater license fee, and discuss other fishery management business. The public meeting will convene December 2, 1987, at 8:30 a.m., and will adjourn at approximately 5 p.m.

For further information, contact Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway, (Route One), Saugus, MA 01906; telephone: (617) 231-0422.

Date: November 17, 1987.

Richard H. Schaefer,

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

[FR Doc. 87-26865 Filed 11-19-87; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Sri Lanka

November 16, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on November 20, 1987. For further information contact Kimbang Pham, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 343-6580. For information on embargoes and quota re-openings, please call (202) 377-3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to restore unused carryforward to the current limits for Categories 341 and 648.

Background

On May 15, 1987, a notice was published in the **Federal Register** (52 FR 18413) which announced import restraint limits for cotton and man-made fiber textile products in Categories 341 and 648, among others, produced or manufactured in Sri Lanka and exported during the twelve-month period which began on June 1, 1987 and extends through May 31, 1988.

Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of May 10, 1983, as amended, between the Governments of the United States and Sri Lanka, the limits for Categories 341 and 648 are being adjusted, for the period June 1, 1987 to May 31, 1988, to restore carryforward that was requested but not used during the previous agreement year.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedule of the United States Annotated (1987).

Adoption by the United States of the Harmonized Commodity Code (HCC) may result in some changes in the categorization of textile products covered by this notice. Notice of any necessary adjustments to the limits affected by adoption of the HCC will be published in the **Federal Register.**

William J. Dulka,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, DC

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on May 12, 1987 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in Sri Lanka and exported during the twelve-month period which began on June 1, 1987 and extends through May 31, 1988.

Effective on November 20, 1987, the directive of May 12, 1987 is hereby amended to adjust limits for cotton and man-made fiber textile products in the following categories, as provided under the terms of the bilateral agreement of May 10, 1983, as amended: [1]

Category	Twelve-month adjusted limit
341	529,317 dozen.
648	189,372 dozen.

[1] The bilateral agreement provides, in part, that: (1) Specific limits and sublimits may be exceeded by certain designated percentages of the square yard equivalent total, provided the amount of the increase is compensated for by a decrease in equivalent square yards in one or more other specific limits; (2) specific limits may be increased for carryover or carryforward; (3) administrative adjustments or arrangements may be made to resolve minor problems arising in the implementation of the agreement..

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

William J. Dulka,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-26786 Filed 11-19-87; 8:45 am]

BILLING CODE 3510-DR-M

Changes in Officials Authorized To Issue Export Visas and Exempt Certifications for Certain Textiles and Textiles Products From the Republic of the Philippines

November 16, 1987.

FOR FURTHER INFORMATION CONTACT: Kimbang Pham, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, DC (202) 377-4212.

Under the terms of the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement of March 4, 1987 and the export visa arrangement and exempt certification requirements, announced in the CITA directive of April 3, 1987 (52 FR 11308), the Government of the Republic of the Philippines has notified the United States Government that Ms. Thelma K. Jover, Deputy Executive Director, Garments and Textiles Export Board, has been authorized by the Government of the Republic of the Philippines to issue export visas and exempt certifications for textiles and textiles products exported from the Philippines, subject to the terms of the bilateral agreement.

The following is a complete list of officials of the Government of the Philippines who are currently authorized to sign export visas and exempt certifications:

Lorna A. del Rosario
Gloria M. Arroyo
Zenaida G. Maglaya
Marissa G. Arzadon
Mercedita M. Pulmones
Mirabel A. Reyes
Thelma K. Jover

The purpose of this notice is to advise the public of these changes.

William J. Dulka,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-26790 Filed 11-19-87; 8:45 am]

BILLING CODE 3510-DR-M

Amendment to the Export Visa Requirement for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Socialist Federal Republic of Yugoslavia

November 16, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on November 20, 1987. For further information contact Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202)377–4212.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to require export visas for products in Categories 341/641, 442, 604–A, 645/646 and 666 which were exported from Yugoslavia to the United States on or after March 15, 1987.

Background

A CITA directive was published in the **Federal Register** (51 FR 4413) on February 4, 1986, which established export visa requirements for cotton, wool and man-made fiber textile products, produced or manufactured in the Socialist Federal Republic of Yugoslavia and exported to the United States.

Under the terms of the Export Visa Arrangement, effected by exchange of notes dated October 26 and 27, 1978, as amended and extended on December 25, 1986, between the Governments of the United States and the Socialist Federal Republic of Yugoslavia, agreement was reached to further amend the visa arrangement to cover imports of cotton, wool and man-made fiber textile products in Categories 340/640, 341/641, 433, 434, 435, 442, 443/643, 444, 447/448, 604–A, 645/646 and 666, produced or manufactured in Yugoslavia and exported from Yugoslavia on and after March 15, 1987.

Accordingly, to comply fully with the arrangement in the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to further amend the export visa arrangement to require export visas for entry of cotton, wool and man-made fiber textile products in Categories 341/641, 442, 604–A, 645/646 and 666, which are exported to the United States from Yugoslavia.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

William J. Dulka,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 16, 1987.

Commissioner of Customs,
Department of the Treasury, Washington, DC

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on January 30, 1986, by the Chairman of the Committee for the Implementation of Textile Agreements that directed you to prohibit entry of certain cotton, wool and man-made fiber textile products, produced or manufactured in Yugoslavia which were not properly visaed and the directive of March 21, 1986, which further clarified the January 30, 1986 directive.

Effective on November 20, 1987 you are directed to prohibit shipments of cotton, wool and man-made fiber textile products in Categories 341/641, 442, 604–A,[1] 645/646 and 666 entered for consumption or withdrawn from warehouse for consumption into the Customs territory of the United States (i.e., the 50 States, the District of Columbia and the Commonwealth of Puerto Rico) on or after March 15, 1987 which have been produced or manufactured in Yugoslavia and exported on and after March 15, 1987 for which the Socialist Federal Republic of Yugoslavia has not issued an appropriate export visa.

Goods in Categories 341/641, 442, 604–A, 645/646 and 666 which were exported prior to March 15, 1987 shall not be denied entry for lack of a visa.

Shipments of textile products classified within Categories 340/640, 433, 434, 435, 443/643, 444 and 447/448 should continue to be accompanied by a valid visa issued by the Government of Yugoslavia, as outlined in the March 21, 1986 directive from CITA.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 533(a)(1).

[1] In Category 604–A, only TSUSA numbers 310.5049 and 310.6045.

Sincerely,

William J. Dulka,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87–26787 Filed 11–19–87; 8:45 am]

BILLING CODE 3510–DR–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Changes; Annual Index

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Notice of change 3 of DoD 5025.1–I,"Department of Defense Annual Index".

SUMMARY: The Department of Defense Annual Index, DoD 5025.1–I, which is available from the National Technical Information Service (NTIS) is being changed. Change 3 supersedes Changes 1 and 2 and may be obtained, at cost, from NTIS, Springfield, Virginia 22161, telephone (703) 487–4600. The change should be available December 11, 1987.

EFFECTIVE DATE: October 31, 1987.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Bynum, Directives Division, Correspondence and Directives Directorate, Washington Headquarters Services, Washington, DC 20301–1155, telephone (202) 697–4111.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

November 16, 1983

[FR Doc. 87–26801 Filed 11–19–87; 8:45 am]

BILLING CODE 3810–01–M

Defense Science Board Task Force on B–1B Defensive Avionics; Cancellation of Meeting.

SUMMARY: The meeting notice for the Defense Science Board Task Force on B–1B Defensive Avionics for November 24–25, 1987 as pubished in the **Federal Register** (Vol. 52, No. 197, Page 38000–38001, Tuesday, October 13, 1987, FR Doc. 87–23644.) has been cancelled.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

November 16, 1987

[FR Doc. 87–26802 Filed 11–19–87; 8:45 am]

BILLING CODE 3810–01M

Defense Science Board Task Force on Competitive Strategies; Advisory Committee Meetings

SUMMARY: The Defense Science Board Task Force on Competitive Strategies will meet in closed session on January 29 and May 27, 1988 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will periodically review the application of competitive strategies to the selection of technologies, weapons, and support systems including C3 for emphasis by the Department of Defense.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly these meetings will be closed to the public.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

November 16, 1987.

[FR Doc. 87-26803 Filed 11-19-87; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Military System Applications of Superconductors; Cancellation of Meeting

SUMMARY: The meeting notice for the Defense Science Board Task Force on Military System Applications of Superconductors for December 16-17, 1987 as published in the **Federal Register** (Vol. 52, No. 204, Page 39556, Thursday, October 22, 1987, FR Doc 87-24482) has been cancelled.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

November 16, 1987.

[FR Doc. 87-26804 Filed 11-19-87; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Military System Applications of Superconductors; Change in Date of Advisory Committee Meeting

SUMMARY: The meeting of the Defense Science Board Task Force on Military System Applications of Superconductors scheduled for January 7-8, 1988 as published in the **Federal Register** (Vol. 52, No. 215, Page 42706, Friday, November 6, 1987, FR Doc. 87-25720) will be held on January 19-20, 1988.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

November 16, 1987.

[FR Doc. 87-26805 Filed 11-19-87; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB)

Date of Meeting: 10 December 1987

Time of Meeting: 1200-1300 hours

Place: Pentagon, Washington, DC.

Agenda: The Army Science Board's Ad Hoc Committee on Implementing Competitive Strategies will brief their draft report to select members of OSD. Due to the classification of the report and ensuing discussions, this meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and unclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 87-26776 Filed 11-19-87; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

Proposed Research Priorities

AGENCY: Department of Education.

ACTION: Notice of Proposed Biennial Research Priorities.

SUMMARY: The Secretary proposes to establish research priorities for Fiscal Years 1988 and 1989, and invites public comment. These priorities are principal components of the research and development agenda to improve education in the United States.

DATE: Comments must be received on or before January 19, 1988.

ADDRESSES: All comments concerning these proposed funding priorities should be addressed to Dr. Lawrence Bussey, Jr., Office of Educational Research and Improvement, Office of Research, Department of Education, 555 New Jersey Avenue NW., Suite 610, Washington, DC 20208-1633.

FOR FURTHER INFORMATION CONTACT: Dr. Arthur Sheekey, (202) 357-6079.

SUPPLEMENTARY INFORMATION: Section 405 of the General Education Provisions Act, as amended by the Higher Education Amendments of 1986 requires the Secretary to publish proposed research priorities in the **Federal Register** every two years not later than October 1, and to allow a period of sixty days for public comments and suggestions. Following consideration of public comments, the Secretary will publish these priorities in final form.

The proposed research priorities were developed in consultation with researchers, practitioners, civic and business leaders, policymakers, interested citizens, and professional associations all over the country, some of whom participated in a series of regional forums sponsored by the Department. The Secretary may implement some or all of these priorities as adopted in final form in competitions in Fiscal Years 1988 and 1989 under the Educational Research Grant Program and the Regional Educational Laboratories and Research and Development Centers Program. In addition, the Secretay may commission papers and undertake research within the Department to implement some or all of the final priorities.

Proposed Research Priorities

English Literacy, Including Reading, Writing, and Language Skills

Conducting research on issues related to the teaching and learning of reading, writing, or language skills. Understanding how effective programs work, how they are developed, and how they influence student competencies in these areas.

Improvement in Education

Assessing the implementation and impact of State and local reform initiatives, with particular emphasis on the refinement of measures of effective school, teaching and classroom practices.

Home, Family, Cultural and Community Influence in Education

Describing the impact of family, culture, and community on education. As applicable, identifying existing and effective strategies to encourage or facilitate parental involvement in education.

Improvement of Educational Outcomes for Students-at-Risk

Identifying what makes some schools and certain educational strategies successful in lowering dropout rates and raising achievement levels of those students having the greatest difficulty in terms of learning and motivation.

Student Achievement and Motivation

Conducting research on student achievement with a concentration on conditions and practices that affect student motivation and interest in learning.

Teaching and Learning Foreign Languages

Investigating successful practices for teaching and learning foreign languages. Understanding effective training practices for teachers of foreign languages.

Management and Organization of Schools

Examining the dynamics of educational organizations, management and leadership strategies and how leadership practices can improve instructional programs, school discipline, and school productivity.

Technology in Education

Applyng the advances in communication technologies to problems of educational productivity, including the reduction of costs in services and the enhancement of the quality of instruction.

Parental Choice in Schooling

Studying the effects of various options in education, including magnet, private and alternative schools, as well as home and independent learning.

Limited English Proficiency

Investigating the effects of policies, practices, and programs on the quality of education for sutdents with limited English proficiency.

Citizenship and Character Education

Understanding the processes of citizenship and character education, concentrating on what is taught and learned in schools and communities, how learning takes place, and determining how education may affect adult participation in civic life.

Recruitment, Training, and Retention of School Professionals

Analyzing policies, programs and practices designed to improve the quality and effectiveness of the professional and support personnel in schools, and identifying staff development and organizational practices that contribute to improved educational outcomes.

Assessment of Postsecondary Education

Investigating the effects of different coursework patterns and other criteria changes on both the general achievement levels and longer-term attainments of college graduates; developing new indicators of college students' learning, and assessing the current state and future prospects of graduate education in the traditional arts and science fields. Analyzing evidence of program effectiveness and instructional strategies in the area of adult learning.

Early Childhood Learning

Obtaining new evidence and examining the characteristics of early childhood learning, which spans the preschool through early elementary school years. Identifying useful information for educators and parents about the potential and acutal learning capabilities of young children.

Library Research

Investigating the needs and data on the resources and services available to young adults in public libraries.

International Education

Conducting comparative studies of the experience of other democratic cultures with problems and issues of special interest in American education, e.g., citizenship education, curriculum content and educational choice.

Educational Finance and Productivity

Identifying policies and finance mechanisms that contribute to improvements in organizational and institutional productivity in public and private educational institutions, agencies, or programs.

Teaching and Learning Content Knowledge

Investigating student achievement, what is taught and learned, and how it is assessed in the various core curriculum areas (e.g., science, mathematics, history, goegraphy, etc.)

Executive Order 12606—The Family

Some of these proposed priorities may have a positive impact on the family and are consistent with the requirements of Executive Order 12606—The Family. These proposed priorities strengthen the authority and participation of parents in the education of their children.

Invitation to comment

Interested persons are invited to submit comments and recommendations regarding the proposed research priorities.

All comments submitted in response to this notice will be available for public inspection, during and after the comment period in Suite 610, Capitol Place, 555 New Jersey Avenue, NW., Washington, DC. 20208 between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal Holidays.

(20 U.S.C. 1221e)

Dated: November 16, 1987.

William J. Bennett,

Secretary of Education.

[FR Doc. 87-26847 Filed 11-19-87; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Hydroelectric Application Filed With the Commission

November 17, 1987.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection:

a. *Type of Application:* Transfer of Annual License.

b. *Project No.:* 176-017.

c. *Date Filed:* November 4, 1987.

d. *Applicant:* Escondido Mutual Water Company.

e. *Name of Project:* Escondido Project.

f. *Location:* On Escondido Creek, in San Diego County, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. J. Barton Seitz, Duncan, Allen & Mitchell, 1575 Eye Street, NW., Washington, DC 20005, (202)-289-8400

Mr. Paul D. Engstrand, Jennings, Engstrand & Henrikson, 2250 Camino del Rio South, San Diego, CA 92108, (619) 291-0840

i. *FERC Contact:* Hossein Ildari, (202) 376-9816.

j. *Comment Date:* December 15, 1987.

k. *Proposed Action:* Escondido Mutual Water Company (Company), holder of an annual license for the Escondido Project, pursuant to section 15 of the Federal Power Act, and the City of Escondido (City) have jointly filed an application to receive approval for the Company to transfer its annual license to the City. A new license for the

Escondido Project was issued on February 26, 1979 (Opinion No. 36). On rehearing, the new license was stayed for a period of two years for congressional consideration of the Department of the Interior's request for federal takeover of the project (Opinion No. 36–A). The Ninth Circuit Court of Appeals overturned Opinion No. 36–A on appeal in *Escondido Mutual Water Company v. Federal Energy Regulatory Commission*, 692 F.2d 1223 (9th Cir. 1982), *amended* 701 F.2d 826 (9th Cir. 1983). The following year the Supreme Court in *Escondido Mutual Water Company v. LaJolla Band of Indians*, 466 U.S. 765 (1984) upheld in part and reversed in part the Ninth Circuit's decision. On remand, the Ninth Circuit has returned Opinion No. 36–A to the Commission for further consideration.

Pursuant to section 15 of the Federal Power Act, the project has been operating under annual licenses since the initial license expired on June 24, 1974.

1. This notice also consists of the following standard paragraphs: B, C and D2.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. An additional copy must be sent to: Mr. Edward A. Abrams, Acting Director, Division of Project Management, Federal Energy Regulatory Commission, Room 203–RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87–26880 Filed 11–19–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP87–41–005, RP84–76–007]

Alabama-Tennessee Natural Gas Co.; Tariff Filing

November 16, 1987.

Take notice that on November 9, 1987, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee) tendered for filing certain revised tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1. Alabama-Tennessee states that the purpose of the tariff sheets listed in Appendix A is to revise its Tariff pursuant to the Commission's Order issued on October 9, 1987 in Docket No. RP87–41–000, which approved an interim settlement filed on September 9, 1987. An effective date of September 1, 1987 is proposed. Alabama-Tennessee further states that the tariff sheets listed in Appendix B reflect certain non-rate changes to its tariff required by Opinion Nos. 268 and 268–A issued on March 13, 1987 and September 16, 1987, respectively. These tariff sheets are also proposed to become effective on September 1, 1987.

Alabama-Tennessee states that copies of the tariff filing have been mailed to all of its customers and affected State regulatory commissions.

Any person desiring to become a party to this proceeding should, on or before November 23, 1987, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestant parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

Appendix A

First Revised Sheet No. 7
First Revised Sheet No. 9
Original Sheet No. 9–A
Second Revised Sheet No. 11
Third Revised Sheet No. 12
First Revised Sheet No. 15
Original Sheet No. 15–A
First Revised Sheet No. 57
First Revised Sheet No. 66
First Revised Sheet No. 71
Second Revised Sheet No. 83
First Revised Sheet No. 99
First Revised Sheet No. 100
Third Revised Sheet No. 101

Appendix B

Original Sheet No. 7A
First Revised Sheet No. 8
Original Sheet No. 13A
Original Sheet No. 66A
First Revised Sheet No. 67
Original Sheet No. 71A
First Revised Sheet No. 72

[FR Doc. 87–26874 Filed 11–19–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP87–112–001]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

November 16, 1987.

Take notice that Columbia Gas Transmission Corporation (Columbia) on November 4, 1987 tendered for filing the following proposed changes to its FERC Gas Tariff, Original Volume No. 1, to be effective October 1, 1987:

Substitute Third Revised Sheet No. 67

Columbia states that the listed tariff sheet sets forth the applicable tariff provisions required to place rates into effect, applicable to the Annual Charge Adjustment, pursuant to the Commission's Regulations as set forth in Order No. 472, 472–A and 472–B issued May 29, 1987, June 17, 1987 and September 16, 1987, respectively and, pursuant to Order of the Director Accepting Annual Charge Adjustments issued September 29, 1987.

Copies of the filing were served upon the Company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825

North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before November 23, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-26866 Filed 11-19-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-15-034]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

November 16, 1987.

Take notice that Columbia Gas Transmission Corporation (Columbia), on November 10, 1987, tendered for filing proposed changes in its FERC Gas Tariff, Original Volume No. 1, to be effective April 1, 1987:

Substitute First Revised Sheet No. 22E2
Substitute First Revised Sheet No. 22E3
Substitute First Revised Sheet No. 22P3
Substitute Third Revised Sheet No. 22Q

Columbia states that these changes are being filed in accordance with Ordering Paragraphs (B) and (D) of the Federal Energy Regulatory Commission's (Commission) September 4, 1987 Order Accepting Tariff Sheets for Filing Subject to Conditions in this proceeding.

These tariff sheets clarify that calculation of seasonal imbalances will be based on actual tendered quantities less Daily Scheduled Quantities. The Daily Scheduled Quantities are those designated by Buyer, in accordance with Subsection 6(a) of the appropriate Rate Schedule, but the sum of the Daily Scheduled Quantities can not on a monthly basis exceed the quantities actually delivered by Columbia at the delivery points specified in the service agreement.

First Revised Sheet No. 22P3 also contains a new section 6(c)(2)(c), with language identical to the language in section 6(c)(2)(c) of Original Sheet No. 22E3.

Columbia states that the proposed tariff sheets are identical to those rejected by an October 21, 1987 Letter Order, but explains that the parties which protested the initial compliance filing have agreed to withdraw their protests. Columbia further explains the necessity for the tariff language which caused the protests and rejection of the earlier tariff sheets.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures. All such motions or protests should be filed on or before November 23, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-26867 Filed 11-19-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-14-034]

Columbia Gulf Transmission Co., Proposed Changes in FERC Gas Tariff

November 16, 1987.

Take notice that Columbia Gulf Transmission Company (Columbia Gulf) on November 10, 1987, tendered for filing proposed changes listed below to its FERC Gas Tariff, Original Volume No. 1, to be effective April 1, 1987:

Substitute First Revised Sheet No. 162 C
Substitute First Revised Sheet No. 162 D
Substitute First Revised Sheet No. 201 B
Substitute First Revised Sheet No. 201 C
Substitute First Revised Sheet No. 238 C
Substitute First Revised Sheet No. 238 D
Substitute First Revised Sheet No. 286 C
Substitute First Revised Sheet No. 286 D

Columbia Gulf states that these changes are being filed in accordance with Ordering Paragraph (C) of the Federal Energy Regulatory Commission's (Commission) November 5, 1987 Order Accepting Tariff Sheets for Filing Subject to Conditions in this proceeding. These tariff sheets are identical to the tariff sheets filed on September 21, 1987 and rejected in a Letter Order issued by the Director of OPPR on October 21, 1987.

These tariff sheets clarify that calculation of seasonal imbalances will be based on actual tendered quantities less Daily Scheduled Quantities. The Daily Scheduled Quantities are those designated by Shipper, in accordance with Subsection 6(a) of the appropriate Rate Schedule, but the sum of the Daily Scheduled Quantities can not on a monthly basis exceed the quantities actually delivered by Columbia Gulf at the delivery points specified in the service agreement.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures. All such motions or protests should be filed on or before November 23, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Columbia Gulf's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-26868 Filed 11-19-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-22-000]

Gasdel Pipeline System, Inc. Filing

November 16, 1987.

Take notice that on November 6, 1987, Gasdel Pipeline System, Incorporated (Gasdel) tendered for filing its FERC Gas Tariff, Original Volume No. 1-A, Original Sheet Nos. 1 through 42. Gasdel states that this filing was made in order to comply with Order Nos. 436 and 436-A.

Gasdel states that the new tariff includes both firm and interruptible transportation service on a first come/first served basis. Gasdel proposes that all transportation revenues be credited to its affiliate and sole transportation customer, Public Service Electric and Gas Company.

The proposed effective date of the above tariff sheets is December 5, 1987. Copies of the filing were served on Gasdel's customer.

Any person desiring to become a party to this proceeding should, on or before November 23, 1987, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intevene in accordance with Rules 214 and 211 of the Commission's Rules of

Practice and Procedure. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-26876 Filed 11-19-87; 8:45 am]

BILLING CODE 6717-01-M

[RP87-135-001]

High Island Offshore System; Tariff Filing

November 16, 1987.

Take notice that on November 3, 1987, High Island Offshore System ("HIOS") tendered for filing Substitute Original Sheet No. 5A to be included in HIOS F.E.R.C. Gas Tariff, Original Volume No. 1, to be effective October 1, 1987.

HIOS states the Substitute Original Sheet No. 5A reflects the addition of language stating HIOS' intent not to recover any amounts recorded in Account No. 928, associated with an Annual Charge Adjustment clause, through a Natural Gas Act Section 4 rate case. This language is required by Federal Energy Regulatory Commission Order No. 472-B, and by an order Accepting Annual Charge Adjustments issued September 29, 1987 at Docket No. RP87-135-000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or to protest with the Federal Energy Regulatory Commission, 825 North Capitol St., NE., Washington, DC 20426, in accordance with Rule 211 or Rule 214 of the Commission's Rules of Practice and procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 23, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-26875 Filed 11-19-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI88-72-000 and CI88-90-000]

Koch Exploration Co.; Application

November 16, 1987.

Take notice that on October 29, 1987, as supplemented on November 9, 1987, Koch Exploration Company (Applicant), of P.O. Box 2256, Wichita, Kansas 67201, filed applications pursuant to section 7(b) and (c) of the Natural Gas Act and §§ 157.23 and 157.30 of the Commission's Regulations thereunder, requesting (1) permanent abandonment of its sale to Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee) of gas produced from the N/2 of East Cameron Block 49, Offshore Louisiana, and (2) a three-year blanket limited-term certificate with pregranted abandonment in order to make sales in the spot market.

Applicant has an application as successor-in-interest for a certificate of public convenience and necessity pending in Docket No. CI87-930-000 to authorize continued sales of natural gas to Tennessee pursuant to contracts dated August 17 and August 10, 1956, and two dated August 14, 1956, on file with the Commission as Conoco Inc. Rate Schedule No. 154, ARCO Oil and Gas Company, a Division of Atlantic Richfield Company Rate Schedule No. 185, Texaco Producing Inc. Rate Schedule No. 72 and Cities Service Oil and Gas Corporation Rate Schedule No. 180, respectively.

In support of its applications Applicant states that the contracts will expire December 4, 1987, and Tennessee has advised that it does not oppose termination of sale by Applicant from its lease under the terms of the contracts effective December 4, 1987. Deliverability is approximately 10.000 Mcf/d. The gas is NGPA section 102(d) gas.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 1, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-26877 Filed 11-19-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-109-004]

Michigan Consolidated Gas Co., Interstate Storage Division; Proposed Changes in FERC Gas Tariff

November 16, 1987.

Take notice that on November 4, 1987, Michigan Consolidated Gas Company—Interstate Storage Division (ISD) tendered for filing proposed changes to the following tariff sheets in its FERC Gas Tariff, Original Volume No. 1, Original Volume No. 2 and Original Volume No. 3:

Original Volume No. 1

First Revised Sheet No. 1B

Original Volume No. 2

First Revised Sheet No. 1A

Original Volume No. 3

Third Revised Sheet No. 30

ISD states that the above revised tariff sheets reflect the specific provisions to be included in an annual charge adjustment clause (ACA required by Order No. 472-B (154.38(d)(ii)(A)), and are filed in compliance with the Order of the Director Accepting Annual Charge Adjustments issued September 29, 1987, in Docket No. RP87-109-000, *et al.*

ISD requests that the above tariff sheets be allowed to go into effect on October 1, 1987, which is the effective date of the tariff sheets originally filed and accepted by the order issued on September 29, 1987. Accordingly, ISD has petitioned for a waiver of the 30 day notice requirement set forth in § 154.38(d)(6)(ii)(A)(*3*) of the Commission's regulations and any other waivers necessary to make its filing effective on October 1, 1987.

ISD states that copies of its filing have been served upon its customers and the Michigan Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 23, 1987. Protests will be considered by

the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-26869 Filed 11-19-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-142-001]

Mississippi River Transmission Corp.; Proposed Changes in FERC Gas Tariff

November 16, 1987.

Take notice that on November 4, 1987, Mississippi River Transmission Corporation (Mississippi) tendered for filing the following tariff sheets to be a part of its FERC Gas Tariff, Second Revised Volume No. 1.

Second Substitute Original Sheet No. 4D
Substitute Third Revised Sheet No. 61
Substitute Original Sheet No. 61A

Mississippi states that the above referenced tariff sheets were submitted in compliance with the Commission letter order issued October 16, 1987, in Docket No. RP87-142-000, and in accordance with Commission Order 472-B, issued September 16, 1987. The proposed changes provide Mississippi with the mechanism to recover from its jurisdictional sales and transportation customers the annual charges assessed it by the Commission through a surcharge of $.0021 per Mcf. Mississippi further states that at this time it elects to use the Annual Charge Adjustment (ACA) method of recovering those charges assessed in accordance with § 154.38(d)(6)(ii)(A) of the Commission's Regulations.

Mississippi requests that these proposed tariff sheets become effective on October 1, 1987. Mississippi also states that copies of its filing have been served upon its customers and applicable state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 23, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-26870 Filed 11-19-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA87-2-27-002]

North Penn Gas Co.; Proposed Changes in FERC Gas Tariff

November 16, 1987.

Take notice that North Penn Gas Company (North Penn) on November 2, 1987, tendered for filing proposed changes to its FERC Gas Tariff, First Revised Volume No. 1 pursuant to its PGA Clause and the Federal Energy Regulatory Commission's (Commission) letter order dated September 18, 1987, in Docket Nos. TA87-2-27-000 to be effective September 1, 1987.

The Commission's letter order dated September 18, 1987, accepted North Penn's PGA filing "subject to downward revisions to reflect any modifications in its pipeline supplier rates tracked herein effective September 1, 1987."

On October 1, 1987, North Penn made a PGA filing in compliance with the Commission's September 18, 1987 Letter-Order tracking a change in rates from Tennessee Gas Pipeline Company which were rejected by the Commission's Letter-Order dated September 29, 1987, in Docket Nos. RP81-54-003, RP85-178-016 and RP87-26-009.

As a result, North Penn, on October 14, 1987, requested that the Commission hold in abeyance its October 1, 1987 PGA filling until it could refile using the proper rates of its pipeline suppliers.

North Penn states that this filing reflects its pipeline supplier rates filed and approved to be effective September 1, 1987. In all other respects this filing contains the same changes as filed by North Penn on August 20, 1987, in Docket No. TA87-2-27 and approved by Commission Letter-Order dated September 18, 1987.

On October 1, 1987, North Penn filed a change in rates to reflect the FERC Annual Charge Adjustment (ACA) in Docket No. RP88-6.

As a result of the filing proposed to be effective September 1, 1987, North Penn is submitting six (6) copies of Substitute Eighty-Sixth Revised Sheet No. PGA-1 to include its ACA proposed to be effective October 1, 1987, and Second Substitute Eighty-Fifth Revised Sheet No. PGA-1 to be effective September 1, 1987.

While North Penn believes that no waiver of the Commission's Rules and Regulations are required, North Penn respectfully requests a waiver of any of the Commission's rules and Regulations as may be required to permit this filing to become effective September 1, 1987 and October 1, 1987, as proposed.

Copies of this letter of transmittal and all enclosures are being mailed to each of North Penn's jurisdicational customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NW., Washington, DC 20426, in accordance with 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such motions or protests should be filed on or before November 23, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-26871 Filed 11-19-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-103-004]

Panhandle Eastern Pipe Line Co.; Compliance Filing

November 16, 1987.

Take notice that on November 3, 1987, Panhandle Easter Pipe Line Company (Panhandle) filed revised tariff sheets as listed in the attached appendix in purported compliance with Ordering Paragraphs (C) and (E) of the Commission's September 30, 1987 Order in this matter. Copies of Panhandle's filing were sent to all parties, jurisdictional customers and appropriate state regulatory agencies.

Any person desiring to become a party to this proceeding should, on or before November 23, 1987, file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

Appendix

FERC Gas Tariff, Original Volume No. 1

First Substitute Sixty-First Revised Sheet No. 3-A
First Substitute Thirty-Eighth Revised Sheet No. 3-B
First Substitute Fourth Revised Sheet No. 3-F
First Substitute Original Sheet No. 3-G
First Substitute Third Revised Sheet No. 32-Y
First Substitute Second Revised Sheet No. 32-Z
First Substitute Second Revised Sheet No. 32-AA
First Substitute First Revised Sheet No. 32-AF
First Substitute First Revised Sheet No. 32-AO
First Substitute First Revised Sheet No. 32-BB
First Substitute First Revised Sheet No. 32-BC
First Substitute First Revised Sheet No. 32-BD
First Substitute Original Sheet No. 32-BI
First Substitute Original Sheet No. 32-BS
First Substitute Fifteenth Revised Sheet No. 43-3
First Substitute Sixteenth Revised Sheet No. 43-4
First Substitute First Revised Sheet No. 48-A
First Substitute First Revised Sheet No. 48-B
First Substitute First Revised Sheet No. 48-C

FERC Gas Tariff, Original Volume No. 2

First Substitute Tenth Revised Sheet No. 93
First Substitute Eleventh Revised Sheet No. 135
First Substitute Second Revised Sheet No. 431
First Substitute Seventh Revised Sheet No. 556
First Substitute Fourteenth Revised Sheet No. 694
First Substitute Thirteenth Revised Sheet No. 695
First Substitute Fifth Revised Sheet No. 1316
First Substitute Fourth Revised Sheet No. 1317
First Substitute Fifth Revised Sheet No. 1339
First Substitute Fourth Revised Sheet No. 1340
First Substitute Sixth Revised Sheet No. 1557
First Substitute Fifth Revised Sheet No. 1558
First Substitute Fifth Revised Sheet No. 1586
First Substitute Sixth Revised Sheet No. 1610
First Substitute Third Revised Sheet No. 1911.A
First Substitute Sixth Revised Sheet No. 1920
First Substitute First Revised Sheet No. 1950
First Substitute Sixth Revised Sheet No. 1963
First Substitute Sixth Revised Sheet No. 1995
First Substitute Fourth Revised Sheet No. 2064
First Substitute Second Revised Sheet No. 2197
First Substitute Eighth Revised Sheet No. 2242
First Substitute Fifth Revised Sheet No. 2370
First Substitute Third Revised Sheet No. 2432
First Substitute Sixth Revised Sheet No. 2489
First Substitute Sixth Revised Sheet No. 2524
First Substitute Third Revised Sheet No. 2546
First Substitute Third Revised Sheet No. 2570
First Substitute Third Revised Sheet No. 2640
First Substitute Sixth Revised Sheet No. 2672
First Substitute Fourth Revised Sheet No. 2707
First Substitute Seventh Revised Sheet No. 2731
First Substitute Third Revised Sheet No. 2754
First Substitute Fifth Revised Sheet No. 2827
First Substitute Fifth Revised Sheet No. 2850
First Substitute Third Revised Sheet No. 2935
First Substitute Third Revised Sheet No. 2961
First Substitute Third Revised Sheet No. 3010
First Substitute Second Revised Sheet No. 3162

[FR Doc. 87-26872 Filed 11-19-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-151-002]

Seagull Interstate Corp.; Compliance Filing

November 16, 1987.

Take notice that on November 6, 1987, Seagull Interstate Corporation tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1: First Revised Sheet Nos. 7, 12, 13, 19, 25, 35, and 54, and Original Sheet No. 54A. Seagull Interstate states that this filing is made in order to comply with the Commission's order of September 24, 1987.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 and 385.211. All such motions or protests should be filed on or before November 23, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-26873 Filed 11-19-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-9-001]

Southwest Gas Corp.; Change in ACA Clause

November 16, 1987.

Take notice that on November 9, 1987, Southwest Gas Corporation (Southwest) submitted for filing, to be a part of its FERC Gas Tariff, First Revised Volume No. 1, Third Revised Sheet No. 35.

The tendered tariff sheet is filed to comply with the provisions of a Commission letter order dated October 23, 1987 in the above-referenced docket.

Southwest requests waiver of the Commission's regulations to permit an effective date of October 1, 1987.

A copy of this filing has been served on Southwest's jurisdictional customers and affected state regulatory commissions.

Any persons desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal

Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protests should be filed on or before November 23, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashsell,

Acting Secretary.

[FR Doc. 87-26878 Filed 11-19-87; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3293-3]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared November 2, 1987 through November 6, 1987 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2) (c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5075/76.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 24, 1987 (52 FR 13749).

Draft EISs

ERP No. D-AFS-J28015-CO, Rating **2, Rock Creek Reservoir, Routt National Forest or Muddy Creek Reservoir, Kremmling Resource Area, Construction, Special Use and 404 Permits, Routt and Grand Counties, CO. *Summary:* EPA is concerned that the direct impacts of the proposed projects, especially water quality impacts, are not analyzed in several geographical areas. The EPA also believes that the draft EIS contains selection criteria that artificially limit the choice of reasonable alternatives. **Rock Creek Reservoir alternative rated EO; Muddy Creek Reservoir alternative rated EC; No Action alternative rated LO.

ERP No. D-BLM-J70014-CO, Rating EC2, Uncompahgre Basin Planning Area, Resource Management Plan, Wilderness Recommendations, Adobe Badlands, Camel Back, and Gunnison Gorge Wilderness Study Areas, Delta, Gunnison, Montrose, and Mesa Counties, CO. *Summary:* The EIS examined several initiatives for salinity control and managing riparian and aquatic systems. However, EPA recommended a more comprehensive planning framework for protecting aquatic resources under the Clean Water and Federal Land Policy and Management Acts.

ERP No. D-COE-G36140-TX, Rating LO, Buffalo Bayou and Tributaries, Comprehensive Flood Damage Prevention Study, Implementation, Harris, Fort Bend, and Waller Counties, TX. *Summary:* EPA has no objection to the project as proposed with proper implementation of the environmental design features and recreational development plans described.

ERP No. D-USN-L11008-AK, Rating LO, Southeast Alaska Acoustic Measurement Facility (SEAFAC) Construction, Establishment, 404 Permit, Behm Canal, Back Island, Ketchikan Gateway Borough, AK. *Summary:* EPA has no objections to the proposed project as described in the draft EIS.

Final EISs

ERP No. F-BLM-G70004-NM, Taos Resource Area, Resource Management Plan, Implementation, Union, Mora, Rio Arriba, Colfax, San Miguel, Los Alamos, Harding, Taos and Santa Fe Counties NM. *Summary:* The document satisfactorily responds to those areas of concern within EPA's jurisdiction and expertise. EPA has no objection to the proposed action.

Regulations

ERP No. R-OSM-A01094-00, 30 CFR Parts 780 and 784; Surface Coal Mining and Reclamation Operation; Permanent Regulatory Program; Surface Mining Permit Applications; Underground Mining Permit Applications (52 FR 32764). *Summary:* EPA recommended that provision be made in the proposed rule for consideration of well head protection areas developed under a state program approved by EPA and the ground-water evaluation procedures contained in the EPA Guidelines for Ground-Water Classification.

Dated: November 17, 1987.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 87-26832 Filed 11-19-87; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3293-2]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

Availability of Environmental Impact Statements filed November 9, 1987 through November 13, 1987 Pursuant to 40 CFR 1506.9

EIS No. 870410, Final, FHW, MD, MD-36 Construction, Seldom Seen Road to Buskirk Hollow Road, Allegany County, Due: December 21, 1987, Contact: Edward Terry (301) 962-4010.

EIS No. 870411, Draft, FHW, MD, MD-228 Extension, US 301 to MD-210 and MD-210 Improvement, MD-228 Extended to Old Fort Road, Charles and Prince Georges Counties, Due: January 4, 1988, Contact: Edward Terry (301) 962-4010.

EIS No. 870412, Final, FHW, MD, MD-100 Construction, I-95 in Howard County to MD-3/I-97 in Anne Arundel County and MD-176 Improvements, US 1 to MD-295/ Gladys Noon Spellman Parkway, Howard and Anne Arundel Counties, Due: December 21, 1987, Contact: Edward Terry (301) 962-4010.

EIS No. 870413, Draft, FHW, ND, Columbia Road Overpass Widening, Gateway Drive to 32nd Avenue South, Grand Forks County, Due: January 4, 1988, Contact: John Kliethermes (701) 255-4011.

EIS No. 870414, Draft, Joint Lead, AFS, BLM, MO, Mark Twain National Forest, Hardrock Mineral Leasing, Approval and Issuance of Leases, Oregon, Carter and Shannon Counties, Due: January 4, 1988, Contact: Leon Kridelbaugh (314) 364-4621.

EIS No. 870415 Final Supplement, COE, CA, Corte Madera Creek Flood Control Project, Unit No. 4, Updated Modifications, Implementation, Town of Ross, Marin County, Due: December 21, 1987, Contact: Richard Meredith (916) 551-1855.

EIS No. 870416, Draft Supplement, COE, IL, MO, Mississippi River Locks and Dam 26 Replacement Construction, Second Lock, Updated Information, Upper Mississippi and Illinois Rivers, Alton, Madison Co., IL and St. Louis Co., Mo, Due: January 4, 1988, Contact: Daniel Ragland (314) 263-5711.

EIS No. 870417, Draft Supplement, NAS, PRO, Galileo Mission Project, Jovian System Investigation Program and Ulysses Mission Project, Heliosphere Exploration Program, Spacecraft Modifications, Due: January 4, 1988,

Contact: Dr. Dudley McConnell (202) 453-1587.

Amended Notices:

EIS No. 870405, Draft, AFS, WA, OR, Umatilla National Forest, Land and Resource Management Plan, Due: February 19, 1988, Published FR 11-13-87—Officially retracted due to noncompliance of distribution.

EIS No. 870406, Draft, AFS, OR, Fremont National Forest, Land and Resource Management Plan, Due: March 1, 1988, Published FR-11-13-87, Officially retracted due to noncompliance of distribution.

EIS No. 870381, Final, SFW, MN, IA, WI, IL, Upper Mississippi River National Wildlife Refuge and Fish Refuge Master Plan, Due: January 4, 1988, Published FR 10-30-87—Review period reestablished.

Dated: November 17, 1987.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 87-26833 Filed 11-17-87; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-140090; FRL-3293-5]

Access to Confidential Business Information by Unisys Corp.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, Unisys Corporation (UNI) of Research Triangle Park, NC, for access to information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATE: Access to the confidential data submitted to EPA will occur no sooner than December 7, 1987.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, DC 20460, (202-554-1404).

SUPPLEMENTARY INFORMATION: Under TSCA, EPA must determine whether the manufacture, processing, distribution in commerce, use, or disposal of certain chemical substances or chemical mixtures may present an unreasonable risk of injury to human health or the environment. New chemical substances, i.e., those not listed on the TSCA Chemcial Substances Inventory, are evaluated by EPA under section 5 of TSCA. Existing chemical substances, i.e., those listed on the TSCA Inventory, are evaluated by the Agency under sections 4, 6, and 8 of TSCA. Certain existing chemical substances intended to be exported to foreign countries are required to be reported to EPA under section 12 of TSCA. New and existing chemical substances intended to be imported into the United States are evaluated by EPA under section 13 of TSCA. Petitions received by EPA to initiate a proceeding for the issuance, amendment, or repeal of a rule under section 4, 6, or 8 or an order under section 5(e) of 6(b)(2) are evaluated by EPA under section 21 of TSCA.

Under contract number 68-01-7437, EPA's contractor Unisys Corporation, 4501 Building, 79 Alexander Drive, will assist the EPA's National Computer Center's National Data Processing Division in operating and maintaining computer systems containing information that may be claimed or determined to be CBI.

In accordance with 40 CFR 2.306(j), EPA has determined that under contract number 69-01-7437, UNI will require access to CBI submitted to EPA under TSCA to successfully perform the duties specified under the contract. Authorization for access by UNI to TSCA CBI for similar purposes under contract number 68-01-6658 was previously announced in the **Federal Register** of January 12, 1987 (52 FR 1241). Under contract number 68-01-7437, UNI personnel will require access to CBI data submitted to EPA under all sections of TSCA. Some of the information may be claimed or determined to be CBI.

EAP is issuing this notice to inform all submitters of information under all sections of TSCA that EPA may provide UNI access to these CBI materials on a need-to-know basis. All access to TSCA CBI under this contract will take place at EPA Headquarters and Research Triangle Park facilities.

Clearance for access to TSCA CBI under this contract is scheduled to expire on September 30, 1988.

UNI personnel will be required to sign non-disclosure agreements, will be briefed on appropriate security procedures and must pass a written test on those security procedures before they are permitted access to TSCA CBI.

Dated: November 13, 1987.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 87-26883 Filed 11-19-87; 8:45 am]

BILLING CODE 6560-50-M

[FRL 3293-4

Management Advisory Group to the Construction Grant Program; Open Meeting

Under Pub. L. 92-463, notice is hereby given that a meeting of Management Advisory Group to the Construction Grant Program (MAG) will be held at the Hilton Pavilion Hotel, 1011 West Holmes Avenue, Mesa, Arizona 85202, beginning at 9:00 a.m., on December 10 and ending at about 1:00 p.m. on December 11, 1987.

The agenda will include a review and discussion of the Sector Study on Municipal Financing and Implementation of State Revolving Loan Fund legislation. The agenda will also include briefings and discussions on other topics of current or future interest to MAG. Any members of the public wishing to make comments are invited to submit them in writing to the Executive Secretary at the meeting.

The meeting will be open to the public. Additional information on the meeting may be obtained from Ms. Vicki Gillispie at the Environmental Protection Agency, WH-547, 401 M Street SW., Washington, DC 20460, telephone number: (202) 382-5859.

Lawrence J. Jensen,

Assistant Administrator for Water (WH-556).

Date: November 16, 1987.

[FR Doc. 87-26882 Filed 11-19-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

November 9, 1987.

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).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on this submission contact Terry Johnson, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact J. Timothy Sprehe, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB Number: 3060–0076.
Title: Annual Employment Report for Common Carriers.
Form Number: FCC 395.
Action: Revision.
Respondents: Businesses (including small businesses).
Frequency of Response: Annually.
Estimated Annual Burden: 1,200 Responses; 1,200 Hours.
Needs and Uses: The Annual Employment Report for Common Carriers is a data collection device for enforcement and assessment of the Commission's EEO Rules. All common carrier licensees and permittees are required to file this report. The report identifies each carrier's staff by gender, race, color, and/or national origin in each of the nine major job categories. The information is used by public interest groups, NTIA, the Equal Employment Opportunity Commission, the Congress and the U.S. Commission on Civil Rights to assess progress in accordance with their particular objectives.

Federal Communications Commission.
William J. Tricarico,
Secretary.
[FR Doc. 87–26828 Filed 11–19–87; 8:45 am]
BILLING CODE 6712–01–M

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

November 12, 1987.

The Federal Communications Commission has submitted the following information collection requirement to the Office of Management and Budget for review and clearance under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Copies of the submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on this submission contact Terry Johnson, Federal Communications Commission, (202) 634–1535. Persons wishing to comment on this information collection should contact J. Timothy Sprehe, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: None.
Title: Tariff Review Plan.
Action: New collection.
Respondents: Businesses (telephone companies).
Frequency of Response: Annually.
Estimated Annual Burden: 58 Responses; 13,978 Hours.
Needs and Uses: Certain local exchange carriers (telephone companies) are required to submit Tariff Review Plans in partial fulfillment of cost support material required by 47 CFR 61.38. The information is used by the Commission and public to determine the justness and reasonableness of rates, terms, and conditions in tariffs as required by the Communications Act of 1934, as amended.

Federal Communications Commission.
William J. Tricarico,
Secretary.
[FR Doc. 87–26829 Filed 11–19–87; 8:45 am]
BILLING CODE 6712–01–M

Allocations Subgroup, Radio Advisory Committee; Meeting

The Allocations Subgroup of the Advisory Committee on Radio Broadcasting will meet at 1:30 p.m., Wednesday, December 2, 1987, in the McCollough Room of the Headquarters of the National Association of Broadcasters, 1771 N Street, NW., Washington DC, to consider the following matters:

(1) The development of recommendations to the FCC on updating the stated allocations objectives of the radio broadcast service, the priorities among those objectives, and possible differentiations between the objectives of the AM and FM components of the radio broadcast service, and between the uses of the established 535–1605 kHz portion of the AM band and the prospective 1605–1705 kHz portion;

(2) Input to the Technical Subgroup of the Radio Advisory Committee concerning the possible desirability of amendment of the FCC AM Rules relating to:

(a) AM groundwave and skywave field strength contours that should normally be protected against interference; and

(b) Protection ratios; and

(c) Additional assignment considerations to increase flexibility;

(3) Preparations for the 1988 Conference to expand the AM band; and

(4) Other business.

Subgroup meetings are continuing ones, and may be resumed after the December 2, 1987 session at such times and places as may be decided then. All Subgroup meetings are open to the public, and all interested persons are invited to participate in them.

For further information, please call the Subgroup Chairman: Louis C. Stephens, (202) 254–3394.

Federal Communications Commission.
William J. Tricarico,
Secretary.
[FR Doc. 87–26830 Filed 11–19–87; 8:45 am]
BILLING CODE 6712–01–M

[Report No. 1690]

Petitions for Reconsideration of Actions in Rulemaking Proceedings

November 13, 1987.

Petitions for reconsideration have been filed in the Commission rule making proceeding listed in this public notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street NW., Washington, DC, or may be purchased from the Commission's copy contractor, International Transcription Service (202–857–3800). Oppositions to these petitions must be filed November 27, 1987. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of Part 69 of the Commission's Rules and Regulations, Access Charges, To Conform It with Part 36 Jurisdictional Separations Procedures. (CC Docket No. 87–113) Number of petitions received: 10

Note.—The filing date for responses to western union's petition for reconsideration filed on 9/23/87 is modified to correspond with this public notice.

Federal Communications Commission.
William J. Tricarico,
Secretary.
[FR Doc. 87–26831 Filed 11–19–87; 8:45 am]
BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations.

Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200059.

Title: Port of Oakland Terminal Use Agreement.

Parties:

Port of Oakland (Port)
Canadian Transport Company Limited (CTCO)

Synopsis: The proposed agreement provides that CTCO shall have, pursuant to the terms and conditions specified therein, the nonexclusive right to use certain assigned premises at either the Port's 7th Street Public Container Terminal or the Charles P. Howard Terminal as its published regularly scheduled Northern California port of call for its vessel operations.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: November 16, 1987.

[FR Doc. 87-26834 Filed 11-19-87; 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 has been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Pub. L. 89-777 (80 Stat. 1357, 1358) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540): Discovery Cruises, Inc./Discovery Cruises, Ltd., c/o Holland & Knight, 1200 Brickell Avenue, Miami, Florida 33131.

Date: November 17, 1987.

Joseph C. Polking,

Secretary.

[FR Doc. 87-26835 Filed 11-19-87; 8:45 am]

BILLING CODE 6730-0-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on October 30, 1987.

Health Care Financing Administration

(Call Reports Clearance Officer on 301-594-1238 for copies of package.)

1. *Hospital and Hospital Health Care Complex Cost Report*—0938-0050—This form is used by hospitals and hospital health care complexes to report their health care costs and by their servicing fiscal intermediaries to determine amounts reimbursable for the services furnished Medicare beneficiaries. Respondents: Businesses or other for-profit. Number of Respondents: 7,000; Frequency of Response: Annually; Estimated Annual Burden: 4,433,560 hours.

2. *Medicare Common Claims Form*—0938-0008—Claims for reimbursement can be acted on in a timely and accurate manner when forms are used to file Part B medical and other health services provided by physicians/suppliers. Respondents: Individuals or households. Number of Respondents: 326,110,000; Frequency of Response: Occasionally; Estimated Annual Burden: 58,623,707 hours.

3. *Information Collection Requirements in the Hospice Case Regulation*—0938-0302—These information collections are needed to implement the Medicare hospice benefit. Respondents: Individuals or households, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations. Number of Respondents: 400; Frequency of Response: Annually; Estimated Annual Burden: 466,300 hours.

4. *Laboratory Personnel Qualification Appraisal*—0938-0049—This form must be completed by personnel employed by independent laboratories certified by Medicare. It is submitted to the State agency surveyor which verifies that the laboratories' personnel meet Federal regulatory standards. Respondents: Businesses or other for-profit. Number of Respondents: 3,000; Frequency of Response: Occasionally; Estimated Annual Burden: 1,000 hours.

OMB Desk Officer: Allison Herron.

Public Health Services

(Call Reports Clearance Officer on 202-245-2100 for copies of package.)

Food and Drug Administration

1. *Protection of Human Subjects*—Recordkeeping and reporting requirements for Institutional Review Boards (21 CFR Part 56)—0910-0130—Documentation of the Institution Review Board activities and retention of those records is necessary for FDA to be able to assess compliance with regulations during inspections. Respondents: Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations. Number of Respondents: 3,000; Frequency of Response: Occasionally; Estimated Annual Burden: 23,400 hours.

2. *Laxative Drug Products for OTC Human Use*—0910-0207—This proposed rule establishes conditions for the marketing of laxative drug products classified safe and effective for OTC use. One provision of the proposed rule is preparation and distribution of directions related to the use of bowel cleansing systems in evacuating the bowel prior to surgery or x-ray. Respondents: Businesses or other for-profit. Number of Respondents: N/A; Frequency of Response: Occasionally; Estimated Annual Burden: N/A.

3. *Medical Device and Laboratory Product Problem Reporting Program (PRP)*—0910-0143—This program provides information needed to monitor the safety and effectiveness of medical devices and radiological products regulated by Center for Devices Radiological Health. Respondents: Individuals or households, State or local governments, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions. Number of Respondents: 2,300; Frequency of Response: Occasionally; Estimated Annual Burden: 575 hours.

OMB Desk Officer: Shanna Koss.

As mentioned above, copies of the information collection clearance packages can be obtained by calling the Reports Clearance Officer, on one of the following numbers:

HCFA: 301-594-1238

PHS: 202-245-2100

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

ATTN: (name of OMB Desk Officer).

Dated: November 16, 1987.

James F. Trickett,

Deputy Assistant Secretary, Administrative and Management Services.

[FR Doc. 87-26800 Filed 11-19-87; 8:45 am]

BILLING CODE 4150-04-M

Centers for Disease Control

Requirement of Certification of Used Tire Casings From Asia Prior to Entry Into the United States

AGENCY: Centers for Disease Control (CDC), Public Health Service, HHS.

ACTION: Notice of requirement of certification of used tire casings from Asia prior to entry into the United States.

SUMMARY: It has been demonstrated that the Asian tiger mosquito is being imported into the United States in used tire casing. Consequently, the Public Health Service is taking action to prevent the further importation.

Background: In August 1985, the Asian tiger mosquito (*Aedes albopictus*) was found to have infested one county in Texas. This mosquito can transmit a number of viral diseases to humans, and its presence is considered to constitute a significant public health threat. In 1986, *Aedes albopictus* was found to have spread to other locations in the United States and by October 1, 1987, 15 States had been found to be infested. Field evaluations in the spring and early summer of 1987 have demonstrated that this species successfully survives temperate winters as far north as Indiana.

Surveys conducted by the Centers for Disease Control (CDC) have established that *Aedes albopictus* and other mosquito species are being imported into the United States from Asia in used tire casings.

Implementation Procedures: To prevent the further importation of this mosquito and the possible introduciton, transmission, or spread of communicable diseases (in these mosquitoes), CDC is taking the following action: Under the authority of section 361 of the Public Health Service Act and 42 CFR 71.32(c), CDC will require that all used tire casing originating from Japan, Korea, Taiwan, Hong Kong, Thailand, and elsewhere in Asia be certified as being dry, clean, and disinsected.

Disinsection and certification should be accomplished by the exporter using one of the following methods:

A. Tire casing must be clean and free from water and fumigated, according to label instruciton, with at least 2 pounds of methyl bromide fumigant per 1,000 feet^3 for 24 hours.

b. Tire casing must be clean and free from water and subjected to dry heat at a temperature of 120°F (49°C) for ≥30 minutes.

C. Tire casing must be clean and free from water and subjected to steam or a pressurized spray of hot water (190°F; 88°C) containing detergent.

After tires have been disinsected they must be kept dry.

The exporter must sign the certificate specifying the method of disinsection used and the date the tires were treated. The importer or his/her agent will sign the certificate at the time of clearance by the U.S. Customs Service and the importer or his/her agent will mail the original copy of the certificate to the Centers for Disease Control, Division of Quarantine, Atlanta, Georgia 30333.

The Customs Service will ensure that all shipments of used tire casings from Asia are accompanied by a valid CDC Disinsection Certificate before releasing the cargo. Shipments of tires that do not have proper documentation will be kept separated from other cargo pending appropriate disposition. All costs incurred for final disposition (including disinsection at a U.S. port of entry) will be borne by the importer.

CDC will make site visits to the major exporting countries to verify disinsection capabilities, will perform periodic inspections of shipments of used tire casings to monitor compliance, and will receive copies of the disinsection certificates from the U.S. Customs Service.

Effective Date: January 1, 1988.

For Further information, Copies of Technical Specifications, or Certification Forms Please Contact: Mr. Tony D. Perez (404–329–2574), Centers for Disease Control, Division of Quarantine, Atlanta, Georgia 30333.

Dated: November 16, 1987.

Glenda S. Cowart,

Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 87–26792 Filed 11–19–87; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

[Docket No. 82F–0334]

Air Products and Chemicals, Inc.; Withdrawal of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal without prejudice to future filing of a petition proposing that the food additive regulations be amended to provide for the safe use of 2,4,7,9-tetramethyl-5-decyn-4,7-diol as a component of coatings for paper and paperboard in contact with food.

FOR FURTHER INFORMATION CONTACT: Edward J. Machuga, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In the Federal Register of December 3, 1982 (47 FR 54547), FDA published a notice that it had filed a petition (FAP 2B3657) from Air Products and Chemicals, Inc., Box 538, Allentown, PA 18105, proposing that 21 CFR 176.170 be amended to provide for the safe use of 2,4,7,9-tetramethyl-5-decyn-4,7-diol as a component of coatings for paper and paperboard in contact with food. Air Products and Chemicals, Inc., has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: November 12, 1987.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87–26781 Filed 11–19–87; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 87F–0344]

Filing of Food Additive Petition; NutraSweet Co.

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the NutraSweet Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of aspartame as a sweetener in baked goods and baking mixes.

FOR FURTHER INFORMATION CONTACT: Joseph Leginus, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–426–5487.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 7A4044) has been filed by the NutraSweet Co., 4711 Golf Rd., Skokie, IL 60076, proposing that § 172.804 *Aspartame* (21 CFR 172.804) be amended to provide for the use of aspartame as a sweetener in baked goods and baking mixes, where standards of identity do not preclude its use.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be

published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: November 12, 1987

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87-26780 Filed 11-19-87; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 87N-0381]

Drug Export; Methotrexate Sodium Tablets

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Lederle Laboratories has filed an application requesting approval for the export of the human drug Methotrexate Sodium Tablets to the United Kingdom.

ADDRESS: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concering the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Rudolf Apodaca, Center for Drugs and Biologics (HFN-310), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8063.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99-660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Lederle Laboratories, Pearl River, New York 10965, has filed an application requesting approval for the export of the drug Methotrexate Sodium Tablets to the United Kingdom. This drug is used in the treatment of neoplastic disease and severe cases of uncontrolled psoriasis unresponsive to conventional therapy. The application was received and filed in the Center for Drugs and Biologics on September 29, 1987, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by November 30, 1987, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99-660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drugs and Biologics (21 CFR 5.44).

Dated: November 4, 1987.

Daniel L. Michels,

Director, Office of Compliance, Center for Drugs and Biologics.

[FR Doc. 87-26779 Filed 11-19-87; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Statement of Organization, Functions, and Delegations of Authority

Part F. of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA) (**Federal Register**, Vol. 51, No. 201, pp. 37076-37077, dated Friday October 17, 1986) is amended to reflect a change in the organizational structure of the Office of Operations Support (OOS), Office of Research and Demonstrations (ORD), Associate Administrator for Program Development. OOS is being reorganized to consolidate all administrative management functions within ORD in one component.

The specific changes to Part F are as follows:

- Section FQ.20.B.3., is deleted in its entirety and replaced by a new functional statement that reads as follows:

* * * * *

3. Office of Operations Support (FQBC).

Provides policy direction, coordination, and control to the Office of Research and Demonstrations in the areas of budget, financial and accounting operations, personnel, workplanning, management evaluation and analysis, and administrative services. Directs the research and demonstration project grant, cooperative agreement and procurement programs. Directs and plans ongoing research publications and information resources programs. Participates with departmental components in a wide range of experimental health care delivery projects. Performs claims adjudication, reimbursement, and data collection for demonstration projects. Provides a setting for testing proposed policies and procedures which impact on fiscal intermediary operations and provides the capacity for serving specialized providers. Directs ORD's correspondence and tracking and control system. Coordinates the development of, and responses to, regulations related to ORD. Responsible for ORD's Freedom of Information requests.

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- Section FQ.20.B.3.a, Division of Executive Operations (FQBC1), is deleted in its entirety and replaced by the following:

* * * * *

a. Division of Program Support (FQBC3)

Plans, organizes, and administers the extramural ORD research and demonstration (grants, cooperative agreements, and contracts) program assuring that both technical and administrative requirements are met. Plans and directs an ongoing publications dissemination and information resources program. Provides assistance in the coordination and production of major written documents, plans, and reports.

* * * * *

Date: October 20, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

[FR Doc. 87-26840 Filed 11-19-87; 8:45 am]

BILLING CODE 4120-01-M

Statement of Organization, Functions, and Delegations of Authority

Part F. of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA), **Federal Register**, Vol. 48, No. 198, pp. 46441–46444, dated Wednesday, October 12, 1983) is amended to indicate a reorganization within the Bureau of Quality Control. The Administration and Management Staff and Program Quality and Evaluation Staff will be abolished and their functions will be consolidated in the Executive Operations Staff. The Office of Medicaid Financial Management is abolished and replaced by the Office of Medicaid Management. All Medicaid operations and financial management activities are incorporated therein. The reorganization also abolishes the Office of Program Review and Evaluation and transfers the Division of Operational Reviews to the Office of Quality Control Program, while the functions of the Division of Performance Evaluation are assigned to the Office of Medicaid Management and the Office of Quality Control Programs.

The specific changes to Part F. are described below:

• Section FP.10.B., Bureau of Quality Control, is amended by deleting the existing organizational titles and replacing them with the following:

1. Executive Operations Staff
2. Office of Medicaid Management
   a. Division of Financial Management
   b. Division of Program Performance
   c. Division of Payment Systems
3. Office of Quality Control Programs
   a. Division of Operational Reviews
   b. Division of Institutional Reimbursement Assessment
   c. Division of Performance Evaluation

• Section FP.20.B is amended by deleting the organizational title, functional statement, and administrative code for each organization beneath the Bureau of Quality Control. The deleted sections are to be replaced by the following updated functional statements, organizational titles, and administrative codes.

1. Executive Operations Staff (FPC–6)

Assists and advises all Bureau of Quality Control (BQC) managers in organizational analysis, design, and implementation by analyzing, developing, and recommending action, and presenting reorganization proposals, requests to establish positions, and delegations of management and program administration authorities. Establishes and implements integrated and coordinated BQC workplanning. Provides instructions and facilitates the completion of organizational, Senior Executive Service, Performance Management and Recognition System (PMRS), and Employee Performance Management System workplans. Plans and monitors the execution of major Bureau program initiatives through the administration of the Bureau's workplanning and PMRS workplans to ensure fairness and equity among components and to assure that measurable and verifiable outputs are provided. Interprets budgetary policies and limitations and develops and issues guidelines and instructions to BQC managers for budget formulation and execution. Executes the budget for BQC through the issuance of staff and dollar controls, budget allowances for administrative expenditures, and employment ceilings to BQC components. Provides services and liaison with the Office of Management and Budget (OMB) related to procurement, space acquisition, utilization and management; telephone systems; records; publications; forms printing; and reprographics. Directs an integrated and coordinated personnel management program responsive to the needs of BQC. Represents BQC in dealings with OMB about staffing, classification, training, labor relations, employee relations, and other human resources management programs. Manages BQC's equal employment opportunity program. Directs BQC's automated data processing (ADP) acitivities related to documenting the requirements and securing clearances and approvals for ADP systems and equipment; preparing BQC's administrative operating ADP procedures; providing input for the development of the annual ADP and telecommunication planning and budget submissions ensuring adherence to all ADP security measures, policies, and procedures; and assisting with the development, modification, and review of HCFA ADP policies. Serves as focal point for public information (i.e., newsletter articles and Freedom of Information and Privacy Act requests). Plans, directs, and coordinates the Bureau's paperwork burden reduction and information collection budget programs. Plans, directs, and implements an information management program. Performs "need to know" analyses of all incoming information and assignments and distributes material to appropriate staff. Compiles and highlights management information files for circulation among BQC senior staff. Designs, develops, and maintains microcomputer program design and data links for automated information retrieval and research systems. Performs an ongoing survey of available data and assesses its applicability for entry into the automated tracking system. Indexes and abstracts all information into the automated reference and retrieval systems. Directs a Bureau-wide tracking and control system on correspondence, policies, regulations, and action documents and provides training and technical assistance on standards for content of written documents. Analyzes a broad range of program operations indicators and key findings from all BQC assessment programs. Prepares summary interpretive reports reflecting the overall analysis of key operational performance findings. Serves as a resource regarding significant trends in the cost and effectiveness of program operations and identifies priority or recurring problems surfaced through multiple assessment approaches. Identifies indicators of apparent causes and effects and draws broad conclusions about vulnerable program areas. Serves as the focus for information and analysis to support long-range planning of Bureau activities.

2. Office of Medicaid Management (FPC4)

Establishes policies and procedures by which Medicaid State agencies and Regional Offices (ROs) submit periodic budget estimates and reports. Analyzes budget estimates and formulates the national Medicaid budget. Administers the State grants process for administrative and program payments. Reviews all State claims for Federal reimbursement under Title XIX. Reviews RO disallowances of State claims for Medicaid reimbursements. Sets and interprets the fiscal requirements and procedures for use by States and ROs. Develops HCFA instructions for regional staff concerning the financial review of the Medicaid program and reviews RO performance to assure consistency in implementation of instructions. Directs and coordinates the fiscal aspects of the Title XIX program activities. Responsible for operational policies regarding availability of Federal Financial Participation (FFP), designation of appropriate FFP rates, and for issuing interpretations to ROs regarding operational FFP issues. Develops the requirements, standards, procedures, guidelines, and methodologies pertaining to the review, evaluation, and assessment of the operations, development, and funding of State agency automated systems to determine their compliance with published Federal requirements.

Provides technical assistance with respect to Electronic Data Processing (EDP) procurements and reviews proposed hardware and software modifications and/or equipment upgrades for approval of increased FFP. Designs and conducts studies, demonstration projects, and surveys to improve Medicaid operational systems, methods, and procedures. Plans, develops, and monitors systems requirements for Medicaid and coordinates systems requirements for related Federal programs such as Child Health Assurance, Child Support Enforcement, Food Stamps, and Aid to Families with Dependent Children. Develops and implements a system for reviewing the State performance of the Income Eligibility Verification System (IEVS) requirements. Develops and interprets IEVS regulations and policies and coordinates all IEVS activities within HCFA and with representatives of the Food and Nutrition Service, the Family Services Administration, and the Assistant Secretary for Management and Budget. Develops and implements policies, procedures, and instructions for the oversight of States' administration of Home and Community-Based Waivers (HCBW). Develops methodologies for processing HCBW expenditure reports. Conducts analyses of States' administration of Home and Community-Based Waivers.

a. Division of Financial Management (FPC41)

Establishes policies and procedures by which Medicaid State agencies and ROs submit periodic budget estimates and reports. Analyzes budget estimates and formulates the national Medicaid budget. Administers the State grants process for administrative and program payments. Reviews all State claims for Federal reimbursement under Title XIX of the Social Security Act. Reviews periodic State agency expenditure reports to evaluate budget execution and determine the allowability of costs. Reviews RO disallowances of State claims for Medicaid reimbursements. Serves as focal point for defense of disallowance decisions before the Grant Appeals Board (GAB), analyzes and disseminates GAB decisions and monitors their implementation. Sets and interprets fiscal requirements and procedures for use by States and ROs. Develops HCFA instructions for RO staff concerning the financial review of the Medicaid program and reviews RO performance to assure consistency in implementation of instructions. Directs and coordinates the fiscal aspects of the Title XIX program activities. Provides the definitive HCFA interpretation of Medicaid reimbursement policy for administration and training costs. Responsible for operational policies regarding availability of Federal Financial Participation (FFP), designation of appropriate FFP rates, and for issuing interpretations to ROs regarding operational FFP issues. Plans and develops new programs to evaluate the reimbursement functions of State agencies. Directs regional staff conducting feasibility studies to identify opportunities for implementing new Medicaid reimbursement quality control programs. Analyzes collected data to identify regional and geographic trends and determines need for new tracking and evaluation techniques. Reevaluates need for present programs as well as their effectiveness and efficiency. Develops enhancements to existing Medicaid quality control and assessment systems to improve efficiency and effectiveness and to reflect operational, legislative, and administrative changes. Directs Regional Office financial reviews and audits of State agencies.

b. Division of Program Performance (FPC42)

Develops, implements, directs, and operates national quality control programs to determine the effectiveness of Medicaid State agencies' performance in the areas of eligibility determinations and beneficiary services. Assures uniform national assessment of State agency compliance with eligibility and beneficiary service standards and program requirements. Promulgates guidelines and requirements for operation and direction of Medicaid assessment and quality control programs. Establishes and operates systems for analyzing results of assessment and quality control programs identifying performance deficiencies and trends. Provides documentation and analysis necessary to initiate and support actions on disallowances, sanctions, and corrective action requirements and on adjudication of appeals of disallowances and sanctions. Develops, implements, and operates a comprehensive system for assessing and assuring adherence to the requirements for operating Medicaid quality control and assessment systems. Systematically reviews established quality control and assessment programs and implements appropriate enhancements. Prepares recurring and special reports of quality control findings in areas of eligibility and beneficiary services to document performance assessment results, present comparative analyses of individual State performance, interpret quantifiable findings and to identify trends, significant problems and corrective action indicators. Develops and implements a system for reviewing the State performance of the Income Eligibility Verification System (IEVS) requirements. Develops and interprets IEVS regulations and policies and coordinates all IEVS activities within and outside HCFA. Develops and implements a system to evaluate Freedom of Choice Waivers. Develops and implements policies, procedures, and instructions for the oversight of States' administration of Home and Community-Based Waivers (HCBW). Develops methodologies for processing HCBW expenditure reports. Conducts analyses of States' administration of HCBW.

c. Division of Payment Systems (FPC43)

Develops the requirements, standards, procedures, guidelines, and methodologies pertaining to the review, evaluation, and assessment of the operations, development and funding of State agency automated systems to determine their compliance with published Federal requirements. Designs and employs test criteria to determine the accuracy and effectiveness of Medicaid claims processing systems. Reviews State agency Medicaid Management Information Systems (MMIS) for approval of increased Federal Financial Participation (FFP). Provides technical assistance with respect to Electronic Data Processing (EDP) procurements and reviews proposed hardware and sofeware modifications and/or equipment upgrades for approval of increased FFP. Establishes the technical specifications for EDP procurement procedures and, where appropriate, conducts onsite reviews to determine the necessity and compliance of such procurement requests with the Department of Health and Human Services and HCFA requirements. Develops and maintains a central State data profile to support States and regions in improving operations and serves as a clearinghouse for technical innovations and cost-effective methodologies pertaining to the state-of-the-art in EDP development. Develops, directs, and coordinates systems plans and studies for the effective integration of all Medicaid automated processing systems at the State agency level. Designs and conducts studies, demonstration projects, and surveys to improve Medicaid operational systems, methods, and procedures. Plans, develops, and monitors systems requirements for Medicaid and coordinates systems

requirements for related Federal programs such as Child Health Assurance, Child Support Enforcement, Food Stamps and Aid to Families with Dependent Children. Directs the development and issuance of regulations, specifications, requirements, procedures, functional standards, and instructional material to implement and maintain operational systems for processing Medicaid claims and defines their application to States and beneficiaries of HCFA programs. Prepares general systems plans and develops the requirements for the detailed design and programming for model systems used by the States administration of the Medicaid program. Plans, conducts, and evaluates studies aimed at long-range improvements in systems, methods, and procedures as they relate to the administration of the Medicaid program. Integrates systems within the framework of HCFA policies, goals, and objectives in an efficient and cost-effective manner. Develops and performs national oversight for MMIS-related activity including monitoring RO responsibilities which involve automated data processing approvals and MMIS FFP issues in this area. Develops and approves cost allocation plans involving multi-agency programs. Develops data initiatives which will promote efficiency and uniformity in Medicaid operations and directs the implementation of national Title XIX data initiatives such as common coding, uniform bills, and electronic media claims. Develops standards for cost and benefit analysis and monitoring of MMIS design, development, installation, and operations. Serves as the HCFA focal point for contact with the State and the private sector on MMIS issues. Develops and implements a program for the exchange of information to improve the operations of MMIS systems, methods, and procedures including conferences and other media. Designs, develops, and implements procedures for assessing adherence to requirements for various MMIS criteria.

3. Office of Quality Control Program (FPC5)

Designs and implements statistically-based reviews and structural assessment programs to determine the overall effectiveness of quality control programs operated by carriers, intermediaries, and other related organizations. Develops and applies policies, standards, and guidelines for quality control programs to provide uniform and comparative assessment of contractor performance in the areas of program eligibility and reimbursement, claims payment, and beneficiary services. Designs and implements new or modified quality control programs to assure proper stewardship of Federal funds by carriers, intermediaries, and other HCFA-related organizations. Initiates recommendations for financial penalties and disallowances on the basis of formal review results. Evaluates RO performance in monitoring Medicare quality control programs and conducting sample reviews. Participates with other HCFA components in developing regulations, policies, and procedures for program administration. Provides consultation and technical guidance to carriers, fiscal intermediaries, and ROs on quality control. Develops, conducts, and/or directs RO participation in intensive analyses of selected areas of quality control and assessment policy and operations. Assessments are conducted to document and evaluate the incidence and cause/effect of specific priority problems or other impact resulting from implementation of laws, regulations, policies or operational procedures and systems. Where inappropriate payments exist, develops analytical reports and specific recommendations for more effective policy or operational controls. Makes independent, nonroutine assessments of systemic policies and operational processes and concerns to assure that results are consistent with the needs and goals of the Medicare program. Develops program-wide regulations, procedures, guidelines, and studies dealing with program effectiveness, oversight, and improvement. Provides data and systems analysis support for the production and interpretation of program operations and performance indicators.

a. Division of Operational Reviews (FPC51)

Undertakes in-depth assessments of selected programmatic areas to determine whether established policy and operational criteria are effectively met, to thoroughly evaluate the appropriateness and cost-effectiveness of selected HCFA-wide operational procedures and systems, and to supplement available data with additional documentation and understanding of priority problems. Conducts and/or directs RO participation in these reviews. Consults with HCFA policy and operational components and prepares specific recommendations for regulatory and legislative initiatives to enhance the cost-effective program management. Develops and conducts studies to evaluate the potential impact resulting from the implementation of proposed laws, regulations, and/or policies and determines the need for improved policy or operational controls to assure fiscal accountability and effective program management. Conducts special surveys in critical areas, identifying problems and barriers to problem resolution, and developing and recommending alternative solutions. Develops, conducts, and/or directs RO participation in pilot reviews of selected areas to determine the potential benefit of conducting comprehensive analyses of selected program problem areas.

b. Division of Institutional Reimbursement Assessment (FPC52)

Develop, implements, directs, and operates national quality control programs to determine the effectiveness of Medicare contractors' reimbursement to institutional providers, including assessment of cost-based, prospective, and alternative reimbursement systems and oversight of chain providers' home office costs. Assures uniform national assessment of Medicare contractors' compliance with institutional reimbursement performance standards and program requirements. Promulgates guidelines and requirements for direction of Medicare reimbursement assessment and quality control programs. Establishes and operates systems for analyzing results of Medicare reimbursement assessment and quality control programs, assessing performance, identifying performance deficiencies and trends and determining need for new tracking and evaluation techniques. Develops, implements, and operates a comprehensive system for assessing and assuring adherence to requirements for operating institutional reimbursement quality control and assessment programs. Systematically reviews established Medicare reimbursement quality control and assessment programs and implements appropriate enhancements reflecting operational, legislative, and administrative changes. Prepares recurring and special reports of operational effectiveness in institutional reimbursement to document performance assessment results, present comparative analyses of individual contractor performance, interpret quantifiable findings, and identify trends, significant problems and appropriate corrective actions. Consults with other components in evaluating the impact of existing and proposed program requirements for effective reimbursement to institutional providers and in developing proposals for legislative, policy, or operational reform.

c. Division of Performance Evaluation (FPC53)

Develops, implements, and directs national quality control programs to determine the effectiveness of Medicare contractors' performance in the area of claims payment. Assures uniform national assessment of contractor compliance with claims payment standards and program requirements. Provides documentation and analysis necessary to initiate and support sanctions that result from established claims payment quality control programs. Reviews and recommends action for adjudicating appeals of these sanctions. Promulgates guidelines and requirements for operation and direction of claims payment assessment and quality control programs. Establishes and operates systems for analyzing results of claims payment assessment and quality control programs identifying performance deficiencies. Develops, implements, and oprates a comprehensive system for assessing and assuring adherence to requirements for operating quality control and assessment systems. Systematically reviews established quality control and assessment programs and implements appropriate enhancements. Prepares recurring and special reports of quality control findings in the area of claims payment to document performance assessment results, present comparative analyses of individual contractor performance, interpret quantifiable findings and to identify trends, significant problems and corrective action indicators. Consults with other components in evaluating the impact of existing and proposed program requirements on claims payment effectiveness and in developing proposals for legislative, policy, or operational reform. Provides BQC with internal systems expertise to produce and interpret operational performance indicators from the manipulation of computer-stored financial and program data and to review the integrity of operating systems. Identifies and accesses operating computer-stored programs and financial information for in-depth reviews. Develops methods and programs for manipulating operating data and statistics to identify trends and to improve interpretive analyses through cross-comparison of key data. On the basis of this information or lead information from other sources, tests selected Medicate systems onsite to identify system deficiencies which may contribute to erroneous payments. Reviews model systems or other systems requirements developed by the Bureau of Program Operations or other HCFA components in order to assure the capability of HCFA-reimbursed systems to prevent erroneous payments.

William L. Roper,

Administrator, Health Care Financing Administration.

Date: October 20, 1987.

[FR Doc. 87-26841 Filed 11-19-87; 8:45 am]

BILLING CODE 4120-01-M

Health Resources and Services Administration

National Advisory Committee on Rural Health; Establishment

Pursuant to the Federal Advisory Committee Act, Pub. L. 92-463 (5 U.S.C. Appendix II), the Health Resources and Service Administration announces the establishment by the Secretary, HHS, with concurrence by the General Services Administration of the following advisory committee.

Designation: National Advisory Committee on Rural Health

Purpose: Advises the Secretary, HHS, concerning the provision and financing of health care services in rural areas.

Authority for this Committee will expire on October 30, 1989, unless the Secretary, HHS, with the concurrence of the General Services Administration, formally determines that continuance is in the public interest.

Dated: November 16, 1987.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 87-26825 Filed 11-19-87; 8:45 am]

BILLING CODE 4160-15-M

National Advisory Committee on Rural Health; Request for Nominations

AGENCY: Health Resources and Services Administration, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The Department of Health and Human Serices (DHHS) is requesting nominations for members to serve on the National Advisory Committee on Rural Health.

DATE: Nominations must be received by December 20, 1987.

ADDRESS: All nominations and curricula vitae shall be sent to Jeffrey Human, Director, Office of Rural Health, HRSA, Room 14-22, 5600 Fishers Lane, Rockville, Maryland 20857, 301-443-0836.

FOR FURTHER INFORMATION CONTACT: Jeffrey Human (address above)

SUPPLEMENTARY INFORMATION: DHHS is requesting nominations for members to serve on the National Advisory Committee on Rural Health. The function of this Committee is to advise the Secretary, DHHS, concerning the provision and financing of health care services in rural areas. The Committee will consist of twelve members, including the Chair, selected by the Secretary, DHHS.

Criteria for Members: Persons nominated for membership on the Committee described above should have adequate experience relevant to the work of the Committee in such fields as the delivery, financing, research, development and administration of health care services in rural areas. Selections shall include representatives from State and local governments, foundations, provider associations, and other rural interest groups. The initial appointments will be for staggered terms.

Nomination Procedure: Any interested person may nominate one or more qualified persons for membership on the Advisory Committee. Nominations shall include a complete curriculum vitae of each nominee, current business address and telephone number, and shall state that the nominee is willing to serve as a member.

The Department will give close attention to equitable geographic distribution and to minority and female representation. Appointments shall be made without discrimination on the basis of age, race, sex, cultural, religious, or socioeconomic status.

This notice is issued under the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C.App.I)) and 21 CFR Part 14, relating to advisory committees.

Dated: November 16, 1987.

David N. Sundwall,

Administrator, Health Resources and Services Administration.

[FR Doc. 87-26824 Filed 11-19-87; 8:45 am]

BILLING CODE 4160-15-M

National Institutes of Health

National Cancer Institute; Meetings

Pursuant to Pub. L. 92-463, notice is hereby given of the meetings of the Board of Scientific Counselors, Division of Cancer Prevention and Control, and its Subcommittees.

These meetings will be open to the public to discuss administrative details or other issues relating to committee

activities as indicated in the notice. Attendance by the public will be limited to space available.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892-3100 (301-496-5708) will provide summaries of the meetings and rosters of members upon request.

Other information pertaining to the meetings can be obtained from the Executive Secretary, Linda M. Bremerman, National Cancer Institute, Blair Building, Room 1A07, National Institutes of Health, Bethesda, Maryland 20892-4200 (301-427-8630).

Name of Committee: Cancer Control Science Subcommittee

Date of Meeting: December 8, 1987, 10 a.m.-3 p.m.

Place of Meeting: Building 31, Room 7A-14, 9000 Rockville Pike, Bethesda, Maryland 20892-3100

Agenda: Discuss current and future programs of the Cancer Control Science Program.

Name of Committee: Prevention Subcommittee

Date of Meeting: January 6, 1988, 1 p.m.-adjournment

Place of Meeting: Building 31, Conference Room 2, A Wing, 9000 Rockville Pike, Bethesda, Maryland 20892-3100

Agenda: Discuss current and future programs of the Prevention Program.

Name of Committee: Centers and Community Oncology Subcommittee

Date of Meeting: January 6, 1988, 7 p.m.-adjournment.

Place of Meeting: Building 31, Conference Room 7, C Wing, 9000 Rockville Pike, Bethesda, Maryland 20892-3100

Agenda: Discuss current and future programs of the Centers and Community Oncology Program.

Name of Committee: Board of Scientific Counselors, Division of Cancer Prevention and Control

Dates of Meeting: January 7-8, 1988, 8:30 a.m.-adjournment

Place of Meeting: Building 31, Conference Room 10, C Wing, 9000 Rockville Pike, Bethesda, Maryland 20892-3100

Agenda: Review progress of programs within the Division and review of concepts being considered for funding.

Dated: November 12, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87-26766 Filed 11-19-87; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute; Meeting

Notice is hereby given to amend the notice of the Frederick Cancer Research Facility Advisory Committee which was published in the **Federal Register** (52 FR 41327) on October 27, 1987. The meeting was originally scheduled to commence at 8 a.m. but will now begin at 8:30 a.m. on December 8, 1987, Building 31C, Conference Room 9, at the National Institutes of Health, Bethesda, Maryland 20892.

The meeting will be open to the public on December 8 from 8:30 a.m. to 12 noon to discuss administrative matters, future meetings, Ten-Year Plan, Fermentation Production Plant, and for briefing on items of interest to NCI and the Committee, including management changes, AIDS subcontracts and other activities, and results of recompetition. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92-463, the meeting will be closed to the public on December 8 from 12 noon to adjournment for discussion of previous site visits and review/evaluation of research being conducted by the Basic Research Program. These discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contractor, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dated: November 12, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87-26767 Filed 11-19-87; 8:45 am]

BILLING CODE 4140-01-M

Recombinant DNA Advisory Committee, Human Gene Therapy Subcommittee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of a meeting of the Recombinant DNA Advisory Committee Human Gene Therapy Subcommittee at the National Institutes of Health, Building 31C, Conference Room 9, 9000 Rockville Pike, Bethesda, Maryland 20892, on December 7, 1987, from approximately 9:00 a.m. to adjournment at approximately 5:00 p.m. to review submission of preclinical data for information purposes, and to review a lay summary document. This meeting will be open to the public. Attendance by the public will be limited to space available.

Further information may be obtained from Dr. William J. Gartland, Executive Secretary, Recombinant DNA Advisory Committee Human Gene Therapy Subcommittee, Office of Recombinant DNA Activities, 12441 Parklawn Drive, Suite 58, Rockville, Maryland 20852, telephone (301) 770-0131.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the official government programs contained in the *Catalog of Federal Domestic Assistance*. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined to be not cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual Program listed in the *Catalog of Federal Domestic Assistance* are affected.

Date: November 12, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87-26768 Filed 11-19-87; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

National Toxicology Program; Completed Short-term Toxicology Studies on Two Chemicals; Request for Comments

As part of an effort to inform the public and allow interested parties to comment and provide information on chemicals prior to designing studies for long-term toxicology and carcinogenesis studies, the National Toxicology Program (NTP) will routinely announce in the **Federal Register** the list of chemicals for which short-term toxicology studies have been completed.

Short-term toxicology studies on the chemicals lised in this announcement have been completed and the National Institute of Environmental Health Sciences (NIEHS)/National Toxicology Program (NTP) is in the process of evaluating the results. A decisison on

whether additional studies are needed, including long-term toxicology and carcinogenicity studies, will soon be made by the NTP. If you have relevant information (such as current production, use pattern, exposue levels, toxicological data) to share with the NTP on any of these chemicals, please contact the responsible NTP Scientist within 30 days of the appearance of this announcement. Contact may be made by telephone or mail to: NIEHS/NTP, P.O. Box 12233, Research Triangle Park, North Carolina 27709. The information provided will be considered by the NTP in determining which chemicals require additional studies and in designing these studies.

Cobalt sulfate heptahydrate (4170–30–3)–14-day and 90-day inhalation studies in Fischer 344 rats and B6C3F$_1$ mice. Dr. John Bucher, telephone (919) 541–4532.

D and C Yellow 11 (8003–22–3)–14-day 90-day dosed feed studies in Fischer 344 rats and B6C3F$_1$ mice. Dr. Wiliam Eastin, telephone (919) 541–7941.

Dated: November 10, 1987.

David P. Rall,

Director, National Toxicology Program.

[FR Doc. 87–26640 Filed 11–19–87; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES-970-08-4111-11-2411; ES 36062]

Proposed Reinstatement of a Terminated Oil and Gas Lease; Louisiana

AGENCY: Bureau of Land Management, Interior.

ACTION: Reinstatement of terminated oil and gas lease ES 36062.

SUMMARY: Terminated oil and gas lease ES 36062 located in Claiborne Parish, Louisiana T. 23 N., R. 4 W., containing 39.15 acres.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Johnson at (703) 274–0160.

SUPPLEMENTARY INFORMATION: Federal oil and gas lease ES 36062 terminated automatically by operation of law on June 1, 1987 (30 U.S.C. 188).

A petition for reinstatement of ES 36062 was filed by Irving Roy Deemar (Lessee) under section 31D of the Mineral Leasing Act of 1920, as amended by the Federal Oil and Gas Royalty Management Act of 1982 (96 Stat. 2447).

The Lessee has met all the following requirements for reinstatement:

(a) $500, Reimbursement of Departmental Administrative Cost

(b) $160, Back Rental Payments

(c) $136, Publication Cost.

The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to $5 per acre per year, and royalty increased to 16⅔ percent beginning June 1, 1987.

Robert Bainbridge,

Acting State Director.

[FR Doc. 87–26799 Filed 11–19–87; 8:45 am]

BILLING CODE 4310–GJ–M

Office of Surface Mining Reclamation and Enforcement

Petition to Designate Certain Privately Owned Lands in the Black Diamond Area of Washington as Unsuitable for Surface Coal Mining Operations; Availability of Final Combined Petition Evaluation Document and Environmental Impact Statement

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of Availability of the final combined petition evaluation document and environmental impact statement (PED/EIS; OSMRE–PE–7/OSMRE–EIS–21) evaluating whether certain privately owned lands in the Black Diamond area, King County, Washington are unsuitable for surface coal mining operations.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) is making available its final PED/EIS on the Citizens Concerned About Strip Mining's (CCASM's) petition to designate certain privately owned lands in the Black Diamond area, 27 miles southeast of Seattle, Washington, unsuitable for surface coal mining operations. The PED/EIS has been prepared to assist the Secretary of the Interior in making a decision on the petition. The Council on Environmental Quality's regulations for implementing the National Environmental Policy Act require that the Department of the Interior wait 30 days after publication of the Environmental Protection Agency notice of availability of the final PED/EIS before the Secretary makes a decision on the petition (40 CFR 1506.10(b)).

ADDRESSES: Copies of the final PED/EIS may be obtained from Raymond L. Lowrie, Assistant Director, Attn: Duane H. Gentz, OSMRE, Western Field Operations, 2nd Floor, Brooks Towers, 1020 Fifteenth Street, Denver, Colorado, 80202. In addition, copies of the final PED/EIS are available for review at the following locations:

Office of Surface Mining Reclamation and Enforcement, Casper Field Office, Federal Building, 100 E. B Street, RM 2128 Casper, WY 82601–1918.

Office of Surface Mining Reclamation and Enforcement, Columbia Commons—Suite 104 3773 C. Martin Way East, Olympia, Washington 98506.

FOR FURTHER INFORMATION CONTACT: Duane H. Gentz, Senior Project Manager, Federal and Indian Permitting Branch (telephone (303) 844–2451) at the Denver, Colorado, location given under "**ADDRESSES**".

SUPPLEMENTARY INFORMATION: On April 6, 1984, the Citizens Concerned About Strip Mining (CCASM) filed with OSMRE a petition to have approximately 800 acres of privately owned land immediately adjacent to the city of Black Diamond in King County, Washington, designated unsuitable for surface coal mining operations. The petition alleges that surface coal mining operations in the Black Diamond petition area would be unsuitable (1) on natural-hazard lands, (2) on fragile lands, and (3) in close proximity to population. It further requests and alleges that OSMRE (1) accept and process the petition as it relates to Pacific Coast Coal Company's (PCCC's) proposed John Henry No. 1 mine permit area and (2) enforce the buffer zones surrounding abandoned underground mines, public roads, and dwellings in the vicinity of the proposed operations.

In accordance with Federal regulations (30 CFR 947.764 and 30 CFR 764.15(a)(7)), on May 25, 1984, OSMRE decided not to process the petition as it relates to that portion of the petition area coinciding with PCCC's proposed John Henry No. 1 mine permit area. On July 13, 1984, OSMRE determined the petition as it relates to the remainder of the petition area (472 acres; hereinafter, the "curtailed petition area") to be complete.

This PED/EIS was prepared by OSMRE in accordance with section 522(d) of the Office of Surface Mining Control and Reclamation Act of 1977 and section 102(2)(C) of the National Environmental Policy Act. It includes detailed statements on the potential coal resources of the curtailed petition area, the demand for those resources, and the impacts that alternative decisions on the unsuitability of the environment, the economy, and the supply of coal.

The Secretary of the Interior must make a decision to grant the petition in whole or in part, to deny the petition, or to take no action. Specifically, the

alternative decisions available to the Secretary regarding the petition are to designate the entire curtailed petition area as unsuitable for all surface coal mining operations (alternative A); not to designate any of the curtailed petition area as unsuitable for surface coal mining operations (alternative B); to designate parts of the curtailed petition area as unsuitable for surface coal mining operations (alternatives C1 and C2); to designate the entire curtailed petition area as unsuitable for surface coal mining, but to allow underground mining (alternative D); and no action (alternative E).

The PED/EIS contains a copy of the petition, the full revised text of the analyses presented in the draft PED/EIS, oral testimony from the public hearing held in Black Diamond, Washington, on April 29, 1986, written comments on the petition and draft PED/EIS and OSMRE's responses to those oral and written comments it considered substantive.

Additional information on this petition may be found in **Federal Register** notices of August 15, 1984 (notice of complete petition for designation of land as unsuitable for surface coal mining operations and request for comments; 49 FR 32686) and May 8, 1985 (intent to prepare a combined unsuitability petition evaluation document/environmental impact statement; 50 FR 19495). A notice of availability of the draft PED/EIS was published in the **Federal Register** in March 28, 1986 (51 FR 10679).

Dated: November 13, 1989.

Brent Wahlquist,

Assistant Director, Program Policy.

[FR Doc. 87-26836 Filed 11-19-87; 8:45 am]

BILLING CODE 4310-01-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-55 (Sub-217X)]

CSX Transportation, Inc.; Exemption; Abandonment in Fluvanna County, VA

Applicant has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments,* to abandon its line of railroad between valuation stations 32+70 and 60+00, a distance of .52 miles, in Fluvanna County, VA.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years and that overhead traffic has not moved over the line; and (2) no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

Applicant has filed an environmental report which shows that no significant environmental or energy impacts are likely to result from this adandonment.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen,* 360 I.C.C. 91 (1979).

The exemption will be effective December 20, 1987 (unless stayed pending reconsideration). Petitions to stay must be filed by November 30, 1987, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by December 10, 1987 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Charles M. Rosenberger, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: November 6, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87-26547 Filed 11-19-87; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-294 (Sub—1X)]

Gulf and Mississippi Railroad Corp.; Exemption; Abandonment in Chickasaw County, MS

Applicant has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments,* to abandon its 7.6-mile line of railroad between milepost No. GG-274.00 at or near Houston, MS, and milepost No. GG-281.60 at or near Woodland, MS, in Chickasaw County, MS.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years and the line does not handle overhead traffic; and (2) no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen,* 360 I.C.C. 91 (1979).

The exemption will be effective December 20, 1987, unless stayed pending reconsideration. Petitions to stay must be filed by November 30, 1987, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by December 10, 1987 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

A copy of any petition filed with the Commission should be sent to applicant's representative: Thomas F. McFarland, Jr., Belnap, Spencer, McFarland, Emrich and Herman, 20 North Wacker Drive, Chicago, IL 60606.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: November 6, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87-26548 Filed 11-19-87; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-52 (Sub-No. 54X)]

The Atchison, Topeka and Santa Fe Railway Co.; Abandonment Exemption; Douglas County, KS; Exemption

Applicant has filed a notice of exemption under 49 C.F.R. 1152 Subpart F—*Exempt Abandonments* to abandon its 1.06-mile line of railroad between milepost 1.95 and milepost 3+0050 feet, at Lawrence, Douglas County, KS.

Applicant has certified (1) that no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line or may be rerouted, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective December 20, 1987, unless stayed pending reconsideration. Petitions to stay must be filed by November 30, 1987, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by December 10, 1987, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should sent to applicant's representative: Michael W. Blaszak, The Atchison, Topeka and Santa Fe Railway Company, 80 East Jackson Boulevard, Chicago, IL 60604.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: November 9, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87-26709 Filed 11-19-87; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Advisory Policy Board, National Crime Information Center; Meeting

The Advisory Policy Board of the National Crime Information Center (NCIC) will meet on December 9–10, 1987, from 9 a.m. until 5 p.m. at the St. Petersburg Hilton and Towers, 333 1st Street South, St. Petersburg, Florida 33701.

The major topic to be discussed will be the finalization of user requirements to be recommended to the contractor for the NCIC 2000 Study. In addition, the results of, and further recommendations for the phased testing of the Interstate Identification Index will be presented.

The meeting will be open to the public with approximately 25 seats available for the seating on a first-come, first-served basis. Any member of the public may file a written statement with the Advisory Policy Board before or after the meeting. Anyone wishing to address a session of the meeting should notify the Advisory Committee Management Officer, Mr. William A. Bayse, FBI, at least 24 hours prior to the start of the session. The notification may be by mail, telegram, cable, or hand-delivered note. It should contain the name, corporate designation, consumer affiliation, or Government designation, along with a capsulized version of the statement and an outline of the material to be offered. A person will be allowed not more than 15 minutes to present a topic, except with the special approval of the Chairman of the Board.

Inquiries may be addressed to Mr. David F. Nemecek, Committee Management Liaison Officer, NCIC Federal Bureau of Investigation, Washington, DC 20535, telephone number 202-342-2606.

Dated: November 13, 1987.

William S. Sessions,

Director.

[FR Doc. 87-26822 Filed 11-19-87; 8:45 am]

BILLING CODE 4410-02-M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Workers Adjustment Assistance; A.C. Lawrence Leather Co., et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street NW., Washington, DC,20213.

Signed at Washington, DC this 9th day of November 1987.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (Union/Workers/Firm)	Location	Date received	Date of petition	Petition No.	Articles produced
A.C. Lawrence Leather Co. (LWU)	Winchester, NH	11/9/87	10/26/87	20,230	Leather.
Center, Fox & Jacob (Workers)	Dallas, TX	11/9/87	10/29/87	20,231	Cabinets.
Cordis Corporation (Workers)	Miami, FL	11/9/87	10/28/87	20,232	Instruments.
Excello Shirt (ACTWU)	Seymour, IN	11/9/87	10/27/87	20,233	Shirts.
Elizabeth Fashions (ILGWU)	Hoboken, NJ	11/9/87	10/26/87	20,234	Coats.
General Motors Corps (UAW)	Detroit, MI	11/9/87	10/30/87	20,235	Stampings.
Griffin Wheel Co. (USWA)	Kansas City, KS	11/9/87	10/30/87	20,236	Wheels.
Hatch, Inc. (Workers)	El Paso, TX	11/9/87	10/26/87	20,237	Panels.

APPENDIX—Continued

Petitioner (Union/Workers/Firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Henson & Henson Oil, Inc. (Company)	Okmulgee, OK	11/9/87	10/24/87	20,238	Oil & Gas.
Munsingwear (ACTWU)	Ashland, WI	11/9/87	10/27/87	20,239	Under garments.
(The) Stock Shop, Inc. (ILGWU)	Boston, MA	11/9/87	10/23/87	20,240	Skirts.
Universal Wire Products, Inc. (Workers)	N. Haven, CT	11/9/87	10/26/87	20,241	Wire & Cable.
Woodland Foundry Co. (Molders Union)	Woodland, WI	11/9/87	10/26/87	20,242	Aluminum.

[FR Doc. 87-26853 Filed 11-19-87; 8:45 am]
BILLING CODE 4510-30-M

[TA-W-19,989]

AnaMag, Inc., Shelbyville, IN; Negative Determination Regarding Application for Reconsideration

By an application dated October 21, 1987, the International Union of Electrical Workers (IUE) requested administrative reconsideration of the Department's negative determination on the subject petition for trade adjustment assistance for workers at AnaMag, Inc., Shelbyville, Indiana. The denial notice was signed on September 17, 1987 and published in the **Federal Register** on September 30, 1987 (52 FR 36645).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous.

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The union claims that the Department's survey was inadequate. The union claimed during the investigation that motors for refrigerators and freezers are being imported with magnet wire already incorporated in them.

The former workers produced magnet wire at the Shelbyville plant until it closed in July 1987. Shelbyville's production of magnet wire was transferred to another domestic corporate plant in July 1987. The Department's negative determination was based on the fact that the "contributed importantly" test was not met. A major respondent to the Department's survey reported no imports during the period applicable to the petition. Since the Department's denial, additional respondents to the survey accounting for a preponderance of Shelbyville's 1986 and 1987 sales, reported that they do not import magnet wire.

Imported finished articles incorporating component parts like magnet wire would not serve as a basis for certification. This issue was addressed in *United Shoe Workers of America, AFL-CIO* v. *Bedell*, 506 F 2d 174, (D.C. Circ. 1974). The court held that imported finished women's shoes were not like or directly competitive with shoe counters. Similarily, magnet wire cannot be considered as like or directly competitive with refrigerators or refrigerator motors incorporating the magnet wire. Section 222(3) of the Trade Act states that there must be increased imports of articles that are like or directly competitive with those produced at the workers' firm.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 13th Day of November 1987.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 87-26855 Filed 11-19-87; 8:45 am]
BILLING CODE 4510-30-M

[TA-W-18, 474 et al.]

Kerr-McGee Corp., Petroleum Exploration Division, Oil & Gas Production Division, and Transworld Drilling Co., Subsidiary of Kerr-McGee Corp.; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In the matter of TA-W-18,474 Oklahoma City, Oklahoma, TA-W-18,474A All Other Locations in Oklahoma, TA-W-18,474B All Locations in Louisiana, TA-W-18,474C All Locations in Texas, TA-W-18,474D All Locations in Oklahoma, TA-W-18,474E All Locations in Louisiana.

In accordance with section 223 of the Trade Act of 1974, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 23, 1986 applicable to all workers of Kerr-McGee Corporation, Petroleum Exploration and Production Division, Morgan City, Oklahoma. The Certification was published in the **Federal Register** on January 21, 1987 (52 FR 2306). The Certification was amended on January 20, 1987 to properly reflect the correct worker group. The amended notice was published in the **Federal Register** on February 10, 1987 (52 FR 4200).

Based on new information furnished to the Department, workers of the Transworld Drilling Company, a wholly owned subsidiary of Kerr-McGee Corporation incurred substantial production declines and worker separations in 1985 and 1986 as the result of reduced activity from Kerr-McGee. A substantial portion of Transworld Drilling Company's operations in 1985 and 1986 were controlled by Kerr McGee for domestic operations.

The intent of the certification is to cover all workers of Kerr-McGee Corporation's Petroleum Exploration and Oil and Gas Production Divisions and Kerr-McGee's wholly owned drilling subsidiary, Transworld Drilling Company. The amended notice applicable to TA-W-18,474 is hereby issued as follows:

All workers of Kerr-McGee Corporation, Petroleum Exploration and Oil and Gas Production Divisions, Oklahoma City, Oklahoma and all other Kerr-McGee Corporation locations of the Petroleum Exploration and Oil and Gas Production Divisions in Oklahoma, Louisiana and Texas and all workers of the Transworld Drilling Company in Oklahoma and Louisiana who became totally or partially separated from employment on or after September 30, 1985 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 16th Day of November 1987.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 87-26856 Filed 11-19-87; 8:45 am]
BILLING COMPANY 4510-30-M

Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance; Westinghouse Electric Corp., et al.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period November 2, 1987–November 6, 1987.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–20,085; Westinghouse Electric Corp., Beaver, PA

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified.

TA–W–20,097; Aramco Service Co., Houston, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–20,107; Reliance Electric, Inc., Columbiana, OH

Increased imports did not contribute importantly to workers separations at the firm.

Affirmative Determinations

TA–W–20,066; Airfoil Textron, Inc., East Windsor, CT

A certification was issued covering all workers of the firm separated on or after August 25, 1986.

TA–W–20,136; Anwelt Shoe Corp., Fitchburg, MA

A certification was issued covering all workers of the firm separated on or after January 1, 1987.

TA–W–20,083; Texas, Inc., Henry Gas Processing Plant, Erath, LA

A certification was issued covering all workers of the firm separated on or after August 21, 1986.

TA–W–20,089; Continental Can Co. Fairfield, AL

A certification was issued covering all workers of the firm separated on or after September 3, 1986 and before October 30, 1987.

TA–W–20,084; Thermal Transfer Corp., Monroeville, PA

A certification was issued covering all workers of the firm separated on or after August 30, 1986.

TA–W–20,195; Unisys Corp., Bristol, TN

A certification was issued covering all workers of the firm separated on or after September 23, 1986.

I hereby certify that the aforementioned determinations were issued during the period November 2, 1987–November 6, 1987. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor 601 D Street NW., Washington, DC 20213 during normal business hours or will be mailed to persons who write to the above address.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

November 10, 1987.

[FR Doc. 87–26854 Filed 11–19–87; 8:45 am]

BILLING CODE 4510–30–M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is

encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

Withdrawn General Wage Determination Decision

This is to advise all interested parties that the Department of Labor is withdrawing, from the date of this notice General Wage Determination No. MI87-18 dated January 23, 1987.

Agencies with construction projects pending to which this wage decision would have been applicable should utilize the project determination procedure by submitting a SF-308. See Regulations Part 1 (29 CFR), section 1.5. Contracts for which bids have been opened shall not be affected by this notice. Also consistent with 29 CFR 1.6(c)(2)(i)(A), the incorporation of the withdrawal decision in contract specifications, when the opening of bids is within ten (10) days of this notice, need not be affected.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Florida: FL87-17 (Jan. 2, 1987). p.155.
Pennsylvania: PA87-24(Jan. 2, 1987). p.1012.

Volume II

Indiana:
IN87-1(Jan. 2, 1987)..... pp.237-238.
IN87-2(Jan. 2, 1987)..... pp.251-252.
IN87-5(Jan. 2, 1987)..... pp.292-293, p.295.
IN87-6(Jan. 2, 1987)..... p.304.
Michigan: MI87-18(Jan. 2, 1987). pp.522a-522b.
Listing by location (index)..... p.xxxv.
Listing by decision (index) .... p.lviii.

Volume III

None.....

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the Country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 13th day of November 1987.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 87-26582 Filed 11-19-87; 8:45 am]

BILLING CODE 4510-27-M

Mine Safety and Health Administration

[Docket No. M-87-209-C]

Mountain View Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Mountain View Coal Company, RDI, Box 104, Williamstown, Pennsylvania 17098 has filed a petition to modify the application of 30 CFR 75.301 (air quality, quantity, and velocity) to its R & S Slope (I.D. No. 36-07850) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that the minimum quantity of air reaching the last open crosscut in any pair or set of developing entries and the last open crosscut in any pair or set of rooms be 9,000 cubic feet a minute, and the minimum quantity of air reaching the intake end of a pillar line be 9,000 cubic feet a minute. The minimum quantity of air in any coal mine reaching each working face shall be 3,000 cubic feet a minute.

2. Air sample analysis history reveals that harmful quantities of methane are nonexistent in the mine. Ignition, explosion, and mine fire history are nonexistent for the mine. There is no history of harmful quantities of carbon monoxide and other noxious or poisonous gases.

3. Mine dust sampling programs have revealed extremely low concentrations of respirable dust.

4. Extremely high velocities in small cross sectional areas of airways and manways required in friable Anthracite veins for control purposes, particularly in steeply pitching mines, present a very dangerous flying object hazard to the miners and cause extremely uncomfortable damp and cold conditions in the mine.

5. As an alternative method, petitioner proposes that—

(a) The minimum quantity of air reaching each working face be 1,500 cubic feet per minute;

(b) The minimum quantity of air reaching the last open crosscut in any pair or set of developing entries be 5,000 cubic feet per minute; and

(c) The minimum quantity of air reaching the intake end of a pillar line be 5,000 cubic feet per minute, and/or whatever additional quantity of air that may be required in any of these areas to maintain a safe and healthful mine atmosphere.

6. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 21, 1987. Copies of the petition are available for inspection at that address.

Date: November 5, 1987.

Patricia W. Silvey,

Acting Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-26857Filed 11-19-87; 8:45 am]

BILLING CODE 4510-43-M

Occupational Safety and Health Administration

Wyoming State Standards; Approval; Correction

This document corrects the one which was originally published in the **Federal Register** (FR Doc. 87-25553;52 FR 42739-42740) on November 6, 1987. The previous document was submitted for publication in the **Federal Register** with the pages assembled incorrectly. The document is being resubmitted with the pages in their correct order, for the convenience of all interested persons, and reads as follows:

1. Background

Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (herein after called the Assistant Secretary), (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State Plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On May 3, 1974, notice was published in the **Federal Register** (39 FR 15394) of the approval of the Wyoming Plan and adoption of Subpart BB to Part 1952 containing the decision.

The Plan provides for the adoption of Federal Standards as State Standards by:

1. Advisory Committee coordination.
2. Publication in newspapers of general/major circulation with a 45-day waiting period for public comment and hearings.
3. Adoption by the Wyoming Health and Safety Commission.
4. Review and approval by the Governor.
5. Filing with Secretary of State and designation of an effective date.

OSHA regulations (29 CFR 1963.22 and 1953.23) require that States respond to the adoption of new or revised permanent Federal standards by State promulgation of comparable standards within six months of OSHA publication in the **Federal Register**, and within 30 days for emergency temporary standards. Although adopted States standards or revisions to standards must be submitted for OSHA's review and approval under procedures set forth in Part 1953, they are enforceable by the state prior to Federal review and approval. By letter dated July 16, 1987, from Donald D. Owsley, Administrator, Wyoming Occupational Health and Safety Division, to Byron R. Chadwick, OSHA Regional Administrator, the State submitted rules and regulations in response to Federal OSHA's General Industry Standards (29 CFR 1910.19: Special Provisions for Air Contaminants, 51 FR 22733, June 20, 1986; CFR 1910.68: Manlifts, 51 FR 34560, September 29, 1986; 29 CFR 1910.1025: Lead, 47 FR 51117, November 12, 1982; 29 CFR 1910.1047: Ethylene Oxide, 51 FR 25053, July 10, 1986; 29 CFR 1910.106: Flammable and Combustible Liquids, 51 FR 34560, September 29, 1986; 29 CFR 1910.157, Portable Fire Extinguishers, 51 FR 34560, September 29, 1986; 29 CFR 1910.179, Overhead and Gantry Cranes, 51 FR 34560, September 29, 1986; 29, CFR 1910.180, Crawler, Locomotive, and Truck Cranes, 51 FR 34560, September 29, 1986; 29 CFR 1910.181 Derricks, 51 FR 34560, September 29, 1986; 29 CFR 1910.217, Mechanical Power Presses, 51 FR 34560, September 29, 1986; 29 CFR 1910.218, Forging Machines, 51 FR 34560, September 29, 1986; 29 CFR 1910.252, Welding, Cutting, and Brazing, 51 FR 34560, September 29, 1986; 29 CFR 1910.440, Commercial Diving Operations, 51 FR 34560, September 29, 1986.)

The above adoptions of Federal standards have been incorporated in the State Plan, and are contained in the Wyoming Occupational Health and Safety Rules and Regulations for General Industry, as required by Wyoming Statute 1977, Section 27-11-105(a)(viii).

State standards for 29 CFR 1910.19: Special Provisions for Air Contaminants, 29 CFR 1910.1025: Lead; and 29 CFR 1910.1047: Ethylene Oxide were adopted by the Health and Safety Commission of Wyoming on November 14, 1986 (effective December 19, 1986 for 1910.1025 and 1920.1047, and effective January 13, 1987 for 1910.19). State standards for 29 CFR 1910.68: Manlifts, 29 CFR 1910.106: Flammable and Combustible Liquids; 29 CFR 1910.157, Portable Fire Extinguishers; 29 CFR 1910.179: Overhead and Gantry Cranes; 29 CFR 1910.180: Crawler, Locomotive, and Truck Cranes; 29 CFR 1910.181: Derricks; 29 CFR 1910.217: Mechanical Power Presses; 29 CFR 1910.218: Forging Machines; 29 CFR 1910.252, Welding, Cutting, and Brazing; 29 CFR 1910.440: Commercial Diving Operations were all adopted by the Health and Safety Commission of Wyoming on January 30, 1987 (effective March 10, 1987), pursuant to Wyoming Statue 1977, section 27-11-105. These State standards are substantially identical to the Federal standard actions, except for the following minor differences: (a) Paragraph numbering; (b) minor wordage appropriate to the Wyoming statutes.

2. Decision

Having reviewed the State submissions in comparison with Federal standards, it has been determined that the State standards are substantially identical to the Federal standards, and are accordingly approved.

3. Location of Supplement for Inspection and Copying

A copy of the standards supplements, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Room 1576, Federal Office Building, 1961 Stout Street, Denver, Colorado 80294; the Occupational Health and Safety Department, 604 East 25th Street, Cheyenne, Wyoming 82002; and the Office of States Programs, Room N-3700, 200 Constitution Avenue, NW., Washington, DC 20210.

4. Public Participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for any other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplements to the Wyoming State Plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reason(s):

The standards were adopted in accordance with the procedural requirements of State law which included public comment and further public participation would be repetitious.

This decision is effective November 6, 1987 (Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667).

Signed at Denver, Colorado, this 7th Day of August, 1987.

Harry C. Borchelt,

Acting Regional Administrator.

[FR Doc. 87-26858 Filed 11-19-87; 8:45 am]

BILLING CODE 4510-26-M

NUCLEAR REGULATORY COMMISSION

Correction to Biweekly Notice of Applications and Amendments to Operating Licenses Involving No Significant Hazards Consideration

On November 4, 1987, the **Federal Register** published the Biweekly Notice of Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations. On page 42361, second column, in the notice for the Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit 3 Generating Plant, there were two listings that were published incorrectly.

The first listing (paragraph 3) should read as follows:

- Reactor safety limit and overpower trip limits
- Rod insertion limits
- Control rod locations and design
- Axial power imbalance limits and imbalance error
- Quadrant power tilt limits
- Bases revision

The second listing (paragraph 5) should read as follows:

- Zirc-Grid fuel assemblies (Mark-BZ) in lieu of Inconel grid assemblies
- Reduced fuel rod pre-pressurization
- Annealed guide tubes
- Modified control rods with Incone1-clad and a larger clad-to-absorber gap.

Dated at Bethesda, Maryland, this 16th day of November, 1987.

For The Nuclear Regulatory Commission.

Harley Silver,

Project Manager, Project Directorate II–2, Division of Reactor Projects–I/II.

[FR Doc. 87–26850 Filed 11–19–87; 8:45 am]

BILLING CODE 7590–01–M

Abnormal Occurrence Report; Section 208 Report Submitted to Congress

Notice is hereby given that pursuant to the requirements of section 208 of the Energy Reorganization Act of 1974, as amended, the Nuclear Regulatory Commission (NRC) has published and issued another periodic report to Congress on abnormal occurrences (NUREG–0090, Vol. 10, No. 1).

Under the Energy Reorganization Act of 1974, which created the NRC, an abnormal occurrence is defined as "an unscheduled incident or event which the Commission (NRC) determines is significant from the standpoint of public health and safety." The NRC has made a determination, based on criteria published in the **Federal Register** (42 FR 10950) on February 24, 1977, that events involving an actual loss or significant reduction in the degree of protection against radioactive properties of source, special nuclear, and byproduct materials are abnormal occurrences.

The report to Congress is for the first calendar quarter of 1987. The report identifies the occurrences or events that the Commission determined to be significant and reportable; the remedial actions that were undertaken are also described. During the report period, there was one abnormal occurrence at the nuclear power plants licensed to operate. The item involved the NRC suspension of power operations of the Peach Bottom Facility due to inattentiveness of the control room staff. There were seven abnormal occurrences at the other NRC licensees. Four involved diagnostic medical misadministrations; the other three involved breakdowns in management controls at three separate industrial radiography licensees. There were two abnormal occurrences reported by the Agreement States. Both involved breakdowns in management controls at industrial radiography licensees.

The report also contains information updating some previously reported abnormal occurrences.

A copy of the report is available for public inspection and/or copying at the NRC Public Document Room, 1717 H Street, NW., Washington, DC 20555, or at any of the nuclear power plant Local Public Document Rooms throughout the country.

Copies of NUREG–0090, Vol. 10, No. 1 (or any of the previous reports in this series), may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082. A year's subscription to the NUREG–0090 series publication, which consists of four issues, is also available.

Copies of the report are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161.

Dated at Washington, DC this 13th day of November 1987.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 87–26884 Filed 11–19–87; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–344]

Portland General Electric Co., et al., Trojan Nuclear Plant; Exemption

I

The Portland General Electric Company (PGE, the Licensee) is the holder of Operating License No. NPF–1 which authorizes operation of the Trojan Nuclear Plant. The license provides, among other things, that the Trojan Nuclear Plant is subject to all rules, regulations, and Orders of the Commission now or hereafter in effect.

The plant is a pressurized water reactor at the Licensee's site located in Prescott, Oregon.

II

On November 19, 1980, the Commission published a revised § 50.48 and a new Appendix R to 10 CFR Part 50 regarding fire protection features of nuclear power plants. The revised § 50.48 and Appendix R became effective on February 17, 1987. Section III of Appendix R contains 15 subsections, lettered A through O, each of which specified requirements for a particular aspect of the fire protection features at a nuclear power plant. One of these subsections, III.G, is the subject of the Licensee's exemption requests.

Subsection III.G.2 of Appendix R requires that one train of cables and equipment necessary to achieve and maintain safe shutdown be maintained free of fire damage by one of the following means:

a. Separation of cables and equipment and associated nonsafety circuits of redundant trains by a fire barrier having a 3-hour rating. Structural steel forming a part of or supporting such fire barriers shall be protected to provide fire resistance equivalent to that required of the barrier.

b. Separation of cables and equipment and associated nonsafety circuits of redundant trains by a horizontal distance of more than 20 feet with no intervening combustibles or fire hazards. In addition, fire detectors and an automatic fire suppression system shall be installed in the fire area.

c. Enclosure of cable and equipment and associated nonsafety circuits of one redundant train in a fire barrier having a 1-hour rating. In addition, fire detectors and an automatic fire suppression system shall be installed in the fire area.

Subsection III.G.3 of Appendix R requires that for areas, rooms, or zones where alternative or dedicated shutdown is provided, fire detection and fixed fire suppression system shall also

be installed in the area, room, or zone under consideration.

III

By letters dated May 5 and August 21, 1981, and March 29, July 17, and September 21, 1982, the Licensee requested exemptions from specific requirements of Appendix R. In December 1982, the NRC issued a Safety Evaluation Report granting six of the seven exemptions requested.

By letters dated April 27, June 7, June 30, July 15, and November 30, 1983, the Licensee requested additional exemptions, which were granted by NRC letters dated July 8, 1983 and March 15, 1984.

The NRC conducted a special site inspection of the plant from June 20 through 24, 1983. The results of this inspection were transmitted by a NRC letter dated August 31, 1983. By letter dated November 1, 1983, the NRC withdrew the previously granted exemption for the cable penetration area outside of the containment.

By letter dated July 8, 1983, the Licensee described a corrective action program which responded to the NRC special inspection. By letter dated September 28, 1983, the Licensee responded to the NRC letter dated August 31, 1983.

On July 30, 1984, the Licensee submitted a complete Appendix R review. By letter dated January 24, 1985, the NRC requested additional information related to the safe shutdown review which the Licensee provided in a letter dated March 6, 1985. By letter dated February 8, 1985, the Licensee withdrew the exemption request for Fire Area R-1 (containment). By letter dated May 31, 1985, the Licensee submitted Amendment 1 to the Appendix R review. The amendment included modifications of Fire Area E-1, structural steel analysis for the fuel and auxiliary buildings, updated data tables, and designation of a new fire area (Fire Area A-4a). The Licensee requested a supplemental exemption for Fire Area T1, from the requirements of section III.G.2.b in an October 16, 1986 letter. However, this request was subsequently withdrawn by letter dated May 8, 1987 when the licensee determined that it was no longer necessary. Rather, the licensee requested staff approval of the request under the provisions of Generic Letter 86-10, section 3.1.2.

The following list of exemption requests reflects the latest status:

1. Fuel and Auxiliary Buildings, Elevations 45, 61, and 77 Feet (Fire Area A-4)

Exemptions were requested from the specific requirements of section III.G.2.a to the extent that redundant safe shutdown cables are not separated by a 3-hour rated fire barrier.

2. Fuel and Auxiliary Buildings, Elevations 45, 61, and 77 Feet (Fire Area A-4)

Exemptions were requested from the specific requirements of section III.G.2.b to the extent that redundant trains of safe shutdown cables and equipment are not separated by a horizontal distance of more than 20 feet with no intervening combustibles or fire hazards and to the extent that fire detectors and an automatic fire suppression system are not installed throughout the fire area.

3. Fuel and Auxiliary Buildings, Elevation 45 Feet (Fire Area A-4)

Exemptions were requested from the specific requirements of section III.G.2.c to the extent that one redundant train of safe shutdown related cables and equipment are not enclosed in a fire barrier having a 1-hour rating and to the extent that fire detectors and an automatic fire suppression system are not installed throughout the fire area.

4. Electrical Penetration Area (Fire Area E-1)

Exemptions were requested from the specific requirements of section III.G.2.b to the extent that redundant trains of safe shutdown related cables and equipment and associated nonsafety circuits are not separated by a horizontal distance of more than 20 feet with no intervening combustibles or fire hazards.

5. Turbine Building, General Area (Fire Area T-1)

Exemptions were requested from the specific requirements of section III.G.2.b to the extent that redundant trains of cables and equipment and associated nonsafety circuits are not separated by a horizontal distance of more than 20 feet with no intervening combustibles or fire hazards and to the extent that fire detectors and an automatic fire suppression system are not installed throughout the fire area.

6. Yard Area (Fire Area Y-1)

Exemptions were requested from the specific requirements of section III.G.2.b to the extent that cables and equipment and associated nonsafety circuits of redundant trains are not separated by a horizontal distance of more than 20 feet with no intervening combustibles or fire hazards and to the extent that fire detectors and an automatic fire suppression system are not installed throughout the fire area.

The Licensee has provided alternative and/or acceptable levels of fire protection for areas containing redundant safe shutdown systems not separated from each other, except for fire protection in areas containing more than a negligible combustible load and containing safe shudown equipment or cables consisting of fire detectors or automatic fire suppression systems, portable extinguishers, and hose stations. The staff finds that there is reasonable assurance that a fire in these areas would be promptly detected and extinguished.

Based on the review of the Licensee's analysis, the staff concluded that the exemption requested from the requirements for the installation of 3-hour fire rated barriers between redundant trains of cables in Fire Area A-4 is not required where the Licensee has committed to enclose one train of cables in a 3-hour fire rated enclosure because this complies with the technical requirements of section III.G.2.a of Appendix R. The staff has also concluded that the installation of 3-hour fire rated barriers between other sections of redundant trains in Fire Area A-4 would not significantly increase the level of fire protection in this area.

The staff has also concluded that the separation of redundant trains by more than 20 feet of horizontal distance or the enclosure of one of the trains by a 1-hour fire rated enclosure and, in some cases, the installation of fire detectors and automatic fire suppression systems in Fire Areas A-4, E-1, T-1, and Y-1 would not significantly increase the level of fire protection in these areas.

By letter dated November 17, 1986, the Licensee provided information relevant to the "special circumstances" finding required by revised 10 CFR 50.12(a) (see 50 FR 50764). The Licensee stated that existing and proposed fire protection features at Trojan Nuclear Plant accomplish the underlying purpose of the rule. Implementing additional modifications to provide additional suppression systems, detection systems, and fire barriers would not enhance fire protection above that already required. The staff concludes that "special circumstances" exist for the Licensee's requested exemptions in that application of the regulation in these particular circumstances is not necessary to achieve the underlying purposes of Appendix R to 10 CFR Part 50. See 10 CFR 50.12(a)(2)(ii).

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), (1) these exemptions as described in section III are authorized by law and will not present an undue risk to the public health and safety and are consistent with common defense and security and (2) special circumstances are present for the exemptions in that application of the regulation in these particular circumstances is not necessary to achieve the underlying purposes of Appendix R to 10 CFR Part 50. Therefore, the Commission hereby grants the following exemptions from the requirements of section III.G of Appendix R to 10 CFR Part 50:

1. Fuel and Auxiliary Buildings, Elevations 46, 61, and 77 Feet (Fire Area A-4) to the extent that redundant trains of safe shutdown cables and equipment are not separated by a horizontal distance of more than 20 feet with no intervening combustibles or fire hazards and to the extent that fire detectors and an automatic fire suppression system are not installed pursuant to section III.G.2.b.

2.Fuel and Auxiliary Buildings, Elevation 45 Feet (Fire Area A-4) to the extent that one redundant train of safe shutdown cables and equipment are not enclosed in a fire barrier having a 1-hour rating and to the extent that fire detectors and an automatic fire suppression system are not installed in the fire area pursuant to section III.G.2.c.

3. Fuel and Auxiliary Buildings, Elevation 61 Feet (Fire Area A-4) to the extent that redundant safe shutdown cables are not separated by a 3-hour rated fire barrier pursuant to section III.G.2.a.

4. Electrical Penetration Area (Fire Area E-1) to the extent that redundant trains of safe shutdown cables and equipment and associated nonsafety circuits are not separated by a horizontal distance of more than 20 feet with no intervening combustibles or fire hazards pursuant to section III.G.2.b.

5.Turbine Building, General Area (Fire Area T-1) to the extent that redundant trains of cables and equipment and associated nonsafety circuits are not separated by a horizontal distance of more than 20 feet with no intervening combustibles or fire hazards and to the extent that fire detectors and an automatic fire suppression system are not installed throughout the fire area pursuant to section III.G.2.b.

6. Yard Area (Fire Area Y-1) to the extent that cables and equipment and associated nonsafety circuits of redundant trains are not separated by a horizontal distance of more than 20 feet with no intervening combustibles or fire hazards and to the extent that fire detectors and an automatic fire suppression system are not installed throughout the fire area pursuant to section III.G.2.b.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of these exemptions will have no significant impact on the environment (November 4, 1987, 52 FR 42382).

A copy of the Safety Evaluation Report dated November 12, 1987, related to this action is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC and at the local public document room for the Trojan Nuclear Plant located at the Portland State University Library, 731 SW. Harrison St., Portland, Oregon 97207. A copy may be obtained upon written request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555.

This exemption is effective upon issuance.

Dated at Bethesda, Maryland, this 12th day of November, 1987.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Director, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 87-26852 Filed 11-19-87; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash (202) 272-2142.

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs, 450 Fifth Street, NW., Washington, DC 20549.

Extension

Form N-8B-3
File No. 270-179
Form N-8B-4
Form No. 270-180
Form N-2
File No. 270-21
Rule 30d-1
File No. 270-21

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq*), the Securities and Exchange Commission has submitted for extension of OMB approval Forms N-8B-3, N-8B-4 and N-2 and Rule 30d-1, all under the Investment Company Act of 1940.

Form N-8B-3 is used by unincorporated management investment companies currently issuing periodic payment plan certificates to register under the Investment Company Act of 1940. Form N-8B-4 is used by face amount certificate companies to register under that act. Each requires approximately 170 hours of reporting per respondent, annually.

Form N-2 is used by closed-end investment companies to register under both the Investment Company Act of 1940 and the Securities Act of 1933. A respondent spends approximately 2000 hours, annually, fulfilling the requirements of the form.

Rule 30d-1 prescribes the minimum content of reports to shareholders that management investment companies must send at least semi-annually. The rule requires approximately 600 hours, annually, per respondent.

Comments should be submitted to OMB Desk Officer: Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3228 NEOB, Washington, DC 20503.

Jonathan G. Katz,

Secretary.

November 10, 1987.

[FR Doc. 87-26791 Filed 11-19-87; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16127; 812-6522]

Application; Boston Australia Limited

November 13, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

Applicant: Boston Australia Limited.

Relevant 1940 Act Section: Exemption requested under section 6(c).

Summary of Application: Applicant seeks an order exempting it from all provisions of the 1940 Act in connection with the issuance and sale in the United States of its Debt Securities (as herein defined) denominated in United States dollars or foreign or composite currencies.

Filing Date: The application was filed on November 4, 1986, and amendments were filed on September 28, and October 27, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on the

application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on December 7, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, c/o Janice B. Liva, Esq., Senior Counsel, The First National Bank of Boston, 100 Federal Street, Boston, MA 02110.

FOR FURTHER INFORMATION CONTACT: H.R. Hallock, Jr., Special Counsel, (202) 272–3030 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Statements and Representations

1. Applicant was organized under the laws of Australia in 1966 and began full operation in 1973. Applicant is a wholly-owned subsidiary of Boston Overseas Financial Corporation ("BOFC"), established pursuant to Section 25A of the Federal Reserve Act (an "Edge Act Corporation"), and which in turn is a wholly-owned subsidiary of The First National Bank of Boston ("Bank of Boston"), a national banking association organized under the National Bank Act. Bank of Boston is wholly-owned by and is the principal subsidiary of Bank of Boston Corporation (the "Corporation"), a Massachusetts corporation and a bank holding company registered under the Bank Holding Company Act of 1956.

2. Applicant is a merchant bank specializing in providing a variety of financial services to the Australian corporation market. Applicant emphasizes specialist lending activities such as financing leveraged buyouts, real estate projects and lending to small to medium-size publicly listed companies and larger private companies. Applicant also actively participates in the money markets, futures and foreign exchange markets both for itself and its customers. As of December 31, 1986. Applicant had total capital and reserves of A$29.8 million and total assets of A$327 million (based on an exchange rate of A$1 to US$.664).

3. At December 31, 1986, Bank of Boston ranked as the 12th largest United States commerical bank in terms of assets. At December 31, 1986, Bank of Boston had total assets of $25.1 billion, total deposits of $16.7 billion and total equity capital of $1.2 billion. Bank of Boston is subject to pervasive regulation by the Comptroller of the Currency, the Federal Deposit Insurance Corporation and the Board of Governors of the Federal Reserve System (the "FRB").

4. Applicant is extensively regulated under Australian laws which include its general authority granted by the Reserve Bank of Australia under Australian Banking (Foreign Exchange) Regulations to buy and sell foreign currency and its licenses issued by the relevant Australian State Corporate Affairs Commissions to deal in securities. Applicant is also subject to regulation under the Federal Reserve Act. As an Edge Act Corporation, BOFC is under the supervision of and is examined by the FRB. The FRB regulates the activities and investments of Edge Act Corporations through the provisions of Regulation K of the Federal Reserve Act. BOFC holds the stock of Applicant pursuant to this authority and Applicant is required to conduct its activities in accordance with the provisions of Regulation K. BOFC is required to furnish to the FRB such reports regarding the activities of the Applicant as the FRB may request. In the event Applicant ceases to be regulated by a federal authority having supervision over banking the requested order will terminate.

5. Applicant proposes to offer in the United States from time to time debt securities which may denominated in U.S. dollars or foreign or generally recognized composite currencies. Payment of principal and interest on the debt securities will be unconditionally guaranteed by Bank of Boston.

6. The debt securities which may be issued by Applicant include promissory notes issued pursuant to the exemption from registration provided by section 3(a)(2) of the Securities Act of 1933 (the "1933 Act"), commercial paper notes issued pursuant to the exemption from registration provided by section 3(a)(3) of the 1933 Act, private placement notes sold pursuant to the exemption from registration provided by section 4(2) of the 1933 Act, other offerings of debt securities exempt from registration under the 1933 Act and registered public offerings of debt securities (the "Debt Securities"). The Debt Securities issued by Applicant will rank *pari passu* among themselves and equally with all other unsecured, unsubordinated indebtedness of Applicant and superior to the rights of Applicant's shareholders.

Applicant's Undertakings

1. Applicant undertakes not to (i) offer any Debt Securities unless they shall be registered pursuant to the 1933 Act; or (ii) offer such Debt Securities without registration pursuant to an applicable 1933 Act exemption unless (x) Applicant shall have received an opinion of its United States legal counsel that the Debt Securities will be entitled to an exemption under the 1933 Act, or (y) the staff of the SEC shall have stated in writing that it will not recommend enforcement action to the SEC under the circumstances of the proposed offering. With respect to an exemption from registration under section 4(2) of the 1933 Act, counsel's opinion shall take into account the doctrine of integration under Rule 502 of the 1933 act. Applicant does not request SEC review or approval of such opinions.

2. Any offering of Debt Securities other than the commercial paper notes will be made on the basis of disclosure documents customary for such registered or exempted offering and in any event at least as comprehensive as those used in offerings of similar debt securities in the United States by United States issuers. Applicant undertakes to ensure that such disclosure documents will be provided to each offeree who has indicated an interest in such securities prior to any sale of such securities to such offeree, except that in the case of an offering made pursuant to a registration statement under the 1933 Act such disclosure documents will be provided to such persons and in such manner as may be required by the 1933 Act and the pertinent rules and regulations thereunder.

3. Applicant undertakes to ensure that each dealer in the commercial paper notes (or Applicant or an affiliate if a dealer is not used) will provide to each offeree who has indicated an interest in such commercial paper notes, prior to any purchase thereof, a memorandum describing the business of Applicant, Bank of Boston and the Corporation and containing the most recently published audited financial statements of the Corporation and Applicant. Such memorandum will describe any material differences between Australian accounting principles applicable to Applicant and generally accepted accounting principles employed by United States banks. Such memorandum will be at least as comprehensive as those customarily used in offering commercial paper in the United States

and will be updated promptly to reflect material changes in the Corporation's and Applicant's business or financial status.

4. Applicant undertakes that in the event of an offering in the United States of Debt Securities denominated in currency other than United States dollars, the Applicant will set forth in the memorandum relating to such offering (i) the rate of exchange between the currency in which the securities are demoninated and United States dollars as of a recent date and (ii) appropriate disclosure of the risks to investors regarding the potential for exchange rate fluctuations.

5. At the time of issuance, the Debt Securities will receive one of three highest investment grade ratings from at least one nationally recognized statistical rating organization and United States counsel shall have certified that such rating has been received. Private placement notes need not have such a rating.

6. Applicant undertakes that in connection with any offering of Debt Securities in the United States, it will appoint an agent for service of process in Boston, Massachusetts for any action arising out of the sale of the Debt Securities. Applicant consents to the jurisdiction of any state or federal court located in Boston, Massachusetts, in any suit, action or proceeding instituted by any holder of a Debt Security. Applicant will also be subject to suit in any other court in the United States which would have jurisdiction because of the manner of the offering of the Debt Securities or otherwise. Such appointment of an agent and consent to jurisdiction will be irrevocable until all amounts due and to become due in respect of the Debt Securities have been paid.

7. Applicant undertakes to ensure that any Debt Securities, including those which are not issued in the United States, will be either (i) sold outside the United States pursuant to agreements and procedures reasonably designed to prevent such Debt Securities from coming into the hands of a United States of America national or resident (except for foreign branches of United States banks which take for their own account and without a view to distribution) or (ii) exempt from the provisions of the 1933 Act by virtue of section 3(a)(2), section 3(a)(3) or section 4(2) thereof or (iii) subject to the registration provisions of the 1933 Act.

8. Applicant consents to the order sought herein being expressly conditioned upon its compliance with the undertakings summarized above, and under the heading "Applicant's Statements and Representations", and more fully set forth in the application.

Applicant's Legal Analysis

The requested exemption is consistent with the protection of investors and the purposes of the 1940 Act and is appropriate in the public interest. Applicant believes that the nature of its business and its assets are the same as equivalent activities undertaken and assets normally generated in the course of commercial banking business. Moreover, in the transaction proposed the investor is ultimately looking to the credit strength of the guarantor, Bank of Boston, a United States national bank. Therefore, Applicant believes its activities were not intended to be covered by the 1940 Act.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-26793 Filed 11-19-87; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16126; 812-6863]

Application; Locust Street Fund, et al.

November 13, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: Locust Street Fund (the "Fund"), Centerre Trust Company of St. Louis (the "Adviser") and Centerre Bank National Association ("Centerre Bank") (collectively, "Applicants").

Relevant 1940 Act Sections: Exemption requested under sections 6(c) and 17(b) from the provisions of sections 17(a) and 17(e).

Summary of Application: Applicants seek an exemptive order to permit the Fund's Tax-Free Money Market Portfolio (the "Portfolio") and certain other funds managed by the Adviser to engage in principal and agency transactions in tax-exempt securities with Centerre Bank, in the manner and subject to the conditions set forth in the application and summarized below.

Filing Date: The application was filed on September 9, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on December 7, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, Locust Street Fund, 82 Devonshire Street, Boston, Massachusetts 02109; Centerre Trust Company of St. Louis, 510 Locust Street, St. Louis, Missouri 63101; Centerre Bank National Association, One Centerre Plaza, St. Louis, Missouri 63101.

FOR FURTHER INFORMATION CONTACT: Joyce M. Pickholz, Staff Attorney (202) 272-3046, or Curtis R. Hilliard, Special Counsel, (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. The Portfolio is a non-diversified, open-end management investment company which has filed for registration under the 1940 Act. The Portfolio seeks to obtain income exempt from Federal income taxes by investing in a portfolio of short-term obligations issued by or on behalf of states, territories and possessions of the United States and the District of Columbia and their political subdivisions, agencies and instrumentalities, the interest on which is exempt from Federal income tax ("Tax-Exempt Securities"). The Portfolio will emphasize investments in Tax-Exempt Securities the interest on which is also exempt from Missouri income tax ("Missouri Tax-Exempt Securities") to the extent market conditions and prudent investment management will permit. The Portfolio will invest solely in Tax-Exempt Securities with remaining maturities of one year or less, which are referred to herein as "Short-Term Tax-Exempt Securities". Tax-Exempt Securities with remaining maturities of greater than one year are referred to herein as "Intermediate Tax-Exempt Securities".

2. The Applicants request that the provisions of the proposed order be made applicable to the Portfolio and any other investment companies which

primarily invest in portfolios of Tax-Exempt Securities for which the Adviser serves as investment adviser in the future ("Future Portfolios") (the Portfolio and Future Portfolios together, the "Portfolios"). The rationale behind the request for the proposed order applies to the Portfolio, and will apply to any new portfolios with which the Adviser hereafter establishes investment advisory relationships.

3. The Adviser provides a broad range of trust and investment services for individuals, privately and publicly held businesses, governmental units and other institutions. Centerre Bank is the third largest bank in Missouri and, through its investment banking division, participates as an underwriter in a substantial number of public offerings of, and acts as a major dealer in, Missouri Tax-Exempt Securities. The Adviser and Centerre Bank are both wholly-owned subsidiaries of Centerre Bancorporation, a multi-bank holding company, but both operate as completely separate entities under the umbrella of Centerre Bancorporation. Centerre Bank and the Adviser each has its own separate books and records and operates as an independent profit center.

4. Applicants anticipate having difficulty in obtaining Missouri Short-Term Tax-Exempt Securities due to a shortage of such securities in the marketplace suitable for investment by the Portfolio. The Applicants believe that access to Centerre Bank acting as a principal would help to alleviate this problem and would enable the Portfolio, in certain instances, to obtain best price and execution.

5. The Applicants also seek to enable the Adviser to use Centerre Bank as an agent or broker for securities transactions to the same extent that any other investment adviser to an investment company may employ the services of an affiliate pursuant to section 17(e)(2) of the 1940 Act, and subject to the terms and conditions set forth below. The Adviser has customarily used Centerre Bank as an agent or broker in municipal securities transactions in other contexts and the ability to do so in this case will enhance the efficiency of the Portfolio and its ability to obtain best price execution.

6. The Applicants request an order of the Commission permitting: (a) Centerre Bank, acting as principal in the secondary market or in fixed price dealer offerings not involving underwriting syndicates, to sell to or purchase from the Portfolio and Future Portfolios Missouri Tax-Exempt Securities; and

(b) Centerre Bank, acting as agent in connection with the sale of securities to or by the Portfolio or Future Portfolios, to receive commissions in connection with such sales not in excess of (A) the usual and customary broker's commission if the sale is affected on a securities exchange, or (B) one-half of one per centum of the purchase or sale price of Short-Term Tax-Exempt Securities and one per centum of the purchase or sale price of Intermediate Tax-Exempt Securities.

7. The Trustees of the Fund who have no affiliation with the Adviser or Centerre Bank have approved certain protective conditions, which are set forth in the application and summarized below. The Trustees intend to delegate responsibility for oversight of such conditions to the Fund's non-interested Trustees (i) to insure that the transactions between the Portfolio and Centerre Bank will be fair and reasonable and will not involve overreaching on the part of any person concerned and, (ii) to minimize the possibility of potential conflicts of interest.

Applicants' Conclusions of Law: 1. The granting of the requested order will work to the benefit of the shareholders of the Portfolios by providing the Portfolios access to the primary and secondary markets for Tax-Exempt Securities needed to insure the availability of suitable portfolio securities and best price and execution.

2. The procedures to be followed with respect to principal and agency transactions between the Portfolios and Centerre Bank are structured in such a way as to insure that such transactions will be in all instances reasonable and fair and will not involve overreaching on the part of any person concerned and that the exemption requested is appropriate, in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

Applicants' Conditions

Applicants expressly agree to the following conditions: 1. Principal purchase or sale transactions may be conducted only in Missouri Tax-Exempt Securities which have one of the two highest investment grade ratings from at least one nationally recognized rating agency.

2. A determination must be made with respect to each such principal transaction as to whether such transaction is unsolicited (i.e., the contact between the Portfolios or their Adviser and Centerre Bank with respect to a specific transaction is initiated by the Portfolios or their Adviser) or solicited (*i.e.*, all other transactions), and the trade ticket evidencing such transactions must be marked either solicited or unsolicited. With respect to solicited principal secondary market transactions, a determination will be required in each instance, based upon the information available to the Portfolios and their Adviser, that the price available from Centerre Bank is "better than" the prices available from other sources with respect to the same type of Missouri Short-Term Tax-Exempt Security (i.e., with respect to short-term securities: municipal notes, tax-exempt commercial paper or variable rate demand notes), with the same rating, maturity and yield. To be considered "better than" that available from other sources, the Centerre Bank quotation must be at least one basis point better than that available from other sources if the quotation is made in terms of yield; if the quotation is made in terms of dollar price, it must be at least 1/64 of a dollar better than the quotations from other sources. In the case of unsolicited principal secondary market transactions, the price available from Centerre Bank must be at least as favorable as the prices available from other sources with respect to the same type of security with the same rating, maturity and yield.

3. Before any principal transaction may be conducted pusuant to the order, the Portfolios or the Adviser must obtain such information as they deem necessary to determine that the price test applicable to such transaction has been satisfied. Before any solicited principal transaction may be conducted pursuant to the order, the Portfolios or the Adviser must obtain and document competitive quotations from at least two other dealers with respect to the specific proposed transaction, except that if quotations are unavailable from two such dealers, only one other competitive quotation is required. In the case of unsolicited principal transactions, the Portfolios or the Adviser must make and document a good faith determination with respect to compliance with the price test based upon current price information obtained through the contemporaneous solicitation of bona fide offers with respect to the type of security involved. With respect to prospective purchases of securities, these dealers must be those who have Tax-Exempt Securities of the categories and type desired in their inventories and who are in a position to quote favorable prices with respect thereto. With respect to the prospective principal disposition of such securities, these dealers must be

those who, in the opinion of the Portfolios and the Adviser, are in a position to quote favorable prices. For purposes of the order, principal transactions shall be deemed to include primary or secondary fixed price dealer offerings of Tax-Exempt Securities not made pursuant to an underwriting syndicate. In the case of fixed price dealer offerings, solicited transactions can be conducted pursuant to the "no-less favorable" price test if the securities are unavailable from other sources and if such transactions comply with the conditions set forth in paragraphs (d) and (e) of Rule 10f-3 under the 1940 Act.

4. Centerre Bank may only act as agent for the Portfolios in connection with the sale of securities to or by any Portfolio where the commission, fee or other remuneration received by Centerre Bank will be reasonable and fair compared to the commission, fee or other remuneration received by other agents in connection with comparable transactions involving similar securities being purchased or sold during a comparable period of time, but in no event will such commission, fee or other remuneration exceed one-half of one per centum of the purchase or sale price of Short-Term Tax-Exempt Securities or one per centum of the purchase or sale price of Intermediate Tax-Exempt Securities.

5. Principal transactions conducted pursuant to the order shall be limited to no more than an aggregate of 50% of all portfolio transactions conducted by each Portfolio. This calculation shall be measured on an annual basis and shall be computed both with respect to the number of transactions and dollar volume thereof.

6. Centerre Bank's dealer spread regarding any transaction with the Portfolios will be no greater than its customary dealer spread, which in turn will be consistent with the average or standard underwriting spread charged by underwriters or dealers in Tax-Exempt Securities for the type of security and the size of the transaction involved.

7. The Adviser will continuously monitor the ratings on the Tax-Exempt Securities purchased in transactions pursuant to the order and retained by the Portfolios. Should any of such rating be reduced by a nationally organized rating organization below the requirements set forth above, the Adviser, subject to procedures adopted by the Trustees of the Fund, shall re-evaluate such security to determine whether the instrument continues to be of high quality with minimal credit risks to the Portfolios. Centerre Bancorporation will not have any involvement with respect to proposed transactions between the Portfolios and Centerre Bank and will not attempt to influence or control in any way the placing by a Portfolio or the Adviser of orders with Centerre Bank.

8. The Applicants will conform to any regulations promulgated by the Commission under section 11(a)(2)(B) of the Securities Exchange Act of 1934 which would otherwise prohibit or restrict in any way the ability of the Portfolios and/or the Adviser to conduct principal transaction with an affiliate or the Adviser.

9. The exemption will be valid only so long as the Adviser and Centerre Bank operate as separate entities within the holding company framework of Centerre Bancorporation, with their own separate officers and employees, separate capitalization and separate books and records. The Portfolios and the Adviser will maintain records with respect to their transactions conducted pursuant to the order, including documentation of whether the transactions are solicited or unsolicited and that the price test and price verification procedures have been met. A schedule of all transactions with Centerre Bank will be filed with the periodic reports filed by the Fund with the Commission pursuant to sections 30(a) and 30(b)(1) of the 1940 Act.

10. The legal departments of Centerre Bank and the Adviser will prepare guidelines for personnel of Centerre Bank and the Adviser to make certain that transactions conducted pursuant to the order comply with the conditions set forth in the order and that the parties generally maintain arm's-length relationships. In the training of Centerre Bank personnel, particular emphasis will be placed on the fact that the Portfolios are to receive rates as favorable as other institutional purchasers buying the same quantities; in the training of the Adviser's personnel, particular emphasis will be given to the distinction between solicited and unsolicited transactions. The legal departments will periodically monitor the activities of Centerre Bank and the Adviser to make certain that the conditions set forth in the order are adhered to.

11. Non-interested Trustees of the Fund will prepare guidelines for the Portfolios and the Adviser to make certain that the transactions conducted pursuant to the order comply with the conditions set forth therein and that the above procedures are followed in all respects. The non-interested Trustees will periodically monitor the activities of the Portfolios and the Adviser in this regard to insure that these matters are being accomplished.

12. The Portfolios (1) will maintain and preserve permanently in an easily accessible place a written copy of the procedures (and any modification thereto) described above, and (2) will maintain and preserve for a period not less than six years from the end of the fiscal year in which any principal or agency transaction with Centerre Bank occurs, the first two years in an easily accessible place, a written record of each such transaction referring to the security purchased or sold, whether the transaction was solicited or unsolicited, the identity of the person on the other side of the transaction, the terms of the purchase or sale transaction, and the information or material upon which the determinations above were made.

13. The purchase or sale of a security by a Portfolio in a principal or agency transaction with Centerre Bank will be consistent with the investment objectives and policies of such Portfolio as recited in its Registration Statement, and will be consistent with the interests of the Fund, the relevant Portfolio, and its Shareholders.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-26794 Filed 11-19-87; 8:45 am]

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[Release No. IC-16128 (812-6724)]

Del Norte Funding Corporation; Application

November 16, 1987.

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("the 1940 Act").

Application: Del Norte Funding Corporation.

Relevant 1940 Act Sections: Exemption requested under section 6(c) from all provisions of the 1940 Act.

Summary of Application: Application seeks an order to permit it to assist El Paso Electric Company in the financing and refinancing of property through leveraged lease financing transactions in which El Paso Electric Company will be the lessee.

Filing date: The application was filed on May 19, 1987, and amended on October 20, November 12, and November 16, 1987.

Hearing on Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on the application

or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on December 7, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, 1209 Orange Street, Wilmington, Delaware 19801.

FOR FURTHER INFORMATION CONTACT: Carson G. Frailey, Staff Attorney (202) 272-3015 or Karen L. Skidmore, Special Counsel (202) 272-3023 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations:

1. Applicant is a Delaware corporation and all of its shares of common stock are expected to be owned by Corporate Trinity Company ("CTC"), a company controlled by The Corporation Trust Company ("CT"). There has been, and in the future there will be, no public offering of Applicant's common stock or of any other equity security. There is, and in the future will be, no class of equity securities of Applicant other than its common stock. Applicant has been created to participate as lender in one or more leveraged lease transactions ("Lease Transactions"), in which El Paso electric Company, a Texas corporation ("El Paso"), is the lessee ("Lessee"). El Paso will make an initial determination as to whether or not the debt position of such Lease Transaction will be funded through the Applicant's sale of one or more series of its debt securities with differing maturities (the "Lease Obligation Bonds").

2. Applicant's sole purpose is to assist El Paso in the financing and refinancing of property, other than that financed or refinanced with the assistance of El Paso Funding Corporation,[1] of El Paso's 15.8% undivided ownership interest in the Palo Verde Nuclear Generating Station ("PVNGS"). PVNGS, located near Phoeniz, Arizona, consists primarily of three 1,270 megawatt electric generating units, each containing a pressurized water nuclear steam supply system, and certain related common facilities. Applicant undertakes not to refinance the lease obligation bonds issued by El Paso Funding Corporation, nor will the Applicant issue Lease Obligation Bonds to fund the debt portion of a Lease Transaction involving an interest in any unit of PVNGS if the lease obligation bonds issued by El Paso Funding Corporation to fund the debt portion of a leveraged lease transaction involving an interest in such unit are outstanding. Ownership of PVNGS is governed by the Arizona Nuclear Power Project Participation Agreement, dated August 23, 1973, as amended, and pursuant thereto, Arizona Public Service Company, an Arizona utility, is authorized to act as agent for the owners of PVNGS, and has responsibility and control over construction, operation and maintenance of PVNGS. El Paso's rights under this Project Participation Agreement with respect to the portion of its undivided interest being financed and refinanced will be assigned to each of the lessors referred to below. Applicant is subject to regulation by the Public Utilities Commission of Texas and the Federal Energy Regulation Commission. All regulatory approvals necessary for the consummation of the Lease Transaction will be obtained by El Paso prior to such consummation.

3. Applicant's participation as lender in the Lease Transactions will be limited to making loans pursuant to a Loan and Security Agreement or a Trust Indenture and Security Agreement (in either case, a "Lease Indenture") to certain lessors ("Lessors") under the leases forming a part thereof ("Leases") which will be payable primarily from rentals and other payments by the Lessee. Initially the Lessor under each Lease will be The First National Bank of Boston acting as trustee for one or more beneficiaries pursuant to a trust agreement formed exclusively for the purpose of the lease financing and that under such trust agreement any successor trustee must be a bank or trust company incorporated and doing business within the United States and having a combined capital and surplus of at least $50,000,000. A portion of the purchase price of the property owned by the Lessors and leased to the Lessee ("Leased Property") will be paid by the beneficiaries of the grantor trust that acts as Lessor and that amount will constitute their equity investment in the Leased Property. It is expected that such Lessors will be grantor trusts formed exclusively for the purpose of the lease financing. The original beneficiaries of such a grantor trust may be a single sophisticated institutional investor or, under limited circumstances, a single direct or indirect subsidiary of El Paso, acting in its individual capacity or, possibly, a limited partnership composed of one or more partners, each of whom will be a sophisticated investor. All such beneficial interests and partnership interests will be offered and sold in transactions not involved in any public offering within the meaning of section 4(2) of the Securities Act of 1933, as amended ("Securities Act"). Subsequent transfers of such beneficial interests may only be made to a transferee which is a financial institution, a corporation or a partnership, a majority in interest of which is composed of one or more financial institutions or corporations, and in no event shall such transfer violate the Securities Act. Applicant believes that these restrictions, when considered in light of the nature of the Lease Transactions, effectively preclude all but the most sophisticated investors from being a transferee. The nature and availability of the tax benefits of the beneficial interests, the legal and regulatory framework of the transactions, and the complex financial analysis required assure that only sophisticated institutional investors will be transferees of beneficial interests in a Lessor. Further, Applicant will restrict the transferees of beneficial interests, other than those in connection with the Lease Transactions under the August 7, and October 19, 1987 commitment letters, to sophisticated investors. The loans by Applicant will be without recourse to the general credit of the Lessors or their respective beneficiaries, and will be evidenced by non-recourse obligations of the respective Lessors ("Lessor Notes").

4. Prior to the issuance of the Lease Obligation Bonds, it is possible that interim borrowings of the balance of the purchase price will be made directly from one or more banks. It is expected that such direct borrowings will be refunded in full by borrowings from the Applicant simultaneous with the issuance of the relevant Lease Obligation Bonds. To the extent that market conditions do not permit a 100% refinancing of such bank debt, however, no bank will have any greater rights under the respective Lease Indentures than a holder of Lease Obligation Bonds.

[1] El Paso Funding Corporation was issued an order of exemption under Section 6(c) of the 1940 Act on August 15, 1986 (Investment Company Act Release No. 15254).

In all cases, the timely payment of the principal of, and premium, if any, and interest on, the Lessor Notes pledged solely for the benefit of the holders of the Lease Obligation Bonds will be sufficient to timely pay the debt service on such Lease Obligation Bonds.

5. Under each Lease, the Lessee will be obligated to make rental payments sufficient to pay principal of and premium, if any, and interest on the Lessor Notes issued in connection therewith. Such obligations of the Lessee will be required to be absolute and unconditional, without right of counterclaim, setoff, deduction or defense. Applicant expects to enter into an agreement ("Commitment Agreement") with El Paso pursuant to which Applicant will agree to make loans to one or more Lessors designated by El Paso from time to time.

6. The Lease Obligation Bonds will be secured on a parity basis by a first lien on, and a security interest in, all of the assets of Applicant, consisting primarily of the Lessor Notes so acquired and previously acquired and which may include a lien on or security interest in the Leased Property. Lessor Notes held by Applicant will consist only of Lessor Notes issued in connection with any Leases to which El Paso is a party, as Lessee, in conjunction with its ownership interest in PVNGS.

7. All Lease Obligation Bonds will be issued under a common indenture and a separate supplemental indenture for each series other than the initial series (collectively, the "Collateral Trust Indenture") which will establish the terms of the Lease Obligation Bonds of that series. It is expected that the trustee under the Collateral Trust Indenture ("Trustee") will be a bank or trust company not affiliated with any of the Lessors and will not be a trustee under any indenture of El Paso or its subsidiaries or of El Paso Funding Corporation. At each Lease closing the Lessor Notes will be pledged and assigned directly to the Trustee. Applicant expects that the Lessor Notes will be issued under circumstances making such transactions exempt from the registration requirements under the Securities Act.

8. The Lease Indentures will set forth the terms and conditions under which the Lessor Notes will be issued. Each Lease Indenture will require the Lessor to grant to the Applicant (if the Lease Indenture is a Loan and Security Agreement) or a trustee under the Lease Indenture ("Lease Indenture Trustee") (if the Lease Indenture is a Trust Indenture and Security Agreement), an assignment of rents, including basic rentals and certain other payments, to be made by the Lessee under the applicable Lease. The Lease Indenture Trustee or the Applicant may have a lien on or security interest in, the Leased Property. The Lessor will covenant that, so long as any Lessor Note is outstanding, it will not incur any other debt not constituting Lessor Notes or otherwise in connection with the Leased Property, and except for certain limited permitted liens, it will not create any lien or security interest in such property. Thus, these two covenants combined ensure that if a Lessor defaults on a Lessor Note, the Leased Property will be available to satisfy the claims of the Trustee, acting for the benefit of Lease Obligation Bondholders. Applicant will be precluded from purchasing any Lessor Note unless (i) such Lessor Note is issued in respect of Leased Property having a fair market sales value at the time of purchase at least equal to 110% of the original principal amount of such Lessor Note or, (ii) such Lessor Note and all other Lessor Notes (if any) issued by the relevant Lessor are issued in respect of Leased Property having an aggregate fair market value (measured, in each case, as of the date such Leased Property was first financed under the Lease) at least equal to 110% of the original principal amount of such Lessor Note and such other Lessor Notes. Further, each Lease Indenture will include as events of default, without limitation: (a) Payment defaults on the Lessors Notes issued thereunder and (b) events of default under the related Lease.

9. The various series of Lease Obligation Bonds will have terms which may differ as to interest rates, sinking fund obligation of Applicant, the right of Applicant to redeem such Lease Obligation Bonds and other matters. The interest rates, maturities and principal amounts of each series of Lease Obligation Bonds will be established based on prevailing market conditions, thereby giving Applicant flexibility to take advantage of changing market conditions. If the maturity dates and cash flow of the Lessor Notes exceed the cash requirements of Applicant's obligations under the Lease Obligation Bonds, the resulting funds ("Temporary Funds") will be invested by Applicant in certain investments ("Permitted Investments"), in each case maturing at such time as necessary to pay Applicant's obligations under the Lease Obligation Bonds. The Lease Obligation Bonds, which may include commercial paper and intermediate-term and long-term obligations, will be issued in private placements pursuant to section 4(2) of, or in underwritten public offerings registered under, the Securities Act, or possibly in distributions exempt from registration because they will come to rest outside the United States (provided that the Lease Obligation Bonds are offered and sold outside the United States and to non-U.S. persons without registration under the Securities Act in reliance upon an opinion of U.S. counsel that registration is not required and that no single offering of Lease Obligation Bonds both within and outside the United States will be made without registration of all such Lease Obligation Bonds under the Securities Act without obtaining a no-action letter permitting such offering or otherwise complying with applicable standards then governing such offerings). In all cases, Applicant will adopt agreements and procedures reasonably designed to prevent such Lease Obligation Bonds from being offered or sold in the United States or to U.S. persons (except as U.S. counsel may then advise is permissible).

10. The initial issuance of Lease Obligation Bonds, Applicant anticipates, will be an interim financing through one or more banks, and then by refinancing through an underwritten public offering of one or more series having an aggregate principal amount of approximately $200 million (assuming a total sales price of $250 million for the portion of El Paso's 15.8% interest in PVNGS Unit 3 which El Paso currently contemplates selling. Although El Paso will not be the actual issuer of any publicly offered Lease Obligation Bonds, it will be considered the "issuer" thereof for purposes of the Securities Act. Any registration statement filed under the Securities Act relating to the Lease Obligation Bonds will name El Paso as the sole registrant and will be signed on behalf of El Paso as the sole registrant by such officers and directors of El Paso as may be required under the Securities Act and the rules, regulations and forms of the Commission thereunder. Accordingly, the provisions of section 11 of the Securities Act will apply to El Paso.

11. Applicant will assign and pledge to the Trustee under the Collateral Trust Indenture, as security for the payment of the principal of and premium, if any, and interest on all Lease Obligation Bonds, the Lessor Notes and other assets held by the Applicant. Each such Lessor Note will in turn be secured by the assigned rentals and other assigned payments under such Lease and may be secured by the Leased Property. The Trustee will give immediate notice to the Lease Obligation Bondholders of any rights granted by the Collateral Trust Indenture to it, which will include the right to exercise voting powers in

respect of the Lessor Notes, to give any consents or waivers with respect thereto or to exercise any rights and remedies in respect thereof. The Collateral Trust Indenture will authorize the Lease Obligation Bondholders to direct by notice to the Trustee within a specific period of time, that it take any action or cast any vote in its capacity as a holder of the Lessor Notes. As a result of this pass-through voting mechanism, the rights and remedies of Lessor Noteholders will be exercisable directly by the Lease Obligation Bondholders through their fiduciary, the Trustee. The principal amount of Lessor Notes directing any action or being voted for or against any proposal will be the principal amount of the Lease Obligation Bondholders taking the corresponding position. To the extent the Trustee does not receive instruction, it will take such action with respect to the Lessor Notes as a prudent man would in the care of his own property.

12. In the event El Paso defaults in the payment of that portion of rent necessary to pay all amounts due and payable in respect of the Lessor Notes, the Applicant or the Lease Indenture Trustee, as the case may be, would have the right to exercise, concurrently with the Lessor under the applicable Lease of any remedies available to it under such Lease, all of the rights and remedies against El Paso provided in the related Lease. The exercise of such rights and remedies would be at the direction of the Lease Obligation Bondholders through the Trustee's instruction to the Lease Indenture Trustee or as pledgee of the Applicant's interest in such Lease Indenture.

13. Among the rights and remedies of a holder of Lessor Notes included under the Lease Indenture is the right to demand, after a specified grace period, that El Paso pay all unpaid basic rent plus a stipulated amount which, in all cases, will be sufficient to pay the principal of, and premium, if any, and interest on the related Lessor Notes. Amounts payable by El Paso under the Leases, to the extent of the amount of the principal of, and premium, if any, and interest on the relevant Lessor Notes, will be paid directly to the Trustee for distribution to the Lease Obligation Bondholders. Therefore, the Lease Obligation Bondholders will have access under the Collateral Trust Indenture and the Lease Indentures to the credit of El Paso. Moreover, the Lease Obligation Bondholders will be entitled to realize on the security afforded by the Security interest created by the Lease Indenture in an amount up to the aggregate unpaid amount of the relevant Lessor Notes secured by such security interest. The combination of the Lessor Notes and the obligation of El Paso under the Leases, grants holders of Lease Obligation Bonds access to the general credit of El Paso and is thus the functional equivalent of a guaranty by El Paso. The Lessor Notes and the Lease Indenture will provide that, upon the occurrence of certian casualty events, termination events, deemed loss events and special loss events and certain other events which require the collapsing of the Lease Transaction, either (i) El Paso shall assume the obligations represented by the Lessor Notes or (ii) El Paso shall purchase from the beneficiaries of the trusts issuing the Lessor Notes the beneficial interest in such trusts and the Lessors will grant a lien and security interest in the Leased Property to secure the Lessor Notes. The assumption or purchase described in the preceding sentence will be in partial satisfaction of El Paso's obligation to make payments required of it upon early termination of the Lease in consequence of any such event. The preservation of a right for El Paso to assume the Lessor Notes in certain circumstances assures that El Paso will not be faced with an accelerated obligation to prepay the Lessor Notes under the provisions of the Leases.

14. The issue, sale and delivery of a particular series of Lease Obligation Bonds may be effected, at maximum, two months prior to the date for the consummation of the Leases ("Lease Closing Date") applicable to the Leased Property financed with the Lease Obligation Bond proceeds. Pending the Lease Closing Date, the net proceeds of the Lease Obligation Bonds will be held by the Trustee, pursuant to the terms of the Collateral Trust Indenture. The Trustee may invest proceeds in Permitted Investments, which include direct obligations of the United States or obligations fully guaranteed by the United States, certificates of deposit issued by or bankers' acceptances of, or time deposits with, banks organized under United States law and limited to amounts of less than $15 million in principal at any one time and from any one bank, or commercial paper of companies incorporated in or doing business under the laws of the United States or one State, in an amount not exceeding $15 million in principal amount at any one time from any one company. The commercial paper will also have the highest rating by a nationally recognized rating organization. Permitted Investments also include repurchase agreements, fully collateralized by the Permitted Investments, pursuant to which a United States bank, trust company or national banking association having a net worth of at least $200 million is obligated to repurchase the obligation not later than 90 days after its purchase.

15. Except to the extent payable from the proceeds of refunding the Lease Obligations Bonds, or the proceeds of the initial issuance of the Lease Obligation Bonds, where the relevant Lease Closing Date does not occur simultaneously, due to the nonrecourse nature of the Lessor Notes and the limited scope of Applicant's activities, payment of the principal of and premium, if any, and interest on the Lease Obligation Bonds will be made exclusively from amounts paid by the Lessee under the Leases.

Applicant's Legal Conclusions

Applicant's proposed activities are appropriate in the public interest because the proposed issuance of Lease Obligation Bonds would provide a convenient mechanism for El Paso to obtain access to segments of the debt capital market other than the institutional private placement market. An exemption would be consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act because, among other things, investors will be protected under the proposed arrangements to the same extent as under equivalent arrangements where the Act is inapplicable.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-26864 Filed 11-19-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25129; File No. 600-23]

Self-Regulatory Organizations; Application for Registration as a Clearing Agency

On October 16, 1987, the Government Securities Clearing Corporation ("GSCC") filed with the Commission an application for registration as a clearing agency under section 17A of the Securities Exchange Act of 1934, 15 U.S.C. 78q-1, (the "Act") and Rule 17Ab2-1(c)(1) (17 CFR 240.17Ad2-1(c)(1)) thereunder.

Pursuant to Rule 17Ab2-1(c)(1), the Commission may grant GSCC registration as a clearing agency and exempt it from one or more of the requirements of section 17A(b)(3) (A)

through (I) of the Act. GSCC's registration under Rule 17Ab2–1(c)(1), however, would be temporary in that it cannot be effective for more than eighteen months from the date on which a registration is made effective by the Commission (or such longer period as ordered by the Commission). Moreover, the Commission, under paragraph (c)(2) of the Rule, must determine nine months after the effective date of GSCC's temporary registration either to: (i) Grant GSCC registration without exempting it from one or more of the requirements as to which the Commission is directed to make a determination under section 17A(b)(3)(A) through (I) of the Act; or (ii) institute proceedings to determine whether registration should be denied at the expiration of the eighteen month (or longer) registration period.

You are invited to submit written data, views and arguments concerning the foregoing application within twenty-one days of the date of publication of this notice in the **Federal Register**. Such written data, views and arguments will be considered by the Commission in granting registration or instituting proceedings to determine whether registration should be denied in accordance with Rule 17Ab2–1(c)(2). Persons desiring to make written submissions should file six copies thereof with the Secretary of Commission, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Reference should be made to File No. 600–23. Copies of the application and of all written comments will be available for inspection at the Securities and Exchange Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: November 16, 1987.

[FR Doc. 87–26860 Filed 11–19–87; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–25128; File No. SR–CBOE–87–48]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Filing and Order Granting Accelerated Approval to Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C 78s(b)(1) ("Act"), notice is hereby given that on October 19, 1987, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") 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.

II. Text of the Proposed Rule Change

Additions are italicized; deletions are bracketed.

Unusual Market Conditions

Rule 6.6 No change

. . . Interpretation and Policies:

[.01 A stop order to buy an S&P 100 Index ("OEX") option contract becomes a market order when the option contract trades or is bid at or above the stop price. A stop order to sell an OEX options contract becomes a market order when the option contract trades or is offered at or below the stop price. A stop-limit order to buy an OEX option contract becomes a limit order when the option contract trades or is bid or at above the stop price. A stop-limit order to sell an OEX option contract becomes a limit order when the option contract trades or is offered at or below the stop price.]

Certain Types of Orders Defined

Rule 6.53 (a) No change

(b) No change

(c) Contingency Order. No change

(i) No change

(ii) No change

(iii) Stop (stop-loss) order. A stop order is a contingency order to buy or sell when the market for a particular option contract reaches a specified price. A stop order to buy becomes a market order when the option contract trades at or above the stop price. A stop order to sell becomes a market order when the option contract trades at or below the stop price. *In the case of index options, a stop order to buy also becomes a market order when the option contract is bid at or above the stop price, and a stop order to sell also becomes a market order when the option contract is offered at or below the stop price.*

(iv) Stop-limit order. A stop-limit order is a contingency order to buy or sell at a limited price when the market for a particular option contract reaches a specified price. Stop-limit order to buy becomes a limit order when the option contract trades at or above the stop price. A stop-limit order to sell becomes a limit order when the option contract trades at or below the stop price. *In the case of index options, a stop-limit order to buy also becomes a limit order when the option is bid at or above the stop price, and stop-limit order to sell also becomes a limit order when the option contract is offered at or below the stop price.*

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 and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The first purpose of the proposed rule change is to place all language concerning stop and stop limit orders in one rule, by deleting Interpretation .01 to Rule 6.6 and by inserting the substance of that Interpretation in parts (c) (iii) and (iv) of Rule 6.53. Interpretation .01 to Rule 6.6 expanded the election of stop and stop-limit orders in options in the Standard & Poor's 100 Stock Index ("OEX") to bids and offers. The proposed rule change would also allow the election of stop and stop-limit orders in other index options on market bids and offers. At present, the only index options traded on the Exchange are OEX and options on the Standard & Poor's 500 Stock Index ("SPX" or "NSX", collectively referred to hereafter as "SPX").

There are two reasons for expanding the election of stop and stop-limit orders to bids and offers in SPX. First, this will avoid investor confusion by making uniform the handling of stop and stop-limit orders in index options at the Exchange. Second, in SPX, there are a number of series which trade on a sporadic basis. It is not inconceivable that between transactions, the SPX index value may move considerably, leaving stop and stop-limit orders unelected.

For example, let us assume that an investor buys 75 SPX calls at 5. He places a sell stop order at 3⅞. There are no further trades in this series while the index value drops, such that the market in this call series is now quoted at 2 bid-2¼ asked. Because there has been no trade at or below 3⅞, the investor's stop

limit of 3⅞ would not yet be elected under the current rule, even though the investor would clearly have preferred to have sold his 75 calls when the market quotations moved below his 3⅞ stop order. While this may be an extreme example, it highlights the rationale for allowing bids and offers to cause the election of stop and stop-limit orders in SPX.

It should also be noted that originally the election of stop and stop-limit orders in OEX by bids and offers was based on the concern that in the large and hectic OEX trading crowd, a floor broker would not be able to hear trades at the price of stop and stop-limit orders in his custody. Because bids and offers could be seen on the display screens, election by bids and offers enabled floor brokers to see when such orders were elected. To the extent that SPX now ranks as the third most actively traded option class at the Exchange, this rationale is also applicable to SPX. The separation of floor broker and market-maker function at the Exchange assures that those making markets as principal do not have knowledge of stop orders in establishing their bids or offers.

The Exchange believes that the proposed rule change is consistent with the provision of the Securities Exchange Act of 1934 ("the Act") and the rules and regulations thereto. In particular, the proposal is consistent with section 6(b)(5) of the Act in that it is designed to make the market more efficient and is designed to protect investors.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that this proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organizaton's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

To the extent that the proposed rule change relates to OEX, the filing has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4 as a statement of an existing Exchange rule. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

To the extent that the proposed rule change relates to other index options, the Commission finds that the rule change is consistent with the Act in that it will enhance the effectiveness of stop order usage by investors in SPX and will reduce confusion by enabling investors to be subject to the same trading rules in all Exchange traded index options. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the proposal in the **Federal Register**, in that the proposed rule is substantively identical to rules of the Philadelphia and American Stock Exchanges. These exchanges have the same rules for the election of stop orders by quotations for their options as the CBOE currently has for OEX, except that their rules are not limited to a single index option.[1]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the propose 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. Copies of such filing will be available for inspection and copying at the principal office of the abovementioned self-regulatory organizations. All submissions should refer to the file number in the caption above and should be submitted by December 11, 1987.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: November 16, 1987.

[FR Doc. 87–26861 Filed 11–19–87; 8:45 am]

BILLING CODE 8010-01-M

[1] *See* Phlx rule 1066(c)(3); and Amex Rule 950(f), commentary .02.

[Release No. 34–25126; File No. SR-NASD-87–49]

Self-Regulatory Organizations; Proposed Rule Change by the National Association of Securities Dealers, Inc.; Revised Specifications and a Revised Study Outline for the Registered Options Principal (Series 4) Examination

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) ("Act"), notice is hereby given that on October 29, 1987, the National Association of Securities Dealers, Inc. ("NASD") 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 NASD has filed revised specifications and a revised study outline for the Registered Options Principal (Series 4) examination administered by the NASD.

II. Self-Regulatory Organization's Statements Regarding the Proposed Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments it received on the proposed rule changes. The text of these statements may be examined at the places specified in Items 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 Purposes of, and Statutory Basis for, the Proposed Rule Change

The Series 4 examiniation is used to qualify persons seeking registration as registered options principals. The revised specifications and study outline reflect a joint securities industry self-regulatory effort to update the examination in view of options products developments since the Series 4 examination was developed in 1975 and revised in 1980.

The revised examination will be a three-hour, 125-question multiple-choice PLATO examination. The revised

examination will cover all option product areas covered on the present Series 4 examination as well as several new products, including index options, interest rate options and foreign currency options.

The revised specifications and study outline are consistent with section 15A(g)(3) of the Securities Exchange Act of 1934, which provides that a registered securities association may prescribe standards of training, experience and competence for persons associated with a member and may examine and verify the qualifications of such persons in accordance with procedures established by the rules of the association.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the specifications or study outline for the revised Series 4 examination will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments were neither solicited nor 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 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 such proposed rule change, or

(b) Institute proceedings to detemine 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 submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Section, 450 5th Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by December 11, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

November 13, 1987.

[FR Doc. 87-26862 Filed 11-19-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25127; File No. SR-PSE-87-28]

Self-Regulatory Organizations; Proposed Rule Change by the Pacific Stock Exchange, Inc.; Evaluation of Options Trading Crowd Performance

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) ("Act"); notice is hereby given that on October 6, 1987, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") 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.[1]

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE proposes to amend Section B of the Option Floor Procedure Advices ("Advice") to add the proposed Advice B-13 regarding the evaluation of options trading crowd performances. The text of the complete rule change is as follows:

B-13

Evaluation of Options Trading Crowd Performance

(a) The Options Listings Committee ("Committee") shall periodically evaluate the options trading crowds, to determine whether each has fulfilled performance standards relating to, among other things: 1) quality of markets, 2) competition among market makers, 3) observance of ethical standards, and 4) administrative factors. The Committee may consider any relevant information, including but not limited to the results of a trading crowd evaluation questionnaire ("Crowd Evaluation Questionnaire"), trading data (including contract volume as related to characteristics of the underlying stock), reports filed with the Exchange, the regulatory history of the members in the crowd, results of periodic Floor Broker meetings to rank the individual crowds and such other factors and data as may be pertinent. A finding by the Committee that a crowd has failed to meet minimum performance standards may result in one or more of the following actions: (1) Restriction on the allocation of new options, and (2) reallocation of existig options.

(b) The Committee shall presume a failure to meet minimum performance standards as to all members of a trading crowd if it is rated in the bottom 10% of all trading crowds in the aggregate results of overall evaluation scores from a periodic Crowd Evaluation Questionnaire.

The Committee may also presume a failure to meet the minimum standard by considering in conjuction with the Questionnaire, reports filed with the Exchange, the regulatory history of the members in the crowd, the results of periodic meetings with Floor Brokers and such other pertinent factors and data.

(c) The Crowd Evaluation Questionnaire will be distributed on a three-month periodic basis. The Questionnaire will be approved by the Committee as to the questions and weighting of answers. The persons surveyed will also be approved by the Committee. The persons surveyed shall answer the quesions by the date specifid to the best of their ability and knowledge.

(d) The Committee or a designated panel of the Committee may elect to have an informal meeting with a trading crowd or a representative chosen by the trading crowd to discuss the presumptive failure to meet minimum performance standards and to explore possible remedies. The Committee will provide notice of the meeting to all members of the crowd. Because of the intended informality of the meeting, counsel for both the Committee and the crowd ordinarily will not be included. No verbatim record of proceedings shall be kept. Formal rules of evidence shall not apply. Prior to the close of the

[1] The proposed rule change was supplemental by letters from David A. Rich, Vice President, Regulation, PSE, to Mary Revell, Esq., Division of Market Regulation, Commission, dated October 15, 1987 and November 2, 1987.

meeting, the Committee will inform the crowd of possible consequences if the unsatisfactory performance continues. However, the Committee may not take the remedial actions set forth in subpart (a) of this Advice except in accordance with subpart (e) or (f) of this Advice.

(e) The Committee may elect to hold a hearing with a trading crowd which has presumptively failed to meet the minimum performance standards. In such an event, the crowd will be so notified in writing ("Notice of Hearing") with a statement of the reasons for and the possible consequences of the presumption, and afforded an opportunity to make a presentation of relevant information in rebuttal. The crowd, or its designated representative, may question members of the Committee and Exchange staff with respect to the performance evaluation. A verbatim record of the proceedings shall be kept. Members may be represented by counsel, however, formal rules of evidence shall not apply.

(f) The trading crowd and the Committee shall have the right to have present at the hearing one or more technical consultants for the purpose of answering questions about trading techniques and procedures, and the proper performance of the various responsibilities of the members in a crowd. Such technical consultants shall not otherwise participate in the Committee's evaluation of the trading crowd.

(g) A presumption of failure to meet minimum performance standards by a trading crowd under subpart (b) of this Advice may form the basis for Committee action against any and all members of the trading crowd. Any member or members affected by a decision of the Committee shall be informed in writing of the decision, which decision shall include the findings, conclusions, any remedial action to be taken under this Advice and the basis for such actions (hereinafter "written notification"). The decision shall also include a statement concerning the trading crowd's right to appeal the Committee's decision to the Board of Governors.

(h) If, after receiving the notice of meeting provided for in subpart (d) of this Advice, or the notice of hearing provided in subparagraph (e) of this Advice, the trading crowd, or a representative of the trading crowd, refuses or otherwise fails without reasonable justification or excuse to meet with the Committee, the Committee may take such remedial action specified in subpart (a) of the Advice as it believes appropriate.

(i) If the Committee takes one or more of the actions specified in subpart (a) of this Advice, such action may be reviewed by the Board of Governors, pursuant to Rule XX, Section 11(d) of the Rules of the Board of Governors, upon submission of a timely application for review. Such application must be submitted to the Compliance Department of the Exchange within twenty days of receipt of written notification. Unless the Board decides otherwise, the review shall be limited to matters raised before the Options Listings Committee meeting or contained in the written notification. The Board review panel or the Chairman of the Board has the authority to grant or deny a stay of the Committee's action. Any decision of the Committee under this Advice may also be called for review by the Board on its own initiative.

(j) This Advice is effective on (first day of the month of implementation) and shall continue in effect to and including (the date two years later). Any extension of the effectiveness of this Advice will require further approval by the Securities and Exchange Commission. A decision by the Committee shall be valid if reached on or prior to the expiration date of this Advice. The effective date as to subpart (i) of the Advice shall be extended as necessary to conclude review of decisions reached by the effective date.

Commentary

.01 A market maker shall be considered to be a member of a trading crowd if he holds an appointment in the options classes at the trading station where such crowd is located or if he regularly effects transactions in person for his market maker account at that station.

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. 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 underlying purpose of the proposed rule change is to improve the quality of the Exchange's options markets by implementing a crowd evaluation system. The new Options Floor Procedure Advice sets out the Options Listings Committee as the evaluator of the various trading crowds on the Exchange's options floor. One of the means in which the Committee may evaluate crowd performance is through the use of a Crowd Evaluation Questionnaire. Crowds which do not meet minimum standards may be restricted from new option classes and may also have options reallocated from their pit. The new Advice also sets out due process rights for crowds which may be impacted by a finding of poor performance. The goal of this program is to ensure a minimum level of performance in all trading crowds.

The Exchange believes that this proposition is clearly consistent with section 6(b)(5) of the Act in that in improving its markets the Exchange is seeking to facilitate transactions and perfect a free and open market. Further, the program should ensure protection of investors and serve the public interest by setting minimum standards of market performance.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The opportunity for comments from floor members was provided in the form of an Exchange Options Floor Bulletin issued on June 10, 1987, noticing the floor population of the proposed new Options Floor Procedure Advice and the Crowd Evaluation Questionnaire. No comments were forthcoming.

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of the 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 such 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. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned, self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by December 11, 1987.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 16, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-26863 Filed 11-19-87; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

National Small Business Development Center Advisory Board; Public Meeting

The National Small Business Development Center Advisory Board will hold a public meeting on Friday, December 4, 1987 from 8:30 a.m. to 5:00 p.m. The meeting will be held in the Administrator's Conference Room on the tenth floor, at the Small Business Administration, 1441 L Street, NW., Washington, DC 20416.

The purpose of the meetings is to discuss such matters as may be presented by Advisory Board Members, staff of the U.S. Small Business Administration, or others present.

For further information write or call Hardy Patten, SBA, Room 317, U.S. Small Business Administration, 1441 L Street, NW., Washington, DC 20416 telephone (202) 653-6315.

Jean M. Nowak,

Director, Office of Advisory Councils.

November 16, 1987.

[FR Doc. 87-26764 Filed 11-19-87; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[AC No. 120-XX]

Proposed Advisory Circular; Crewmember Cabin Safety Training

AGENCY: Federal Aviation Administration, DOT.

ACTION: Request for comments on proposed Advisory Circular (AC) 120-XX, Crewmember Cabin Safety Training.

SUMMARY: This proposed AC provides guidance regarding crewmember cabin safety training requirements.

Comments Invited: Comments are invited on all aspects of the proposed AC. Commentators must identify file number AC 120-XX.

DATE: Comments must be received on or before February 18, 1988.

ADDRESS: Send all comments and requests for copies of the proposed AC to: Federal Aviation Administration, AFS-220, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Donell Pollard, AFS-220, at the above address, telephone (202) 267-3735 (7:30 a.m. to 4:00 p.m. est).

SUPPLEMENTARY INFORMATION: During FAA participation in the Task Force on Evacuation and other meetings with the industry it became apparent there was a need for information pertaining to crewmember cabin safety training. This advisory circular will address the issues which were discussed during various work group meetings conducted as part of the Task Force.

Issued in Washington, DC, on October 30, 1987.

Robert L. Goodrich,

Director of Flight Standards.

[FR Doc. 87-26772 Filed 11-19-87; 8:45 am]

BILLING CODE 4910-13-M

[Summary Notice No. PE-87-30]

Petition for Exemption; Summary of Petitions Received and Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption 914 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: December 10, 1987.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No.——, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on November 13, 1987.

Deborah E. King,

Acting Manager, Program Management Staff.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought
25349	Riverside Air Service	14 CFR 135.271	To allow petitioner to conduct helicopter hospital emergency medical evacuation service under the conditions and limitations of § 135.271 while based from an airport rather than a hospital.
25404	Peninsula Airways, Inc.	14 CFR 43.3(a)	To allow petitioner's pilots to perform the preventive maintenance functions of removing and replacing the passenger seats and seat belts of petitioner's aircraft used in FAR Part 135 operations.
25420	International Jet Aviation Services	14 CFR 135.89(b)(3)	To allow petitioner to operate its pressurized Learjet aircraft up to and including 41,000 feet mean sea level without requiring at least one pilot seated at the controls to wear, secured and sealed, an oxygen mask except when the cabin pressure altitude exceeds 12,000 feet mean sea level.
25424	Douglas Aircraft Company	14 CFR 121.312(a)(1)	To exempt two model DC-10-30 airplanes (serial numbers 48317 and 48313) from compliance with the interim requirements of a heat release rate of 100 kilowatt-minutes per square meter and a peak heat release of 100 kilowatt-minutes per square meter.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought disposition
12638	Air Transport Association of America	14 CFR 121.99 and 121.351(a)	To extend the termination date of Exemption No. 2081I, as amended, that allows Eastern Air Lines, Inc., Pan American World Airways, Inc., and Trans World Airlines to operate their turbojet airplanes in extended overwater operations with one of two installed high frequency (HF) communications systems inoperative at the time of departure and without maintaining two-way radio communications between each airplane and dispatch office within certain named areas, subject to certain conditions. *Granted, October 26, 1987.*
19475	Flight Safety International	14 CFR 61.63(d)(2) and (3), 61.157(d)(1) and (e)(1), and 121.407(a)(1)(i), portions of Part 61, Appendix A, and portions of Part 121, Appendix H.	To extend the termination date of Exemption No. 2854E that allows trainees of petitioner to complete a practical test for the issuance of a type rating to be added to any grade of pilot certificate that includes the items and procedures for testing in an airplane simulator as set forth in Appendix A of Part 61, although petitioner does not have an operating certificate issued under Part 121. *Granted, October 27, 1987.*
19742	Philippine Airlines, Inc	14 CFR Part 21	To extend the termination date of Exemption No. 2888F, as amended, that allows petitioner to operate four leased U.S.-registered aircraft using an FAA-approved minimum equipment list (MEL). *Granted, October 28, 1987.*
20090	Sierra Academy of Aeronautics	14 CFR 61.63(d)(2) and (3) and 61.157(d)(1)	To extend the termination date of Exemption No. 2963, as amended, that allows trainees of petitioner, who are applicants for a type rating to be added to any grade of pilot certiicate, to substitute the practical test requirements of § 61.157(a) for those § 61.63(d)(2) and (3) and to complete a portion of that practical test in a simulator as authorized by § 61.157(d). *Granted, October 27, 1987.*
23336	Simulator Training, Inc	14 CFR 61.63(d)(2) and (3), 61.157(d)(1), and 121.407(a).	To extend the termination date of Exemption No. 4797A that allows trainees of petitioner, who are applicants for an airline transport pilot certificate or are applying for a type rating to be added to their pilot certificate, to substitute the practical test requirements of § 61.157(a) for those of § 61.63(d)(2) and (3). In addition, that exemption permits trainees of petitioner to complete that portion of the practical test for an airline transport pilot certificate for an additional type rating, as authorized by § 61.157(d), in a simulator. *Granted, October 27, 1987.*
24413	Flight Training International, Inc	14 CFR 61.63(d)(2) and (3) and 61.157(d)(1)	To allow trainees of petitioner, who are applicants for an airline transport pilot certificate or a type rating to be added to any grade of pilot certificate, to substitute the practical test requirements of § 61.157(a) for those of § 61.63(d)(2) and (3) and to complete a portion of that practical test in a simulator as authorized by § 61.157(d). *Granted, October 29, 1987.*
25221	Dowty Rotol Limited	14 CFR 145.71 and 145.73	To allow petitioner, pursuant to the foreign repair station certificate for which it is concurrently applying, to perform warranty and other maintenance work on propellers, landing gear, and accessories on U.S.-registered aircraft which it has manufactured, without limitation as to where such aircraft operate. *Granted, October 27, 1987.*
25249	American Airlines	14 CFR 43.3	To allow petitioner's flight attendants to replace passengers' reading light bulbs in flight on its DC9-82 aircraft. *Denied, October 15, 1987.*
25269	Tempelhof Airways, U.S.A., Inc.	14 CFR 135.429 and 135.435	To allow petitioner to utilize Societe Nationale Industrielle Aerospatiale, Sasmat Rousseau Aviation, Turbomeca, Ratier-Figeac, of France, and Lucas Aerospace, Ltd., of England, to overhaul and repair the airframes, engines, propellers, and other components of two Nord 262A aircraft operated by the petitioner. *Granted, October 29, 1987.*
25337	ERA Helicopters, Inc	14 CFR 43.3(g)	To allow petitioner's pilots to remove and replace seats when away from the maintenance base. *Granted, October 28, 1987.*
25358	Britt Airways, Inc	14 CFR 121.411(a)(1), (a)(2), (a)(3), and (a)(6) and 121.413(b) and (3).	To add two more Aerospatiale instructor pilots to Exemption No. 4852, which allows petitioner to use Aerospatiale (ATR-2) pilot flight instructors to train petitioner's initial cadre of ATR-42 pilots. *Granted, October 26, 1987.*
25374	Eastern Express	14 CFR 121.411(a)(1), (a)(2), (a)(3), and (a)(6) and 121.413(b) and (3).	To add two more Aerospatiale instructor pilots to Exemption No. 4851, which allows petitioner to use Aerospatiale (ATR-42) pilot flight instructors to train petitioner's initial cadre of ATR-42 pilots. *Granted, October 30, 1987.*

[FR Doc. 87-26769 Filed 11-19-87; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

Current Ad Valorem User Fee for Imported Merchandise

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of current fee rate.

SUMMARY: The Omnibus Budget Reconciliation Act of 1986 authorized the Customs Service to assess a merchandise processing user fee on formal entries of imported merchandise. The proceeds of the user fees which have been in effect since December 1, 1986, are deposited in a dedicated account of the Treasury and, subject to authorization and appropriation, are to be used to offset Customs appropriations for the salaries and expenses of Customs incurred in conducting commercial operations. This document informs the public that, until further notice, the rate for the fiscal year beginning on October 1, 1987, is 0.17 percent of the appraised Customs value of the merchandise. It is published for the convenience of the importing public and Customs personnel.

DATES: Date of Notice: November 20, 1987.

Effective date of current ad valorem user fee: October 1, 1987.

FOR FURTHER INFORMATION CONTACT: Charles Davies, Office of Inspection and Control (202-566-9425).

SUPPLEMENTARY INFORMATION:.

Background

Section 8101 of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99-509) provided that an ad valorem user fee was to be collected by Customs on formal entries of merchandise imported for consumption, or withdrawn from warehouse for consumption, beginning on December 1, 1986. The fee was to be based on the appraised Customs value of the merchandise. The Act provided that the proceeds of the user fees are to be deposited in a dedicated account of the Treasury and, subject to authorization and appropriation, are to be used to offset Customs appropriations for the salaries and expenses of Customs incurred in conducting commercial operations.

Section 8101 provided, that with certain exceptions, the fee to be assessed for imported merchandise formaly entered, or withdrawn from a warehouse, for consumption after November 30, 1986, and before October 1, 1987, was to be 0.22 percent ad valorem. After September 30, 1987, the fee was to be reduced to 0.17 percent ad valorem or a lesser ad valorem rate determined by the Secretary of the Treasury, after appropriation of funds to Customs by Congress, as sufficient to provide an amount of revenue during the fiscal year equal to the total amount appropriated for such fiscal year for Customs commercial operations. Unless reauthorized by Congress, fees are not to be charged after September 30, 1989.

By a document published as T.D. 86-205 in the **Federal Register** on December 1, 1986 (51 FR 43188), Customs implemented Section 8101 on an interim basis, by issuance of § 24.23, Customs Regulations (19 CFR 24.23). Due to the need for extensive analysis of the comments received in response to publication of the interim regulations, and the likely possibility of further legislation, final regulations have not yet been approved.

Ad Valorem Rate

Funds for the entire fiscal year beginning October 1, 1987, have not yet been appropriated by Congress to Customs for salaries or expenses incurred in conducting commercial operations. However, pursuant to Section 8101, Congress has mandated that the user fee rate be set at 0.17 percent ad valorem after October 1, 1987, or a lesser rate determined by the Secretary of the Treasury based upon the appropriations for the fiscal year. Because funds have not yet been appropriated, the fee for Fiscal Year 1988 is 0.17 percent ad valorem for all merchandise formally entered, or withdrawn from a warehouse, for consumption on and after October 1, 1987.

Dated: November 10, 1987.

Commissioner of Customs,

William von Raab

[FR Doc. 87-26821 Filed 11-19-87; 8:45 am]

BILLING CODE 4820-02-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Implementation of Amendments to Specialty Steel Import Relief

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: This notice amends the Tariff Schedules of the United States (TSUS) to implement changes in the specialty steel import relief program.

EFFECTIVE DATE: November 20, 1987.

FOR FURTHER INFORMATION CONTACT: Robert Cassidy or Elena Bryan, Office of the United States Trade Representative, (202) 395-4510.

SUPPLEMENTARY INFORMATION: Presidential Proclamation 5679 of July 16, 1987 (58 FR 27308) provided for the temporary imposition of increased tariffs and quantitative restrictions on certain stainless steel and alloy tool steel imported into the United States, pursuant to section 203 of the Trade Act of 1974. Proclamation 5679 authorizes the U.S. Trade Representative to take such actions and perform such functions for the United States as may be necessary to administer and implement the relief, including negotiating orderly marketing agreements and allocating quota quantities on a country-by-country basis. The U.S. Trade Representative is also authorized to make modifications in the TSUS headnote of items proclaimed by the President in order to implement such actions.

Accordingly, the U.S. Trade Representative has determined that the following modifications in the specialty steel import relief be made:

Schedule 9, subpart A, part 2 of the Apendix to the TSUS is modified—

(A) By inseting the following sentence after the first sentence of headnote 10(g)(i):

The duties provided for in items 926.00 and 926.05 shall not apply to products of Trinidad and Tobago exported to the United States on or after October 15, 1987.

(B) By deleting headnote 10(g)(ii) and inserting in lieu thereof new headnote 10(g)(ii) and 10(iii) to read as follows:

(ii) The quantitative limitations provided for in items 926.10 through 926.17 shall not apply to products of brazil, or the following Member States of the European Communities: Belgium, Denmark, Federal Republic of Germany, France, Greece, Ireland, Italy, Luxembourg, the Netherlands, and the United Kingdom of Great Britain and Northern Ireland.

(iii) The quantitative limitations provided for in items 926.18 through 926.18 through 926.21 shall not apply to products of Austria, Brazil, or the following Member States of the European Communities: Belgium, Denmark, Federal Republic of Germany, France, Greece, Ireland, Italy, Luxembourg, the Netherlands, and the United Kingdom of Great Britain and Northern Ireland.

(C) By inserting in numerical sequence the following new headnote 10(h) and its subparts:

(h) Regarding shipments of mold blocks from Canada into the United States:

(i) the term *"mold blocks"* refers to products of either stainless steel bar or alloy tool steel whose chemistry meets that of

either H13 hot-work tool steel forged bars, P20 mold steel forged bars, or hardenable Cr stainless steel 420 forged bars, as defined in subparts (a), (b), and (c) below:

(a) *"H13 hot-work tool steel forged bars"* refers to forged bars of the alloy tool steel grade containing by weight, in addition to iron, not less than 0.32 percent nor more than 0.45 percent carbon; not less than 4.75 percent nor more than 5.50 percent chromium; not less than 0.20 percent nor more than 0.5. percent managanese; not less than 1.10 percent nor more than 1.75 percent molybdenum; not more than 0.030 percent phosphorus; not more than 0.030 percent sulfur; not less than 0.80 percent nor more than 1.20 percent silicon; and not less than 0.80 percent nor more than 1.20 percent vanadium.

(b) *"P20 mold steel forged blocks"* refers to foreged bars of the alloy tool steel grade containing by weight, in addition to iron, not less than 0.28 percent nor more than 0.40 percent carbon; not less than 1.40 percent nor more than 2.00 percent chromium; not less than 0.60 percent nor more than 1.00 percent manganese; not less than 0.30 percent nor more than 0.55 percent molybdenum; not more than 0.030 percent phosphorous; not more than 0.030 percent sulphur; and not less than 0.20 percent nor more than 0.030 percent sulphur; and not less than 0.20 percent nor more than 0.80 percent silicon.

(c) *"Hardenable Cr Stainless Steel 420 forged bars"* Refers to stainless steel forged bars containing by weighted over 0.15 percent carbon; not less than 12.00 percent nor more than 14 percent chromium; not more than 1.00 percent manganese; not more than 0.040 percent phosphorous; not more than 0.030 percent sulphur; and not more than 1.00 percent silicon.

(ii) Mold Blocks may only be forged bars of P20 mold steel, forged bars of H13 hot-work tool steel, and hardenable Cr stainless steel 420 forged bars of Canadian origin which are used in the United States to produce plastic injection molds, die-casting molds, and metal forming dies for automotive components. If rectangular, these bars must be between 4 and 40 inches in thickness and between 13 and 72 inches in width. Round bars of these steels must be between 8 and 24 inches in diameter. The rectangular bars must be machined on four faces at 90 degrees. In addition, one surface must be machined not to exceed 250AA roughness height (250 R.M.S. value), and surfaces must be perpendicular within 0.0625 inch. The round bars must be machined on both end faces, and their periphery must be machined not to exceed 250AA roughness height (250 R.M.S. value).

(iii) In order for the product to be considered a mold block, the Canadian government and the importer must certify that the product meets the requirements set forth in subparts (i) and (ii) above. The Canadian government will certify that the tonnage in the shipment, when added to other such certified shipments during the same restraint period, does not exceed the tonnage allowed under items 926.22, 926.23, or 926.24, as appropriate. Such certification must be endorsed by the compentent Canadian government authorities and presented to U.S. Customs at the time of entry into the United States.

(iv) the Government of the United States will allow entry of such mold blocks only to the extent that the quantity of mold blocks entered does not exceed the quantities set forth in terms 926.22, 926.23, and 926.24, respectively. Entries in excess of such quantity will be subject to the restraint levels described in items 926.11, 926.12, 926.13, 926.19, 926.20, and 926.21, as appropriate.

(D) by creating items 926.22 through 926.24, inclusive, to read as follows:

Item	Articles	Quota quantity (in short tons)	
		If entered during the restraint period:	
		July 20 through January 19	January 20 through July 19
926.22	Mold blocks of the type described in headnote 10(h): If entered during the period from November 20, 1987 through July 19, 1988, inclusive: Canada	1,100	2,200
926.23	If entered during the period from July 20, 1988 through July 19, 1989, inclusive Canada	2,200	2,200
926.24	If entered during the period from July 20, 1989 through September 30, 1989 inclusive: Canada	880	N/a

I have determined that the above changes in the import relief are appropriate to carry out the authority granted by the President to teh U.S. Trade Representative and the obligations of the United States, with due consideration to the interests of the domestic producers of such specialty steel. This action is subject to further modification.

Clayton Yeutter,

United States Trade Representative.

[FR Doc. 87-26951 Filed 11-19-87; 10:34 am]

BILLING CODE 3190-01-M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 224
Friday, November 20, 1987

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).

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, November 25, 1987.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW. Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: November 17, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-26848 Filed 11-17-87; 4:07 p.m.]

BILLING CODE 6210-01-M

FEDERAL ENERGY REGULATORY COMMISSION

November 17, 1987.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. 94-409), 5 U.S.C. 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

TIME AND DATE: November 24, 1987, 10:00 a.m.

PLACE: 825 North Capitol Street, NE., Room 9306, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

*Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Acting Secretary, Telephone (202) 357-8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Public Reference Room.

Consent Power Agenda, 867th Meeting—November 24, 1987, Regular Meeting (10:00 a.m.)

CAP-1.
Project No. 9683-002, Dunn and McCarthy, Inc.
CAP-2.
Project No. 10390-001, Skykomish River Hydro
Project No. 10392-001, Sauk River Hydro
Project No. 10416-001, Washington Hydro Development Company
Project No. 10425-001, Steven J. Wight
CAP-3.
Project No. 7802-006, Natural Energy Resources Company
CAP-4.
Project Nos. 137-007, 1962-009 and 1988-009, Pacific Gas and Electric
CAP-5.
Project No. 8488-003, Cosumnes River Water and Power Authority
CAP-6.
Project No. 3865-005, Guadalupe-Blanco River Authority
CAP-7.
Project No. EL80-38-004 and Project No. 405-020, Philadelphia Electric Power Company and Susquehanna Power Company
CAP-8.
Project No. 10002-001, American Power Producers, Inc.
CAP-9.
Project No. 9319-001, Keith and Marilyn Peterson
CAP-10.
Project No. 3239-004, Puget Sound Power and Light Company and McMaster and Schroder
CAP-11.
Project No. 6595-003, Mountain Energy, Inc.
CAP-12.
Project No. 8864-004, Weyerhaeuser Company
CAP-13.
Docket No. QF87-185-001, Malacha Power Project, Inc.
CAP-14.
Docket Nos. QF86-1025-002, QF86-1026-002, QF86-1027-002, QF86-1028-002, QF86-1029-003, QF86-1030-002, QF86-1031-002, QF86-1032-003 and QF86-1033-002, Turbo Power Systems
CAP-15.
Docket No. QF87-274-001, Union Carbide Corporation and Fina Oil and Chemical Company
CAP-16.
Docket No. ER76-205-006, Southern California Edison Company
CAP-17.
Docket No. ER86-354-003, Niagara Mohawk Power Corporation
CAP-18.
Docket No. ER87-476-001, Minnesota Power & Light Company
CAP-19.
Docket Nos. ER87-435-001, 002, and ER87-554-000, Wisconsin Power & Light Company
CAP-20.
Docket Nos. EF87-2011-004 and EF87-2021-002, United States Department of Energy—Bonneville Power Administration
CAP-21.
Docket Nos. ER87-107-002 and ER87-107-003, Idaho Power Company and Utah Power & Light Company
Docket No. EL87-8-001, Pacific Power & Light Company
Docket No. ER86-570-003, Idaho Power Company
CAP-22.
Docket No. ER87-180-003, Cincinnati Gas & Electric Company
CAP-23.
Docket No. ER82-769-008, Minnesota Power & Light Company
CAP-24.
Docket No. ER86-721-001, Central Power and Light Company
CAP-25.
Docket No. ER86-694-002, New England Power Pool
CAP-26.
Docket No. EL88-2-000, Safe Harbor Water Power Corporation
CAP-27.
Docket No. QF86-594-001, Weyerhaeuser Company

Consent Miscellaneous Agenda

CAM-1.
Docket No. FA87-70-000, Central Vermont Public Service Corporation
CAM-2.
Docket No. RM85-6-002, Waiver of the Water Quality Certification Requirement of Section 401(a)(1) of the Clean Water Act
CAM-3. (A)
Docket No. GP87-27-000 (Formerly RM79-76-250), Texas Railroad Commission, Travis Peak Foundation, JD87-16493T
CAM-3. (B)
Docket No. GP87-27-002 (Formerly RM79-76-250), Texas Railroad Commission, Travis Peak Formation, JD87-16493T
CAM-3. (C)
Docket No. GP87-65-000 (Formerly Docket No. RM79-76-248 (Oklahoma-8)), Oklahoma Corporation Commission, Cherokee Group, Roger Mills County, JD No. 87-16490T
Docket No. GP87-67-000 (Formerly Docket No. RM79-76-225 (Kentucky-3)), Commonwealth of Kentucky, "Big Lime" Formation, Harlan, Leslie, Letcher and Perry Counties, JD No. 87-16488T
CAM-3. (D)

Docket No. GP87-69-000 (Formerly RM79-76-255 (Colorado-38 Addition)), Colorado Oil and Gas Conservation Commission, Niobrara Formation, Larimer, Boulder and Weld Counties, JD No. 87-16492T
Docket No. GP87-66-000 (Formerly RM79-76-239 (Colorado-39 Addition)), Colorado Oil and Gas Conservation Commission, Niobrara Formation, Weld County, JD No. 87-16489T
Docket No. GP87-68-000 (Formerly RM79-76-249 (Virginia-4)), Virginia Department of Mines, Minerals and Energy, "Big-Lime" Formation, Buchanan, Dickerson, Lee, Scott, Wise, Russell and Tazewell Counties, JD No. 87-16491T

CAM-4.
Docket No. RO87-8-000, Marathon Petroleum Company

CAM-5.
Docket No. RO85-13-001, South Central Terminal Company, Inc.

Consent Gas Agenda

CAG-1.
Docket No. TA88-1-53-000, KN Energy, Inc.

CAG-2.
Docket No. TA88-2-51-000, Great Lakes Gas Transmission Company

CAG-3.
Omitted

CAG-4.
Docket No. RP88-17-000, Natural Gas Pipeline Company of America

CAG-5.
Omitted

CAG-6.
Docket No. TA88-2-5-000, Midwestern Gas Transmission Company

CAG-7.
Docket Nos. TA88-1-31-001 and 000, Arkla Energy Resources

CAG-8.
Docket Nos. RP86-126-001, 002 and 003, Transwestern Pipeline Company

CAG-9.
Docket No. RP87-115-001, Williston Basin Interstate Pipeline Company

CAG-10.
Docket No. RP87-71-001, Gas Research Institute

CAG-11.
Docket No. RP86-157-002, El Paso Natural Gas Company

CAG-12.
Docket No. TA87-7-51-001, Great Lakes Gas Transmission Company

CAG-13.
Docket Nos. TA87-4-49-005 and CP82-487-015, *et al.*, Williston Basin Interstate Pipeline Company

CAG-14.
Docket Nos. RP85-178-023, RP81-54-034, and RP87-26-020, Tennessee Gas Pipeline Company, a Division of Tenneco, Inc.

CAG-15.
Docket No. RP87-92-001, Williston Basin Interstate Pipeline Company

CAG-16.
Docket No. TA87-1-37-011, Northwest Pipeline Corporation

CAG-17.
Docket No. IS87-35-001, Gulf Central Pipeline Company

CAG-18.
Docket Nos. RP82-124-007, RP81-53-002 and RP81-55-034, East Tennessee Natural Gas Company

CAG-19.
Omitted

CAG-20.
Docket Nos. RP86-14-018 thru 029 and 033, Columbia Gulf Transmission Company
Docket Nos. RP86-15-018 thru 029 and 033, Columbia Gas Transmission Corporation

CAG-21.
Docket No. RP86-69-004, Mid Louisiana Gas Company

CAG-22.
Docket Nos. TA87-3-16-002 and 003, National Fuel Gas Supply Corporation

CAG-23.
Docket Nos. TA88-1-47-000 and RP87-143-000, MIGC, Inc.

CAG-24.
Docket Nos. RP87-13-005 and RP87-69-003, South Georgia Natural Gas Company

CAG-25.
Docket No. TA87-3-28-000, Panhandle Eastern Pipe Line Company

CAG-26.
Docket No. CP87-15-002, Panhandle Eastern Pipe Line Company

CAG-27.
Docket No. TA87-2-30-000, Trunkline Gas Company

CAG-28.
Omitted

CAG-29.
Docket No. CI87-918-000, Chevron U.S.A. Inc.

CAG-30.
Docket No. CI85-513-007, Tenngasco Gas Supply Company, *et al.* v. Southland Royalty Company, *et al.*

CAG-31.
Docket No. CP86-693-008, Washington Gas Light Company

CAG-32.
Docket No. CP84-132-008, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. and Columbia Gulf Transmission Company

CAG-33.
Docket No. CP87-503-001, Pacific Gas Transmission Company and Pacific Interstate Transmission Company

CAG-34.
Docket No. CP87-532-001, Northwest Pipeline Corporation

CAG-35.
Docket No. CP87-39-001, Granite State Transmission, Inc.

CAG-36.
Docket Nos. CP87-57-002, CP87-166-002, CP87-316-002, CP87-386-003 and CP87-406-002, Florida Gas Transmission Company

CAG-37.
Docket No. CP86-277-006, Southern Natural Gas Company
Docket No. CP86-610-003, Southern Natural Gas Company and Southern Georgia Natural Gas Company

CAG-38.
Docket Nos. CP86-430-000, CP86-431-000, CP86-719-000, RP86-10-005 and RP86-10-006, Williston Basin Interstate Pipeline Company

CAG-39.
Docket No. CP87-349-000, Transcontinental Gas Pipe Line Corporation

CAG-40.
Docket Nos. CP72-50-000 and CP72-274-000, Georgia Pacific Corporation

CAG-41.
Docket No. CP85-912-005, Colorado Interstate Gas Company

CAG-42.
Docket No. CP81-225-002, Great Lakes Gas Transmission

CAG-43.
Docket Nos. RP-55-013, RP80-118-014, RP81-73-006 and RP82-32-007, Sea Robin Pipeline Company

I. Licensed Project Matters

P-1.
Reserved

II. Electric Rate Matters

ER-1.
Reserved

Miscellaneous Agenda

M-1.
Reserved

M-2.
Reserved

M-3. (A)
Docket No. RM87-16-000, Abandonment of Sales and Purchases of Natural Gas Under Expired, Terminated, or Modified Contracts. Final Rule.

M-3. (B)
Docket No. CI84-10-006, Felmont Oil Corporation and Essex Offshore, Inc. Order on court remand.

M-3. (C)
Docket Nos. CP84-348-005, 006 and 007, Mississippi River Transmission Corporation
Docket No. CP84-183-004, Transcontinental Gas Pipe Line Corporation
Docket Nos. CI86-307-002, 003, CI86-688-002, 003, CI-689-001 and 002, Sea Robin Pipeline Company. Rehearing of orders authorizing pipeline to cease purchases.

M-3. (D)
Docket Nos. CI77-337-002 and G-14227-001, Union Texas Petroleum Corporation. Opinion and Order on rehearing. Opinion No. 274-A.

M-4. (A)
Docket No. CI87-247-000, Texaco Inc. and Texaco Gas Marketing Inc.
Docket No. CI87-248-000, Texaco Inc. Order on applications for abandonment and blanket limited-term certificate with pre-granted abandonment.

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CP-2.

Docket No. CP86-250-002, Ozark Gas Transmission System. Request for rehearing of order issuing blanket tranportation certificate.

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Docket Nos. CP86-720-001 through 003, Trailblazer Pipeline Company. Requests for rehearing of order issuing blanket transportation certificate.

CP-4.

Docket Nos. CP86-492-000 and CP86-494-000, Moraine Pipeline Company

Docket No. CP86-493-000, Natural Gas Pipeline Company of America. Request by an interstate pipeline for 7(c) authorization to transport gas on behalf of an LDC and request for optional certificate to construct facilities and transport gas.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-26932 Filed 11-18-87; 3:31 pm]

BILLING CODE 6717-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Tuesday, November 24, 1987, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 47,053-L (Second Amendment) Knoxville Consolidated Office, Knoxville, Tennessee

Case No. 47,128 Denver Consolidated Office, Denver, Colorado

Reports of the actions approved by the standing committees of the Corporation and by officers of the Corporation pursuant to authority delegated by the Board of Directors.

Discussion Agenda:

Memorandum and resolution re: Final amendment to Part 304 of the Corporation's rules and regulations, entitled "Forms, Instructions, and Reports," which changes from monthly to quarterly the frequency with which each FDIC-insured bank with combined fully insured brokered deposits and fully insured deposits placed directly by depository institutions in excess of either the bank's total capital and reserves or five percent of the bank's total deposits must report its holdings of such deposits to the Corporation.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898-3813.

Dated: November 17, 1987.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 87-26919 Filed 11-18-87; 1:52 pm]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Tuesday, November 24, 1987, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Application for Federal deposit insurance:

Hallmark Loan and Investment Corporation, an operating noninsured industrial bank located at 305 East Broadway, North Little Rock, Arkansas.

Reports of the Director, Office of Corporate Audits and Internal Investigations:

Audit Report re:
The Hoxie State Bank, Hoxie, Kansas (2615) (Memo dated October 30, 1987)

Audit Report re:
Chicago Regional Office, Cost Center—200 (Memo dated October 15, 1987)

Audit Report re:
Oak Lawn Consolidated Office, Cost Center—201 (Memo dated November 5, 1987)

Audit Report re:
Loan Management and Liquidation—Midland Consolidated Office (Memo dated November 6, 1987)

Discussion Agenda:

Applications for Federal deposit insurance:

Bankwest Industrial Bank/Boulder, an operating noninsured industrial bank located at 2337 30th Street, Boulder, Colorado.

Bankwest Industrial Bank/Denver, an operating noninsured industrial bank located at 1500 Grant Street, Denver, Colorado.

Bankwest Industrial Bank/San Luis Valley, an operating noninsured industrial bank located at 122 Adams Street, Monte Vista, Colorado.

Bankwest Industrial Bank/Strasburg, an operating noninsured industrial bank located at Monroe and Colfax, Strasburg, Colorado.

Fort Collins Colorado Industrial Bank, an operating noninsured industrial bank located at 1240 W. Elizabeth, Fort Collins, Colorado.

Colorado Industrial Bank, an operating noninsured industrial bank located at 2525 N. Lincoln Avenue, Loveland, Colorado.

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2) and (c)(6)).

Matters relating to the possible closing of certain insured banks:

Names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550–17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–3813.

Dated: November 17, 1987.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 87–26920 Filed 11–19–87; 1:52 pm]

BILLING CODE 6714–01–M

SECURITIES AND EXCHANGE COMMISSION

Agency meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of November 16, 1987:

A closed meeting will be held on Thursday, November 19, 1987, at 10:00 a.m.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Cox, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the close meeting scheduled for Thursday, November 19, 1987, at 10:00 a.m., will be:

Settlement of administrative proceeding of an enforcement nature.
Institution of administrative proceeding of an enforcement nature.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Kevin Fogarty at (202) 272–3195.

Jonathan G. Katz,

Secretary.

November 16, 1987.

[FR Doc. 87–26859 Filed 11–17–87; 4:30 pm]

BILLING CODE 8010–01–M

Corrections

Federal Register
Vol. 52, No. 224
Friday, November 20, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. 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.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 87F-0332]

Filing of Food Additive Petition; Ausimont USA, Inc.

Correction

In notice document 87-25689 appearing on page 42728 in the issue of Friday, November 6, 1987, the agency docket number should read as it appears in the bracketed heading above.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 87F-0326]

Filing of Food Additive Petition; Ciba-Geigy Corp.

Correction

In notice document 87-25690 appearing on page 42728 in the issue of Friday, November 6, 1987, make the following corrections:

1. In the second column, under **SUMMARY**, in the eighth line, "chlor" should read "chloro".

2. In the same column, under **SUPPLEMENTARY INFORMATION**, in the 12th line, the slash should be a hyphen.

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8162]

Low-Income Housing Credit for Federally-Assisted Buildings and OMB Control Numbers Under the Paperwork Reduction Act

Correction

In rule document 87-25444 beginning on page 42098 in the issue of Tuesday, November 3, 1987, make the following correction:

§ 1.42-2T [Corrected]

On page 42100, in the first column, in § 1.42-2T(d)(2)(xii), the last line should read "for the building".

BILLING CODE 1505-01-D

federal register

Friday
November 20, 1987

Part II

United States Sentencing Commission

Sentencing Guidelines for United States Courts; Notice of Revisions to Commentary

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of revisions to commentary to the sentencing guidelines and policy statements for the United States Courts.

SUMMARY: The initial sentencing guidelines and policy statements were submitted to Congress on April 13, 1987. Technical, clarifying and conforming amendments were submitted on May 1, 1987. As so amended, the sentencing guidelines and policy statements were published in the **Federal Register** on May 13, 1987 (52 FR 18046). Since that time, the Commission has revised the commentary and amended one policy statement. The sentencing guidelines and policy statements with the revised commentary have been distributed in loose-leaf manual form for use in the courts. Although the Commission does not believe that the revisions effect any substantive change, or that Congressional review of these revisions is required, the Commission intends to submit them formally to Congress at the next opportunity provided by law.

DATES: The law (28 U.S.C. 994(p)) authorizes the Commission to submit amendments to the sentencing guidelines between the beginning of a regular session of Congress and May 1, inclusive, of each year. Upon submission, there is a 180-day period of Congressional review and examination. The law further provides that unless by enacting a law Congress modifies, postpones, or rejects them, amendments to the guidelines take effect upon expiration of the 180-day period. At present, the Commission intends to submit these revisions to Congress upon commencement of the next amendment period. Accordingly, comments should be submitted by December 10, 1987, to ensure that they will be considered before the next submission to Congress. Suggestions for improving the sentencing guidelines, commentary and policy statements are, however, solicited on a continuing basis, to assist the Commission in carrying out its responsibilities under the Sentencing Reform Act.

ADDRESSES: Comments should be sent to: United States Sentencing Commission, 1331 Pennsylvania Avenue NW., Suite 1400, Washington, DC 20004, Attention: Sentencing Guidelines Comment.

FOR FURTHER INFORMATION CONTACT: Paul K. Martin, Communications Director for the Commission, telephone (202) 662-8800.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent commission in the judicial branch of the United States Government. Ordinarily, the Administrative Procedure Act rulemaking requirements (including publication in the **Federal Register,** public comment and public hearing procedures) are not applicable to judicial branch agencies. However, 28 U.S.C. 994(x) makes the Administrative Procedure Act rulemaking provisions of 5 U.S.C. 553 applicable to the promulgation of sentencing guidelines by the Sentencing Commission. No similar requirement exists with respect to policy statements or Commission commentary accompanying guidelines.

Since May 1, 1987, the Commission has conducted extensive clinical testing of the guidelines. Those sessions produced useful suggestions for clarifying and reorganizing the commentary, many of which were incorporated into the recent revisions. This revised commentary appears below, along with the guidelines and policy statements as amended May 1. One policy statement (§ 2X5.1) has been rewritten. The same document, in loose-leaf manual form, has been distributed for use by United States Probation Officers, judges, U.S. attorneys, federal defenders and others involved in the federal criminal justice system. The loose-leaf manual is available from the Government Printing Office, Stock No. 052-070-06363-7.

The revisions to the commentary are intended solely to enhance understanding and clarity, and are not intended to make substantive changes in the application of the guidelines. The Commission has advised recipients that in the event of a conflict, the May 1 version is to be treated as controlling.

In the opinion of the Commission, under the provisions of the Sentencing Reform Act, revisions to the commentary and policy statements are not subject to the Administrative Procedure Act, nor must they be formally submitted for Congressional review. However, certain persons have expressed the view that such revisions may be subject to these procedures. Accordingly, the Commission intends to submit these revisions to Congress, after a comment period, in order to eliminate any questions as to their validity and effectiveness. Comments may be addressed to both the form and substance of the documents.

Authority: Section 217(a) of the Comprehensive Crime Control Act of 1984 (28 U.S.C. 994 (a), (p), (x)).

William W. Wilkins, Jr.,

Chairman.

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CHAPTER ONE—INTRODUCTION AND GENERAL APPLICATION PRINCIPLES

Part A—Introduction

1. Authority

The United States Sentencing Commission ("Commission") is an independent agency in the judicial branch composed of seven voting and two non-voting, ex officio members. Its principal purpose is to establish sentencing policies and practices for the federal criminal justice system that will assure the ends of justice by promulgating detailed guidelines prescribing the appropriate sentences for offenders convicted of federal crimes.

The guidelines and policy statements promulgated by the Commission are issued pursuant to Section 994(a) of Title 28, United States Code.

2. The Statutory Mission

The Comprehensive Crime Control Act of 1984 foresees guidelines that will further the basic purposes of criminal punishment, i.e., deterring crime, incapacitating the offender, providing just punishment, and rehabilitating the offender. It delegates to the Commission broad authority to review and rationalize the federal sentencing process.

The statute contains many detailed instructions as to how this determination should be made, but the most important of them instructs the Commission to create categories of offense behavior and offender characteristics. An offense behavior category might consist, for example, of "bank robbery/committed with a gun/ $2500 taken." An offender characteristic category might be "offender with one prior conviction who was not sentenced to imprisonment." The Commission is required to prescribe guideline ranges that specify an appropriate sentence for each class of convicted persons, to be determined by coordinating the offense behavior categories with the offender characteristic categories. The statute contemplates the guidelines will establish a range of sentences for every coordination of categories. Where the guidelines call for imprisonment, the range must be narrow: the maximum imprisonment cannot exceed the minimum by more than the greater of 25 percent or six months. 28 U.S.C. 994(b)(2).

The sentencing judge must select a sentence from within the guideline range. If, however, a particular case presents atypical features, the Act allows the judge to depart from the guidelines and sentence outside the range. In that case, the judge must specify reasons for departure. 18 U.S.C. 3553(b). If the court sentences within the guideline range, an appellate court may review the sentence to see if the guideline was correctly applied. If the judge departs from the guideline range, an appellate court may review the reasonableness of the departure. 18 U.S.C. 3742. The Act requires the offender to serve virtually all of any prison sentence imposed, for it abolishes parole and substantially restructures good behavior adjustments.

The law requires the Commission to send its initial guidelines to Congress by April 13, 1987, and under the present statute they take effect automatically on November 1, 1987. Pub. L. 98-473, § 235, reprinted at 18 U.S.C. 3551. The Commission may submit guideline amendments each year to Congress between the beginning of a regular session and May 1. The amendments will take effect automatically 180 days after submission unless a law is enacted to the contrary. 28 U.S.C. 994(p).

The Commission, with the aid of its legal and research staff, considerable public testimony, and written commentary, has developed an initial set of guidelines which it now transmits to Congress. The Commission emphasizes, however, that it views the guideline-writing process as evolutionary. It expects, and the governing statute anticipates, that continuing research, experience, and analysis will result in modifications and revisions to the guidelines by submission of amendments to Congress. To this end, the Commission is established as a permanent agency to monitor sentencing practices in the Federal courts throughout the nation.

3. The Basic Approach (Policy Statement)

To understand these guidelines and the rationale that underlies them, one must begin with the three objectives that Congress, in enacting the new sentencing law, sought to achieve. Its basic objective was to enhance the ability of the criminal justice system to reduce crime through an effective, fair sentencing system. To achieve this objective, Congress first sought honesty in sentencing. It sought to avoid the confusion and implicit deception that arises out of the present sentencing system which requires a judge to impose

an indeterminate sentence that is automatically reduced in most cases by "good time" credits. In addition, the parole commission is permitted to determine how much of the remainder of any prison sentence an offender actually will serve. This usually results in a substantial reduction in the effective length of the sentence imposed, with defendants often serving only about one-third of the sentence handed down by the court.

Second, Congress sought uniformity in sentencing by narrowing the wide disparity in sentences imposed by different Federal courts for similar criminal conduct by similar offenders. Third, Congress sought proportionality in sentencing through a system that imposes appropriately different sentences for criminal conduct of different severity.

Honesty is easy to achieve: The abolition of parole makes the sentence imposed by the court the sentence the offender will serve. There is a tension, however, between the mandate of uniformity (treat similar cases alike) and the mandate of proportionality (treat different cases differently) which, like the historical tension between law and equity, makes it difficult to achieve both goals simultaneously. Perfect uniformity—sentencing every offender to five years—destroys proportionality. Having only a few simple categories of crimes would make the guidelines uniform and easy to administer, but might lump together offenses that are different in important respects. For example, a single category for robbery that lumps together armed and unarmed robberies, robberies with and without injuries, robberies of a few dollars and robberies of millions, is far too broad.

At the same time, a sentencing system tailored to fit every conceivable wrinkle of each case can become unworkable and seriously compromise the certainty of punishment and its deterrent effect. A bank robber with (or without) a gun, which the robber kept hidden (or brandished), might have frightened (or merely warned), injured seriously (or less seriously), tied up (or simply pushed) a guard, a teller or a customer, at night (or at noon), for a bad (or arguably less bad) motive, in an effort to obtain money for other crimes (or for other purposes), in the company of a few (or many) other robbers, for the first (or fourth) time that day, while sober (or under the influence of drugs or alcohol), and so forth.

The list of potentially relevant features of criminal behavior is long; the fact that they can occur in multiple combinations means that the list of possible permutations of factors is virtually endless. The appropriate relationships among these different factors are exceedingly difficult to establish, for they are often context specific. Sentencing courts do not treat the occurrence of a simple bruise identically in all cases, irrespective of whether that bruise occurred in the context of a bank robbery or in the context of a breach of peace. This is so, in part, because the risk that such a harm will occur differs depending on the underlying offense with which it is connected (and therefore may already be counted, to a different degree, in the punishment for the underlying offense); and also because, in part, the relationship between punishment and multiple harms is not simply additive. The relation varies, depending on how much other harm has occurred. (Thus, one cannot easily assign points for each kind of harm and simply add them up, irrespective of context and total amounts.)

The larger the number of subcategories, the greater the complexity that is created and the less workable the system. Moreover, the subcategories themselves, sometimes too broad and sometimes too narrow, will apply and interact in unforeseen ways to unforeseen situations, thus failing to cure the unfairness of a simple, broad category system. Finally, and perhaps most importantly, probation officers and courts, in applying a complex system of subcategories, would have to make a host of decisions about whether the underlying facts are sufficient to bring the case within a particular subcategory. The greater the number of decisions required and the greater their complexity, the greater the risk that different judges will apply the guidelines differently to situations that, in fact, are similar, thereby reintroducing the very disparity that the guidelines were designed to eliminate.

In view of the arguments, it is tempting to retreat to the simple, broad-category approach and to grant judges the discretion to select the proper point along a broad sentencing range. Obviously, however, granting such broad discretion risks correspondingly broad disparity in sentencing, for different courts may exercise their discretionary powers in different ways. That is to say, such an approach risks a return to the wide disparity that Congress established the Commission to limit.

In the end, there is no completely satisfying solution to this practical stalemate. The Commission has had to simply balance the comparative virtues and vices of broad, simple categorization and detailed, complex subcategorization, and within the constraints established by that balance, minimize the discretionary powers of the sentencing court. Any ultimate system will, to a degree, enjoy the benefits and suffer from the drawbacks of each approach.

A philosophical problem arose when the Commission attempted to reconcile the differing perceptions of the purposes of criminal punishment. Most observers of the criminal law agree that the ultimate aim of the law itself, and of punishment in particular, is the control of crime. Beyond this point, however, the consensus seems to break down. Some argue that appropriate punishment should be defined primarily on the basis of the moral principle of "just deserts." Under this principle, punishment should be scaled to the offender's culpability and the resulting harms. Thus, if a defendant is less culpable, the defendant deserves less punishment. Others argue that punishment should be imposed primarily on the basis of practical "crime control" considerations. Defendants sentenced under this scheme should receive the punishment that most effectively lessens the likelihood of future crime, either by deterring others or incapacitating the defendant.

Adherents of these points of view have urged the Commission to choose between them, to accord one primacy over the other. Such a choice would be profoundly difficult. The relevant literature is vast, the arguments deep, and each point of view has much to be said in its favor. A clear-cut Commission decision in favor of one of these approaches would diminish the chance that the guidelines would find the widespread acceptance they need for effective implementation. As a practical matter, in most sentencing decisions both philosophies may prove consistent with the same result.

For now, the Commission has sought to solve both the practical and philosophical problems of developing a coherent sentencing system by taking an empirical approach that uses data estimating the existing sentencing system as a starting point. It has analyzed data drawn from 10,000 presentence investigations, crimes as distinguished in substantive criminal statutes, the United States Parole Commission's guidelines and resulting statistics, and data from other relevant sources, in order to determine which distinctions are important in present practice. After examination, the Commission has accepted, modified, or rationalized the more important of these distinctions.

This empirical approach has helped the Commission resolve its practical problem by defining a list of relevant distinctions that, although of considerable length, is short enough to create a manageable set of guidelines. Existing categories are relatively broad and omit many distinctions that some may believe important, yet they include most of the major distinctions that statutes and presentence data suggest make a significant difference in sentencing decisions. Important distinctions that are ignored in existing practice probably occur rarely. A sentencing judge may take this unusual case into account by departing from the guidelines.

The Commission's empirical approach has also helped resolve its philosophical dilemma. Those who adhere to a just deserts philosophy may concede that the lack of moral consensus might make it difficult to say exactly what punishment is deserved for a particular crime, specified in minute detail. Likewise, those who subscribe to a philosophy of crime control may acknowledge that the lack of sufficient, readily available data might make it difficult to say exactly what punishment will best prevent that crime. Both groups might therefore recognize the wisdom of looking to those distinctions that judges and legislators have in fact made over the course of time. These established distinctions are ones that the community believes, or has found over time, to be important from either a moral or crime-control perspective.

The Commission has not simply copied estimates of existing practice as revealed by the data (even though establishing offense values on this basis would help eliminate disparity, for the data represent averages). Rather, it has departed from the data at different points for various important reasons. Congressional statutes, for example, may suggest or require departure, as in the case of the new drug law that imposes increased and mandatory minimum sentences. In addition, the data may reveal inconsistencies in treatment, such as punishing economic crime less severely than other apparently equivalent behavior.

Despite these policy-oriented departures from present practice, the guidelines represent an approach that begins with, and builds upon, empirical data. The guidelines will not please those who wish the Commission to adopt a single philosophical theory and then work deductively to establish a simple and perfect set of categorizations and distinctions. The guidelines may prove acceptable, however, to those who seek more modest, incremental improvements in the status quo, who believe the best is often the enemy of the good, and who recognize that these initial guidelines are but the first step in an evolutionary process. After spending considerable time and resources exploring alternative approaches, the Commission has developed these guidelines as a practical effort toward the achievement of a more honest, uniform, equitable, and therefore effective, sentencing system.

4. The Guidelines' Resolution of Major Issues (Policy Statement)

The guideline-writing process has required the Commission to resolve a host of important policy questions, typically involving rather evenly balanced sets of competing considerations. As an aid to understanding the guidelines, this introduction will briefly discuss several of those issues. Commentary in the guidelines explains others.

(a) Real Offense vs. Charge Offense Sentencing

One of the most important questions for the Commission to decide was whether to base sentences upon the actual conduct in which the defendant engaged regardless of the charges for which he was indicted or convicted ("real offense" sentencing), or upon the conduct that constitutes the elements of the offense with which the defendant was charged and of which he was convicted ("charge offense" sentencing). A bank robber, for example, might have used a gun, frightened bystanders, taken $50,000, injured a teller, refused to stop when ordered, and raced away damaging property during escape. A pure real offense system would sentence on the basis of all identifiable conduct. A pure charge offense system would overlook some of the harms that did not constitute statutory elements of the offenses of which the defendant was convicted.

The Commission initially sought to develop a real offense system. After all, the present sentencing system is, in a sense, a real offense system. The sentencing court (and the parole commission) take account of the conduct in which the defendant actually engaged, as determined in a presentence report, at the sentencing hearing, or before a parole commission hearing officer. The Commission's initial efforts in this direction, carried out in the spring and early summer of 1986, proved unproductive mostly for practical reasons. To make such a system work, even to formalize and rationalize the status quo, would have required the Commission to decide precisely which harms to take into account, how to add them up, and what kinds of procedures the courts should use to determine the presence or absence of disputed factual elements. The Commission found no practical way to combine and account for the large number of diverse harms arising in different circumstances; nor did it find a practical way to reconcile the need for a fair adjudicatory procedure with the need for a speedy sentencing process, given the potential existence of hosts of adjudicated "real harm" facts in many typical cases. The effort proposed as a solution to these problems required the use of, for example, quadratic roots and other mathematical operations that the Commission considered too complex to be workable, and, in the Commission's view, risked return to wide disparity in practice.

The Commission therefore abandoned the effort to devise a "pure" real offense system and instead experimented with a "modified real offense system", which it published for public comment in a September 1986 preliminary draft.

This version also foundered in several major respects on the rock of practicality. It was highly complex and its mechanical rules for adding harms (e.g., bodily injury added the same punishment irrespective of context) threatened to work considerable unfairness. Ultimately, the Commission decided that it could not find a practical or fair and efficient way to implement either a pure or modified real offense system of the sort it originally wanted, and it abandoned that approach.

The Commission, in its January 1987 Revised Draft and the present guidelines, has moved closer to a "charge offense" system. The system is not, however, pure; it has a number of real elements. For one thing, the hundreds of overlapping and duplicative statutory provisions that make up the federal criminal law have forced the Commission to write guidelines that are descriptive of generic conduct rather than tracking purely statutory language. For another, the guidelines, both through specific offense characteristics and adjustments, take account of a number of important, commonly occurring real offense elements such as role in the offense, the presence of a gun, or the amount of money actually taken.

Finally, it is important not to overstate the difference in practice between a real and a charge offense system. The federal criminal system, in practice, deals mostly with drug offenses, bank robberies and white collar crimes (such as fraud, embezzlement, and bribery).

For the most part, the conduct that an indictment charges approximates the real and relevant conduct in which the offender actually engaged.

The Commission recognizes its system will not completely cure the problems of a real offense system. It may still be necessary, for example, for a court to determine some particular real facts that will make a difference to the sentence. Yet, the Commission believes that the instances of controversial facts will be far fewer; indeed, there will be few enough so that the court system will be able to devise fair procedures for their determination. See United States v. Fatico, 579 F.2d 707 (2d Cir. 1978) (permitting introduction of hearsay evidence at sentencing hearing under certain conditions), on remand, 458 F. Supp. 388 (E.D.N.Y. 1978), aff'd, 603 F.2d 1053 (2d Cir. 1979) (holding that the government need not prove facts at sentencing hearing beyond a reasonable doubt), cert. denied, 444 U.S. 1073 (1980).

The Commission also recognizes that a charge offense system has drawbacks of its own. One of the most important is its potential to turn over to the prosecutor the power to determine the sentence by increasing or decreasing the number (or content) of the counts in an indictment. Of course, the defendant's actual conduct (that which the prosecutor can prove in court) imposes a natural limit upon the prosecutor's ability to increase a defendant's sentence. Moreover, the Commission has written its rules for the treatment of multicount convictions with an eye toward eliminating unfair treatment that might flow from count manipulation. For example, the guidelines treat a three-count indictment, each count of which charges sale of 100 grams of heroin, or theft of $10,000, the same as a single-count indictment charging sale of 300 grams of heroin or theft of $30,000. Further, a sentencing court may control any inappropriate manipulation of the indictment through use of its power to depart from the specific guideline sentence. Finally, the Commission will closely monitor problems arising out of count manipulation and will make appropriate adjustments should they become necessary.

(b) Departures

The new sentencing statute permits a court to depart from a guideline-specified sentence only when it finds "an aggravating or mitigating circumstance * * * that was not adequately taken into consideration by the Sentencing Commission * * *." 18 U.S.C. 3553(b). Thus, in principle, the Commission, by specifying that it had adequately considered a particular factor, could prevent a court from using it as grounds for departure. In this initial set of guidelines, however, the Commission does not so limit the courts' departure powers. The Commission intends the sentencing courts to treat each guideline as carving out a "heartland," a set of typical cases embodying the conduct that each guideline describes. When a court finds an atypical case, one to which a particular guideline linguistically applies but where conduct significantly differs from the norm, the court may consider whether a departure is warranted. Section 5H1.10 (Race, Sex, National Origin, Creed, Religion, Socio-Economic Status), the third sentence of § 5H1.4, and the last sentence of § 5K2.12, list a few factors that the court cannot take into account as grounds for departure. With those specific exceptions, however, the Commission does not intend to limit the kinds of factors (whether or not mentioned anywhere else in the guidelines) that could constitute grounds for departure in an unusual case.

The Commission has adopted this departure policy for two basic reasons. First is the difficulty of foreseeing and capturing a single set of guidelines that encompasses the vast range of human conduct potentially relevant to a sentencing decision. The Commission also recognizes that in the initial set of guidelines it need not do so. The Commission is a permanent body, empowered by law to write and rewrite guidelines, with progressive changes, over many years. By monitoring when courts depart from the guidelines and by analyzing their stated reasons for doing so, the Commission, over time, will be able to create more accurate guidelines that specify precisely where departures should and should not be permitted.

Second, the Commission believes that despite the courts' legal freedom to depart from the guidelines, they will not do so very often. This is because the guidelines, offense by offense, seek to take account of those factors that the Commission's sentencing data indicate make a significant difference in sentencing at the present time. Thus, for example, where the presence of actual physical injury currently makes an important difference in final sentences, as in the case of robbery, assault, or arson, the guidelines specifically instruct the judge to use this factor to augment the sentence. Where the guidelines do not specify an augmentation or diminution, this is generally because the sentencing data do not permit the Commission, at this time, to conclude that the factor is empirically important in relation to the particular offense. Of course, a factor (say physical injury) may nonetheless sometimes occur in connection with a crime (such as fraud) where it does not often occur. If, however, as the data indicate, such occurrences are rare, they are precisely the type of events that the court's departure powers were designed to cover—unusual cases outside the range of the more typical offenses for which the guidelines were designed. Of course, the Commission recognizes that even its collection and analysis of 10,000 presentence reports are an imperfect source of data sentencing estimates. Rather than rely heavily at this time upon impressionistic accounts, however, the Commission believes it wiser to wait and collect additional data from our continuing monitoring process that may demonstrate how the guidelines work in practice before further modification.

It is important to note that the guidelines refer to three different kinds of departure. The first kind, which will most frequently be used, is in effect an interpolation between two adjacent, numerically oriented guideline rules. A specific offense characteristic, for example, might require an increase of four levels for serious bodily injury but two levels for bodily injury. Rather than requiring a court to force middle instances into either the "serious" or the "simple" category, the guideline commentary suggests that the court may interpolate and select a midpoint increase of three levels. The Commission has decided to call such an interpolation a "departure" in light of the legal views that a guideline providing for a range of increases in offense levels may violate the statute's 25 percent rule (though others have presented contrary legal arguments). Since interpolations are technically departures, the courts will have to provide reasons for their selection, and it will be subject to review for "reasonableness" on appeal. The Commission believes, however, that a simple reference by the court to the "mid-category" nature of the facts will typically provide sufficient reason. It does not foresee serious practical problems arising out of the application of the appeal provisions to this form of departure.

The second kind involves instances in which the guidelines provide specific guidance for departure, by analogy or by other numerical or non-numerical suggestions. For example, the commentary to § 2G1.1 (Transportation for Prostitution), recommends a downward adjustment of eight levels where commercial purpose was not

involved. The Commission intends such suggestions as policy guidance for the courts. The Commission expects that most departures will reflect the suggestions, and that the courts of appeals may prove more likely to find departures "unreasonable" where they fall outside suggested levels.

A third kind of departure will remain unguided. It may rest upon grounds referred to in Chapter 5, Part H, or on grounds not mentioned in the guidelines. While Chapter 5, Part H lists factors that the Commission believes may constitute grounds for departure, those suggested grounds are not exhaustive. The Commission recognizes that there may be other grounds for departure that are not mentioned; it also believes there may be cases in which a departure outside suggested levels is warranted. In its view, however, such cases will be highly unusual.

(c) Plea Agreements

Nearly ninety percent of all Federal criminal cases involve guilty pleas, and many of these cases involve some form of plea agreement. Some commentators on early Commission guideline drafts have urged the Commission not to attempt any major reforms of the agreement process, on the grounds that any set of guidelines that threatens to radically change present practice also threatens to make the Federal system unmanageable. Others, starting with the same facts, have argued that guidelines which fail to control and limit plea agreements would leave untouched a "loophole" large enough to undo the good that sentencing guidelines may bring. Still other commentators make both sets of arguments.

The Commission has decided that these initial guidelines will not, in general, make significant changes in current plea agreement practices. The court will accept or reject any such agreements primarily in accordance with the rules set forth in Fed.R.Crim.P. 11(e). The Commission will collect data on the courts' plea practices and will analyze this information to determine when and why the courts accept or reject plea agreements. In light of this information and analysis, the Commission will seek to further regulate the plea agreement process as appropriate.

The Commission nonetheless expects the initial set of guidelines to have a positive, rationalizing impact upon plea agreements for two reasons. First, the guidelines create a clear, definite expectation in respect to the sentence that a court will impose if a trial takes place. Insofar as a prosecutor and defense attorney seek to agree about a likely sentence or range of sentences, they will no longer work in the dark. This fact alone should help to reduce irrationality in respect to actual sentencing outcomes. Second, the guidelines create a norm to which judges will likely refer when they decide whether, under Rule 11(e), to accept or to reject a plea agreement or recommendation. Since they will have before them the norm, the relevant factors (as disclosed in the plea agreement), and the reason for the agreement, they will find it easier than at present to determine whether there is sufficient reason to accept a plea agreement that departs from the norm.

(d) Probation and Split Sentences

The statute provides that the guidelines are to "reflect the general appropriateness of imposing a sentence other than imprisonment in cases in which the defendant is a first offender who has not been convicted of a crime of violence or an otherwise serious offense * * *." 28 U.S.C. 994(j). Under present sentencing practice, courts sentence to probation an inappropriately high percentage of offenders guilty of certain economic crimes, such as theft, tax evasion, antitrust offenses, insider trading, fraud, and embezzlement, that in the Commission's view are "serious." If the guidelines were to permit courts to impose probation instead of prison in many or all such cases, the present sentences would continue to be ineffective.

The Commission's solution to this problem has been to write guidelines that classify as "serious" (and therefore subject to mandatory prison sentences) many offenses for which probation is now frequently given. At the same time, the guidelines will permit the sentencing court to impose short prison terms in many such cases. The Commission's view is that the definite prospect of prison, though the term is short, will act as a significant deterrent to many of these crimes, particularly when compared with the status quo where probation, not prison, is the norm.

More specifically, the guidelines work as follows in respect to a first offender. For offense levels one through six, the sentencing court may elect to sentence the offender to probation (with or without confinement conditions) or to a prison term. For offense levels seven through ten, the court may substitute probation for a prison term, but the probation must include confinement conditions (community confinement or intermittent confinement). For offense levels eleven and twelve, the court must impose at least one half the minimum confinement sentence in the form of prison confinement, the remainder to be served on supervised release with a condition of community confinement. The Commission, of course, has not dealt with the single acts of aberrant behavior that still may justify probation at higher offense levels through departures.

(e) Multi-Count Convictions

The Commission, like other sentencing commissions, has found it particularly difficult to develop rules for sentencing defendants convicted of multiple violations of law, each of which makes up a separate count in an indictment. The reason it is difficult is that when a defendant engages in conduct that causes several harms, each additional harm, even if it increases the extent to which punishment is warranted, does not necessarily warrant a proportionate increase in punishment. A defendant who assaults others during a fight, for example, may warrant more punishment if he injures ten people than if he injures one, but his conduct does not necessarily warrant ten times the punishment. If it did, many of the simplest offenses, for reasons that are often fortuitous, would lead to life sentences of imprisonment—sentences that neither "just deserts" nor "crime control" theories of punishment would find justified.

Several individual guidelines provide special instructions for increasing punishment when the conduct that is the subject of that count involves multiple occurrences or has caused several harms. The guidelines also provide general rules for aggravating punishment in light of multiple harms charged separately in separate counts. These rules may produce occasional anomalies, but normally they will permit an appropriate degree of aggravation of punishment when multiple offenses that are the subjects of separate counts take place.

These rules are set out in Chapter Three, Part D. They essentially provide: (1) When the conduct involves fungible items, e.g., separate drug transactions or thefts of money, the amounts are added and the guidelines apply to the total amount. (2) When nonfungible harms are involved, the offense level for the most serious count is increased (according to a somewhat diminishing scale) to reflect the existence of other counts of conviction.

The rules have been written in order to minimize the possibility that an arbitrary casting of a single transaction into several counts will produce a longer sentence. In addition, the sentencing

court will have adequate power to prevent such a result through departures where necessary to produce a mitigated sentence.

(f) Regulatory Offenses

Regulatory statutes, though primarily civil in nature, sometimes contain criminal provisions in respect to particularly harmful activity. Such criminal provisions often describe not only substantive offenses, but also more technical, administratively-related offenses such as failure to keep accurate records or to provide requested information. These criminal statutes pose two problems. First, which criminal regulatory provisions should the Commission initially consider, and second, how should it treat technical or administratively-related criminal violations?

In respect to the first problem, the Commission found that it cannot comprehensively treat all regulatory violations in the initial set of guidelines. There are hundreds of such provisions scattered throughout the United States Code. To find all potential violations would involve examination of each individual federal regulation. Because of this practical difficulty, the Commission has sought to determine, with the assistance of the Department of Justice and several regulatory agencies, which criminal regulatory offenses are particularly important in light of the need for enforcement of the general regulatory scheme. The Commission has sought to treat these offenses in these initial guidelines. It will address the less common regulatory offenses in the future.

In respect to the second problem, the Commission has developed a system for treating technical recordkeeping and reporting offenses, dividing them into four categories.

First, in the simplest of cases, the offender may have failed to fill out a form intentionally, but without knowledge or intent that substantive harm would likely follow. He might fail, for example, to keep an accurate record of toxic substance transport, but that failure may not lead, nor be likely to lead, to the release or improper treatment of any toxic substance. Second, the same failure may be accompanied by a significant likelihood that substantive harm will occur; it may make a release of a toxic substance more likely. Third, the same failure may have led to substantive harm. Fourth, the failure may represent an effort to conceal a substantive harm that has occurred.

The structure of a typical guideline for a regulatory offense is as follows:

(1) The guideline provides a low base offense level (6) aimed at the first type of recordkeeping or reporting offense. It gives the court the legal authority to impose a punishment ranging from probation up to six months of imprisonment.

(2) Specific offense characteristics designed to reflect substantive offenses that do occur (in respect to some regulatory offenses), or that are likely to occur, increase the offense level.

(3) A specific offense characteristic also provides that a recordkeeping or reporting offense that conceals a substantive offense will be treated like the substantive offense.

The Commission views this structure as an initial effort. It may revise its approach in light of further experience and analysis of regulatory crimes.

(g) Sentencing Ranges

In determining the appropriate sentencing ranges for each offense, the Commission began by estimating the average sentences now being served within each category. It also examined the sentence specified in congressional statutes, in the parole guidelines, and in other relevant, analogous sources. The Commission's forthcoming detailed report will contain a comparison between estimates of existing sentencing practices and sentences under the guidelines.

While the Commission has not considered itself bound by existing sentencing practice, it has not tried to develop an entirely new system of sentencing on the basis of theory alone. Guideline sentences in many instances will approximate existing practice, but adherence to the guidelines will help to eliminate wide disparity. For example, where a high percentage of persons now receive probation, a guideline may include one or more specific offense characteristics in an effort to distinguish those types of defendants who now receive probation from those who receive more severe sentences. In some instances, short sentences of incarceration for all offenders in a category have been substituted for a current sentencing practice of very wide variability in which some defendants receive probation while others receive several years in prison for the same offense. Moreover, inasmuch as those who currently plead guilty often receive lesser sentences, the guidelines also permit the court to impose lesser sentences on those defendants who accept responsibility and those who cooperate with the government.

The Commission has also examined its sentencing ranges in light of their likely impact upon prison population. Specific legislation, such as the new drug law and the career offender provisions of the sentencing law, require the Commission to promulgate rules that will lead to substantial prison population increases. These increases will occur irrespective of any guidelines. The guidelines themselves, insofar as they reflect policy decisions made by the Commission (rather than legislated mandatory minimum, or career offender, sentences), will lead to an increase in prison population that computer models, produced by the Commission and the Bureau of Prisons, estimate at approximately 10 percent, over a period of ten years.

(h) The Sentencing Table

The Commission has established a sentencing table. For technical and practical reasons it has 43 levels. Each row in the table contains levels that overlap with the levels in the preceding and succeeding rows. By overlapping the levels, the table should discourage unnecessary litigation. Both prosecutor and defendant will realize that the difference between one level and another will not necessarily make a difference in the sentence that the judge imposes. Thus, little purpose will be served in protracted litigation trying to determine, for example, whether $10,000 or $11,000 was obtained as a result of a fraud. At the same time, the rows work to increase a sentence proportionately. A change of 6 levels roughly doubles the sentence irrespective of the level at which one starts. The Commission, aware of the legal requirement that the maximum of any range cannot exceed the minimum by more than the greater of 25 percent or six months, also wishes to permit courts the greatest possible range for exercising discretion. The table overlaps offense levels meaningfully, works proportionately, and at the same time preserves the maximum degree of allowable discretion for the judge within each level.

Similarly, many of the individual guidelines refer to tables that correlate amounts of money with offense levels. These tables often have many, rather than a few levels. Again, the reason is to minimize the likelihood of unnecessary litigation. If a money table were to make only a few distinctions, each distinction would become more important and litigation as to which category an offender fell within would become more likely. Where a table has many smaller monetary distinctions, it minimizes the likelihood of litigation, for the importance of the precise amount of money involved is considerably less.

5. A Concluding Note

The Commission emphasizes that its approach in this initial set of guidelines is one of caution. It has examined the many hundreds of criminal statutes in the United States Code. It has begun with those that are the basis for a significant number of prosecutions. It has sought to place them in a rational order. It has developed additional distinctions relevant to the application of these provisions, and it has applied sentencing ranges to each resulting category. In doing so, it has relied upon estimates of existing sentencing practices as revealed by its own statistical analyses, based on summary reports of some 40,000 convictions, a sample of 10,000 augmented presentence reports, the parole guidelines and policy judgments.

The Commission recognizes that some will criticize this approach as overly cautious, as representing too little a departure from existing practice. Yet, it will cure wide disparity. The Commission is a permanent body that can amend the guidelines each year. Although the data available to it, like all data, are imperfect, experience with these guidelines will lead to additional information and provide a firm empirical basis for revision.

Finally, the guidelines will apply to approximately 90 percent of all cases in the federal courts. Because of time constraints and the nonexistence of statistical information, some offenses that occur infrequently are not considered in this initial set of guidelines. They will, however, be addressed in the near future. Their exclusion from this initial submission does not reflect any judgment about their seriousness. The Commission has also deferred promulgation of guidelines pertaining to fines, probation and other sanctions for organizational defendants, with the exception of antitrust violations. The Commission also expects to address this area in the near future.

Part B—General Application Principles

§ 1B1.1. Application Instructions

(a) Determine the guideline section in Chapter Two most applicable to the statute of conviction. See § 1B1.2 (Applicable Guidelines). The statutory index (Appendix A) provides a listing to assist in this determination. If more than one guideline is referenced for the particular statute, select the guideline most appropriate for the conduct of which the defendant was convicted.

(b) Determine the base offense level and apply any appropriate specific offense characteristics contained in the particular guideline in Chapter Two.

(c) Apply the adjustments as appropriate related to victim, role, and obstruction of justice from Parts A, B, and C of Chapter Three.

(d) If there are multiple counts of conviction, repeat steps one through three for each count. Apply Part D of Chapter Three to group the various counts and adjust the offense level accordingly.

(e) Apply the adjustment as appropriate for the defendant's acceptance of responsibility from Part E of Chapter Three. The resulting offense level is the total offense level.

(f) Determine the defendant's criminal history category as specified in Part A of Chapter Four. Determine from Part B of Chapter Four any other applicable adjustments.

(g) Determine the guideline range in Part A of Chapter Five that corresponds to the total offense level and criminal history category.

(h) For the particular guideline range, determine from Parts B through G of Chapter Five the sentencing requirements and options related to probation, imprisonment, supervision conditions, fines, and restitution.

(i) Refer to Parts H and K of Chapter Five, Specific Offender Characteristics and Departures, and to any other policy statements or commentary in the guidelines that might warrant consideration in imposing sentence.

Commentary

Application Notes:

1. The following are definitions of terms that are used frequently in the guidelines:

(a) "Abducted" means that a victim was forced to accompany an offender to a different location. For example, a bank robber's forcing a bank teller from the bank into a getaway car would constitute an abduction.

(b) "Bodily injury" means any significant injury; e.g., an injury that is painful and obvious, or is of a type for which medical attention ordinarily would be sought. As used in the guidelines, the definition of this term is somewhat different than that used in various statutes.

(c) "Brandished" with reference to a firearm or other dangerous weapon means that the weapon was pointed or waved about, or displayed in a threatening manner.

(d) "Dangerous weapon" means an instrument capable of inflicting death or serious bodily injury.

(e) "Firearm" means any weapon which is designed to or may readily be converted to expel any projectile by the action of an explosive. A weapon, commonly known as "BB" or pellet gun, that uses air or carbon dioxide pressure to expel a projectile is a dangerous weapon but not a firearm.

(f) "More than minimal planning" means more planning than is typical for commission of the offense in a simple form. "More than minimal planning" also exists if significant affirmative steps were taken to conceal the offense.

"More than minimal planning" is deemed present in any case involving repeated acts over a period of time, unless it is clear that each instance was purely opportune. Consequently, this adjustment will apply especially frequently in property offenses.

In an assault, for example, waiting to commit the offense when no witnesses were present would not alone constitute more than minimal planning. By contrast, luring the victim to a specific location, or wearing a ski mask to prevent identification, would constitute more than minimal planning.

In a commercial burglary, for example, checking the area to make sure no witnesses were present would not alone constitute more than minimal planning. By contrast, obtaining building plans to plot a particular course of entry, or disabling an alarm system, would constitute more than minimal planning.

In a theft, going to a secluded area of a store to conceal the stolen item in one's pocket would not alone constitute more than minimal planning. However, repeated instances of such thefts on several occasions would constitute more than minimal planning. Similarly, fashioning a special device to conceal the property, or obtaining information on delivery dates so that an especially valuable item could be obtained, would constitute more than minimal planning.

In an embezzlement, a single taking accomplished by a false book entry would constitute only minimal planning. On the other hand, creating purchase orders to, and invoices from, a dummy corporation for merchandise that was never delivered would constitute more than minimal planning, as would several instances of taking money, each accompanied by false entries.

(g) "Otherwise used" with reference to a firearm or other dangerous weapon means that the conduct did not amount to the discharge of a firearm but was more than brandishing, displaying, or possessing a firearm or other dangerous weapon.

(h) "Permanent or life-threatening bodily injury" means injury involving a substantial risk of death; loss or substantial impairment of the function of a bodily member, organ, or mental faculty that is likely to be permanent; or an obvious disfigurement that is likely to be permanent.

(i) "Physically restrained" means the forcible restraint of the victim such as by being tied, bound, or locked up.

(j) "Serious bodily injury" means injury involving extreme physical pain or the impairment of a function of a bodily member, organ, or mental faculty; or requiring medical intervention such as surgery, hospitalization, or physical rehabilitation. As used in the guidelines, the definition of this term is somewhat different than that used in various statutes.

2. Definitions or explanations of terms may also appear within the commentary to specific guidelines. Such commentary is not of general applicability. The term "includes" is not exhaustive; the term "e.g." is merely illustrative.

3. The list of "Statutory Provisions" in the Commentary to each offense guideline does not necessarily include every statute covered by that guideline. In addition, some statutes may be covered by more than one guideline.

§ 1B1.2. Applicable Guidelines

(a) The court shall apply the guideline in Chapter Two (Offense Conduct) most applicable to the offense of conviction. Provided, however, in the case of conviction by a plea of guilty or nolo contendere containing a stipulation that specifically establishes a more serious offense than the offense of conviction, the court shall apply the guideline in such chapter most applicable to the stipulated offense.

(b) The court shall determine any applicable specific offense characteristic, victim-related adjustment, or departure from the guidelines attributable to offense conduct, according to the principles in § 1B1.3 (Relevant Conduct).

Commentary

Application Notes:

1. This section provides the basic rules for determining the guidelines applicable to the offense conduct under Chapter Two (Offense Conduct). As a general rule, the court is to apply the guideline covering the offense conduct most applicable to the offense of conviction. Where a particular statute proscribes a variety of conduct which might constitute the subject of different guidelines, the court will decide which guideline applies based upon the nature of the offense conduct charged.

However, there is a limited exception to this general rule. Where a stipulation as part of a plea of guilty or nolo contendere specifically establishes facts that prove a more serious offense or offenses than the offense or offenses of conviction, the court is to apply the guideline most applicable to the more serious offense or offenses established. The sentence that may be imposed is limited, however, to the maximum authorized by the statute under which the defendant is convicted. See Chapter Five, Part G (Implementing the Total Sentence of Imprisonment). For example, if the defendant pleads guilty to theft, but admits the elements of robbery as part of the plea agreement, the robbery guideline is to be applied. The sentence, however, may not exceed the maximum sentence for theft. See H. Rep. 98-1017, 98th Cong., 2d Sess. 99 (1984). Similarly, if the defendant pleads guilty to one robbery but admits the elements of two additional robberies as part of a plea agreement, the guideline applicable to three robberies is to be applied.

The exception to the general rule has a practical basis. In cases where the elements of an offense more serious than the offense of conviction are established by the plea, it may unduly complicate the sentencing process if the applicable guideline does not reflect the seriousness of the defendant's actual conduct. Without this exception, the court would be forced to use an artificial guideline and then depart from it to the degree the court found necessary based upon the more serious conduct established by the plea. The probation officer would first be required to calculate the guideline for the offense of conviction. However, this guideline might even contain characteristics that are difficult to establish or not very important in the context of the actual offense conduct. As a simple example, § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft), contains monetary distinctions which are more significant and more detailed than the monetary distinctions in § 2B3.1 (Robbery). Then, the probation officer might need to calculate the robbery guideline to assist the court in determining the appropriate degree of departure in a case in which the defendant pled guilty to theft but admitted committing the robbery. This cumbersome, artificial procedure is avoided by using the exception rule in guilty or nolo contendere plea cases where it is applicable.

As with any plea agreement, the court must first determine that the agreement is acceptable, in accordance with the policies stated in Chapter Six, Part B (Plea Agreements). The limited exception provided here applies only after the court has determined that a plea, otherwise fitting the exception, is acceptable.

2. Section 1B1.2(b) directs the court, once it has determined the applicable guideline (i.e., the applicable guideline section from Chapter Two) under § 1B1.2(a) to determine any applicable specific offense characteristics (under that guideline), any applicable victim-related adjustment from Chapter Three, Part A, and any guideline departures attributable to the offense conduct from Chapter Five, Part K, using a "relevant conduct" standard, as that standard is defined in § 1B1.3. Where there is more than one base offense level within a particular guideline, the determination of the applicable base offense level is treated in the same manner as a determination of a specific offense characteristic. Accordingly, the "relevant conduct" criteria of § 1B1.3 are to be used, unless conviction under a specific statute is expressly required.

3. In many instances, it will be appropriate that the court consider the actual conduct of the offender, even when such conduct does not constitute an element of the offense. As described above, this may occur when an offender stipulates certain facts in a plea agreement. It is more typically so when the court considers the applicability of specific offense characteristics within individual guidelines, when it considers various adjustments, and when it considers whether or not to depart from the guidelines for reasons relating to offense conduct. In such instances, the court should consider all conduct, circumstances, and injury relevant to the offense (as well as all relevant offender characteristics). See § 1B1.3 (Relevant Conduct).

§ 1B1.3. Relevant Conduct

To determine the seriousness of the offense conduct, all conduct, circumstances, and injuries relevant to the offense of conviction shall be taken into account.

(a) Unless otherwise specified under the guidelines, conduct and circumstances relevant to the offense of conviction means:

Acts or omissions committed or aided and abetted by the defendant, or by a person for whose conduct the defendant is legally accountable, that (1) are part of the same course of conduct, or a common scheme or plan, as the offense of conviction, or (2) are relevant to the defendant's state of mind or motive in committing the offense of conviction, or (3) indicate the defendant's degree of dependence upon criminal activity for a livelihood.

(b) Injury relevant to the offense of conviction means harm which is caused intentionally, recklessly or by criminal negligence in the course of conduct relevant to the offense of conviction.

Commentary

Application Note:

1. In sentencing, the court should consider all relevant offense and offender characteristics. For purposes of assessing offense conduct, the relevant conduct and circumstances of the offense of conviction are as follows:

a. conduct directed toward preparation for or commission of the offense of conviction, and efforts to avoid detection and responsibility for the offense of conviction;

b. conduct indicating that the offense of conviction was to some degree part of a broader purpose, scheme, or plan;

c. conduct that is relevant to the state of mind or motive of the defendant in committing the crime;

d. conduct that is relevant to the defendant's involvement in crime as a livelihood.

The first three criteria are derived from two sources, Rule 8(a) of the Federal Rules of Criminal Procedure, governing joinder of similar or related offenses, and Rule 404(b) of the Federal Rules of Evidence, permitting admission of evidence of other crimes to establish motive, intent, plan, and common scheme. These rules provide standards that govern consideration at trial of crimes "of the same or similar character," and utilize concepts and terminology familiar to judges, prosecutors, and defenders. The governing standard should be liberally construed in favor of considering information generally appropriate to sentencing. When other crimes are inadmissible under the Rule 404(b) standard, such crimes may not be "relevant to the offense of conviction" under the criteria that determine this question for purposes of Chapter Two; such crimes would, however, be considered in determining the relevant offender characteristics to the extent authorized by Chapter Three (Adjustments), and Chapter Four (Criminal History and Criminal Livelihood) and Chapter Five, Part H (Specific Offender Characteristics). This construction is consistent with the existing rule that "[n]o limitation shall be placed on the information concerning the background, character, and conduct of a person convicted of an offense * * * for the purpose of imposing an appropriate sentence," 18 U.S.C. 3577, so

long as the information "has sufficient indicia of reliability to support its probable accuracy." United States v. Marshall, 519 F. Supp. 751 (D. Wis. 1981), aff'd, 719 F.2d 887 (7th Cir. 1983).

The last of these criteria is intended to ensure that a judge may consider at sentencing, information that, although not specifically within other criteria of relevance, indicates that the defendant engages in crime for a living. Inclusion of this information in sentencing considerations is consistent with 28 U.S.C. 994(d)(11).

§ 1B1.4. Determining the Offense Level

In determining the offense level:

(a) Determine the base offense level from Chapter Two;

(b) Make any applicable adjustments for specific offense characteristics from Chapter Two in the order listed;

(c) Make any applicable adjustments from Chapter Three;

(d) Make any applicable adjustments from Chapter Four, Part B (Career Offenders and Criminal Livelihood).

Commentary

Application Notes:

1. A particular guideline (in the base offense level or in a specific offense characteristic) may expressly direct that a particular factor be applied only if the defendant was convicted of a particular statute. E.g., in § 2K2.3, a base offense level of 12 is used "if convicted under 26 U.S.C. 5861." Unless such an express direction is included, conviction under the statute is not required. Thus, use of a statutory reference to describe a particular set of circumstances does not require a conviction under the referenced statute. 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 § 2A3.4(b)(2) ("if the abusive contact was accomplished as defined in 18 U.S.C. 2242, increase by 4 levels"). In such cases, the particular circumstances described are to be evaluated under the "relevant conduct" standard of § 1B1.3.

2. Once the appropriate base offense level is determined, all specific offense characteristics are to be applied in the order listed.

3. The offense level adjustments from more than one specific offense characteristic within an offense guideline are cumulative (added together) unless the guideline specifies that only the greater (or greatest) is to be used. Within each specific offense characteristic subsection, however, the offense level adjustments are alternative; only the one that best describes the conduct is to be used. E.g., in § 2A2.2(b)(3), pertaining to degree of bodily injury, the subsection that best describes the level of bodily injury is used; the adjustments from different degrees of bodily injury (subsections (A), (B) and (C)) are not added together).

4. The adjustments in Chapter Three that may apply include Part A (Victim-Related Adjustments), Part B (Role in the Offense), Part C (Obstruction), Part D (Multiple Counts), and Part E (Acceptance of Responsibility).

§ 1B1.5. Interpretation of References to Other Offense Guidelines

Unless otherwise expressly indicated, a reference to another guideline, or an instruction to apply another guideline, refers to the entire guideline, i.e., the base offense level plus all applicable adjustments for specific offense characteristics.

Commentary

Application Note:

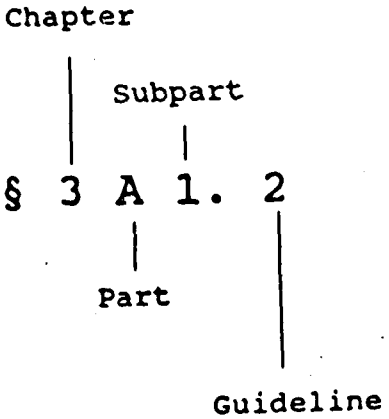
1. References to other offense guidelines are most frequently designated "Cross References," but may also appear in the portions of the guideline entitled "Base Offense Level" (e.g., §§ 2D1.2(a)(1), 2H1.2(a)(2)), or "Specific Offense Characteristics" (e.g., §§ 2A4.1(b)(5)(B), 2Q1.2(b)(5)). These references may be to a specific guideline, or may be more general (e.g., to the guideline for the "underlying offense"). Such references are to be construed to incorporate the specific offense characteristics as well as the base offense level. For example, if the guideline reads "2 plus the offense level from § 2A2.2 (Aggravated Assault)," the user would determine the offense level from § 2A2.2, including any applicable adjustments for planning, weapon use, degree of injury and motive, and then increase by 2 levels. If the victim was vulnerable, the adjustment from § 3A1.1 (Vulnerable Victim) also would apply.

§ 1B1.6. Structure of the Guidelines

The guidelines are presented in numbered chapters divided into alphabetical parts. The parts are divided into subparts and individual guidelines. Each guideline is identified by three numbers and a letter corresponding to the chapter, part, subpart and individual guideline.

The first number is the chapter, the letter represents the part of the chapter, the second number is the subpart, and the final number is the guideline. Section 2B1.1, for example, is the first guideline in the first subpart in Part B of Chapter Two. Or, § 3A1.2 is the second guideline in the first subpart in Part A of Chapter Three. Policy statements are similarly identified.

To illustrate:



§ 1B1.7. Significance of Commentary

The Commentary that accompanies the guideline sections may serve a number of purposes. First, it may interpret the guideline or explain how it is to be applied. Failure to follow such commentary could constitute an incorrect application of the guidelines, subjecting the sentence to possible reversal on appeal. See 18 U.S.C. 3742. Second, the commentary may suggest circumstances which, in the view of the Commission, may warrant departure from the guidelines. Such commentary is to be treated as the legal equivalent of a policy statement. Finally, the commentary may provide background information, including factors considered in promulgating the guideline or reasons underlying promulgation of the guideline. As with a policy statement, such commentary may provide guidance in assessing the reasonableness of any departure from the guidelines.

Commentary

Portions of this document not labeled as guidelines or commentary also express the policy of the Commission or provide guidance as to the interpretation and application of the guidelines. These are to be construed as commentary and thus have the force of policy statements.

In stating that failure to follow certain commentary "could constitute an incorrect application of the guidelines," the Commission simply means that in seeking to understand the meaning of the guidelines courts likely will look to the commentary for guidance as an indication of the intent of those who wrote them. In such instances, the courts will treat the commentary much like legislative history or other legal material that helps determine the intent of a drafter.

CHAPTER TWO—OFFENSE CONDUCT

Introductory Commentary

Chapter Two pertains to offense conduct. The chapter is organized by offenses and divided into parts and related sections that may cover one statute or many. Each offense has a corresponding base offense level and may have one or more specific offense characteristics that adjust the offense level upward or downward. Certain factors relevant to the offense that are not covered in specific guidelines in Chapter Two are set forth in Chapter Three, Parts A (Victim-Related Adjustments), B (Role in the Offense), and C (Obstruction); Chapter Four, Part B (Career Offenders and Criminal Livelihood); and Chapter Five, Part K (Departures).

Part A—Offenses Against the Person

1. Homicide

§ 2A1.1. First Degree Murder

(a) Base Offense Level: 43.

Commentary

Statutory Provision: 18 U.S.C. 1111.

Application Note:

1. The Commission has concluded that in the absence of capital punishment life imprisonment is the appropriate punishment for the "willful, deliberate, malicious, and premeditated killing" to which 18 U.S.C. 1111 applies. However, the same statute applies when death results from certain enumerated felonies—arson, escape, murder, kidnapping, treason, espionage, sabotage, rape, burglary, or robbery. Life imprisonment is not necessarily appropriate in all such situations. For example, if in robbing a bank, the defendant merely passed a note to the teller, as a result of which she had a heart attack and died, a sentence of life imprisonment clearly would not be appropriate.

If the defendant did not cause the death intentionally or knowingly, a downward departure may be warranted. The extent of the departure should be based upon the defendant's state of mind (e.g., recklessness or negligence), the degree of risk inherent in the conduct, and the nature of the underlying offense conduct. However, the Commission does not envision that departure below that specified in § 2A1.2 (Second Degree Murder) is likely to be appropriate. Also, because death obviously is an aggravating factor, it necessarily would be inappropriate to impose a sentence at a level below that which the guideline for the underlying offense requires in the absence of death.

Background: The maximum penalty authorized by statute for first-degree murder is death or life imprisonment.

§ 2A1.2. Second Degree Murder

(a) Base Offense Level: 33.

Commentary

Statutory Provision: 18 U.S.C. 1111.

Background: The maximum term of imprisonment authorized by statute for second degree murder is life.

§ 2A1.3. Voluntary Manslaughter

(a) Base Offense Level: 25.

Commentary

Statutory Provision: 18 U.S.C. 1112.

Background: The maximum term of imprisonment authorized by statute for voluntary manslaughter is ten years.

§ 2A1.4. Involuntary Manslaughter

(a) Base Offense Level:

(1) 10, if the conduct was criminally negligent; or

(2) 14, if the conduct was reckless.

Commentary

Statutory Provision: 18 U.S.C. 1112.

Application Notes:

1. "Reckless" refers to a situation in which the defendant was aware of the risk created by his conduct and the risk was of such a nature and degree that to disregard that risk constituted a gross deviation from the standard of care that a reasonable person would exercise in such a situation. The term thus includes all, or nearly all, convictions for involuntary manslaughter under 18 U.S.C. 1112. A homicide resulting from driving, or similarly dangerous actions, while under the influence of alcohol or drugs ordinarily should be treated as reckless.

2. "Criminally negligent" refers to conduct that involves a gross deviation from the standard of care that a reasonable person would exercise under the circumstances, but which is not reckless. Offenses with this characteristic usually will be encountered as assimilative crimes.

2. Assault

§ 2A2.1. Assault With Intent To Commit Murder; Conspiracy or Solicitation To Commit Murder; Attempted Murder

(a) Base Offense Level: 20

(b) Specific Offense Characteristics

(1) If an assault involved more than minimal planning, increase by 2 levels.

(2) (A) If a firearm was discharged, increase by 5 levels; (B) if a firearm or a dangerous weapon was otherwise used, increase by 4 levels; (C) if a firearm or other dangerous weapon was brandished or its use was threatened, increase by 3 levels.

(3) If the victim sustained bodily injury, increase the offense level according to the seriousness of the injury:

Degree of bodily injury	Increase in level
(A) Bodily Injury	Add 2.
(B) Serious Bodily Injury	Add 4.
(C) Permanent or Life-Threatening Bodily Injury.	Add 6.

Provided, however, that the cumulative adjustments from (2) and (3) shall not exceed 9 levels.

(4) If a conspiracy or assault was motivated by a payment or offer of money or other thing of value, increase by 2 levels.

Commentary

Statutory Provisions: 18 U.S.C. 113(a), 351(c), (d), 373, 1113, 1116(a), 1117, 1751 (c), (d), 1952A(a).

Application Notes:

1. Definitions of "more than minimal planning," "firearm," "dangerous weapon," "brandished," "otherwise used," "bodily injury," "serious bodily injury," and "permanent or life-threatening bodily injury" are found in the Commentary to § 1B1.1 (Application Instructions).

2. If the degree of bodily injury falls between two injury categories, use of the intervening level (i.e., interpolation) is appropriate.

Background: This section applies to the offenses of assault with intent to commit murder, conspiracy to commit murder, solicitation to commit murder, and attempted murder.

The maximum term of imprisonment authorized by statute for conspiracy to murder is life imprisonment (18 U.S.C. 1117). The maximum term of imprisonment authorized by statute for solicitation to murder is twenty years (18 U.S.C. 373). The statutes that prohibit attempted murder, or assaults with intent to commit murder, vary widely in the maximum term of imprisonment authorized. Assault with intent to commit murder (18 U.S.C. 113(a)) carries a maximum authorized term of twenty years imprisonment. An attempted assassination of certain essential government officials (18 U.S.C. 351(c)) carries a maximum authorized term of life imprisonment. An attempted murder of foreign officials (18 U.S.C. 1116(a) carries a maximum authorized term of twenty years imprisonment. An attempt to commit murder, other than an assault with intent to commit murder covered by 18 U.S.C. 113(a), carries a maximum term of three years imprisonment (18 U.S.C. 1113).

Enhancements are provided for planning, weapon use, injury, and commission of the crime for hire. All of the factors can apply in the case of an assault; only the last can apply in the case of a conspiracy that does not include an assault; and none can apply in the case of a mere solicitation.

§ 2A2.2. Aggravated Assault

(a) Base Offense Level: 15

(b) Specific Offense Characteristics

(1) If the assault involved more than minimal planning, increase by 2 levels.

(2) (A) If a firearm was discharged, increase by 5 levels; (B) if a firearm or a dangerous weapon was otherwise used, increase by 4 levels; (C) if a firearm or other dangerous weapon was brandished or its use was threatened, increase by 3 levels.

(3) If the victim sustained bodily injury, increase the offense level according to the seriousness of the injury:

Degree of bodily injury	Increase in level
(A) Bodily Injury	Add 2.
(B) Serious Bodily Injury	Add 4.
(C) Permanent or Life-Threatening Bodily Injury.	Add 6.

Provided, however, that the cumulative adjustments from (2) and (3) shall not exceed 9 levels.

(4) If the assault was motivated by a payment or offer of money or other thing of value, increase by 2 levels.

Commentary

Statutory Provisions: 18 U.S.C. 111, 112, 113(b), (c), (f), 114, 115(a), (b)(1), 351(e), 1751(e).

Application Notes:

1. "Aggravated assault" means a felonious assault that involved (a) a dangerous weapon with intent to do bodily harm (i.e., not merely to frighten), or (b) serious bodily injury, or (c) an intent to commit another felony.

2. Definitions of "more than minimal planning," "firearm," "dangerous weapon," "brandished," "otherwise used," "bodily injury," "serious bodily injury," and "permanent or life-threatening bodily injury," are found in the Commentary to § 1B1.1 (Application Instructions).

3. If the degree of bodily injury falls between two injury categories, use of the intervening level (i.e., interpolation) is appropriate.

4. Assault with intent to commit murder is covered by § 2A2.1. Assault with intent to commit rape is covered by § 2A3.1.

Background: This section applies to serious (aggravated) assaults where there is no intent to kill. Such offenses occasionally may involve planning or be committed for hire. Consequently, the structure follows § 2A2.1.

There are a number of Federal provisions that address varying degrees of assault and battery. The punishments under these statutes differ considerably, even among provisions directed to substantially similar conduct. For example, if the assault is upon certain Federal officers "while engaged in or on account of * * * official duties," the maximum term of imprisonment under 18 U.S.C. 111 is three years. If a dangerous weapon is used in the assault on a federal officer, the maximum term of imprisonment is ten years. However, if the same weapon is used to assault a person not otherwise specifically protected, the maximum term of imprisonment under 18 U.S.C. 113(c) is five years. If the assault results in serious bodily injury, the maximum term of imprisonment under 18 U.S.C. 113(f) is ten years, unless the injury constitutes maiming by scalding, corrosive, or caustic substances under 18 U.S.C. 114, in which case the maximum term of imprisonment is twenty years.

§ 2A2.3. Minor Assault

(a) Base Offense Level:

(1) 6, if the conduct involved striking, beating, or wounding; or

(2) 3, otherwise.

Commentary

Statutory Provisions: 18 U.S.C. 111, 112, 113(d), 113(e), 115(a), 115(b)(1), 351(e), 1751(e).

Application Notes:

1. "Minor assault" means a misdemeanor assault, or a felonious assault not covered by § 2A2.2.

2. "Striking, beating, or wounding" means conduct sufficient to violate 18 U.S.C. 113(d).

Background: Minor assault and battery are covered in this section. The distinction for striking, beating, or wounding reflects the statutory distinction found in 18 U.S.C. 113 (d) and (e).

3. Criminal Sexual Abuse

§ 2A3.1. Criminal Sexual Abuse; Attempt or Assault with the Intent to Commit Criminal Sexual Abuse

(a) Base Offense Level: 27

(b) Specific Offense Characteristics

(1) If the criminal sexual abuse was accomplished as defined in 18 U.S.C. 2241 (including, but not limited to, the use or display of any dangerous weapon), increase by 4 levels.

(2) (A) If the victim had not attained the age of twelve years, increase by 4 levels; otherwise, (B) if the victim was under the age of sixteen, increase by 2 levels.

(3) If the victim was in the custody, care, or supervisory control of the defendant, was a corrections employee, or a person held in the custody of a correctional facility, increase by 2 levels.

(4) (A) If the victim sustained permanent or life-threatening bodily injury, increase by 4 levels; (B) if the victim sustained serious bodily injury, increase by 2 levels.

(5) If the victim was abducted, increase by 4 levels.

Commentary

Statutory Provisions: 18 U.S.C. 2241, 2242.

Application Notes:

1. "Permanent or life-threatening bodily injury," "serious bodily injury," and "abducted" are defined in the Commentary to § 1B1.1 (Application Instructions).

2. "Accomplished as defined in 18 U.S.C. 2241" means accomplished by force, threat, or other means as defined in 18 U.S.C. 2241 (a) or (b) (i.e., by using force against that person; by threatening or placing that other person in fear that any person will be subject to death, serious bodily injury, or kidnapping; by rendering the victim unconscious; or by administering by force or threat of force, or without the knowledge or permission of the victim, a drug, intoxicant, or other similar substance and thereby substantially impairing the ability of the victim to appraise or control conduct).

Background: Sexual offenses addressed in this section are crimes of violence. Because of their dangerousness, attempts are treated the same as completed acts of criminal sexual abuse. The maximum term of imprisonment authorized by statute is life imprisonment. The base offense level represents sexual abuse as set forth in 18 U.S.C. 2242. An enhancement is provided for use of force, threat of death, serious bodily injury, kidnapping, or certain other means as defined in 18 U.S.C. 2241. This includes any use or threatened use of a dangerous weapon.

An enhancement is provided when the victim is less than sixteen years of age. An additional enhancement is provided where the victim is less than twelve years of age. Any criminal sexual abuse with a child less than twelve years of age, regardless of "consent," is governed by § 2A3.1.

An enhancement for a custodial relationship between defendant and victim is also provided. Whether the custodial relationship is temporary or permanent, the defendant in such a case is a person the victim trusts or to whom the victim is entrusted. This represents the potential for greater and prolonged psychological damage. Also, an enhancement is provided where the victim was an inmate of, or a person employed in, a correctional facility. Finally, enhancements are provided for serious physical injury and abduction.

§ 2A3.2. Criminal Sexual Abuse of a Minor (Statutory Rape) or Attempt To Commit Such Acts

(a) Base Offense Level: 15.

(b) Specific Offense Characteristic.

(1) If the victim was in the custody, care, or supervisory control of the defendant, increase by 1 level.

Commentary

Statutory Provision: 18 U.S.C. 2243.

Application Note:

1. If the defendant committed the criminal sexual act in furtherance of a commercial scheme such as pandering, transporting persons for the purpose of prostitution, or the production of pornography, an upward departure may be warranted. See Chapter Five, Part K (Departures).

Background: This section applies to statutory rape, i.e., sexual acts that would be lawful but for the victim's incapacity to give lawful consent. It is assumed that at least a four-year age difference exists between the victim and the defendant, as specified in 18 U.S.C. 2243. An enhancement is provided for a defendant who victimizes a minor under his supervision or care.

§ 2A3.3. Criminal Sexual Abuse of a Ward (Statutory Rape) or Attempt To Commit Such Acts

(a) Base Offense Level: 9.

Commentary

Statutory Provision: 18 U.S.C. 2243.

Application Note:

1. A ward is a person in official detention under the custodial, supervisory, or disciplinary authority of the defendant.

Background: The offense covered by this section is a misdemeanor. The maximum term of imprisonment authorized by statute is one year.

§ 2A3.4. Abusive Sexual Contact or Attempt To Commit Abusive Sexual Contact

(a) Base Offense Level: 6.

(b) Specific Offense Characteristics.

(1) If the abusive sexual contact was accomplished as defined in 18 U.S.C. 2241 (including, but not limited to, the use or display of any dangerous weapon), increase by 9 levels.

(2) If the abusive sexual contact was accomplished as defined in 18 U.S.C. 2242, increase by 4 levels.

Commentary

Statutory Provisions: 18 U.S.C. 2244, 2245.

Application Notes:

1. "Accomplished as defined in 18 U.S.C. 2241" means accomplished by force, threat, or other means as defined in 18 U.S.C. 2241 (a) or (b) (i.e., by using force against that person; by threatening or placing that other person in fear that any person will be subject to death, serious bodily injury, or kidnapping; by rendering the victim unconscious; or by administering by force or threat of force, or without the knowledge or permission of the victim, a drug, intoxicant, or other similar substance and thereby substantially impairing the ability of the victim to appraise or control conduct).

2. "Accomplished as defined in 18 U.S.C. 2242" means accomplished by threatening or placing the victim in fear (other than by threatening or placing the victim in fear that any person will be subjected to death, serious bodily injury, or kidnapping); or when the victim is incapable of appraising the nature of the conduct or physically incapable of declining participation in, or communicating unwillingness to engage in, that sexual act.

Background: This section covers abusive sexual contact not amounting to criminal sexual abuse (criminal sexual abuse is covered under § 2A3.1–3.3). Enhancements are provided for the use of force or threats. The maximum term of imprisonment authorized by statute for offenses covered in this section is five years (if accomplished as defined in 18 U.S.C. 2241), three years (if accomplished as defined in 18 U.S.C. 2242), and six months otherwise. The base offense level applies to conduct that is consensual.

4. Kidnapping, Abduction, or Unlawful Restraint

§ 2A4.1. Kidnapping, Abduction, Unlawful Restraint

(a) Base Offense Level: 24.

(b) Specific Offense Characteristics.

(1) If a ransom demand or a demand upon government was made, increase by 6 levels.

(2) (A) If the victim sustained permanent or life-threatening bodily injury, increase by 4 levels; (B) if the victim sustained serious bodily injury, increase by 2 levels.

(3) If a dangerous weapon was used, increase by 2 levels.

(4) (A) If the victim was not released before thirty days had elapsed, increase by 2 levels.

(B) If the victim was not released before seven days had elapsed, increase by 1 level.

(C) If the victim was released before twenty-four hours had elapsed, decrease by 1 level.

(5) If the victim was kidnapped, abducted, or unlawfully restrained to facilitate the commission of another offense: (A) Increase by 4 levels; or (B) if the result of applying this guideline is less than that resulting from application of the guideline for such other offense, apply the guideline for such other offense.

Commentary

Statutory Provisions: 18 U.S.C. 115(b)(2), 351 (b), (d), 1201, 1203, 1751(b).

Application Notes:

1. Definitions of "serious bodily injury" and "permanent or life-threatening bodily injury" are found in the Commentary to § 1B1.1 (Application Instructions).

2. "A dangerous weapon was used" means that a firearm was discharged, or a "firearm" or "dangerous weapon" was "otherwise used" (as defined in the Commentary to § 1B1.1 (Application Instructions)).

3. For the purpose of subsection (b)(4)(C), "released" includes allowing the victim to escape or turning him over to law enforcement authorities without resistance.

Background: Federal kidnapping cases generally encompass three categories of conduct: Limited duration kidnapping where the victim is released unharmed; kidnapping that occurs as part of or to facilitate the commission of another offense (often, sexual assault); and kidnapping for ransom or political demand.

The guideline contains an adjustment for the length of time that the victim was detained. The adjustment recognizes the increased suffering involved in lengthy kidnappings and provides an incentive to release the victim.

An enhancement is provided when the offense is committed for ransom or to facilitate the commission of another offense. Should the application of this guideline result in a penalty less than the result achieved by applying the guideline for the underlying offense, apply the guideline for the underlying offense (e.g., § 2A3.1, Criminal Sexual Abuse).

§ 2A4.2. Demanding or Receiving Ransom Money

(a) Base Offense Level: 23.

Commentary

Statutory Provisions: 18 U.S.C. 876, 877, 1202.

Background: This section specifically includes conduct prohibited by 18 U.S.C. 1202, requiring that ransom money be received, possessed, or disposed of with knowledge of its criminal origins. The actual demand for ransom under these circumstances is reflected in § 2A4.1. This section additionally includes extortionate demands through the use of the United States Postal Service, behavior proscribed by 18 U.S.C. 876–877.

5. Air Piracy

§ 2A5.1. Aircraft Piracy or Attempted Aircraft Piracy

(a) Base Offense Level: 38.

(b) Specific Offense Characteristic.

(1) If death resulted, increase by 5 levels.

Commentary

Statutory Provision: 49 U.S.C. 1472 (i), (n).

Background: This section covers aircraft piracy both within the special aircraft jurisdiction of the United States, 49 U.S.C. 1472(i), and aircraft piracy outside that jurisdiction when the defendant is later found in the United States, 49 U.S.C. 1472(n). Seizure of control of an aircraft may be by force or violence, or threat of force or violence, or by any other form of intimidation. The presence of a weapon is assumed in the base offense level.

§ 2A5.2. Interference With Flight Crew Member or Flight Attendant

(a) Base Offense Level (Apply the greatest): (1) 30, if the defendant intentionally endangered the safety of the aircraft and passengers; or

(2) 18, if the defendant recklessly endangered the safety of the aircraft and passengers; or

(3) if an assault occurred, the offense level from the most analogous assault guideline, §§ 2A2.1–2A2.4; or

(4) 9.

Commentary

Statutory Provision: 49 U.S.C. 1472 (c), (j).

Application Note:

1. If an assault occurred, apply the most analogous guideline from Part A, Subpart 2 (Assault) if the offense level under that guideline is greater.

Background: An adjustment is provided where the defendant intentionally or recklessly endangered the safety of the aircraft and passengers. The offense of carrying a weapon aboard an aircraft, which is proscribed by 49 U.S.C. 1472(1), is covered in § 2K1.5 (Possessing Dangerous Weapons or Materials While Boarding an Aircraft).

6. Threatening Communications

§ 2A6.1. Threatening Communications

(a) Base Offense Level: 12.

(b) Specific Offense Characteristics.

(1) If the defendant engaged in any conduct evidencing an intent to carry out such threat, increase by 6 levels.

(2) If specific offense characteristic § 2A6.1(b)(1) does not apply, and the defendant's conduct involved a single instance evidencing little or no deliberation, decrease by 4 levels.

Commentary

Statutory Provisions: 18 U.S.C. 871, 876, 877, 878(a), 879.

Application Note:

1. The Commission recognizes that this offense includes a particularly wide range of conduct and that it is not possible to include all of the potentially relevant circumstances in the offense level. Factors not incorporated in the guideline may be considered by the court in determining whether a departure from the guidelines is warranted. See Chapter Five, Part K (Departures).

Background: These statutes cover a wide range of conduct, the seriousness of which depends upon the defendant's intent and the likelihood that the defendant would carry out the threat. The specific offense characteristics are intended to distinguish such cases.

Part B—Offenses Involving Property

1. Theft, Embezzlement, Receipt of Stolen Property, and Property Destruction

Introductory Commentary

These sections address the most basic forms of property offenses: Theft, embezzlement, transactions in stolen goods, and simple property damage or destruction. (Arson is dealt with separately in Part K, Offenses Involving Public Order and Safety.) These guidelines apply to offenses prosecuted under a wide variety of federal statutes, as well as offenses that arise under the Assimilative Crimes Act.

§ 2B1.1. Larceny, Embezzlement, and Other Forms of Theft

(a) Base Offense Level: 4.

(b) Specific Offense Characteristics.

(1) If the value of the property taken exceeded $100, increase the offense level as follows:

Loss	Increase in level
(A) $100 or less	No increase.
(B) $101 to $1,000	Add 1.
(C) $1,001 to $2,000	Add 2.
(D) $2,001 to $5,000	Add 3.
(E) $5,001 to $10,000	Add 4.
(F) $10,001 to $20,000	Add 5.
(G) $20,001 to $50,000	Add 6.
(H) $50,001 to $100,000	Add 7.
(I) $100,001 to $200,000	Add 8.
(J) $200,001 to $500,000	Add 9.
(K) $500,001 to $1,000,000	Add 10.
(L) $1,000,001 to $2,000,000	Add 11.
(M) $2,000,001 to $5,000,000	Add 12.
(N) Over $5,000,000	Add 13.

(2) If a firearm, destructive device, or controlled substance was taken, increase by 1 level; but if the resulting offense level is less than 7, increase to level 7.

(3) If the theft was from the person of another, increase by 2 levels.

(4) If the offense involved more than minimal planning, increase by 2 levels.

(5) If undelivered United States mail was taken, and the offense level as determined above is less than level 6, increase to level 6.

(6) If the offense involved organized criminal activity, and the offense level as determined above is less than level 14, increase to level 14.

Commentary

Statutory Provisions: 18 U.S.C. 641, 656, 657, 659, 1702, 1708, 2113(b), 2312, 2317.

Application Notes:

1. "More than minimal planning" and "firearm" are defined in the Commentary to § 1B1.1 (Application Instructions). "Destructive device" is defined in the Commentary to § 2K1.4 (Arson; Property Damage by Use of Explosives).

2. Loss is to be based upon replacement cost to the victim or market value of the property, whichever is greater.

3. The loss need not be determined with precision, and may be inferred from any reasonably reliable information available, including the scope of the operation.

4. The loss includes any unauthorized charges made with stolen credit cards, but in no event less than $100 per card. See Commentary to §§ 2X1.1 (Attempts) and 2F1.1 (Fraud).

5. Controlled substances should be valued at their estimated street value.

6. "Undelivered United States mail" means mail that has not actually been received by the addressee or his agent (e.g., it includes mail that is in the addressee's mail box).

7. "From the person of another" refers to property, taken without the use of force, that was being held by another person or was within arms' reach. Examples include pick-pocketing or non-forcible purse-snatching, such as the theft of a purse from a shopping cart.

8. "Organized criminal activity" refers to operations such as car theft rings or "chop shops," where the scope of the activity is clearly significant.

Background: The value of property taken plays an important role in determining sentences for theft offenses, because it is an indicator of both the harm to the victim and the gain to the defendant. Because of the structure of the Sentencing Table (§ 5A1.1), subsection (b)(1) results in an overlapping range of enhancements based on the loss from the theft.

The guidelines provide an enhancement for more than minimal planning, which includes most offense behavior involving affirmative acts on multiple occasions. Planning and repeated acts are indicative of an intention and potential to do considerable harm. Also, planning is often related to increased difficulties of detection and proof.

Consistent with statutory distinctions, an increased minimum offense level is provided for the theft of undelivered mail. Theft of undelivered mail interferes with a governmental function, and the scope of the theft may be difficult to ascertain.

Studies show that stolen firearms are used disproportionately in the commission of crimes. The guidelines provide an enhancement for theft of a firearm to ensure that some amount of imprisonment is required. An enhancement is also provided when controlled substances are taken. Such thefts may involve a greater risk of violence, as well as a likelihood that the substance will be abused.

Theft from the person of another, such as pickpocketing or non-forcible purse-snatching, receives an enhanced sentence because of the increased risk of physical injury. This guideline does not include an enhancement for thefts from the person by means of force or fear; such crimes are robberies.

A minimum offense level of 14 is provided for organized criminal activity, i.e., operations such as car theft rings or "chop shops," where the scope of the activity is clearly significant but difficult to estimate. The guideline is structured so that if reliable information enables the court to estimate a volume of property loss that would result in a higher offense level, the higher offense level would govern.

§ 2B1.2. Receiving Stolen Property

(a) Base Offense Level: 4

(b) Specific Offense Characteristics

(1) If the value of the property taken exceeded $100, increase by the corresponding number of levels from the table in § 2B1.1.

(2)(A) If the offense was committed by a person in the business of selling stolen property, increase by 4 levels; or

(B) If the offense involved more than minimal planning, increase by 2 levels.

(3) If the property included a firearm, destructive device, or controlled substance, increase by 1 level; but if the resulting offense level is less than 7, increase to 7.

(4) If the offense involved organized criminal activity, and the offense level as determined above is less than level 14, increase to level 14.

Commentary

Statutory Provisions: 18 U.S.C. 553(a)(1), 659, 662, 1708, 2312–2317.

Application Notes:

1. If the defendant is convicted of transporting stolen property, either § 2B1.1 or this guideline would apply, depending upon whether the defendant stole the property.

2. "More than minimal planning" and "firearm" are defined in the Commentary to § 1B1.1 (Application Instructions). "Destructive device" is defined in the Commentary to § 2K1.4 (Arson; Property Damage by Use of Explosives).

3. For consistency with § 2B1.1, it is the Commission's intent that specific offense characteristic (b)(3) be applied before (b)(2).

4. Valuation of property is discussed in the Commentary to § 2B1.1.

Background: The treatment accorded receiving stolen property parallels that given theft. Persons who receive stolen property for resale receive a sentence enhancement because the amount of property is likely to underrepresent the scope of their criminality

and the extent to which they encourage or facilitate other crimes.

§ 2B1.3. Property Damage or Destruction (Other than by Arson or Explosives)

(a) Base Offense Level: 4.

(b) Specific Offense Characteristics.

(1) If the amount of the property damage or destruction, or the cost of restoration, exceeded $100, increase by the corresponding number of levels from the table in § 2B1.1.

(2) If the offense involved more than minimal planning, increase by 2 levels.

(3) If undelivered United States mail was destroyed, and the offense level as determined above is less than level 6, increase to level 6.

Commentary

Statutory Provisions: 18 U.S.C. 1361, 1363, 1702, 1703 (if vandalism or malicious mischief, including destruction of mail is involved). Arson is treated separately in Part K, Offenses Involving Public Order and Safety.

Application Notes:

1. "More than minimal planning" is defined in the Commentary to § 1B1.1 (Application Instructions).

2. Valuation of property is discussed in the Commentary to § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft).

3. "Undelivered United States mail" means mail that has not been received by the addressee or his agent (e.g., it includes mail that is in the addressee's mailbox).

4. In some cases, the monetary value of the property damaged or destroyed may not adequately reflect the extent of the harm caused. For example, the destruction of a $500 telephone line may cause an interruption in service to thousands of people for several hours. In such instances, an upward departure would be warranted.

2. Burglary and Trespass

§ 2B2.1. Burglary of a Residence

(a) Base Offense Level: 17.

(b) Specific Offense Characteristics.

(1) If the offense involved more than minimal planning, increase by 2 levels.

(2) If the value of the property taken or destroyed exceeded $2,500, increase the offense level as follows:

Loss	Increase in level
(A) $2,500 or less	No increase.
(B) $2,501 to $10,000	Add 1.
(C) $10,001 to $50,000	Add 2.
(D) $50,001 to $250,000	Add 3.
(E) $250,001 to $1,000,000	Add 4.
(F) $1,000,001 to $5,000,000	Add 5.
(G) More than $5,000,000	Add 6.

(3) If obtaining a firearm, destructive device, or controlled substance was an object of the offense, increase by 1 level.

(4) If a firearm or other dangerous weapon was possessed, increase by 2 levels.

Commentary

Application Notes:

1. "More than minimal planning," "firearm," and "dangerous weapon" are defined in the Commentary to § 1B1.1 (Application Instructions). "Destructive device" is defined in the Commentary to § 2K1.4 (Arson; Property Damage by Use of Explosives).

2. Obtaining a weapon or controlled substance is to be presumed to be an object of the offense if such an item was in fact taken.

3. Valuation of property is discussed in the Commentary to § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft).

4. Subsection (b)(4) does not apply with respect to a firearm stolen during the course of the offense.

Background: The base offense level for residential burglary is higher than for other forms of burglary because of the increased risk of physical and psychological injury. Weapon possession, but not use, is a specific offense characteristic because use of a weapon (including to threaten) ordinarily would make the offense robbery. Weapon use would be a ground for upward departure.

§ 2B2.2. Burglary of Other Structures

(a) Base Offense Level: 12.

(b) Specific Offense Characteristics.

(1) If the offense involved more than minimal planning, increase by 2 levels.

(2) If the value of the property taken or destroyed exceeded $2,500, increase by the corresponding number of levels from the table in § 2B2.1.

(3) If obtaining a firearm, destructive device, or controlled substance was an object of the offense, increase by 1 level.

(4) If a firearm or other dangerous weapon was possessed, increase by 2 levels.

Commentary

Statutory Provisions: 18 U.S.C. 2113(a), 2115, 2117, 2118(b).

Application Notes:

1. "More than minimal planning" and "firearm" are defined in the Commentary to § 1B1.1 (Application Instructions). "Destructive device" is defined in the Commentary to § 2K1.4 (Arson; Property Damage by Use of Explosives).

2. Obtaining a weapon or controlled substance is to be presumed to be an object of the offense if such an item was in fact taken.

3. Valuation of property is discussed in the Commentary to § 2B1.1 (Larceny, Embezzlement and Other Forms of Theft).

4. Subsection (b)(4) does not apply with respect to a firearm stolen during the course of the offense.

Background: The offense level for burglary is significantly higher than that for theft for low losses, but is approximately the same for very high losses. Weapon possession, but not use, is a specific offense characteristic because use of a weapon (including to threaten) ordinarily would make the offense robbery. Weapon use would be a ground for upward departure.

§ 2B2.3. Trespass

(a) Base Offense Level: 4.

(b) Specific Offense Characteristic.

(1) If the trespass occurred at a secured government facility, a nuclear energy facility, or a residence, increase by 2 levels.

(2) If a firearm or other dangerous weapon was possessed, increase by 2 levels.

Commentary

Statutory Provisions: 18 U.S.C. 1382, 1854.

Application Note:

"Firearm" and "dangerous weapon" are defined in the Commentary to § 1B1.1 (Application Instructions).

Background: Most trespasses punishable under Federal law involve Federal lands or property. The trespass section provides an enhancement for offenses involving trespass on secured government installations, such as nuclear facilities, to protect a significant Federal interest. Additionally, an enhancement is provided for trespass at a residence.

3. Robbery, Extortion, and Blackmail

§ 2B3.1. Robbery

(a) Base Offense Level: 18.

(b) Specific Offense Characteristics.

(1) If the value of the property taken or destroyed exceeded $2,500, increase the offense level as follows:

Loss	Increase in level
(A) $2,500 or less	No increase.
(B) $2,501 to $10,000	Add 1.
(C) $10,001 to $50,000	Add 2.
(D) $50,001 to $250,000	Add 3.
(E) $250,001 to $1,000,000	Add 4.
(F) $1,000,001 to $5,000,000	Add 5.
(G) More than $5,000,000	Add 6.

Treat the loss for a financial institution or post office as at least $5,000.

(2) (A) If a firearm was discharged increase by 5 levels; (B) if a firearm or a dangerous weapon was otherwise used, increase by 4 levels; (C) if a firearm or other dangerous weapon was brandished, displayed or possessed, increase by 3 levels.

(3) If any victim sustained bodily injury, increase the offense level according to the seriousness of the injury:

Degree of bodily injury	Increase in level
(A) Bodily Injury	Add 2.
(B) Serious Bodily Injury	Add 4.

Degree of bodily injury	Increase in level
(C) Permanent or Life-Threatening Bodily Injury.	Add 6.

Provided, however, that the cumulative adjustments from (2) and (3) shall not exceed 9 levels.

(4) (A) If any person was abducted to facilitate commission of the offense or to facilitate escape, increase by 4 levels; or (B) if any person was physically restrained to facilitate commission of the offense or to facilitate escape, increase by 2 levels.

(5) If obtaining a firearm, destructive device, or controlled substance was the object of the offense, increase by 1 level.

Commentary

Statutory Provisions: 18 U.S.C. 1951, 2113, 2114, 2118(a).

Application Notes:

1. "Firearm," "dangerous weapon," "otherwise used," "brandished," "abducted," and "physically restrained" are defined in the Commentary to § 1B1.1 (Application Instructions).

2. Pursuant to the last sentence of § 2B3.1(b)(1), robbery of a bank or post office results in a minimum one-level enhancement. There is no special enhancement for banks and post offices if the loss exceeds $10,000, however.

3. Valuation of property taken is discussed in the Commentary to § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft).

4. If the degree of bodily injury falls between two injury categories, use of the intervening level (i.e., interpolation) is appropriate.

5. The combined adjustments for weapon involvement and injury are limited to a maximum enhancement of 9 levels.

6. Obtaining a weapon or controlled substance is to be presumed to be an object of the offense if such an item was in fact taken.

7. If the defendant actually intended to murder the victim, an upward departure may be warranted; see § 2A2.1 (Assault with Intent to Commit Murder).

8. If the defendant was convicted under 18 U.S.C. 2113(e) and in committing the offense or attempting to flee or escape, a participant killed any person, apply § 2A1.1 (First Degree Murder). Otherwise, if death results, see Chapter Five, Part K, Departures.

Background: Possession or use of a weapon, physical injury, and unlawful restraint sometimes occur during a robbery. The guideline provides for a range of enhancements where these factors are present. Banks and post offices carry a minimum 1 level enhancement for property loss because such institutions generally have more cash readily available, and whether the defendant obtains more or less than $2,500 is largely fortuitous.

Obtaining drugs or other controlled substances is often the motive for robberies of a Veterans Administration Hospital, a pharmacy on a military base, or a similar facility. A specific offense characteristic is included for robberies where drugs or weapons were the object of the offense to take account of the dangers involved when such items are taken.

Although in current practice the amount of money taken in robbery cases affects sentence length, its importance is small compared to that of the other harm involved. Moreover, because of the relatively high base offense level for robbery, an increase of 1 or 2 levels brings about a considerable increase in sentence length in absolute terms. Accordingly, the gradations for property loss increase more slowly than for simple property offenses.

The guideline provides an enhancement for robberies where a victim was forced to accompany the defendant to another location, or was physically restrained by being tied, bound, or locked up.

§ 2B3.2. Extortion by Force or Threat of Injury or Serious Damage

(a) Base Offense Level: 18.

(b) Specific Offense Characteristics.

(1) If the greater of the amount obtained or demanded exceeded $2,500, increase by the corresponding number of levels from the table in § 2B3.1.

(2) (A) If a firearm was discharged increase by 5 levels; (B) if a firearm or a dangerous weapon was otherwise used, increase by 4 levels; (C) if a firearm or other dangerous weapon was brandished, displayed or possessed, increase by 3 levels.

(3) If any victim sustained bodily injury, increase the offense level according to the seriousness of the injury:

Degree of bodily injury	Increase in level
(A) Bodily Injury	Add 2.
(B) Serious Bodily Injury	Add 4.
(C) Permanent or Life-Threatening Bodily Injury.	Add 6.

Provided, however, that the cumulative adjustments from (2) and (3) shall not exceed 9 levels.

(4) (A) If any person was abducted to facilitate commission of the offense or to facilitate escape, increase by 4 levels; or (B) if any person was physically restrained to facilitate commission of the offense or to facilitate escape, increase by 2 levels.

Commentary

Statutory Provisions: 18 U.S.C. 875(b), 876, 877, 1951.

Application Notes:

1. "Firearm," "dangerous weapon," "otherwise used," "brandished," "abducted," and "physically restrained" are defined in the Commentary to § 1B1.1 (Application Instructions).

2. This guideline applies if there was any threat, express or implied, that reasonably could be interpreted as one to injure a person or physically damage property, or any comparably serious threat, such as to drive an enterprise out of business. Even if the threat does not in itself imply violence, the possibility of violence or serious adverse consequences may be inferred from the circumstances of the threat or the reputation of the person making it. An ambiguous threat, such as "pay up or else," or a threat to cause labor problems, ordinarily should be treated under this section.

3. Guidelines for bribery involving public officials are found in Part C, Offenses Involving Public Officials. "Extortion under color of official right," which usually is solicitation of a bribe by a public official, is covered under § 2C1.1 unless there is use of force or a threat that qualifies for treatment under this section. Certain other extortion offenses are covered under the provisions of Part E, Offenses Involving Criminal Enterprises.

4. If the degree of bodily injury falls between two injury categories, use of the intervening level (i.e., interpolation) is appropriate.

5. The combined adjustments for weapon involvement and injury are limited to a maximum enhancement of 9 levels.

6. Valuation of items taken is discussed in the Commentary to § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft).

Background: The Hobbs Act, 18 U.S.C. 1951, prohibits extortion, attempted extortion, and conspiracy to extort. It provides for a maximum term of imprisonment of twenty years. 18 U.S.C. 875–877 prohibits communication of extortionate demands through various means. The maximum penalty under these statutes varies from two to twenty years. Violations of 18 U.S.C. 875 involve threats or demands transmitted by interstate commerce. Violations of 18 U.S.C. 876 involve the use of the United States mails to communicate threats, while violations of section 877 involve mailing threatening communications from foreign countries.

§ 2B3.3. Blackmail and Similar Forms of Extortion

(a) Base Offense Level: 9.

(b) Specific Offense Characteristics.

(1) If the greater of the amount obtained or demanded exceeded $2,000, increase by the corresponding number of levels from the table in § 2F1.1.

Commentary

Statutory Provisions: 18 U.S.C. 873, 875–877, 1951.

Application Note:

1. This section applies only to blackmail and similar forms of extortion where there clearly is no threat of violence to person or property. "Blackmail" (18 U.S.C. 873) is defined as a threat to disclose a violation of United States law unless money or some other item of value is given.

Background: Under 18 U.S.C. 873, the maximum term of imprisonment authorized for blackmail is one year. Extortionate threats to injure a reputation, or other threats that are less serious than those covered by § 2B3.2, may also be prosecuted under 18

U.S.C. 875–877, which carry higher maximum sentences.

4. Commercial Bribery and Kickbacks

§ 2B4.1. Bribery in Procurement of Bank Loan and Other Commercial Bribery

(a) Base Offense Level: 8.

(b) Specific Offense Characteristic.

(1) If the greater of the value of the bribe or the improper benefit to be conferred exceeded $2,000, increase the offense level by the corresponding number of levels from the table in § 2F1.1.

Commentary

Statutory Provisions: 15 U.S.C. 78dd–1, 78dd–2; 18 U.S.C. 215, 224; 26 U.S.C. 9012(e), 9042(d); 41 U.S.C. 1, 53–54; 42 U.S.C. 1395nn(b) (1), (2), 1396h(b) (1), (2); 49 U.S.C. 11907 (a), (b).

Application Notes:

1. This guideline covers commercial bribery offenses and kickbacks that do not involve officials of Federal, State, or local government. See Part C, Offenses Involving Public Officials, if governmental officials are involved.

2. The "value of the improper benefit to be conferred" refers to the value of the action to be taken or effected in return for the bribe. See Commentary to § 2C1.1 (Bribery).

Background: This guideline applies to violations of various Federal bribery statutes that do not involve governmental officials. The base offense level is to be enhanced based upon the value of the unlawful payment or the value of the action to be taken or effected in return for the unlawful payment, whichever is greater.

One of the more commonly prosecuted offenses to which this guideline applies is offering or accepting a fee in connection with procurement of a loan from a financial institution in violation of 18 U.S.C. 215. As is the case for most other offenses covered by this guideline, the maximum term of imprisonment authorized is five years.

As with non-commercial bribery, this guideline considers not only the amount of the bribe but also the value of the action received in return. Thus, for example, if a bank officer agreed to the offer of a $25,000 bribe to approve a $250,000 loan under terms for which the applicant would not otherwise qualify, the court, in increasing the offense level, would use the greater of the $25,000 bribe, and the savings in interest over the life of the loan compared with alternative loan terms. If a gambler paid a player $5,000 to shave points in a nationally televised basketball game, the value of the action to the gambler would be the amount that he and his confederates won or stood to gain. If that amount could not be estimated, the amount of the bribe would be used to determine the appropriate increase in offense level.

This guideline also applies to making prohibited payments to induce the award of subcontracts on Federal projects for which the maximum term of imprisonment authorized was recently increased from two to ten years. 41 U.S.C. 51, 53–54. Violations of 42 U.S.C. 1395nn (b)(1) and (b)(2), involve the offer or acceptance of a payment to refer an individual for services or items paid for under the Medicare program. Similar provisions in 42 U.S.C. 1396h (b)(1) and (b)(2) cover the offer or acceptance of a payment for referral to the Medicaid program.

This guideline also applies to violations of law involving bribes and kickbacks in expenses incurred for a presidential nominating convention or presidential election campaign. These offenses are prohibited under 26 U.S.C. 9012(e) and 9042(d), which apply to candidates for President and Vice President whose campaigns are eligible for Federal matching funds.

This guideline also applies to violations of the Foreign Corrupt Practices Act, 15 U.S.C. 77d–1 and 77d–2, and to violations of 18 U.S.C. 224, sports bribery, as well as certain violations of the Interstate Commerce Act.

5. Counterfeiting, Forgery, and Infringement of Copyright or Trademark

§ 2B5.1. Offenses Involving Counterfeit Obligations of the United States

(a) Base Offense Level: 9.

(b) Specific Offense Characteristics.

(1) If the face value of the counterfeit items exceeded $2,000, increase by the corresponding number of levels from the table at § 2F1.1 (Fraud and Deceit).

(2) If the defendant manufactured or produced any counterfeit obligation or security of the United States, or possessed or had custody of or control over a counterfeiting device or materials used for counterfeiting, and the offense level as determined above is less than 15, increase to 15.

Commentary

Statutory Provisions: 18 U.S.C. 471–473, 476, 477, 500, 501, 510, 1003, 2314, 2315.

Application Notes:

1. This guideline applies to counterfeiting of United States currency and coins, food stamps, postage stamps, treasury bills, bearer bonds and other items that generally could be described as bearer obligations of the United States, i.e., that are not made out to a specific payee.

2. Subsection (b)(2) does not apply to persons who merely photocopy notes, paste corners of notes on notes of a different denomination, or otherwise produce items that are so obviously counterfeit that they are unlikely to be accepted even if subjected to only minimal scrutiny.

Background: Possession of counterfeiting devices to copy obligations (including securities) of the United States is treated as an aggravated form of counterfeiting because of the sophistication and planning involved in manufacturing counterfeit obligations and the public policy interest in protecting the integrity of government obligations. Similarly, an enhancement is provided for a defendant who produces, rather than merely passes, the counterfeit items.

§ 2B5.2. Forgery; Offenses Involving Counterfeit Instruments Other than Obligations of the United States.

Apply § 2F1.1 (Fraud and Deceit).

Commentary

Statutory Provision: 18 U.S.C. 510.

§ 2B5.3. Criminal Infringement of Copyright

(a) Base Offense Level: 6.

(b) Specific Offense Characteristic.

(1) If the retail value of the infringing items exceeded $2,000, increase by the corresponding number of levels from the table in § 2F1.1 (Fraud and Deceit).

Commentary

Statutory Provisions: 17 U.S.C. 506(a); 18 U.S.C. 2319, 2511.

Background: This guideline treats copyright violations much like fraud. Note that the enhancement is based on the value of the infringing items, which will generally exceed the loss or gain due to the offense.

The Electronic Communications Act of 1986 prohibits the interception of satellite transmission for purposes of direct or indirect commercial advantage or private financial gain. Such violations are similar to copyright offenses and are therefore covered by this guideline.

§ 2B5.4. Criminal Infringement of Trademark

(a) Base Offense Level: 6.

(b) Specific Offense Characteristic.

(1) If the retail value of the infringing items exceeded $2,000, increase by the corresponding number of levels from the table in § 2F1.1 (Fraud and Deceit).

Commentary

Statutory Provisions: 18 U.S.C. 2318, 2320.

Background: The Commission concluded that trademark infringement is roughly comparable to copyright infringement.

6. Motor Vehicle Identification Numbers

§ 2B6.1. Altering or Removing Motor Vehicle Identification Numbers, or Trafficking in Motor Vehicles or Parts with Altered or Obliterated Identification Numbers

(a) Base Offense Level: 8.

(b) Specific Offense Characteristic.

(1) If the retail value of the motor vehicles or parts involved exceeded $2,000, increase the offense level by the corresponding number of levels from the table in § 2F1.1 (Fraud and Deceit).

(2) If the offense involved organized criminal activity, and the offense level as determined above is less than level 14, increase to level 14.

Commentary

Statutory Provisions: 18 U.S.C. 511, 553(a)(2), 2320.

Application Note:

1. See Commentary to § 2B1.1 (Larceny, Embezzlement, and other Forms of Theft) regarding the adjustment in subsection (b)(2) for organized criminal activity, such as car theft rings and "chop shop" operations.

Background: The statutes covered in this guideline prohibit altering or removing motor vehicle identification numbers, importing or exporting, or trafficking in motor vehicles or parts knowing that the identification numbers have been removed, altered, tampered with, or obliterated. Violations of 18 U.S.C. 511 and 553(a)(2) carry a maximum of five years imprisonment. Violations of 18 U.S.C. 2320 carry a maximum of ten years imprisonment.

Part C—Offenses Involving Public Officials

Introductory Commentary

The Commission believes that current sentencing practices do not adequately reflect the seriousness of public corruption offenses. Therefore, these guidelines provide for sentences that are considerably higher than average current practice.

§ 2C1.1. Offering, Giving, Soliciting, or Receiving a Bribe; Extortion Under Color of Official Right

(a) Base Offense Level: 10.

(b) Specific Offense Characteristics

Apply the greater:

(1) If the value of the bribe or the action received in return for the bribe exceeded $2,000, increase by the corresponding number of levels from the table in § 2F1.1 (Fraud and Deceit).

(2) If the offense involved a bribe for the purpose of influencing 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 bribe was for the purpose of concealing or facilitating another criminal offense, or for obstructing justice in respect to another criminal offense, apply § 2X3.1 (Accessory After the Fact) in respect to such other criminal offense if the resulting offense level is greater than that determined above.

(2) 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.

Commentary

Statutory Provisions: 18 U.S.C. 202(b) (1), (2), 872, 1951.

Application Notes:

1. "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.

2. "Value of the bribe or the action received in return for the bribe" means the greater of the value of the bribe or the value of the action (i.e., benefit or favor) received, or to be received, in return for the bribe. The "value of the action received in return" means the net value of such action. For example, if a $150,000 contract on which $20,000 profit was made was awarded in return for a bribe, the value of the action received in return is $20,000.

3. Do not apply § 3B1.3 (Abuse of Position of Trust or Use of Special Skill) except where the offense level is determined under § 3C1.1(c) (1) or (2).

4. In some cases the monetary value of the bribe may not be known or may not adequately reflect the seriousness of the offense. For example, a small payment may be made in exchange for the falsification of inspection records for a shipment of defective parachutes or the destruction of evidence in a major narcotics case. In part, this issue is addressed by the adjustments in § 2C1.1(b)(2), and § 2C1.1(c) (1) and (2). However, in cases in which the seriousness of the offense is still not adequately reflected, an upward departure is warranted. See Chapter Five, Part K (Departures).

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).

6. When multiple counts are involved, each bribe is to be treated as a separate, unrelated offense not subject to § 3D1.2(d) or § 3D1.3(b). Instead, apply § 3D1.4. However, if a defendant makes several payments as part of a single bribe, that is to be treated as a single bribery offense involving the total amount of the bribe.

Background: This section applies to a person who offers or gives a bribe for a corrupt purpose, such as inducing a public official to participate in a fraud or to influence his official actions, or to a public official who solicits or accepts such a bribe. The maximum term of imprisonment authorized by statute for these offenses is fifteen years under 18 U.S.C. 201 (b) and (c), twenty years under 18 U.S.C. 1951, and three years under 18 U.S.C. 872.

The object and nature of a bribe may vary widely from case to case. In some cases, the object may be commercial advantage (e.g., preferential treatment in the award of a government contract). In others, the object may be issuance of a license to which the recipient is not entitled. In still others, the object may be the obstruction of justice. Consequently, a guideline for the offense must be designed to cover diverse situations.

The amount of the bribe is used as a factor in the guideline not because it directly measures harm to society, but because it is improbable that a large bribe would be given for a favor of little consequence. Moreover, for deterrence purposes, the punishment should be commensurate with the gain. Under § 2C1.1(b)(2), if the bribe is for the purpose of influencing an official act by certain officials, the offense level is increased by 8 levels if this increase is greater than that provided under § 2C1.1(b)(1).

Under § 2C1.1(c)(1), if the purpose of the bribe involved the facilitation of another criminal offense or the obstruction of justice in respect to another criminal offense, the guideline for § 2X3.1 (Accessory After the Fact) in respect to that criminal offense will be applied, if the result is greater than that determined above. For example, if a bribe was given for the purpose of facilitating or covering up the offense of espionage, the guideline for accessory after the fact to espionage would be applied.

Under § 2C1.1(c)(2), if the offense involved forcible extortion, the guideline from § 2B3.2 (Extortion by Force or Threat of Injury or Serious Damage) will apply if the result is greater than that determined above.

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.

Section 2C1.1 also applies to extortion by officers or employees of the United States in violation of 18 U.S.C. 872, and Hobbs Act extortions, conspiracies, and attempts under color of official right, in violation of 18 U.S.C. 1951. The Hobbs Act, 18 U.S.C. 1951(b)(2), applies in part to any person who acts "under color of official right." This statute applies to extortionate conduct by, among others, officials and employees of state and local governments. The panoply of conduct that may be prosecuted under the Hobbs Act varies from a city building inspector who demands a small amount of money from the owner of an apartment building to ignore code violations to a state court judge who extracts substantial interest-free loans from attorneys who have cases pending in his court.

Offenses involving attempted bribery are frequently not completed because the victim reports the offense to authorities or is acting in an undercover capacity. Failure to complete the offense does not lessen the defendant's culpability in attempting to use public position for personal gain. Therefore, solicitations and attempts are treated as equivalent to the underlying offense.

§ 2C1.2. Offering, Giving, Soliciting, or Receiving a Gratuity

(a) Base Offense Level: 7.

(b) Specific Offense Characteristics.

Apply the greater:

(1) If the value of the gratuity exceeded $2,000, increase by the corresponding number of levels from the table in § 2F1.1 (Fraud and Deceit).

(2) If the gratuity was given, or to be given, to an elected official or any official holding a high level decision-making or sensitive position, increase by 8 levels.

Commentary

Statutory Provision: 18 U.S.C. 201(c)(1).

Application Notes:

1. "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.

2. Do not apply the adjustment in § 3B1.3 (Abuse of Position or Trust or Use of Special Skill).

3. In some cases, the public official is the instigator of the offense. In others, a private citizen who is attempting to ingratiate himself or his business with the public official may be the initiator. This factor may appropriately be considered in determining the placement of the sentence within the applicable guideline range.

4. When multiple counts of receiving a gratuity are involved, each count is to be treated as a separate, unrelated offense not subject to § 3D1.2(d) or § 3D1.3(b). Instead, apply § 3D1.4.

Background: This section applies to the offering, giving, soliciting, or receiving of a gratuity to a public official in respect to an official act. A corrupt purpose is not an element of this offense. The maximum term of imprisonment authorized by statute for these offenses is two years. An adjustment is provided where the value of the gratuity exceeded $2,000, or where the public official was an elected official or held a high level decision-making or sensitive position.

§ 2C1.3. Conflict of Interest

(a) Base Offense Level: 6.

(b) Specific Offense Characteristic.

(1) If the offense involved actual or planned harm to the government, increase by 4 levels.

Commentary

Statutory Provisions: 18 U.S.C. 203, 205, 207–208.

Application Note:

1. Do not apply the adjustment in § 3B1.3 (Abuse of Position of Trust or Use of Special Skill).

Background: This section applies to financial and non-financial conflicts of interest by present and former Federal officers and employees. The maximum term of imprisonment authorized by statute is two years.

§ 2C1.4. Payment or Receipt of Unauthorized Compensation

(a) Base Offense Level: 6.

Commentary

Statutory Provisions: 18 U.S.C. 209, 1909.

Application Note:

1. Do not apply the adjustment in § 3B1.3 (Abuse of Position of Trust or Use of Special Skill).

Background: Violations of 18 U.S.C. 209 involve the unlawful supplementation of salary of various Federal employees. 18 U.S.C. 1909 prohibits bank examiners from performing any service for compensation for banks or bank officials. Both offenses are misdemeanors for which the maximum term of imprisonment authorized by statute is one year.

§ 2C1.5. Payments to Obtain Public Office

(a) Base Offense Level: 8.

Commentary

Statutory Provisions: 18 U.S.C. 210, 211.

Application Note:

1. Do not apply the adjustment in § 3B1.3 (Abuse of Position of Trust or Use of Special Skill).

Background: Under 18 U.S.C. 210, it is unlawful to pay, offer, or promise anything of value to a person, firm, or corporation in consideration of procuring appointive office. Under 18 U.S.C. 211, it is unlawful to solicit or accept anything of value in consideration of a promise of the use of influence in obtaining appointive federal office. Both offenses are misdemeanors for which the maximum term of imprisonment authorized by statute is one year.

§ 2C1.6. Loan or Gratuity to Bank Examiner, or Gratuity for Adjustment of Farm Indebtedness, or Procuring Bank Loan, or Discount of Commercial Paper

(a) Base Offense Level: 7.

(b) Specific Offense Characteristic.

(1) If the value of the gratuity exceeded $2,000, increase by the corresponding number of levels from the table in § 2F1.1 (Fraud and Deceit).

Commentary

Statutory Provisions: 18 U.S.C. 212–214, 217.

Application Note:

1. Do not apply the adjustment in § 3B1.3 (Abuse of Position of Trust or Use of Special Skill).

Background: Violations of 18 U.S.C. 212 and 213 involve the offer to, or acceptance by, a bank examiner of a loan or gratuity. Violations of 18 U.S.C. 214 involve the offer or receipt of anything of value for procuring a loan or discount of commercial paper from a Federal Reserve bank. Violations of 18 U.S.C. 217 involve the acceptance of a fee or other consideration by a federal employee for adjusting or cancelling a farm debt. These offenses are misdemeanors for which the maximum term of imprisonment authorized by statute is one year.

Part D—Offenses Involving Drugs

1. Unlawful Manufacturing, Importing, Exporting, Trafficking, or Possession; Continuing Criminal Enterprise

§ 2D1.1. Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses)

(a) Base Offense Level:

(1) 43, for an offense that results in death or serious bodily injury with a prior conviction for a similar drug offense; or

(2) 38, for an offense that results in death or serious bodily injury and involved controlled substances (except Schedule III, IV, and V controlled substances and less than: (A) fifty kilograms of marihuana, (B) ten kilograms of hashish, and (C) one kilogram of hashish oil); or

(3) For any other offense, the base offense level is the level specified in the Drug Quantity Table below.

(b) Specific Offense Characteristic.

(1) If a firearm or other dangerous weapon was possessed during commission of the offense, increase by 2 levels.

DRUG QUANTITY TABLE

Controlled substances and quantity*	Based offense level
10 KG Heroin or equivalent Schedule I or II Opiates, 50 KG Cocaine or equivalent Schedule I or II Stimulants, 500 G Cocaine Base, 10 KG PCP or 1 KG Pure PCP, 100 G LSD or equivalent Schedule I or II Hallucinogens, 4 KG Fentanyl or 1 KG Fentanyl Analogue, 10,000 KG Marihuana, 100,000 Marihuana Plants, 2000 KG Hashish, 200 KG Hashish Oil (or more of any of the above).	Level 36.
3–9.9 KG Heroin or equivalent Schedule I or II Opiates, 15–49.9 KG Cocaine or equivalent Schedule I or II Stimulants, 150–499 G Cocaine Base, 3–9.9 KG PCP or 300–999 G Pure PCP, 30–99 G LSD or equivalent Schedule I or II Hallucinogens, 1.2–3.9 KG Fentanyl or 300–999 G Fentanyl Analogue, 3000–9999 KG Marihuana, 30,000–99,999 Marihuana Plants, 600–1999 KG Hashish, 60–199 KG Hashish Oil.	Level 34.
1–2.9 KG Heroin or equivalent Schedule I or II Opiates, 5–14.9 KG Cocaine or equivalent Schedule I or II Stimulants, 50–149 G Cocaine Base, 1–2.9 KG PCP or 100–299 G Pure PCP, 10–29 G LSD or equivalent Schedule I or II Hallucinogens, .4–1.1 KG Fentanyl or 100–299 G Fentanyl Analogue, 1000–2999 KG Marihuana, 10,000–29,999 Marihuana Plants, 200–599 KG Hashish, 20–59.9 KG Hashish Oil.	Level 32.**

DRUG QUANTITY TABLE—Continued

Controlled substances and quantity*	Based offense level
700-999 G Heroin or equivalent Schedule I or II Opiates, 3.5-4.9 KG Cocaine or equivalent Schedule I or II Stimulants, 35-49 G Cocaine Base, 700-999 G PCP or 70-99 G Pure PCP, 7-9.9 G LSD or equivalent Schedule I or II Hallucinogens, 280-399 G Fentanyl or 70-99 G Fentanyl Analogue, 700-999 KG Marihuana, 7000-9999 Marihuana Plants, 140-199 KG Hashish, 14-19.9 KG Hashish Oil.	Level 30.
400-699 G Heroin or equivalent Schedule I or II Opiates, 2-3.4 KG Cocaine or equivalent Schedule I or II Stimulants, 20-34.9 G Cocaine Base, 400-699 G PCP or 40-69 G Pure PCP, 4-6.9 G LSD or equivalent Schedule I or II Hallucinogens, 160-279 G Fentanyl or 40-69 G Fentanyl Analogue, 400-699 KG Marihuana, 4000-6999 Marihuana Plants, 80-139 KG Hashish, 8.0-13.9 KG Hashish Oil.	Level 28.
100-399 G Heroin or equivalent Schedule I or II Opiates, .5-1.9 KG Cocaine or equivalent Schedule I or II Stimulants, 5-19 G Cocaine Base, 100-399 G PCP or 10-39 G Pure PCP, 1-3.9 G LSD or equivalent Schedule I or II Hallucinogens, 40-159 G Fentanyl or 10-39 G Fentanyl Analogue, 100-399 KG Marihuana, 1000-3999 Marihuana Plants, 20-79 KG Hashish, 2.0-7.9 KG Hashish Oil.	Level 26.**
80-99 G Heroin or equivalent Schedule I or II Opiates, 400-499 G Cocaine or equivalent Schedule I or II Stimulants, 4-4.9 G Cocaine Base, 80-99 G PCP or 8-9.9 G Pure PCP, 800-999 MG LSD or equivalent Schedule I or II Hallucinogens, 32-39 G Fentanyl or 8-9.9 G Fentanyl Analogue, 80-99 KG Marihuana, 800-999 Marihuana Plants, 16-19.9 KG Hashish, 1.6-1.9 KG Hashish Oil.	Level 24.
60-79 G Heroin or equivalent Schedule I or II Opiates, 300-399 G Cocaine or equivalent Schedule I or II Stimulants, 3-3.9 G Cocaine Base, 60-79 G PCP or 6-7.9 G Pure PCP, 600-799 MG LSD or equivalent Schedule I or II Hallucinogens, 24-31.9 G Fentanyl or 6-7.9 G Fentanyl Analogue, 60-79 KG Marihuana, 600-799 Marihuana Plants, 12-15.9 KG Hashish, 1.2-1.5 KG Hashish Oil.	Level 22.
40-59 G Heroin or equivalent Schedule I or II Opiates, 200-299 G Cocaine or equivalent Schedule I or II Stimulants, 2-2.9 G Cocaine Base, 40-59 G PCP or 4-5.9 G Pure PCP, 400-599 MG LSD or equivalent Schedule I or II Hallucinogens, 16-23.9 G Fentanyl or 4-5.9 G Fentanyl Analogue, 40-59 KG Marihuana, 400-599 Marihuana Plants, 8-11.9 KG Hashish, .8-1.1 KG Hashish Oil, 20 KG+ Scheduled III or other Schedule I or II controlled substances.	Level 20.
20-39 G Heroin or equivalent Schedule I or II Opiates, 100-199 G Cocaine or equivalent Schedule I or II Stimulants, 1-1.9 G Cocaine Base, 20-39 G PCP or 2-3.9 G Pure PCP, 200-399 MG LSD or equivalent Schedule I or II Hallucinogens, 8-15.9 G Fentanyl or 2-3.9 G Fentanyl Analogue, 20-39 KG Marihuana, 200-399 Marihuana Plants, 5-7.9 KG Hashish, 500-799 G Hashish Oil, 10-19 KG Schedule III or other Schedule I or II controlled substances.	Level 18.
10-19 G Heroin or equivalent Schedule I or II Opiates, 50-99 G Cocaine or equivalent Schedule I or II Stimulants, 500-999 MG Cocaine Base, 10-19.9 G PCP or 1-1.9 G Pure PCP, 100-199 MG LSD or equivalent Schedule I or II Hallucinogens, 4-7.9 G Fentanyl or 1-1.9 G Fentanyl Analogue, 10-19 KG Marihuana, 100-199 Marihuana Plants, 2-4.9 KG Hashish, 200-499 G Hashish Oil, 5-9.9 KG Schedule III or other Schedule I or II controlled substances.	Level 16.
5-9.9 G Heroin or equivalent Schedule I or II Opiates, 25-49 G Cocaine or equivalent Schedule I or II Stimulants, 250-499 MG Cocaine Base, 5-9.9 G PCP or 500-999 MG Pure PCP, 50-99 MG LSD or equivalent Schedule I or II Hallucinogens, 2-3.9 G Fentanyl or .5-.9 G Fentanyl Analogue, 5-9.9 KG Marihuana, 50-99 Marihuana Plants, 1-1.9 KG Hashish, 100-199 G Hashish Oil, 2.5-4.9 KG Schedule III or other Schedule I or II controlled substances.	Level 14.
Less than the following: 5 G Heroin or equivalent Schedule I or II apiates, 25 G Cocaine or equivalent Schedule I or II Stimulants, 250 MG Cocaine Base, 5 G PCP or 500 MG Pure PCP, 50 MG LSD or equivalent Schedule I or II Hallucinogens, 2 G Fentanyl or 500 MG Fentanyl Analogue; 2.5-4.9 KG Marihuana, 25-49 Marihuana Plants, 500-999 G Hashish, 50-99 G Hashish Oil, 1.25-2.4 KG Schedule III or other Schedule I or II controlled substances, 20 KG+ Schedule IV.	Level 12.
1-2.4 KG Marihuana, 10-24 Marihuana Plants, 200-499 G Hashish, 20-49 G Hashish Oil, .50-1.24 KG Schedule III or other Schedule I or II controlled substances, 8-19 KG Schedule IV.	Level 10.
250-999 G Marihuana, 3-9 Marihuana Plants, 50-199 G Hashish, 10-19 G Hashish Oil, 125-499 G Schedule III or other Schedule I or II controlled substances, 2-7.9 KG Schedule IV, 20 KG+ Schedule V.	Level 8.
Less than the following: 250 G Marihuana, 3 Marihuana Plants, 50 G Hashish, 10 G Hashish Oil, 125 G Schedule III or other Schedule I or II controlled substances, 2 KG Schedule IV, 20 KG Schedule V.	Level 6.

*The scale amounts for all controlled substances refer to the total weight of the controlled substance. Consistent with the provisions of the Anti-Drug Act, if any mixture of a compound contains any detectable amount of a controlled substance, the entire amount of the mixture or compound shall be considered in measuring the quantity. If a mixture or compound contains a detectable amount of more than one controlled substance, the most serious controlled substance shall determine the categorization of the entire quantity.

**Statute specifies a mandatory minimum sentence.

Commentary

Statutory Provisions: 21 U.S.C. 841, 960.

Application Notes:

1. "Similar drug offense" as used in § 2D1.1(a)(1) means a prior conviction as described in 21 U.S.C. 841(b) or 962(b).

2. The statute and guideline also apply to "counterfeit" substances, which are defined in 21 U.S.C. 802 to mean controlled substances that are falsely labeled so as to appear to have been legitimately manufactured or distributed.

3. Definitions of "firearm" and "dangerous weapon" are found in the Commentary to § 1B1.1 (Application Instructions). The enhancement for weapon possession reflects the increased danger of violence when drug traffickers possess weapons. The adjustment should be applied if the weapon was present, unless it is clearly improbable that the weapon was connected with the offense. For example, the enhancement would not be applied if the defendant, arrested at his residence, had an unloaded hunting rifle in the closet. The enhancement also applies to offenses that reference § 2D1.1, i.e., §§ 2D1.2-2D1.4. The adjustment is to be applied even if several counts are involved and the weapon was present in any of them.

4. Distribution of "a small amount of marihuana for no remuneration", 21 U.S.C. 841(b)(4), is treated as simple possession, to which § 2D2.1 applies.

5. Any reference to a particular controlled substance in these guidelines includes all salts, isomers, and all salts of isomers. Any reference to cocaine includes ecgonine and coca leaves, except extracts of coca leaves from which cocaine and ecgonine have been removed.

6. Where there are multiple transactions or multiple drug types, the quantities of drugs are to be added. Tables for making the necessary conversions are provided below.

7. Where a mandatory (statutory) minimum sentence applies, this mandatory minimum sentence may be "waived" and a lower

sentence imposed (including a sentence below the applicable guideline range), as provided in 28 U.S.C. 994(n), by reason of a defendant's "substantial assistance in the investigation or prosecution of another person who has committed an offense". See § 5K1.1 (Substantial Assistance to Authorities).

8. A defendant who used special skills in the commission of the offense may be subject to an enhancement under § 3B1.3 (Abuse of Position of Trust or Use of Special Skill). Certain professionals often occupy essential positions in drug trafficking schemes. These professionals include doctors, pilots, boat captains, financiers, bankers, attorneys, chemists, accountants, and others whose special skill, trade, profession, or position may be used to significantly facilitate the commission of a drug offense.

9. Trafficking in controlled substances, compounds, or mixtures of unusually high purity may warrant an upward departure. The purity of the controlled substance, particularly in the case of heroin, may be relevant in the sentencing process because it is probative of the defendant's role or position in the chain of distribution. Since controlled substances are often diluted and combined with other substances as they pass down the chain of distribution, the fact that a defendant is in possession of unusually pure narcotics may indicate a prominent role in the criminal enterprise and proximity to the source of the drugs. As large quantities are normally associated with high purities, this factor is particularly relevant where smaller quantities are involved.

Congress provided an exception to purity considerations in the case of phencyclidine (PCP). 21 U.S.C. 841(b)(1)(A). The legislation designates amounts of pure PCP and mixtures in establishing mandatory sentences. The first row of the table illustrates this distinction as one kilogram of PCP or 100 grams of pure PCP. Allowance for higher sentences based on purity is not appropriate for PCP.

10. The Commission has used the sentences provided in, and equivalences derived from, the statute (21 U.S.C. 841(b)(1)), as the primary basis for the guideline sentences. The statute, however, provides direction only for the more common controlled substances, i.e., heroin, cocaine, PCP, LSD and marihuana. The Drug Equivalency Tables set forth below provide conversion factors for other substances, which the Drug Quantity Table refers to as "equivalents" of these drugs. For example, one gram of a substance containing methamphetamine, a Schedule I stimulant, is to be treated as the equivalent of two grams of a substance containing cocaine in applying the Drug Quantity Table.

The Drug Equivalency Tables also provide a means for combining differing controlled substances to obtain a single offense level. 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, convert each of the drugs to either the heroin or marihuana equivalents, add the quantities, and look up the total in the Drug Quantity Table to obtain the combined offense level. Use the marihuana equivalents when the only substances involved are "Schedule I Marihuana," "Schedule III Substances," "Schedule IV Substances," "Schedule V Substances" or "Other Schedule I or II Substances." Otherwise, use the heroin equivalents.

Note: Because of the statutory equivalences, the ratios in the Drug Equivalency Tables do not necessarily reflect dosages based on pharmacological equivalents.

Examples:

a. The defendant is convicted of selling seventy grams of a substance containing PCP (Level 22) and 250 milligrams of a substance containing LSD (Level 18). 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 twenty-five grams of PCP. The total is therefore ninety-five grams of PCP, for which the Drug Quantity Table provides an offense level of 24.

b. The defendant is convicted of selling 500 grams of marihuana (Level 8) and five kilograms of diazepam (Level 8). The diazepam, a Schedule IV drug, is equivalent to 625 grams of marihuana. The total, 1.125 kilograms of marihuana, has an offense level of 10 in the Drug Quantity Table.

c. The defendant is convicted of selling eighty grams of cocaine (Level 16) and five kilograms of marihuana (Level 14). The cocaine is equivalent to sixteen grams of heroin; the marihuana, to five grams of heroin. The total equivalent is twenty-one grams of heroin, which has an offense level of 18 in the Drug Quantity Table.

Drug Equivalency Tables

Schedule I or II Opiates

1 gm of Alpha-Methylfentanyl=100 gm of heroin
1 gm of Dextromoramide=0.67 gm of heroin
1 gm of Dipipanone=0.25 gm of heroin
1 gm of 3-Methylfentanyl=125 gm of heroin
1 gm of 1-Methyl-4-phenyl-4-propionoxypiperidine/MPPP=0.7 gm of heroin
1 gm of 1-(2-Phenylethyl)-4-phenyl-4-acetyloxypiperidine/PEPAP=0.7 gm of heroin
1 gm of Alphaprodine=0.1 gm of heroin
1 gm of Fentanyl (N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] Propanamide)=31.25 gm of heroin
1 gm of Hydromorphone/Dihydromorphinone=2.5 gm of heroin
1 gm of Levorphanol=2.5 gm of heroin
1 gm of Meperidine/Pethidine=0.05 gm of heroin
1 gm of Methadone=0.5 gm of heroin
1 gm of 6-Monoacetylmorphine=1 gm of heroin
1 gm of Morphine=0.5 gm of heroin
1 gm of Oxycodone=0.5 gm of heroin
1 gm of Oxymorphone=5 gm of heroin
1 gm of Racemorphan=0.8 gm of heroin
1 gm of Codeine=0.08 gm of heroin
1 gm of Dextropropoxyphene/Propoxyphene-Bulk=0.05 gm of heroin
1 gm of Ethylmorphine=0.165 gm of heroin
1 gm of Hydrocodone/Dihydrocodeinone=0.5 gm of heroin
1 gm of Mixed Alkaloids of Opium/Papaveretum=0.25 gm of heroin
1 gm of Opium=0.05 gm of heroin

Cocaine and Other Schedule I and II Stimulants

1 gm of Cocaine=0.2 gm of heroin
1 gm of N-Ethylamphetamine=0.4 gm of cocaine/0.08 gm of heroin
1 gm of Fenethylline=0.2 gm of cocaine/0.04 gm of heroin
1 gm of Amphetamine=1.0 gm of cocaine/0.2 gm of heroin
1 gm of Dextroamphetamine=1.0 gm of cocaine/0.2 gm of heroin
1 gm of Methamphetamine=2.0 gm of cocaine/0.4 gm of heroin
1 gm of L-Methamphetamine/Levo-methamphetamine/L-Desoxyephedrine=0.2 gm of cocaine/0.04 gm of heroin
1 gm of Phenmetrazine=0.4 gm of cocaine/0.08 gm of heroin
1 gm of Phenylacetone/P_2P (amphetamine precursor)=0.375 gm of cocaine/0.075 gm of heroin
1 gm of Phenylacebone/P_2P (methamphetamine precursor)=0.833 gm of cocaine/0.167 gm of heroin
1 gm of Cocaine Base ("Crack")=100 gm of cocaine/20 gm of heroin

LSD, PCP, and Other Schedule I and II Hallucinogens

1 gm of Bufotenine=0.07 gm of heroin or PCP
1 gm of D-Lysergic Acid Diethylamide/Lysergide/LSD=100 gm of heroin or PCP
1 gm of Diethyltryptamine/DET=0.08 gm of heroin or PCP
1 gm of Dimethyltryptamine/DMT=0.1 gm of heroin or PCP
1 gm of Mescaline=0.01 gm of heroin or PCP
1 gm of Mushrooms containing Psilocin and/or Psilocybine (Dry)=0.001 gm of heroin or PCP
1 gm of Mushrooms containing Psilocin and/or Psilocybin (Wet)=0.0001 gm of heroin or PCP
1 gm of Peyote (Dry)=0.0005 gm of heroin or PCP
1 gm of Peyote (Wet)=0.00005 gm of heroin or PCP
1 gm of Phencyclidine/PCP=1 gm of heroin
1 gm of Phencyclidine (Pure PCP)=10 gm of heroin or PCP
1 gm of Liquid Phencyclidine=0.1 gm of heroin or PCP
1 gm of Psilocin=0.5 gm of heroin or PCP
1 gm of Psilocybin=0.5 gm of heroin or PCP
1 gm of Pyrrolidine Analog of Phencyclidine/PHP=1 gm of heroin or PCP
1 gm of Thiophene Analog of Phencyclidine/TCP=1 gm of heroin or PCP
1 gm of 4-Bromo-2,5-Dimethoxyamphetamine/DOB=2.5 gm of heroin or PCP
1 gm of 2,5-Dimethoxy-4-methylamphetamine/DOM=1.67 gm of heroin or PCP
1 gm of 3,4-Methylenedioxyamphetamine/MDA=0.05 gm of heroin or PCP
1 gm of 3,4-Methylenedioxymethamphetamine/MDMA=0.035 gm of heroin or PCP
1 gm of 1-Piperidinocyclohexanecarbonitrile/PCC=0.68 gm of heroin or PCP

Schedule I Marihuana

1 gm of Marihuana/Cannabis=1 mg of heroin

1 gm of Marihuana/Cannabis Plant=0.1 gm of heroin/100 gm of marihuana
1 gm of Marihuana/Cannabis, granulated, powdered, etc.=1 mg of heroin/1 gm of marihuana
1 gm of Hashish Oil=0.05 gm of heroin/50 gm of marihuana
1 gm of Cannabis Resin or Hashish=5 mg of heroin/5 gm of marihuana
1 gm of Tetrahydrocannabinol, Organic=0.167 gm of heroin/167 gm of marihuana
1 gm of Tetrahydrocannabinol, Synthetic=0.167 gm of heroin/167 gm of marihuana

Other Schedule I or II Substances

1 gm of Methaqualone=0.7 mg of heroin/700 mg of marihuana
1 gm of Amobarbital=2 mg of heroin/2 gm of marihuana
1 gm of Pentobarbital=2 mg of heroin/2 gm of marihuana
1 gm of Secobarbital=2 mg of heroin/2 gm of marihuana

Schedule III Substances

1 gm of Allobarbital=2 mg of heroin/2 gm of marihuana
1 gm of Aprobarbital=2 mg of heroin/2 gm of marihuana
1 gm of Barbiturate=2 mg of heroin/2 gm of marihuana
1 gm of Butabarbital=2 mg of heroin/2 gm of marihuana
1 gm of Butalbital=2 mg of heroin/2 gm of marihuana
1 gm of Butobarbital/butethal=2 mg of heroin/2 gm of marihuana
1 gm of Cyclobarbital=2 mg of heroin/2 gm of marihuana
1 gm of Cyclopentobarbital=2 mg of heroin/2 gm of marihuana
1 gm of Glutethimide=2 mg of heroin/2 gm of marihuana
1 gm of Heptabarbital=2 mg of heroin/2 gm of marihuana
1 gm of Hexethal=2 mg of heroin/2 gm of marihuana
1 gm of Hexobarbital=2 mg of heroin/2 gm of marihuana
1 gm of Metharbital=2 mg of heroin/2 gm of marihuana
1 gm of Talbutal=2 mg of heroin/2 gm of marihuana
1 gm of Thialbarbital=2 mg of heroin/2 gm of marihuana
1 gm of Thiamylal=2 mg of heroin/2 gm of marihuana
1 gm of Thiobarbital=2 mg of heroin/2 gm of marihuana
1 gm of Thiohexethal=2 mg of heroin/2 gm of marihuana
1 gm of Thiopental=2 mg of heroin/2 gm of marihuana
1 gm of Vinbarbital=2 mg of heroin/2 gm of marihuana
1 gm of Vinylbital=2 mg of heroin/2 gm of marihuana
1 gm of Phendimetrazine=2 mg of heroin/2 gm of marihuana
1 gm of Paregoric=2 mg of heroin/2 gm of marihuana
1 gm of Hydrocodone Cough Syrups=2 mg of heroin/2 gm of marihuana

Schedule IV Substances

1 gm of Phentermine=0.125 mg of heroin/0.125 gm of marihuana
1 gm of Pentazocine=0.125 mg of heroin/0.125 gm of marihuana
1 gm of Barbital=0.125 mg of heroin/0.125 gm of marihuana
1 gm of Diazepam=0.125 mg of heroin/0.125 gm of marihuana
1 gm of Phenobarbital=0.125 mg of heroin/0.125 gm of marihuana
1 gm of Mephobarbital=0.125 mg of heroin/0.125 gm of marihuana
1 gm of Methohexital=0.125 mg of heroin/0.125 gm of marihuana
1 gm of Methylphenobarbital/Mephobarbital=0.125 mg of heroin/0.125 gm of marihuana
1 gm of Nitrazepam=0.125 mg of heroin/0.125 gm of marihuana

Schedule V Substances

1 gm of codeine cough syrup=0.125 mg of heroin/12.5 gm of marihuana

To facilitate conversions to drug equivalencies, the following table is provided:

Measurement Conversion Table

1 oz=28.35 gm
1 lb=453.6 gm
1 lb=.45 kg
1 kg=2.2 lbs
1 gal=3.8 liters
1 qt=.95 liters
1 gm=1 ml (liquid)
1 liter=1,000 ml
1 kg=1,000 gm
1 gm=1,000 mg
1 grain=64.8 mg

The following dosage equivalents for certain common drugs are provided by the Drug Enforcement Administration to facilitate the application of § 2D1.1 of the guidelines in cases where the number of doses, but not the weight of the controlled substances, are known. The dosage equivalents provided in these tables reflect the amount of the pure drug contained in an average dose.

Dosage Equivalency Table

Hallucinogens

Anhalamine	300 mg
Anhalonide	300 mg
Anhalonine	300 mg
Bufotenine	1 mg
Diethyltryptamine	60 mg
Dimethyltryptamine	50 mg
Lophophorine	300 mg
LSD (Lysergic acid diethylamide)	.1 mg
LSD tartrate	.05 mg
MDA	100 mg
Mescaline	500 mg
PCP	5 mg
Pellotine	300 mg
Peyote	12 mg
Psilocin	10 mg
Psilocybin	10 mg
STP (DOM) Dimethoxyamphetamine	3 mg

Depressants

Barbiturates	100 mg
Brallobarbital	30 mg
Eldoral	100 mg
Eunarcon	100 mg
Hexethel	100 mg
Methaqualone	300 mg
Thiobarbital	50 mg
Thiohexethal	60 mg

Stimulants

Amphetamines	10 mg
Ethylamphetamine HCl	12 mg
Ethylamphetamine SO_4	12 mg
Methamphetamine combinations	5 mg
Methamphetamines	5 mg
Preludin	25 mg

11. If it is uncertain whether the quantity of drugs involved falls into one category in the table or an adjacent category, the court may use the intermediate level for sentencing purposes. For example, sale of 700–999 grams of heroin is at level 30, while sale of 400–699 grams is at level 28. If the exact quantity is uncertain, but near 700 grams, use of level 29 would be permissible.

Background: Offenses under 21 U.S.C. 841 and 960 receive identical punishment based upon the quantity of the controlled substance involved, the defendant's criminal history, and whether death or serious bodily injury resulted from the offense.

The base offense levels in § 2D1.1 are either provided directly by the Anti-Drug Abuse Act of 1986 or are proportional to the levels established by statute, and apply to all unlawful trafficking. Levels 32 and 26 in the Drug Quantity Table are the distinctions provided by the Anti-Drug Abuse Act; however, further refinement of drug amounts is essential to provide a logical sentencing structure for drug offenses. To determine these finer distinctions, the Commission consulted numerous experts and practitioners, including authorities at the Drug Enforcement Administration, chemists, attorneys, probation officers, and members of the Organized Crime Drug Enforcement Task Forces, who also advocate the necessity of these distinctions.

The base offense levels with two asterisks represent mandatory minimum sentences established by the Anti-Drug Abuse Act of 1986. These levels reflect sentences with a lower limit as close to the statutory requirement as possible; e.g., level 32 ranges from 121 to 151 months, where the statutory minimum is ten years or 120 months.

Frequently, a term of supervised release to follow imprisonment is required by statute for offenses covered by this guideline. Guidelines for the imposition, duration, and conditions of supervised release are set forth in Chapter Five, §§ 5D3.1–5D3.3.

§ 2D1.2. Involving Juveniles in the Trafficking of Controlled Substances

(a) Base Offense Level:

(1) Level from § 2D1.1, corresponding to triple the drug amount involved, but in no event less than level 13, for involving an individual less than fourteen years of age; or

(2) Level from § 2D1.1, corresponding to double the drug amount involved, for involving an individual at least fourteen years of age and less than eighteen years of age.

Commentary

Statutory Provision: 21 U.S.C. 845(b).
Application Notes:

1. If multiple drugs or offenses occur and all or some of them involve juveniles, double or triple the drug amounts for those offenses involving juveniles before totalling the amounts. For example, if there are three drug offenses of conviction and only one involves juveniles in trafficking, add the amount from the first and second offense, double the amount for the offense involving juveniles, and total. Use that total to determine the base offense level.

2. The reference to the level from § 2D1.1 includes the base offense level plus the specific offense characteristic dealing with a weapon. Under § 2D1.1(b)(1) there is a 2-level increase for possession of a firearm or other dangerous weapon during commission of the offense.

Background: The statute addressed by this section punishes any person eighteen years of age or older who knowingly employs or uses any person younger than eighteen to violate or to conceal any violation of any provision of Title 21. Section 845b provides a minimum mandatory period of imprisonment of one year (provided for by the minimum base offense level of 13) in addition to the punishment imposed for the applicable crime in which the defendant involved a juvenile. An increased penalty for the employment or use of persons under age fourteen is statutorily directed by 21 U.S.C. 845b(d).

§ 2D1.3. Distributing Controlled Substances to Individuals Younger Than Twenty-One Years, to Pregnant Women, or Within 1000 Feet of a School or College

(a) Base Offense Level:

(1) Level from § 2D1.1, corresponding to double the drug amount involved, but in no event less than level 13, for distributing a controlled substance to a pregnant woman;

(2)(A) Level from § 2D1.1, corresponding to double the drug amount involved, but in no event less than level 13, for distributing a controlled substance other than five grams or less of marihuana to an individual under the age of twenty-one years; or

(B) Level from § 2D1.1, corresponding to double the drug amount involved, but in no event less than level 13, for distributing or manufacturing a controlled substance other than five grams or less of marihuana within 1000 feet of a schoolyard.

Commentary

Statutory Provisions: 21 U.S.C. 845, 845a.
Application Notes:

1. The provisions addressed by this section contain a mandatory minimum period of imprisonment of one year. The base offense level is determined as in § 2D1.2. If more than one enhancement provision is applicable in a particular case, the punishment imposed under the separate enhancement provisions should be added together in calculating the appropriate guideline sentence. However, only one of the enhancements in § 2D1.3(a)(2) shall apply in a given case.

2. If multiple drugs or offenses occur, determine the offense level as described in the Commentary to § 2D1.2.

3. The reference to the level from § 2D1.1 includes the base offense level plus the specific offense characteristic dealing with a weapon. Under § 2D1.1(b)(1) there is a 2-level increase for possession of a firearm, or other dangerous weapon during the commission of the offense.

Background: The guideline sentences for distribution of controlled substances to individuals under twenty-one years of age or within 1000 feet of a school or college treat the distribution of less than five grams of marihuana less harshly than other controlled substances. This distinction is based on the statutory provisions that specifically exempt convictions for the distribution of less than five grams of marihuana from the mandatory minimum one-year imprisonment requirement.

§ 2D1.4. Attempts and Conspiracies

(a) Base Offense Level: If a defendant is convicted of participating in an incomplete conspiracy or an attempt to commit any offense involving a controlled substance, the offense level shall be the same as if the object of the conspiracy or attempt had been completed.

Commentary

Statutory Provisions: 21 U.S.C. 846, 963.
Application Notes:

1. If the defendant is convicted of a conspiracy that includes transactions in controlled substances in addition to those that are the subject of substantive counts of conviction, each conspiracy transaction shall be included with those of the substantive counts of conviction to determine scale. If the defendant is convicted of an offense involving negotiation to traffic in a controlled substance, the weight under negotiation in an uncompleted distribution shall be used to calculate the applicable amount. Where the defendant was not reasonably capable of producing the negotiated amount the court may depart and impose a sentence lower than the sentence that would otherwise result. If the defendant is convicted of conspiracy, the sentence should be imposed only on the basis of the defendant's conduct or the conduct of co-conspirators in furtherance of the conspiracy that was known to the defendant or was reasonably foreseeable.

2. Where there is no drug seizure or the amount seized does not reflect the scale of the offense, the sentencing judge shall approximate the quantity of the controlled substance. In making this determination, the judge may consider, for example, the price generally obtained for the controlled substance, financial or other records, similar transactions in controlled substances by the defendant, and the size or capability of any laboratory involved.

3. See Commentary to § 2D1.1 regarding weapon possession.

§ 2D1.5. Continuing Criminal Enterprise

(a) Base Offense Level:

(1) 32, for the first conviction of engaging in a continuing criminal enterprise; or

(2) 38, for the second or any subsequent conviction of engaging in a continuing criminal enterprise; or

(3) 43, for engaging in a continuing criminal enterprise as the principal administrator, leader, or organizer, if either the amount of drugs involved was 30 times the minimum in the first paragraph (i.e., the text corresponding to Level 36) of the Drug Quantity Table or 300 times the minimum in the third paragraph (i.e., the text corresponding to Level 32), or the principal received $10 million in gross receipts for any twelve-month period.

Commentary

Statutory Provision: 21 U.S.C. 848.
Application Note:

1. Do not apply any adjustment from Chapter Three, Part B (Role in the Offense).

Background: The base offense levels for continuing criminal enterprises are mandatory minimum sentences provided by the statute that mandate imprisonment for leaders of large scale drug enterprises. A conviction establishes that the defendant controlled and exercised decision-making authority over one of the most serious forms of ongoing criminal activity. Therefore, an adjustment for role in the offense in Chapter Three, Part B, is not applicable.

§ 2D1.6. Use of Communication Facility in Committing Drug Offense

(a) Base Offense Level: 12.

Commentary

Statutory Provision: 21 U.S.C. 843(b).

Background: This section covers the use of a communications facility in committing a drug offense. A communications facility includes any public or private instrument used in the transmission of writing, signs, signals, pictures, and sound; e.g., telephone, wire, radio.

§ 2D1.7. Unlawful Interstate Sale and Transporting of Drug Paraphernalia

(a) Base Offense Level: 12.

Commentary

Statutory Provision: 21 U.S.C. 857.

§ 2D1.8. Renting or Managing a Drug Establishment

(a) Base Offense Level: 16.

(b) Specific Offense Characteristic.

(1) If a firearm or other dangerous weapon was possessed during commission of the offense, increase by 2 levels.

Commentary

Statutory Provision: 21 U.S.C. 856.
Application Note:

1. Definitions of "firearm" and "dangerous weapon" are found in the Commentary to § 1B1.1 (Application Instructions).

Background: This section covers the offense of knowingly opening, maintaining, managing, or controlling any building, room, or enclosure for the purpose of manufacturing, distributing, storing, or using a controlled substance contrary to law (e.g., a "crack house").

§ 2D1.9. Placing or Maintaining Dangerous Devices on Federal Property to Protect the Unlawful Production of Controlled Substances

(a) Base Offense Level: 23.

Commentary

Statutory Provision: 21 U.S.C. 841(e)(1).

Background: This section covers the offense of assembling, placing, or causing to be placed, or maintaining a "booby-trap" on federal property where a controlled substance is being manufactured or distributed.

2. Unlawful Possession

§ 2D2.1. Unlawful Possession

(a) Base Offense Level:

(1) 8, if the substance is heroin or any Schedule I or II opiate, or LSD, or an analogue of these; or

(2) 6, if the substance is cocaine or PCP; or

(3) 4, if the substance is any other controlled substance.

Commentary

Statutory Provision: 21 U.S.C. 844(a).

Background: Absent a prior drug related conviction, the maximum term of imprisonment authorized by statute is one year. With a single prior drug related conviction, a mandatory minimum term of imprisonment of fifteen days is required by statute and the maximum term of imprisonment authorized is increased to two years. With two or more prior drug related convictions, a mandatory minimum term of imprisonment of ninety days is required by statute and the maximum term of imprisonment authorized is increased to three years.

§ 2D2.2. Acquiring a Controlled Substance by Forgery, Fraud, Deception, or Subterfuge

(a) Base Offense Level: 8.

Commentary

Statutory Provision: 21 U.S.C. 843(a)(3).

§ 2D2.3. Operating or Directing the Operation of a Common Carrier Under the Influence of Alcohol or Drugs

(a) Base Offense Level: 8.

Commentary

Statutory Provision: 21 U.S.C. 342.

3. Regulatory Violations

§ 2D3.1. Illegal Use of Registration Number to Manufacture, Distribute, Acquire, or Dispense a Controlled Substance

(a) Base Offense Level: 6.

Commentary

Statutory Provision: 21 U.S.C. 843(a).

Background: The maximum term of imprisonment authorized by statute is four years, except in a case with a prior drug related felony where the maximum term of imprisonment authorized by statute is eight years.

§ 2D3.2. Manufacture of Controlled Substance in Excess of or Unauthorized by Registration Quota

(a) Base Offense Level: 4.

Commentary

Statutory Provision: 21 U.S.C. 842.

Background: This offense is a misdemeanor. The maximum term of imprisonment authorized by statute is one year.

§ 2D3.3. Illegal Use of Registration Number to Distribute or Dispense a Controlled Substance to Another Registrant or Authorized Person

(a) Base Offense Level: 4.

Commentary

Statutory Provision: 21 U.S.C. 842.

Background: This offense is a misdemeanor. The maximum term of imprisonment authorized by statute is one year.

§ 2D3.4. Illegal Transfer or Transshipment of a Controlled Substance

(a) Base Offense Level: 4.

Commentary

Statutory Provision: 21 U.S.C. 842.

Background: This offense is a misdemeanor. The maximum term of imprisonment authorized by statute is one year.

Part E—Offenses Involving Criminal Enterprises and Racketeering

1. Racketeering

Introductory Commentary

Because of the jurisdictional nature of the offenses included, this subpart covers a wide variety of criminal conduct. The offense level usually will be determined by the offense level of the underlying conduct.

§ 2E1.1. Unlawful Conduct Relating to Racketeer Influenced and Corrupt Organizations

(a) Base Offense Level (Apply the greater):

(1) 19; or

(2) the offense level applicable to the underlying racketeering activity.

Commentary

Statutory Provisions: 18 U.S.C. 1962, 1963.

Application Notes:

1. For purposes of subsection (a)(2), determine the offense level for each underlying offense. Use the provisions of Chapter Three, Part D (Multiple Counts), to determine the offense level, treating each underlying offense as if contained in a separate count of conviction.

2. If the underlying conduct violates state law, the offense level corresponding to the most analogous federal offense is to be used.

3. If the offense level for the underlying racketeering activity is less than the alternative minimum level specified (i.e., 19), the alternative minimum base offense level is to be used.

§ 2E1.2. Interstate or Foreign Travel or Transportation in Aid of a Racketeering Enterprise

(a) Base Offense Level (Apply the greater):

(1) 6; or

(2) the offense level applicable to the underlying crime of violence or other unlawful activity in respect to which the travel or transportation was undertaken.

Commentary

Statutory Provision: 18 U.S.C. 1952.

Application Notes:

1. For purposes of subsection (a)(2), determine the offense level for each underlying offense. Use the provisions of Chapter Three, Part D (Multiple Counts), to determine the offense level, treating each underlying offense as if contained in a separate count of conviction.

2. If the underlying conduct violates state law, the offense level corresponding to the most analogous federal offense is to be used.

3. If the offense level for the underlying conduct is less than the alternative minimum base offense level specified (i.e., 6), the alternative minimum base offense level is to be used.

§ 2E1.3. Violent Crimes in Aid of Racketeering Activity

(a) Base Offense Level (Apply the greater):

(1) 12; or

(2) the offense level applicable to the underlying crime or racketeering activity.

Commentary

Statutory Provision: 18 U.S.C. 1952B.

Application Notes:

1. If the underlying conduct violates state law, the offense level corresponding to the most analogous federal offense is to be used.

2. If the offense level for the underlying conduct is less than the alternative minimum base offense level specified (i.e., 12), the alternative minimum base offense level is to be used.

Background: The conduct covered under this section ranges from threats to murder. The maximum term of imprisonment

authorized by statute ranges from three years to life imprisonment.

§ 2E1.4. Use of Interstate Commerce Facilities in the Commission of Murder-For-Hire

(a) Base Offense Level (Apply the greater):

(1) 23; or

(2) the offense level applicable to the underlying unlawful conduct.

Commentary

Statutory Provision: 18 U.S.C. 1952A.

Application Notes:

1. If the underlying conduct violates state law, the offense level corresponding to the most analogous federal offense is to be used.

2. If the offense level for the underlying conduct is less than the alternative minimum base offense level specified (i.e., 23), the alternative minimum base offense level is to be used.

Background: The statute does not require that a murder covered by this section has been committed. The maximum term of imprisonment authorized by statute ranges from five years to life imprisonment.

§ 2E1.5. Hobbs Act Extortion or Robbery

Apply the guideline provision for extortion or robbery, as applicable.

Commentary

Statutory Provision: 18 U.S.C. 1951.

Application Note:

1. Apply the guideline most applicable to the underlying conduct, which may include § 2B3.1 (Robbery), § 2B3.2 (Extortion by Force or Threat of Injury or Serious Damage), § 2B3.3 (Blackmail and Similar Forms of Extortion), or § 2C1.1 (Offering, Giving, Soliciting, or Receiving a Bribe).

2. Extortionate Extension of Credit

§ 2E2.1. Making, Financing, or Collecting an Extortionate Extension of Credit

(a) Base Offense Level: 20.

(b) Specific Offense Characteristics.

(1) (A) If a firearm was discharged increase by 5 levels; or

(B) if a firearm or a dangerous weapon was otherwise used, increase by 4 levels; or

(C) if a firearm or other dangerous weapon was brandished, displayed or possessed, increase by 3 levels.

(2) If any victim sustained bodily injury, increase the offense level according to the seriousness of the injury:

Degree of bodily injury	Increase in level
(A) Bodily Injury	Add 2.
(B) Serious Bodily Injury	Add 4.
(C) Permanent or Life-Threatening Bodily Injury.	Add 6.

Provided, however, that the combined increase from (1) and (2) shall not exceed 9 levels.

(3) (A) If any person was abducted to facilitate the commission of the offense or an escape from the scene of the crime, increase by 4 levels;

(B) if any person was physically restrained to facilitate commission of the offense or to facilitate escape, increase by 2 levels.

Commentary

Statutory Provisions: 18 U.S.C. 892–894.

Application Notes:

1. Definitions of "firearm," "dangerous weapon," "otherwise used," "brandished," "bodily injury," "serious bodily injury," "permanent or life-threatening bodily injury," "abducted," and "physically restrained" are found in the Commentary to § 1B1.1 (Application Instructions).

2. See also Commentary to § 2B3.2 (Extortion by Force or Threat of Injury or Serious Damage) regarding the interpretation of the specific offense characteristics.

Background: This section refers to offenses involving the making or financing of extortionate extensions of credit, or the collection of loans by extortionate means. These "loan-sharking" offenses typically involve threats of violence and provide economic support for organized crime. The base offense level for these offenses is higher than the offense level for extortion because loan sharking is in most cases a continuing activity. In addition, the guideline does not include the amount of money involved because the amount of money in such cases is often difficult to determine. Other enhancements parallel those in § 2B3.2 (Extortion by Force or Threat of Injury or Serious Damage).

3. Gambling

Introductory Commentary

This subpart covers a variety of proscribed conduct. The adjustments in Chapter Three, Part B (Role in the Offense) are particularly relevant in providing a measure of the scope of the offense and the defendant's participation.

§ 2E3.1. Engaging in a Gambling Business

(a) Base Offense Level: 12.

Commentary

Statutory Provision: 18 U.S.C. 1955.

§ 2E3.2. Transmission of Wagering Information

(a) Base Offense Level: 12.

Commentary

Statutory Provision: 18 U.S.C. 1064.

§ 2E3.3. Other Gambling Offenses

(a) Base Offense Level: 6.

(b) Specific Offense Characteristic.

(1) If the offense is committed as part of, or to facilitate, a commercial gambling operation, increase by 6 levels.

Commentary

Statutory Provisions: 15 U.S.C. 1172–1175; 18 U.S.C. 1082, 1301–1304, 1306, 1511, 1953.

Background: This section includes a wide variety of conduct. A specific offense characteristic has been included to distinguish commercial from other gambling offenses.

4. Trafficking in Contraband Cigarettes

§ 2E4.1. Unlawful Conduct Relating to Contraband Cigarettes

(a) Base Offense Level (Apply the greater):

(1) 9; or

(2) the offense level from the table in § 2T4.1 (Tax Table) corresponding to the amount of the tax evaded.

Commentary

Statutory Provisions: 18 U.S.C. 2342(a), 2344(a).

Application Note:

1. "Tax evaded" refers to state excise tax.

Background: The conduct covered by this section generally involves evasion of state excise taxes. At least 60,000 cigarettes must be involved. Because this offense is basically a tax matter, it is graded by use of the tax table in § 2T4.1.

5. Labor Racketeering

Introductory Commentary

The statutes included in this subpart protect the rights of employees under the Taft-Hartley Act, members of labor organizations under the Labor-Management Reporting and Disclosure Act of 1959, and participants of employee pension and welfare benefit plans covered under the Employee Retirement Income Security Act.

The base offense levels for many of the offenses in this subpart have been determined by reference to analogous sections of the guidelines. Thus, the base offense levels for bribery, theft, and fraud in this subpart generally correspond to similar conduct under other parts of the guidelines. The base offense levels for bribery and graft have been set higher than the level for commercial bribery due to the particular vulnerability to exploitation of the organizations covered by this subpart.

§ 2E5.1. Bribery or Gratuity Affecting the Operation of an Employee Welfare or Pension Benefit Plan

(a) Base Offense Level:

(1) 10, if a bribe; or

(2) 6, if a gratuity.

(b) Specific Offense Characteristics:

(1) If the defendant was a fiduciary of the benefit plan, increase by 2 levels.

(2) Increase by the number of levels from the table in § 2F1.1 (Fraud and Deceit) corresponding to the value of the prohibited payment or the value of the improper benefit to the payer, whichever is greater.

Commentary

Statutory Provision: 18 U.S.C. 1954.
Application Notes:
1. "Bribe" refers to the offer or acceptance of an unlawful payment with the specific understanding that it will corruptly affect an official action of the recipient.
2. "Gratuity" refers to the offer or acceptance of an unlawful payment other than a bribe.
3. "Fiduciary of the benefit plan" is defined in 29 U.S.C. 1002(21)(A) to mean a person who exercises any discretionary authority or control in respect to the management of such plan or exercises authority or control in respect to management or disposition of its assets, or who renders investment advice for a fee or other direct or indirect compensation with respect to any moneys or other property of such plan, or has any authority or responsibility to do so, or who has any discretionary authority or responsibility in the administration of such plan.
4. "Value of the improper benefit to the payer" is explained in the Commentary to § 2C1.1 (Offering, Giving, Soliciting, or Receiving a Bribe; Extortion Under Color of Official Right).
5. If the adjustment for a fiduciary at § 2E5.1(b)(1) applies, do not apply the adjustment at § 3B1.3 (Abuse of Position of Trust or Use of Special Skill).
Background: This section covers the giving or receipt of bribes and other unlawful gratuities involving employee welfare or pension benefit plans. The seriousness of the offense is determined by several factors, including the value of the bribe or gratuity and the magnitude of the loss resulting from the transaction. A more severe penalty is warranted in a bribery where the payment is the primary motivation for an action to be taken, as opposed to graft, where the prohibited payment is given because of a person's actions, duties, or decisions without a prior understanding that the recipient's performance will be directly influenced by the gift.

§ 2E5.2. Theft or Embezzlement from Employee Pension and Welfare Benefit Plans

(a) Base Offense Level: 4.
(b) Specific Offense Characteristics.
(1) If the offense involved more than minimal planning, increase by 2 levels.
(2) If the defendant had a fiduciary obligation under the Employee Retirement Income Security Act, increase by 2 levels.
(3) Increase by corresponding number of levels from the table in § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft) according to the value of the property stolen.

Commentary

Statutory Provision: 18 U.S.C. 664.
Application Notes:
1. "More than minimal planning" is defined in the Commentary to § 1B1.1 (Application Instructions).
2. "Fiduciary of the benefit plan" is defined in 29 U.S.C. 1002(21)(A) to mean a person who exercises any discretionary authority or control in respect to the management of such plan or exercises authority or control in respect to management or disposition of its assets, or who renders investment advice for a fee or other direct or indirect compensation with respect to any moneys or other property of such plan, or has any authority or responsibility to do so, or who has any discretionary authority or responsibility in the administration of such plan.
3. If the adjustment for a fiduciary obligation at § 2E5.2(b)(2) is applied, do not apply the adjustment at § 3B1.3 (Abuse of a Position of Trust or Use of a Special Skill).
Background: This section covers theft or conversion from employee benefit plans by fiduciaries, or by any person, including borrowers to whom loans are disbursed based upon materially defective loan applications, service providers who are paid on inflated billings, and beneficiaries paid as the result of fraudulent claims. The base offense level corresponds to the base offense level for other forms of theft. Specific offense characteristics address whether a defendant has a fiduciary relationship to the benefit plan, the sophistication of the offense, and the scale of the offense.

§ 2E5.3. False Statements and Concealment of Facts in Relation to Documents Required by the Employee Retirement Income Security Act

(a) Base Offense Level (Apply the greater):
(1) 6; or
(2) If false records were used for criminal conversion of plan funds or a scheme involving a bribe or a gratuity relating to the operation of an employee benefit plan, apply § 2E5.2 or § 2E5.1, as applicable.

Commentary

Statutory Provision: 18 U.S.C. 1027.
Application Note:
1. "Criminal conversion" means embezzlement.
Background: This section covers the falsification of documents or records relating to a benefit plan covered by ERISA. Such violations sometimes occur in connection with the criminal conversion of plan funds or schemes involving bribery or graft. Where a violation under this section occurs in connection with another offense, the offense level is determined by reference to the offense facilitated by the false statements or documents.

§ 2E5.4. Embezzlement or Theft From Labor Unions in the Private Sector

(a) Base Offense Level: 4.
(b) Specific Offense Characteristics.
(1) If the offense involved more than minimal planning, increase by 2 levels.
(2) If the defendant was a union officer or occupied a position of trust in the union, as set forth in 29 U.S.C. 501(a), increase by 2 levels.
(3) Increase by the number of levels from the table in § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft) corresponding to the value of the property stolen.

Commentary

Statutory Provision: 29 U.S.C. 501(c).
Application Notes:
1. "More than minimal planning" is defined in the Commentary to § 1B1.1 (Applicable Instructions).
2. If the adjustment for being a union officer or occupying a position of trust in a union at § 2E5.4(b)(2) is applied, do not apply the adjustment at § 3B1.3 (Abuse of a Position of Trust or Use of a Special Skill).
Background: This section includes embezzlement or theft from a labor organization. It is directed at union officers and persons employed by a union. The seriousness of this offense is determined by the amount of money taken, the sophistication of the offense, and the nature of the defendant's position in the union.

§ 2E5.5. Failure to Maintain and Falsification of Records Required by the Labor Management Reporting and Disclosure Act

(a) Base Offense Level (Apply the greater):
(1) 6; or
(2) If false records were used for criminal conversion of funds or a scheme involving a bribe or gratuity, apply § 2E5.4 or § 2E5.6, as applicable.

Commentary

Statutory Provisions: 29 U.S.C. 439, 461.
Background: This section covers failure to maintain proper documents required by the LMRDA or falsification of such documents. This offense is a misdemeanor.

§ 2E5.6. Prohibited Payments or Lending of Money by Employer or Agent to Employees, Representatives, or Labor Organizations

(a) Base Offense Level:
(1) 10, if a bribe; or
(2) 6, if a gratuity.
(b) Specific Offense Characteristic.
(1) Increase by the number of levels from the table in § 2F1.1 (Fraud and Deceit) corresponding to the value of the prohibited payment or the value of the improper benefit to the payer, whichever is greater.

Commentary

Statutory Provision: 29 U.S.C. 186.
Application Notes:
1. "Bribe" refers to the offer or acceptance of an unlawful payment with the specific understanding that it will corruptly affect an official action of the recipient.
2. "Gratuity" refers to the offer or acceptance of an unlawful payment other than a bribe.
3. "Value of the improper benefit to the payer" is explained in the Commentary to § 2C1.1 (Offering, Giving, Soliciting, or Receiving a Bribe; Extortion Under Color of Official Right).

Part F—Offenses Involving Fraud or Deceit

§ 2F1.1. Fraud and Deceit

(a) Base Offense Level: 6.

(b) Specific Offense Characteristics.

(1) If the estimated, probable or intended loss exceeded $2,000, increase the offense level as follows:

Loss	Increase in level
(A) $2,000 or less	No increase.
(B) 2,001 to 5,000	Add 1.
(C) 5,001 to 10,000	Add 2.
(D) 10,001 to 20,000	Add 3.
(E) 20,001 to 50,000	Add 4.
(F) 50,001 to 100,000	Add 5.
(G) 100,001 to 200,000	Add 6.
(H) 200,001 to 500,000	Add 7.
(I) 500,001 to 1,000,000	Add 8.
(J) 1,000,001 to 2,000,000	Add 9.
(K) 2,000,001 to 5,000,000	Add 10.
(L) Over $5,000,000	Add 11.

(2) If the offense involved (A) more than minimal planning; (B) a scheme to defraud more than one victim; (C) a misrepresentation that the defendant was acting on behalf of a charitable, educational, religious or political organization, or a government agency; or (D) violation of any judicial or administrative order, injunction, decree or process; increase by 2 levels, but if the result is less than level 10, increase to level 10.

(3) If the offense involved the use of foreign bank accounts or transactions to conceal the true nature or extent of the fraudulent conduct, and the offense level as determined above is less than level 12, increase to level 12.

Commentary

Statutory Provisions: 7 U.S.C. 6, 6b, 6c, 6h, 6o, 13, 23; 15 U.S.C. 50, 77e, 77q, 77x, 78d, 78j, 78ff, 80b–6, 1644; 18 U.S.C. 285–291, 659, 1001–1008, 1010–1014, 1016–1022, 1025–1026, 1028–1029, 1341–1344.

Application Notes:

1. The adjustments in § 2F1.1(b)(2) are alternative rather than cumulative. If in a particular case, however, several of the enumerated factors applied, upward departure might be warranted.

2. "More than minimal planning" (subsection (b)(2)(A)) is defined in the Commentary to § 1B1.1 (Application Instructions).

3. "Scheme to defraud more than one victim," as used in subsection (b)(2)(B), refers to a design or plan to obtain something of value from more than one person. In this context, "victim" refers to the person or entity from which the funds are to come directly. Thus, a wire fraud in which a single telephone call was made to three distinct individuals to get each of them to invest in a pyramid scheme would involve a scheme to defraud more than one victim, but passing a fraudulently endorsed check would not, even though the maker, payee and/or payor all might be considered victims for other purposes, such as restitution.

4. Subsection (b)(2)(C) provides an adjustment for a misrepresentation that the defendant was acting on behalf of a charitable, educational, religious or political organization, or a government agency. Examples of conduct to which this factor applies would include a group of defendants who solicit contributions to a non-existent famine relief organization by mail, a defendant who diverts donations for a religiously-affiliated school by telephone solicitations to church members in which the defendant falsely claims to be a fund-raiser for the school, or a defendant who poses as a federal collection agent in order to collect a delinquent student loan.

5. Subsection (b)(2)(D) provides an adjustment for violation of any judicial or administrative order, injunction, decree or process. If it is established that an entity the defendant controlled was a party to the prior proceeding, and the defendant had knowledge of the prior decree or order, this provision applies even if the defendant was not a specifically-named party in that prior case. For example, a defendant whose business was previously enjoined from selling a dangerous product, but who nonetheless engaged in fraudulent conduct to sell the product, would be subject to this provision.

6. Some fraudulent schemes may result in multiple-count indictments, depending on the technical elements of the offense. The cumulative loss produced by a common scheme or course of conduct should be used in determining the offense level, regardless of the number of counts of conviction. See Chapter Three, Part D (Multiple Counts).

7. In keeping with the Commission's policy on attempts, if a probable or intended loss that the defendant was attempting to inflict can be determined, that figure would be used if it was larger than the actual loss. For example, if the fraud consisted of attempting to sell $40,000 in worthless securities, or representing that a forged check for $40,000 was genuine, the "loss" would be treated as $40,000 for purposes of this guideline.

8. The amount of loss need not be precise. The court is not expected to identify each victim and the loss he suffered to arrive at an exact figure. The court need only make a reasonable estimate of the range of loss, given the available information. The estimate may be based on the approximate number of victims and an estimate of the average loss to each victim, or on more general factors, such as the nature and duration of the fraud and the revenues generated by similar operations. Estimates based upon aggregate "market loss" (e.g., the aggregate decline in market value of a stock resulting from disclosure of information that was wrongfully withheld or misrepresented) are especially appropriate for securities cases. The offender's gross gain from committing the fraud is an alternative estimate that ordinarily will understate the loss.

9. Dollar loss often does not fully capture the harmfulness and seriousness of the conduct. In such instances, an upward departure may be warranted. Examples may include the following:

(a) The primary objective of the fraud was non-monetary;

(b) False statements were made for the purpose of facilitating some other crime;

(c) The offense caused or risked physical or psychological harm;

(d) the offense endangered national security or military readiness;

(e) the offense caused a loss of confidence in an important institution;

(f) completion of the offense was prevented, or the offense was interrupted before it caused serious harm.

10. The adjustments for loss do not distinguish frauds involving losses greater than $5,000,000. Departure above the applicable guideline may be warranted if the loss substantially exceeds that amount.

11. In a few instances, the total dollar loss that results from the offense may overstate its seriousness. Such situations typically occur when a misrepresentation is of limited materiality or is not the sole cause of the loss. Examples would include understating debts to a limited degree in order to obtain a substantial loan which the defendant genuinely expected to repay; attempting to negotiate an instrument that was so obviously fraudulent that no one would seriously consider honoring it; and making a misrepresentation in a securities offering that enabled the securities to be sold at inflated prices, but where the value of the securities subsequently declined in substantial part for other reasons. In such instances, a downward departure may be warranted.

12. Offenses involving fraudulent identification documents and access devices, in violation of 18 U.S.C. 1028 and 1029, are also covered by this guideline. The statutes provide for increased maximum terms of imprisonment for the use or possession of device-making equipment and the production or transfer of more than five identification documents or fifteen access devices. The court may find it appropriate to enhance the sentence for violations of these statutes in a manner similar to the treatment of analogous counterfeiting offenses under Part B.

13. If the fraud exploited vulnerable victims, an enhancement will apply. See § 3A1.1 (Vulnerable Victim).

14. Sometimes, offenses involving fraudulent statements are prosecuted under 18 U.S.C. 1001, or a similarly general statute, although the offense is also covered by a more specific statute. Examples include false entries regarding currency transactions, for which § 2S1.3 would be more apt, and false statements to a customs officer, in which § 2T3.1 likely would be more apt. In such instances, although § 2F1.1 applies, a departure may be warranted.

15. In certain other cases, the mail or wire fraud statutes, or other relatively broad statutes, are used primarily as jurisdictional bases for the prosecution of other offenses. For example, a state law arson where a fraudulent insurance claim was mailed might be prosecuted as mail fraud. In such cases the most analogous guideline (in the above case, § 2K1.4) is to be applied.

Background: This guideline is designed to apply to a wide variety of fraud cases. The statutory maximum term of imprisonment for

most such offenses is five years. The guideline does not link offense characteristics to specific code sections. Because federal fraud statutes are so broadly written, a single pattern of offense conduct usually can be prosecuted under several code sections, as a result of which the offense of conviction may be somewhat arbitrary. Furthermore, most fraud statutes cover a broad range of conduct with extreme variation in severity.

Empirical analyses of current practices show that the most important factors that determine sentence length are the amount of loss and whether the offense is an isolated crime of opportunity or is sophisticated or repeated. Accordingly, although they are imperfect, these are the primary factors upon which the guideline has been based.

The extent to which an offense is planned or sophisticated is important in assessing its potential harmfulness and the dangerousness of the offender, independent of the actual harm. A complex scheme or repeated incidents of fraud is indicative of an intention and potential to do considerable harm. In current practice, this factor has a significant impact, especially in frauds involving small losses. Accordingly, the guideline not only specifies a 2-level enhancement when this factor is present, but also specifies that the minimum offense level in such cases shall be 10. A number of special cases are specifically broken out under subdivision (b)(2) to ensure that defendants in such cases are adequately punished.

Use of false pretenses involving charitable causes and government agencies enhances the sentences of defendants who take advantage of victims' trust in government or law enforcement agencies or their generosity and charitable motives. Taking advantage of a victim's self-interest does not mitigate the seriousness of fraudulent conduct. However, defendants who exploit victims' charitable impulses or trust in government create particular social harm. A defendant who has been subject to civil or administrative proceedings for the same or similar fraudulent conduct demonstrates aggravated criminal intent and is deserving of additional punishment for not conforming with the requirements of judicial process or orders issued by federal, state, or local administrative agencies.

Offenses that involve the use of transactions or accounts outside the United States in an effort to conceal illicit profits and criminal conduct involve a particularly high level of sophistication and complexity. These offenses are difficult to detect and require costly investigations and prosecutions. Diplomatic processes often must be used to secure testimony and evidence beyond the jurisdiction of United States courts. Consequently, a minimum level of 12 is provided for these offenses.

§ 2F1.2. Insider Trading

(a) Base Offense Level: 8.

(b) Specific Offense Characteristic.

(1) Increase by the number of levels from the table in § 2F1.1 corresponding to the gain resulting from the offense.

Commentary

Statutory Provisions: 15 U.S.C. 78j and 17 CFR 240.10b–5.

Application Note:

1. Section 3B1.3 (Abuse of Position of Trust or Use of Special Skill) should be applied only if the defendant occupied and abused a position of special trust. Examples might include a corporate president or an attorney who misused information regarding a planned but unannounced takeover attempt. It typically would not apply to an ordinary "tippee."

Background: This guideline applies to certain violations of Rule 10b–5 that are commonly referred to as "insider trading." Insider trading is treated essentially as a sophisticated fraud. Because the victims and their losses are difficult if not impossible to identify, the gain, i.e., the total increase in value realized through trading in securities by the defendant and persons acting in concert with him or to whom he provided inside information, is employed instead of the victims' losses.

Certain other offenses, e.g., 7 U.S.C. 13(e), that involve misuse of inside information for personal gain also may appropriately be covered by this guideline.

Part G—Offenses Involving Prostitution, Sexual Exploitation of Minors, and Obscenity

1. Prostitution

§ 2G1.1. Transportation for the Purpose of Prostitution or Prohibited Sexual Conduct

(a) Base Offense Level: 14.

(b) Specific Offense Characteristic.

(1) If the defendant used physical force, or coercion by drugs or otherwise, increase by 4 levels.

Commentary

Statutory Provisions: 8 U.S.C. 1328; 18 U.S.C. 2421, 2422.

Application Notes:

1. The base offense level assumes that the offense was committed for profit. In the infrequent case where the defendant did not commit the offense for profit and the offense did not involve physical force or coercion, the Commission recommends a downward departure of 8 levels.

2. The enhancement for physical force, or coercion by drugs or otherwise, anticipates no bodily injury. If bodily injury results, an upward departure may be warranted. See Chapter Five, Part K (Departures).

3. "Coercion," as used in this guideline, includes any form of conduct that negates the voluntariness of the behavior of the person transported.

4. For the purposes of § 3B1.1 (Aggravating Role), the persons transported are considered participants only if they assisted in the unlawful transportation of others.

5. For the purposes of Chapter Three, Part D (Multiple Counts), each person transported is to be treated as a separate, distinct offense, even if several persons are transported in a single act.

§ 2G1.2. Transportation of a Minor for the Purpose of Prostitution or Prohibited Sexual Conduct

(a) Base Offense Level: I6

(b) Specific Offense Characteristics

(1) If the offense involved the use of physical force, or coercion by drugs or otherwise, increase by 4 levels.

(2) If the conduct involved the transportation of a minor under the age of twelve years, increase by 4 levels.

(3) If the conduct involved the transportation of a minor at least twelve years of age but under the age of sixteen years, increase by 2 levels.

Commentary

Statutory Provisions: 8 U.S.C. 1328; 18 U.S.C. 2423.

Application Note:

1. For the purposes of Chapter Three, Part D (Multiple Counts), each person transported is to be treated as a separate, distinct offense, even if several persons are transported in a single act.

2. The enhancement for physical force, or coercion by drugs or otherwise, anticipates no bodily injury. If bodily injury results, an upward departure may be warranted. See Chapter Five, Part K (Departures).

3. "Coercion," as used in this guideline, includes any form of conduct that negates the voluntariness of the behavior of the person transported.

2. Sexual Exploitation of a Minor

§ 2G2.1. Sexually Exploiting a Minor by Production of Sexually Explicit Visual or Printed Material

(a) Base Offense Level: 25

(b) Specific Offense Characteristic

(1) If the minor was under the age of twelve years, increase by 2 levels.

Commentary

Statutory Provisions: 8 U.S.C. 1328; 18 U.S.C. 2251.

Application Note:

1. For the purposes of Chapter Three, Part D (Multiple Counts), each minor exploited is to be treated as a separate, distinct offense, even if several are exploited simultaneously.

Background: This offense commonly involves the production source of a child pornography enterprise. Because the offense directly involves the exploitation of minors, the base offense level is higher than for the distribution of the sexually explicit material after production. An enhancement is provided when the conduct involves the exploitation of a minor under age twelve to reflect the more serious nature of exploiting young children.

§ 2G2.2. Transporting, Receiving, or Trafficking in Material Involving the Sexual Exploitation of a Minor

(a) Base Offense Level: 13

(b) Specific Offense Characteristics

(1) If the material involved a minor under the age of twelve years, increase by 2 levels.

(2) If the offense involved distribution, increase by the number of levels from the table in § 2F1.1 corresponding to the retail value of the material, but in no event less than 5 levels.

Commentary

Statutory Provision: 18 U.S.C. 2252.

Application Note:

1. "Distribution," as used in this guideline, includes any act related to distribution for pecuniary gain, including production, transportation, and possession with intent to distribute.

3. Obscenity

§ 2G3.1. Importing, Mailing, or Transporting Obscene Matter

(a) Base Offense Level: 6

(b) Specific Offense Characteristics

(1) If the offense involved an act related to distribution for pecuniary gain, increase by the number of levels from the table in § 2F1.1 corresponding to the retail value of the material, but in no event by less than 5 levels.

(2) If the offense involved material that portrays sadomasochistic conduct or other depictions of violence, increase by 4 levels.

(c) Cross Reference

(1) If the offense involved a criminal enterprise, apply the appropriate guideline from Chapter Two, Part E (Offenses Involving Criminal Enterprises and Racketeering) if the resulting offense level is greater than that determined above.

Commentary

Statutory Provisions: 18 U.S.C. 1461–1465.

Application Note:

1. "Act related to distribution" as used in this guideline is to be construed broadly and includes production, transportation, and possession with intent to distribute.

Background: Most federal prosecutions for offenses covered in this guideline are directed to offenses involving distribution for pecuniary gain. Consequently, the offense level under this section generally will be at least 11.

§ 2G3.2. Obscene or Indecent Telephone Communications

(a) Base Offense Level: 6

Commentary

Statutory Provision: 47 U.S.C. 223.

Background: This offense is a misdemeanor for which the maximum term of imprisonment authorized by statute is six months.

Part H—Offenses Involving Individual Rights

1. Civil Rights

Introductory Commentary

This subpart covers violations of civil rights statutes that typically penalize conduct involving death or bodily injury more severely than discriminatory or intimidating conduct not involving such injury.

The addition of two levels to the offense level applicable to the underlying offense in this subpart reflects the fact that the harm involved both the underlying conduct and activity intended to deprive a person of his civil rights. An added penalty is imposed on an offender who was a public official at the time of the offense to reflect the likely damage to public confidence in the integrity and fairness of government, and the added likely force of the threat because of the official's involvement.

§ 2H1.1. Going in Disguise to Deprive of Rights

(a) Base Offense Level (Apply the greater):

(1) 15; or

(2) 2 plus the offense level applicable to any underlying offense.

(b) Specific Offense Characteristic

(1) If the defendant was a public official at the time of the offense, increase by 4 levels.

Commentary

Statutory Provision: 18 U.S.C. 241.

Application Notes:

1. "2 plus the offense level applicable to any underlying offense" means 2 levels above the offense level (base offense level plus any applicable specific offense characteristics contained in the particular guideline in Chapter Two) for any underlying criminal conduct. For example, if the underlying offense was second-degree murder, which under § 2A1.2 has an offense level of 33, "2 plus the offense level applicable to any underlying offense" would be 33+2=35. If the underlying offense was assault, criminal sexual conduct, kidnapping, abduction or unlawful restraint, the offense level from the guideline for the most comparable offense in §§ 2A2.1–2A4.2 (Assault, Criminal Sexual Abuse, and Kidnapping, Abduction, or Unlawful Restraint) would first be determined, and 2 levels then would be added. If the underlying offense was damage to property by means of arson or an explosive device, the offense level from § 2K1.4 (Arson; Property Damage By Use of Explosives) would first be determined and 2 levels would be added. If the offense was property damage by other means, the offense level from § 2B1.3 (Property Damage or Destruction [Other than by Arson or Explosives]) would first be determined and 2 levels would be added. If the offense was a conspiracy or attempt to commit an offense, "2 plus the offense level for any underlying offense" would be the offense level from the guideline applicable to a conspiracy or attempt to commit that offense plus 2 levels.

2. Where the adjustment in § 2H1.1(b)(1) is applied, do not apply § 3B1.3 (Abuse of Position of Trust or Use of Special Skill).

Background: This section applies to intimidating activity by various groups, including formally and informally organized groups as well as hate groups. The maximum term of imprisonment authorized by statute is ten years, except where death results the maximum term of imprisonment authorized by statute is life imprisonment. The base offense level for this guideline assumes threatening or otherwise serious conduct.

§ 2H1.2. Conspiracy to Interfere with Civil Rights

(a) Base Offense Level (Apply the greater):

(1) 13; or

(2) 2 plus the offense level applicable to any underlying offense.

(b) Specific Offense Characteristic

(1) If the defendant was a public official at the time of the offense, increase by 4 levels.

Commentary

Statutory Provision: 18 U.S.C. 241.

Application Notes:

1. "2 plus the offense level applicable to any underlying offense" is explained in the Commentary to § 2H1.1.

2. Where the adjustment in § 2H1.2(b)(1) is applied, do not apply § 3B1.3 (Abuse of Position of Trust or Use of Special Skill).

Background: This section applies to conspiracies to interfere with civil rights. The maximum term of imprisonment authorized by statute is ten years, except where death results, in which case the maximum term of imprisonment authorized by statute is life imprisonment. The base offense level for this guideline assumes threatening or otherwise serious conduct.

§ 2H1.3. Use of Force or Threat of Force to Deny Benefits or Rights in Furtherance of Discrimination

(a) Base Offense Level (Apply the greatest):

(1) 10, if no injury occurred; or

(2) 15, if injury occurred; or

(3) 2 plus the offense level applicable to any underlying offense.

(b) Specific Offense Characteristic

(1) If the defendant was a public official at the time of the offense, increase by 4 levels.

Commentary

Statutory Provisions: 18 U.S.C. 245; 42 U.S.C. 3631.

Application Notes:

1. "2 plus the offense level applicable to any underlying offense" is defined in the Commentary to § 2H1.1.

2. "Injury" means "bodily injury," "serious bodily injury," or "permanent or life threatening bodily injury" as defined in the Commentary to § 1B1.1 (Application Instructions).

3. Where the adjustment in § 2H1.3(b)(1) is applied, do not apply the adjustment at

§ 3B1.3 (Abuse of Position of Trust or Use of Special Skill).

4. In the case of a violation of 42 U.S.C. 3631, apply this guideline where the offense involved the threat or use of force. Otherwise, apply § 2H1.5.

Background: The statutes covered by this guideline provide federal protection for the exercise of civil rights in a variety of contexts (e.g., voting, employment, public accommodations, etc.). The base offense level in § 2H1.3(a) reflects that the threat or use of force is inherent in the offense. The maximum term of imprisonment authorized by statute is one year if no injury occurs, ten years if injury occurs, and life imprisonment if death results.

§ 2H1.4. Interference With Civil Rights Under Color of Law

(a) Base Offense Level (Apply the greater):

(1) 10; or

(2) 2 plus the offense level applicable to any underlying offense.

Commentary

Statutory Provision: 18 U.S.C. 242.

Application Notes:

1. "2 plus the offense level applicable to any underlying offense" is defined in the Commentary to § 2H1.1.

2. Do not apply the adjustment from § 3B1.3 (Abuse of Position of Trust or Use of Special Skill).

Background: This maximum term of imprisonment authorized by 18 U.S.C. 242 is one year, except where death results, in which case the maximum term of imprisonment authorized is life imprisonment. Given this one-year statutory maximum, a base offense level of 10 is prescribed at § 2H1.4(a)(1) providing a guideline sentence near the statutory maximum for cases not resulting in death because of the compelling public interest in deterring and adequately punishing those who violate civil rights under color of law. The Commission intends to recommend that this one year statutory maximum penalty be increased. An alternative base offense level is provided at § 2H1.4(a)(2).

Enhancement under § 3B1.3 (Abuse of Position of Trust or Use of Special Skill) is inappropriate because the base offense level in § 2H1.4(a) reflects that the abuse of actual or purported legal authority is inherent in the offense.

§ 2H1.5. Other Deprivations of Rights or Benefits in Furtherance of Discrimination

(a) Base Offense Level (Apply the greater):

(1) 6; or

(2) 2 plus the offense level applicable to any underlying offense.

(b) Specific Offense Characteristic

(1) If the defendant was a public official at the time of the offense, increase by 4 levels.

Commentary

Statutory Provisions: 18 U.S.C. 246; 42 U.S.C. 3631.

Application Notes:

1. "2 plus the offense level applicable to any underlying offense" is explained in the Commentary to § 2H1.1.

2. Where the adjustment in § 2H1.4(b)(1) is applied, do not apply the adjustment at § 3B1.3 (Abuse of Position of Trust or Use of Special Skill).

3. In the case of a violation of 42 U.S.C. 3631, apply this guideline where the offense did not involve the threat or use of force. If the offense involved the threat or use of force, apply § 2H1.3.

Background: Violations of the statutes covered by this provision do not necessarily involve the use of force or threatening conduct or violations by public officials. Accordingly, the minimum base offense level (level 6) provided is lower than that of the other guidelines in this subpart.

2. Political Rights

§ 2H2.1. Obstructing an Election or Registration

(a) Base Offense Level (Apply the greatest):

(1) 18, if the obstruction occurred by use of force or threat of force against persons or property; or

(2) 12, if the obstruction occurred by forgery, fraud, theft, bribery, deceit, or other means, except as provided in (3) below; or

(3) 6, if the defendant (A) solicited, demanded, accepted, or agreed to accept anything of value to vote, refrain from voting, vote for or against a particular candidate, or register to vote, (B) gave false information to establish eligibility to vote, or (C) voted more than once in a federal election.

Commentary

Statutory Provisions: 18 U.S.C. 241, 242, 245(b)(1)(A), 592, 593, 594, 597; 42 U.S.C. 1973i, 1973j.

Application Note:

1. If the offense resulted in bodily injury or significant property damage, or involved corrupting a public official, an upward departure may be warranted. See Chapter Five, Part K (Departures).

Background: Specific offense characteristics cover three major ways of obstructing an election: by force, by deceptive or dishonest conduct, or by bribery. A defendant who is a public official or who directs others to engage in criminal conduct is subject to an enhancement from Chapter Three, Part B (Role in the Offense).

3. Privacy and Eavesdropping

§ 2H3.1. Interception of Communications or Eavesdropping

(a) Base Offense Level (Apply the greater):

(1) 9; or

(2) If the purpose of the conduct was to facilitate another offense, apply the guideline applicable to an attempt to commit that offense.

(b) Specific Offense Characteristic.

(1) If the purpose of the conduct was to obtain direct or indirect commercial advantage or economic gain not covered by § 2H3.1(a)(2) above, increase by 3 levels.

Commentary

Statutory Provisions: 18 U.S.C. 2511; 47 U.S.C. 605.

Application Note:

1. If the offense involved interception of satellite cable transmissions for purposes of commercial advantage or private financial gain (including avoiding payment of fees), apply § 2B5.3 (Criminal Infringement of Copyright) rather than this guideline.

Background: This section refers to conduct proscribed by 47 U.S.C. 605 and the Electronic Communications Privacy Act of 1986, which amends 18 U.S.C. 2511 and other sections of Title 18 dealing with unlawful interception and disclosure of communications. These statutes proscribe the interception and divulging of wire, oral, radio, and electronic communications. The Electronic Communications Privacy Act of 1986 provides for a maximum term of imprisonment of five years for violations involving most types of communication.

§ 2H3.2. Manufacturing, Distributing, Advertising, or Possessing an Eavesdropping Device

(a) Base Offense Level: 6.

(b) Specific Offense Characteristic.

(1) If the offense was committed for pecuniary gain, increase by 3 levels.

Commentary

Statutory Provision: 18 U.S.C. 2512.

§ 2H3.3. Obstructing Correspondence

(a) Base Offense Level:

(1) 6; or

(2) if the conduct was theft of mail, apply § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft);

(3) if the conduct was destruction of mail, apply § 2B1.3 (Property Damage or Destruction (Other than by Arson or Explosives))

Commentary

Statutory Provision: 18 U.S.C. 1702.

Background: The statutory provision covered by this guideline is sometimes used to prosecute offenses more accurately described as theft or destruction of mail. In such cases, § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft) or § 2B1.3 (Property Damage or Destruction (Other than by Arson or Explosives)) is to be applied.

4. Peonage, Involuntary Servitude, and Slave Trade

§ 2H4.1. Peonage, Involuntary Servitude, and Slave Trade

(a) Base Offense Level (Apply the greater):

(1) 15; or

(2) 2 plus the offense level applicable to any underlying offense.

Commentary

Statutory Provisions: 18 U.S.C. 1581–1588.
Application Note:

1. "2 plus the offense level applicable to the underlying offense" is explained in the Commentary to § 2H1.1.

Background: This section covers statutes that prohibit peonage, involuntary servitude, and slave trade. For purposes of deterrence and just punishment, the minimum base offense level is 15. However, these offenses frequently involve other serious offenses. In such cases, the offense level will be increased under § 2H4.1(a)(2).

Part J—Offenses Involving the Administration of Justice

§ 2J1.1. Contempt

If the defendant was adjudged guilty of contempt, the court shall impose a sentence based on stated reasons and the purposes of sentencing set forth in 18 U.S.C. § 3553(a)(2).

Commentary

Statutory Provisions: 18 U.S.C. 401, 402.
Application Note:

1. Because misconduct constituting contempt varies significantly and the nature of the contemptuous conduct, the circumstances under which the contempt was committed, the effect the misconduct had on the administration of justice, and the need to vindicate the authority of the court are highly context-dependent, the Commission has not provided a specific guideline for this offense. See, however, § 2X5.1 (Other Offenses).

§ 2J1.2. Obstruction of Justice

(a) Base Offense Level: 12.

(b) Specific Offense Characteristics.

(1) If the defendant obstructed or attempted to obstruct the administration of justice by causing or threatening to cause physical injury to a person or property, increase by 8 levels.

(2) If the defendant substantially interfered with the administration of justice, increase by 3 levels.

(c) Cross Reference.

(1) If the conduct was obstructing the investigation or prosecution of a criminal offense, apply § 2X3.1 (Accessory After the Fact) in respect to such criminal offense, if the resulting offense level is greater than that determined above.

Commentary

Statutory Provisions: 18 U.S.C. 1503–1513.
Application Notes:

1. "Substantially interfered with the administration of justice" includes offense conduct resulting in a premature or improper termination of a felony investigation, an indictment or verdict based upon perjury, false testimony, or other false evidence, or the unnecessary expenditure of substantial governmental or court resources.

2. For offenses covered under this section, Chapter Three, Part C (Obstruction) does not apply, unless the defendant obstructed the investigation or trial of the obstruction of justice count.

3. In the event that the defendant is convicted under this section as well as for the underlying offense (i.e., the offense that is the object of the obstruction), see the Commentary to Chapter Three, Part C (Obstruction), and to § 3D1.2(c) (Groups of Closely Related Counts).

4. If a weapon was used, or bodily injury or significant property damage resulted, a departure may be warranted. See Chapter Five, Part K (Departures).

Background: This section addresses offenses involving the obstruction of justice generally prosecuted under the above-referenced statutory provisions. Numerous offenses of varying seriousness may constitute obstruction of justice: using threats or force to intimidate or influence a juror or federal officer; obstructing a civil or administrative proceeding; stealing or altering court records; unlawfully intercepting grand jury deliberations; obstructing a criminal investigation; obstructing a state or local investigation of illegal gambling; using intimidation or force to influence testimony, alter evidence, evade legal process, or obstruct the communication of a judge or law enforcement officer; or causing a witness bodily injury or property damage in retaliation for providing testimony, information or evidence in a federal proceeding. The conduct that gives rise to the violation may, therefore, range from a mere threat to an act of extreme violence.

The specific offense characteristics reflect the more serious forms of obstruction. Because the conduct covered by this guideline is frequently part of an effort to assist another person to escape punishment for a crime he has committed, an alternative reference to the guideline for accessory after the fact is made.

§ 2J1.3. Perjury

(a) Base Offense Level: 12.

(b) Specific Offense Characteristics.

(1) If the defendant suborned perjury by causing or threatening to cause physical injury to a person or property, increase by 8 levels.

(2) If the defendant's perjury or subornation of perjury substantially interfered with the administration of justice, increase by 3 levels.

(c) Cross Reference

(1) If the conduct was perjury in respect to a criminal offense, apply § 2X3.1 (Accessory After the Fact) in respect to such criminal offense, if the resulting offense level is greater than that determined above.

Commentary

Statutory Provisions: 18 U.S.C. 1621–1623.
Application Notes:

1. "Substantially interfered with the administration of justice" includes offense conduct resulting in a premature or improper termination of a felony investigation, an indictment or verdict based upon perjury, false testimony, or other false evidence, or the unnecessary expenditure of substantial governmental or court resources.

2. For offenses covered under this section, Chapter Three, Part C (Obstruction) does not apply, unless the defendant obstructed the investigation or trial of the perjury count.

3. In the event that the defendant is convicted under this section as well as for the underlying offense (i.e., the offense with respect to which he committed perjury), see the Commentary to Chapter Three, Part C (Obstruction), and to § 3D1.2(c) (Groups of Closely Related Counts).

4. If a weapon was used, or bodily injury or significant property damage resulted, an upward departure may be warranted. See Chapter Five, Part K (Departures).

Background: This section applies to perjury and subornation of perjury, generally prosecuted under the referenced statutes. The guidelines provide a higher penalty for perjury than the current practice estimate of ten months imprisonment. The Commission believes that perjury should be treated similarly to obstruction of justice. Therefore, the same considerations for enhancing a sentence are applied in the specific offense characteristics, and an alternative reference to the guideline for accessory after the fact is made.

§ 2J1.4. Impersonation

(a) Base Offense Level: 6

(b) Specific Offense Characteristic

(1) If the defendant falsely represented himself as a federal officer, agent or employee to demand or obtain any money, paper, document, or other thing of value or to conduct an unlawful arrest or search, increase by 6 levels.

Commentary

Statutory Provisions: 18 U.S.C. 912, 913.
Background: This section applies to impersonation of a federal officer, agent, or employee; and impersonation to conduct an unlawful search or arrest.

§ 2J1.5. Failure to Appear by Material Witness

(a) Base Offense Level:

(1) 6, if in respect to a felony; or

(2) 4, if in respect to a misdemeanor.

(b) Specific Offense Characteristic

(1) If the offense substantially interfered with the administration of justice, increase by 3 levels.

Commentary

Statutory Provision: 18 U.S.C. 3146(b)(2).
Application Note:

1. "Substantially interfered with the administration of justice" includes offense conduct resulting in a premature or improper termination of a felony investigation, an indictment or verdict based upon perjury, false testimony, or other false evidence, or the unnecessary expenditure of substantial governmental or court resources.

2. By statute, a term of imprisonment imposed for this offense runs consecutively to any other term of imprisonment imposed. 18 U.S.C. 3146(b)(2).

Background: This section applies to a failure to appear by a material witness. The base offense level incorporates a distinction

as to whether the failure to appear was in respect to a felony or misdemeanor prosecution. This offense covered by this section is a misdemeanor for which the maximum period of imprisonment authorized by statute is one year.

§ 2J1.6. Failure to Appear by Defendant

(a) Base Offense Level: 6

(b) Specific Offense Characteristics

(1) If the underlying offense is punishable by death or imprisonment for a term of fifteen years or more, increase by 9 levels.

(2) If the underlying offense is punishable by a term of imprisonment of five or more years, but less than fifteen years, increase by 6 levels.

(3) If the underlying offense is a felony punishable by a maximum term of less than five years, increase by 3 levels.

Commentary

Statutory Provision: 18 U.S.C. 3146(b)(1).

Application Note:

1. "Underlying offense" means the offense in respect to which the defendant failed to appear.

2. By statute, a term of imprisonment imposed for this offense runs consecutively to any other term of imprisonment imposed. 18 U.S.C. 3146(b)(1).

3. For offenses covered under this section, Chapter Three, Part C (Obstruction) does not apply, unless the defendant obstructed the investigation or trial of the failure to appear count.

Background: This section applies to a failure to appear by a defendant who was released pending trial, sentencing, appeal, or surrender for service of sentence. The offense level for this offense increases in relation to the statutory maximum of the underlying offense.

§ 2J1.7. Commission of Offense While on Release

(a) *Base Offense Level:* 6

(b) Specific Offense Characteristics

(1) If the offense committed while on release is punishable by death or imprisonment for a term of fifteen years or more, increase by 6 levels.

(2) If the offense committed while on release is punishable by a term of imprisonment of five or more years, but less than fifteen years, increase by 4 levels.

(3) If the offense committed while on release is a felony punishable by a maximum term of less than five years, increase by 2 levels.

Commentary

Statutory Provision: 18 U.S.C. 3147.

Application Notes:

1. By statute, a term of imprisonment imposed for this offense runs consecutively to any other term of imprisonment. 18 U.S.C. 3147.

2. This guideline assumes that the sentence imposed for the offense committed while on release, which may have been imposed by a state court, is reasonably consistent with that which the guidelines would provide for a similar federal offense. If this is not the case, a departure may be warranted. See Chapter Five, Part K (Departures).

3. If the defendant was convicted in state court for the offense committed while on release, the term of imprisonment referred to in subdivision (b) is the maximum term of imprisonment authorized under state law.

Background: Because defendants convicted under this section will necessarily have a prior criminal history, the guideline sentences provided are greater than they otherwise might appear.

§ 2J1.8. Bribery of Witness

(a) Base Offense Level: 12.

(b) Specific Offense Characteristic.

(1) If the offense substantially interfered with the administration of justice, increase by 3 levels.

(c) Cross Reference.

(1) If the conduct was perjury in respect to a criminal offense, apply § 2X3.1 (Accessory After the Fact) in respect to such criminal offense, if the resulting offense level is greater than that determined above.

Commentary

Statutory Provisions: 18 U.S.C. 201(b) (3), (4).

Application Notes:

1. "Substantially interfered with the administration of justice" includes offense conduct resulting in a premature or improper termination of a felony investigation, an indictment or verdict based upon perjury, false testimony, or other false evidence, or the unnecessary expenditure of substantial governmental or court resources.

2. This section applies only in the case of a conviction for the above referenced (or equivalent) statute. For offenses covered under this section, Chapter Three, Part C (Obstruction) does not apply, unless the defendant obstructed the investigation or trial of the witness bribery count.

3. In the event that the defendant is convicted under this section as well as for the underlying offense (i.e., the offense with respect to which the bribery occurred), see the Commentary to Chapter Three, Part C (Obstruction), and to § 3D1.2(c) (Groups of Closely Related Counts).

4. Subsection (c) refers to bribing a witness regarding his testimony in respect to a criminal offense.

Background: This section applies to witness bribery. The offense levels correspond to those for perjury (§ 2J1.3).

§ 2J1.9. Payment to Witness

(a) Base Offense Level: 6.

(b) Specific Offense Characteristic.

(1) If the payment was for refusing to testify, increase by 4 levels.

Commentary

Statutory Provisions: 18 U.S.C. 201(c) (2), (3).

Application Notes:

1. "Refusing to testify" includes absenting oneself for the purpose of avoiding testifying.

2. This section applies only in the case of a conviction under the above-referenced (or equivalent) statute. For offenses covered under this section, Chapter Three, Part C (Obstruction) does not apply unless the defendant obstructed the investigation or trial of the payment to witness count.

3. In the event that the defendant is convicted under this section as well as for the underlying offense (i.e., the offense with respect to which the payment was made), see the Commentary to Chapter Three, Part C (Obstruction), and to § 3D1.2(c) (Groups of Closely Related Counts).

Background: This section applies to witness gratuities in federal proceedings.

Part K—Offenses Involving Public Safety

1. Explosives and Arson

§ 2K1.1. Failure To Report Theft of Explosives

(a) Base Offense level: 6.

Commentary

Statutory Provisions: 18 U.S.C. 842(k), 844(b).

Background: The above-referenced provisions are misdemeanors. The maximum term of imprisonment authorized by statute is one year.

§ 2K1.2. Improper Storage of Explosives

(a) Base Offense Level: 6.

Commentary

Statutory Provision: 18 U.S.C. 842(j).

Background: The above-referenced provision is a misdemeanor. The maximum term of imprisonment authorized by statute is one year.

§ 2K1.3. Unlawfully Trafficking In, Receiving, or Transporting Explosives

(a) Base Offense Level: 6.

(b) Specific Offense Characteristics.

If any of the following applies, use the greatest:

(1) If the defendant's conduct involved any written or oral false or fictitious statement, false record, or misrepresented identification, increase by 4 levels.

(2) If the offense involved explosives that the defendant knew or had reason to believe were stolen, increase by 6 levels.

(3) If the defendant knowingly distributed explosives to a person under twenty-one years of age, to a person prohibited by state law or ordinance from receiving such explosives at the place of distribution, or to a person the defendant had reason to believe intended to transport such materials into a state in violation of the law of that state, increase by 4 levels.

(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.

(5) If a recordkeeping offense reflected an effort to conceal a substantive firearm offense, apply the guideline for the substantive offense.

Commentary

Statutory Provisions: 18 U.S.C. 842 (a), (h), (i), 844(b).

Application Notes:

1. "A person prohibited from receiving explosives under 18 U.S.C. 842(i)" is anyone who is under indictment for or has been convicted of a crime punishable by imprisonment for more than one year; who is a fugitive from justice; who is an unlawful user of or addicted to marihuana, any depressant or stimulant or narcotic drug; or who has been adjudicated as a mental defective or has been committed to a mental institution.

Background: This section applies to conduct ranging from violations of a regulatory nature pertaining to licensees or persons otherwise lawfully involved in explosives commerce to more serious violations that involve substantial danger to public safety.

§ 2K1.4. Arson; Property Damage By Use of Explosives

(a) Base Offense Level: 6.

(b) Specific Offense Characteristics.

If any of the following applies, use the greatest:

(1) If the defendant knowingly created a substantial risk of death or serious bodily injury, increase by 18 levels.

(2) If the defendant recklessly endangered the safety of another, increase by 14 levels.

(3) If the offense involved destruction or attempted destruction of a residence, increase by 12 levels.

(4) If the defendant used fire or an explosive to commit another offense that is a felony under federal law, or carried explosives during the commission of any offense that is a felony under federal law (i.e., the defendant is convicted under 18 U.S.C. 844(h)), increase by 7 levels.

(5) If the defendant endangered the safety of another person, increase by 4 levels.

(6) If a destructive device was used, increase by 2 levels.

(c) Cross References.

(1) If the defendant caused death, or intended to cause bodily injury, apply the most analogous guideline from Chapter Two, Part A, Offenses Against the Person, if the resulting offense level is higher than that determined above.

(2) Apply § 2B1.3 (Property Damage or Destruction) if the resulting offense level is higher than that determined above.

Commentary

Statutory Provisions: 18 U.S.C. 32, 33, 81, 844 (f), (h), (i), 1153, 1855, 2275.

Application Notes:

1. "Destructive device" means any article described in 18 U.S.C. 921(a)(4) (for example, explosive, incendiary, or poison gas bombs, grenades, mines, and similar devices and certain rockets, missiles, and large bore weapons).

2. If bodily injury resulted, an upward departure may be warranted. See Chapter Five, Part K (Departures).

Background: Review of presentence reports indicates that many arson cases involve "malicious mischief," i.e., minor property damage under circumstances that do not present an appreciable danger. A low base offense level is provided for these cases. However, aggravating factors are provided for instances where a defendant knowingly or recklessly endangered others, destroyed or attempted to destroy a residence, used fire or an explosive in the commission of a felony, used a destructive device, or otherwise endangered others.

§ 2K1.5. Possessing Dangerous Weapons or Materials While Boarding or Aboard an Aircraft

(a) Base Offense Level: 9.

(b) Specific Offense Characteristics.

If any of the following applies, use the greatest:

(1) If the defendant acted willfully and without regard for the safety of human life, or with reckless disregard for the safety of human life (i.e., the defendant is convicted under 49 U.S.C. 1472(1)(2)), increase by 15 levels.

(2) If the defendant was prohibited by another federal law from possessing the weapon or material, increase by 2 levels.

(3) If the defendant's possession of the weapon or material would have been lawful but for 49 U.S.C. 1472(1) and he acted with mere negligence, decrease by 3 levels.

(c) Cross Reference.

(1) If the defendant used the weapon or material in committing or attempting another offense, apply the guideline for such other offense, or § 2X1.1 (Attempt or Conspiracy) if the resulting offense level is higher than that determined above.

Commentary

Statutory Provision: 49 U.S.C. 1472(1).

Background: Except under the circumstances specified in 49 U.S.C. 1472(1)(2), the offense covered by this section is a misdemeanor for which the maximum term of imprisonment authorized by statute is one year. An enhancement is provided where the defendant was a person prohibited by federal law from possession of the weapon or material. A decrease is provided in a case of mere negligence where the defendant was otherwise authorized to possess the weapon or material.

§ 2K1.6. Shipping, Transporting, or Receiving Explosives with Felonious Intent or Knowledge; Using or Carrying Explosives in Certain Crimes

(a) Base Offense Level (Apply the greater):

(1) 18; or

(2) If the defendant committed the offense with intent to commit another offense against a person or property, apply § 2X1.1 (Attempt or Conspiracy) in respect to such other offense.

Commentary

Statutory Provisions: 18 U.S.C. 844(d); 26 U.S.C. 5685.

2. Firearms

§ 2K2.1. Receipt, Possession, or Transportation of Firearms and Other Weapons by Prohibited Persons

(a) Base Offense Level: 9.

(b) Specific Offense Characteristics.

(1) If the firearm was stolen or had an altered or obliterated serial number, increase by 1 level.

(2) If the defendant obtained or possessed the firearm solely for sport or recreation, decrease by 4 levels.

(c) Cross Reference.

(1) If the defendant used the firearm in committing or attempting another offense, apply the guideline in respect to such other offense, or § 2X1.1 (Attempt or Conspiracy) if the resulting offense level is higher than that determined above.

Commentary

Statutory Provisions: 18 U.S.C. 922(a)(6), (g), (h).

Application Note:

1. Under § 2K2.1(b)(2), intended lawful use, as determined by the surrounding circumstances, provides a decrease in offense level. Relevant circumstances include, among others, the number and type of firearms (sawed-off shotguns, for example, have few legitimate uses) and ammunition, the location and circumstances of possession, the nature of the defendant's criminal history (e.g., whether involving firearms), and the extent to which possession is restricted by local law.

Background: Under current sentencing practices, there is substantial sentencing variation for these crimes. From the Commission's investigations, it appears that the variation is attributable primarily to the wide variety of circumstances under which these offenses occur. Apart from the nature of the defendant's criminal history, his actual or intended use of the firearm is probably the most important factor in determining the sentence.

Statistics show that sentences average two to three months lower if the firearm involved is a rifle or an unaltered shotgun. This may reflect the fact that these weapons tend to be more suitable than others for recreational activities. However, some rifles or shotguns may be possessed for criminal purposes,

while some handguns may be suitable primarily for recreation. Therefore, the guideline is not based upon the type of firearm. Intended lawful use, as determined by the surrounding circumstances, is a mitigating factor.

Available data are not sufficient to determine the effect a stolen firearm has on the average sentence. However, reviews of actual cases suggest that this is a factor that tends to result in more severe sentences. Independent studies show that stolen firearms are used disproportionately in the commission of crimes.

The firearm statutes often are used as a device to enable the federal court to exercise jurisdiction over offenses that otherwise could be prosecuted only under state law. For example, a convicted felon may be prosecuted for possessing a firearm if he used the firearm to rob a gasoline station. Such prosecutions result in high sentences because of the true nature of the underlying conduct. The cross reference at § 2K2.1(c) deals with such cases.

§ 2K2.2. Receipt, Possession, or Transportation of Firearms and Other Weapons in Violation of National Firearms Act

(a) Base Offense Level: 12.

(b) Specific Offense Characteristics.

(1) If the firearm was stolen or had an altered or obliterated serial number, increase by 1 level.

(2) If the firearm has a silencer, increase by 4 levels.

(3) If the defendant obtained or possessed the firearm solely for sport, recreation or collection, decrease by 6 levels.

(c) Cross Reference.

(1) If the defendant used the firearm in committing or attempting another offense, apply the guideline for such other offense or § 2X1.1 (Attempt or Conspiracy), if the resulting offense level is higher than that determined above.

Commentary

Statutory Provisions: 26 U.S.C. 5861 (b) through (l).

Application Note:

1. Under § 2K2.2(b)(3), intended lawful use, as determined by the surrounding circumstances, provides a decrease in offense level. Relevant circumstances include, among others, the number and type of firearms (sawed-off shotguns, for example, have few legitimate uses) and ammunition, the location and circumstances of possession, the nature of the defendant's criminal history (e.g., whether involving firearms), and the extent to which possession is restricted by local law.

Background: 26 U.S.C. 5861 prohibits the unlicensed receipt, possession, transportation, or manufacture of certain firearms, such as machine guns, silencers, rifles and shotguns with shortened barrels, and destructive devices. As with § 2K2.1, there is considerable variation in the conduct included under this statutory provision and some violations may be relatively technical.

§ 2K2.3. Prohibited Transactions in or Shipment of Firearms and Other Weapons

(a) Base Offense Level:

(1) 12, if convicted under 26 U.S.C. 5861; or

(2) 6, otherwise.

(b) Specific Offense Characteristics

(1) If the number of firearms unlawfully dealt in exceeded 5, increase as follows:

Number of firearms	Increase in level
(A) 6–10	Add 1.
(B) 11–20	Add 2.
(C) 21–50	Add 3.
(D) 51–100	Add 4.
(E) 101–200	Add 5.
(F) more than 200	Add 6.

(2) If any of the following applies, use the greatest:

(A) If the defendant knew or had reason to believe that a purchaser was a person prohibited by federal law from owning the firearm, increase by 2 levels.

(B) If the defendant knew or had reason to believe that a purchaser resided in another state in which he was prohibited from owning the firearm, increase by 1 level.

(C) If the defendant knew or had reason to believe that a firearm was stolen or had an altered or obliterated serial number, increase by 1 level.

(c) Cross Reference

(1) If the defendant provided the firearm to another for the purpose of committing another offense, or knowing that he planned to use it in committing another offense, apply § 2X1.1 (Attempt or Conspiracy) in respect to such other offense, if the resulting offense level is higher.

Commentary

Statutory Provisions: 18 U.S.C. 922 (a)(1), (a)(5), (b)(2), (b)(3), (d), (i), (j), (k), (1); 26 U.S.C. 5861(a).

Background: This section applies to a variety of offenses involving prohibited transactions in or transportation of firearms and certain other weapons.

§ 2K2.4. Use of Firearms or Armor-Piercing Ammunition During or in Relation to Certain Crimes

If the defendant, whether or not convicted of another crime, was convicted under 18 U.S.C. 924(c) or § 929(a), the penalties are those required by statute.

Commentary

Statutory Provisions: 18 U.S.C. 924(c), 929(a).

Application Notes:

1. In each case, the statute requires a term of imprisonment imposed under this section to run consecutively to any other term of imprisonment.

2. Where a sentence under this section is imposed in conjunction with a sentence for an underlying offense, any specific offense characteristic for the possession, use, or discharge of a firearm (e.g., § 2B3.1(b)(2) (Robbery)), is not to be applied in respect to the guideline for the underlying offense.

Background: 18 U.S.C. 924(c) and 929(a) provide mandatory minimum penalties for the conduct proscribed. To avoid double counting, when a sentence under this section is imposed in conjunction with a sentence for an underlying offense, any specific offense characteristic for firearm discharge, use, or possession is not applied in respect to such underlying offense.

3. Transportation of Hazardous Materials

§ 2K3.1. Unlawfully Transporting Hazardous Materials in Commerce

Apply the guideline provision for § 2Q1.2 (Mishandling of Hazardous or Toxic Substances or Pesticides; Recordkeeping, Tampering, and Falsification).

Commentary

Statutory Provision: 49 U.S.C. 1809(b).

Background: This conduct involves the same risks as the conduct covered under § 2Q1.2 (Mishandling of Hazardous or Toxic Substances or Pesticides; Recordkeeping, Tampering, and Falsification). Accordingly, that guideline applies.

Part L—Offenses Involving Immigration, Naturalization, and Passports

1. Immigration

§ 2L1.1 Smuggling, Transporting, or Harboring an Unlawful Alien

(a) Base Offense Level: 6.

(b) Specific Offense Characteristics.

(1) If the defendant committed the offense for profit or with knowledge that the alien was excludable under 8 U.S.C. 1182(a) (27), (28), (29), increase by 3 levels.

(2) If the defendant previously has been convicted of bringing illegal aliens into the United States, increase by 2 levels.

Commentary

Statutory Provisions: 8 U.S.C. 1324(a), 1327.

Application Notes:

1. "For profit" means for financial gain or commercial advantage, but this definition does not include a defendant who commits the offense solely in return for his own entry or transportation.

2. "Convicted of bringing illegal aliens into the United States" includes any conviction for smuggling, transporting, or harboring an unlawful alien, and any conviction for aiding and abetting, conspiring or attempting to commit such offense.

3. If the defendant was convicted under 8 U.S.C. 1328, apply the applicable guideline

from part G (see Statutory Index) rather than this guideline.

4. The adjustment under § 2L1.1(b)(2) for a previous conviction is in addition to any points added to the criminal history score for such conviction in Chapter Four, Part A (Criminal History). This adjustment is to be applied only if the previous conviction occurred prior to the last overt act of the instant offense.

5. For the purposes of § 3B1.1 (Aggravating Role), the aliens smuggled, transported, or harbored are not considered participants unless they actively assisted in the smuggling, transporting, or harboring of others.

6. For the purposes of § 3B1.2 (Mitigating Role), a defendant who commits the offense solely in return for his own entry or transportation is not entitled to a reduction for a minor or minimal role. This is because the enhancement at § 2L1.1(b)(1) does not apply to such a defendant.

7. 8 U.S.C. 1182 (a)(27), (a)(28), and (a)(29) concern certain aliens who are excludable because they are subversives.

Background: This section includes the most serious immigration offenses covered under the Immigration Reform and Control Act of 1986. A specific offense characteristic provides an enhancement if the defendant committed the offense for profit or with knowledge that the alien was excludable as a subversive. A second specific offense characteristic provides an enhancement if the defendant was previously convicted of a similar offense.

§ 2L1.2. Unlawfully Entering or Remaining in the United States

(a) Base Offense Level: 6.

(b) Specific Offense Characteristic.

(1) If the defendant previously has unlawfully entered or remained in the United States, increase by 2 levels.

Commentary

Statutory Provisions: 8 U.S.C. 1325, 1326.

Application Notes:

1. The adjustment at § 2L1.2(b)(1) is to be applied where the previous entry resulted in deportation (voluntary or involuntary), with or without a criminal conviction. If the previous entry resulted in a conviction, this adjustment is to be applied in addition to any points added to the criminal history score for such conviction in Chapter Four, Part A (Criminal History).

2. In the case of a defendant with repeated prior instances of deportation without criminal conviction, a sentence at or near the maximum of the applicable guideline range may be warranted.

§ 2L1.3. Engaging in a Pattern of Unlawful Employment of Aliens

(a) Base Offense Level: 6.

Commentary

Statutory Provision: 8 U.S.C. 1324a(f)(1).

Background: The offense covered under this section is a misdemeanor for which the maximum term of imprisonment authorized by statute is six months.

2. Naturalization and Passports

§ 2L2.1. Trafficking in Evidence of Citizenship or Documents Authorizing Entry

(a) Base Offense Level: 6.

(b) Specific Offense Characteristic.

(1) If the defendant committed the offense for profit, increase by 3 levels.

Commentary

Statutory Provisions: 18 U.S.C. 1425–1427, 1546.

Application Note:

1. "For profit" means for financial gain or commercial advantage.

§ 2L2.2. Fraudulently Acquiring Evidence of Citizenship or Documents Authorizing Entry for Own Use

(a) Base Offense Level: 6.

Commentary

Statutory Provisions: 18 U.S.C. 1423, 1425, 1546.

Application Notes:

1. In the case of a defendant who is an unlawful alien and has been deported (voluntarily or involuntarily) on one or more occasions prior to the instant offense, the Commission recommends an upward departure of 2 levels in order to provide an enhancement equivalent to that at § 2L1.2(b)(1).

2. For the purposes of Chapter Three, Part D (Multiple Counts), a conviction for unlawfully entering or remaining in the United States (§ 2L1.2) arising from the same course of conduct is treated as a closely related count, and is therefore grouped with an offense covered by this guideline.

§ 2L2.3. Trafficking in a United States Passport

(a) Base Offense Level: 6.

(b) Specific Offense Characteristic.

(1) If the defendant committed the offense for profit, increase by 3 levels.

Commentary

Statutory Provisions: 18 U.S.C. 1542, 1544.

Application Note:

1. "For profit" means for financial gain or commercial advantage.

§ 2L2.4. Fraudulently Acquiring or Improperly Using a United States Passport

(a) Base Offense Level: 6.

Commentary

Statutory Provisions: 18 U.S.C. 1543, 1544.

Application Notes:

1. In the case of a defendant who is an unlawful alien and has been deported (voluntarily or involuntarily) on one or more occasions prior to the instant offense, the Commission recommends an upward departure of 2 levels in order to provide an enhancement equivalent to that at § 2L1.2(b)(1).

2. For the purposes of Chapter Three, Part D (Multiple Counts), a conviction for unlawfully entering or remaining in the United States (§ 2L1.2) arising from the same course of conduct is treated as a closely related count, and is therefore grouped with an offense covered by this guideline.

§ 2L2.5. Failure to Surrender Canceled Naturalization Certificate

(a) Base Offense Level: 6.

Commentary

Statutory Provision: 18 U.S.C. 1428.

Part M—Offenses Involving National Defense

1. Treason

§ 2M1.1. Treason

(a) Base Offense Level.

(1) 43, if the conduct is tantamount to waging war against the United States;

(2) the offense level applicable to the most analogous offense, otherwise.

Commentary

Statutory Provision: 18 U.S.C. 2381.

Background: Treason is a rarely-prosecuted offense that could encompass a relatively broad range of conduct, including many of the more specific offenses in this Part. The guideline contemplates imposition of the maximum penalty in the most serious cases, with reference made to the most analogous offense guideline in lesser cases.

2. Sabotage

§ 2M2.1. Destruction of War Material, Premises, or Utilities

(a) Base Offense Level: 32.

Commentary

Statutory Provisions: 18 U.S.C. 2153; 42 U.S.C. 2284.

Application Note:

1. Violations of 42 U.S.C. 2284 are included in this section where the defendant was convicted of acting with intent to injure the United States or aid a foreign nation.

§ 2M2.2. Production of Defective War Material, Premises, or Utilities

(a) Base Offense Level: 32.

Commentary

Statutory Provision: 18 U.S.C. 2154.

§ 2M2.3. Destruction of National Defense Material, Premises, or Utilities

(a) Base Offense Level: 26.

Commentary

Statutory Provision: 18 U.S.C. 2155; 42 U.S.C. 2284.

Application Note:

1. Violations of 42 U.S.C. 2284 not included in § 2M2.1 are included in this section.

§ 2M2.4. Production of Defective National Defense Material, Premises, or Utilities

(a) Base Offense Level: 26.

Commentary

Statutory Provision: 18 U.S.C. 2156.

3. Espionage and Related Offenses

§ 2M3.1. Gathering or Transmitting National Defense Information to Aid a Foreign Government

(a) Base Offense Level:

(1) 42, if top secret information was gathered or transmitted; or

(2) 37, otherwise.

Commentary

Statutory Provisions: 18 U.S.C. 794; 42 U.S.C. 2274 (a), (b), 2275.

Application Notes:

1. "Top secret information" is information that, if disclosed, "reasonably could be expected to cause exceptionally grave damage to the national security." Executive Order 12356.

2. The Commission has set the base offense level in this subpart on the assumption that the information at issue bears a significant relation to the nation's security, and that the revelation will significantly and adversely affect security interests. When revelation is likely to cause little or no harm, a downward departure may be warranted. See Chapter Five, Part K (Departures).

3. The court may depart from the guidelines upon representation by the President or his duly authorized designee that the imposition of a sanction other than authorized by the guideline is necessary to protect national security or further the objectives of the nation's foreign policy.

Background: Offense level distinctions in this subpart are generally based on the classification of the information gathered or transmitted. This classification, in turn, reflects the importance of the information to the national security.

§ 2M3.2. Gathering National Defense Information

(a) Base Offense Level:

(1) 35, if top secret information was gathered; or

(2) 30, otherwise.

Commentary

Statutory Provisions: 18 U.S.C. 793 (a), (b), (c), (d), (e), (g).

Application Notes:

1. See Commentary to § 2M3.1.

2. If the defendant is convicted under 18 U.S.C. 793 (d) or (e), § 2M3.3 may apply. See Commentary to § 2M3.3.

Background: The statutes covered in this section proscribe diverse forms of obtaining and transmitting national defense information with intent or reason to believe the information would injure the United States or be used to the advantage of a foreign government.

§ 2M3.3. Transmitting National Defense Information

(a) Base Offense Level:

(1) 29, if top secret information was transmitted; or

(2) 24, otherwise.

Commentary

Statutory Provisions: 18 U.S.C. 793 (d), (e), (g).

Application Notes:

1. See Commentary to § 2M3.1.

2. If the defendant was convicted of 18 U.S.C. 793 (d) or (e) for the willful transmission or communication of intangible information with reason to believe that it could be used to the injury of the United States or the advantage of a foreign nation, apply § 2M3.2.

Background: The statutes covered in this section proscribe willfully transmitting or communicating to a person not entitled to receive it a document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, or note relating to the national defense. Proof that the item was communicated with reason to believe that it could be used to the injury of the United States or the advantage of a foreign nation is required only where intangible information is communicated under 18 U.S.C. 793 (d) or (e).

§ 2M3.4. Losing National Defense Information

(a) Base Offense Level:

(1) 18, if top secret information was lost; or

(2) 13, otherwise.

Commentary

Statutory Provision: 18 U.S.C. 793(f).

Application Note:

1. See Commentary to § 2M3.1.

Background: Offenses prosecuted under this statute generally do not involve subversive conduct on behalf of a foreign power, but rather the loss of classified information by the gross negligence of an employee of the federal government or a federal contractor.

§ 2M3.5. Tampering with Restricted Data Concerning Atomic Energy

(a) Base Offense Level: 24

Commentary

Statutory Provision: 42 U.S.C. 2276.

Application Note:

1. See Commentary to § 2M3.1.

§ 2M3.6. Disclosure of Classified Cryptographic Information

(a) Base Offense Level:

(1) 29, if top secret information was disclosed; or

(2) 24, otherwise.

Commentary

Statutory Provision: 18 U.S.C. 798.

Application Note:

1. See Commentary to § 2M3.1.

Background: The statute covered in this section proscribes the disclosure of classified information concerning cryptographic or communication intelligence to the detriment of the United States or for the benefit of a foreign government.

§ 2M3.7. Unauthorized Disclosure to Foreign Government or a Communist Organization of Classified Information by Government Employee

(a) Base Offense Level:

(1) 29, if top secret information was disclosed; or

(2) 24, otherwise.

Commentary

Statutory Provision: 50 U.S.C. 783(b).

Application Note:

1. See Commentary to § 2M3.1.

§ 2M3.8. Receipt of Classified Information

(a) Base Offense Level:

(1) 29, if top secret information was received; or

(2) 24, otherwise.

Commentary

Statutory Provision: 50 U.S.C. 783(c).

Application Note:

1. See Commentary to § 2M3.1.

§ 2M3.9. Disclosure of Information Identifying a Covert Agent

(a) Base Offense Level:

(1) 30, if the information was disclosed by a person with, or who had authorized access to classified information identifying a covert agent; or

(2) 25, if the information was disclosed by a person with authorized access only to other classified information.

Commentary

Statutory Provision: 50 U.S.C. 421.

Application Notes:

1. See Commentary to § 2M3.1.

2. This guideline applies only to violations of 50 U.S.C. 421 by persons who have or previously had authorized access to classified information. This guideline does not apply to violations of 50 U.S.C. 421 by defendants, including journalists, who disclosed such information without having or having had authorized access to classified information. Violations of 50 U.S.C. 421 not covered by this guideline may vary in the degree of harm they inflict, and the court should impose a sentence that reflects such harm. See § 2X5.1 (Other Offenses).

Background: The alternative base offense levels reflect a statutory distinction by providing a greater base offense level for a violation of 50 U.S.C. 421 by an official who has or had authorized access to classified information identifying a covert agent than for a violation by an official with authorized access only to other classified information. This guideline does not apply to violations of 50 U.S.C. 421 by defendants who disclosed such information without having, or having had, authorized access to classified information.

4. Evasion of Military Service

§ 2M4.1. Failure to Register and Evasion of Military Service

(a) Base Offense Level: 6.

(b) Specific Offense Characteristic.

(1) If the offense occurred while persons were being inducted into the armed services, other than in time of war or armed conflict, increase by 6 levels.

Commentary

Statutory Provision: 50 U.S.C. App. § 462.

Application Notes:

1. "While persons were being inducted into the armed services" means at a time of compulsory military service under the Selective Service laws.

2. The Commission has not considered the appropriate sanction for this offense when persons are being inducted during time of war or armed conflict.

5. Prohibited Financial Transactions and Exports

§ 2M5.1. Evasion of Export Controls

(a) Base Offense Level: (Apply the greater):

(1) 22, if national security or nuclear proliferation controls were evaded; or

(2) 14.

Commentary

Statutory Provisions: 50 U.S.C. App. §§ 2401–2420.

Application Notes:

1. In the case of a violation during time of war or armed conflict, an upward departure may be warranted.

2. In determining the sentence within the applicable guideline range, the court may consider the degree to which the violation threatened a security interest of the United States, the volume of commerce involved, the extent of planning or sophistication, and whether there were multiple occurrences. Where such factors are present in an extreme form, a departure from the guidelines may be warranted. See Chapter Five, Part K (Departures).

3. In addition to the provisions for imprisonment, 50 U.S.C. App. § 2410 contains provisions for criminal fines and forfeiture as well as civil penalties. The maximum fine for individual defendants is $250,000. In the case of corporations, the maximum fine is five times the value of the exports involved or $1 million, whichever is greater. When national security controls are violated, in addition to any other sanction, the defendant is subject to forfeiture of any interest in, security of, or claim against: any goods or tangible items that were the subject: of the violation; property used to export or attempt to export that was the subject of the violation; and any proceeds obtained directly or indirectly as a result of the violation.

§ 2M5.2. Exportation of Arms, Munitions, or Military Equipment or Services Without Required Validated Export License

(a) Base Offense Level (Apply the greater):

(1) 22, if sophisticated weaponry was involved; or

(2) 14.

Commentary

Statutory Provision: 22 U.S.C. 2778.

Application Notes:

1. In the case of a violation during time of war or armed conflict, an upward departure may be warranted. See Chapter Five, Part K (Departures).

2. In determining the sentence within the applicable guideline range, the court may consider the degree to which the violation threatened a security interest of the United States, the volume of commerce involved, the extent of planning or sophistication, and whether there were multiple occurrences. Where such factors are present in an extreme form, a departure from the guidelines may be warranted.

6. Atomic Energy

§ 2M6.1. Unlawful Acquisition, Alteration, Use, Transfer, or Possession of Nuclear Material, Weapons, or Facilities

(a) Base Offense Level: 30.

(b) Specific Offense Characteristic.

(1) If the offense was committed with intent to injure the United States or to aid a foreign nation, increase by 12 levels.

Commentary

Statutory Provisions: 42 U.S.C. 2077(b), 2122, 2131. Also, 18 U.S.C. 831 (only where the conduct is similar to that proscribed by the aforementioned statutory provisions).

§ 2M6.2. Violation of Other Federal Atomic Energy Agency Statutes, Rules, and Regulations

(a) Base Offense Level (Apply the greater):

(1) 30, if the offense was committed with intent to injure the United States or to aid a foreign nation; or

(2) 6.

Commentary

Background: This section applies to offenses related to nuclear energy not specifically addressed elsewhere. This provision covers, for example, violations of statutes dealing with rules and regulations, license conditions, and orders of the Nuclear Regulatory Commission and the Department of Energy.

Part N—Offenses Involving Food, Drugs, Agricultural Products, and Odometer Laws

1. Tampering With Consumer Products

§ 2N1.1. Tampering or Attempting to Tamper Involving Risk of Death or Serious Injury

(a) Base Offense Level: 25.

Commentary

Statutory Provisions: 18 U.S.C. 1365 (a), (e).

Application Note:

1. If death, bodily injury, extreme psychological injury, or substantial property damage or monetary loss resulted, an upward departure may be warranted. See Chapter Five, Part K (Departures).

Background: The base offense level reflects the risk of death or serious injury posed to significant numbers of people by this type of product tampering.

§ 2N1.2. Providing False Information or Threatening to Tamper with Consumer Products

(a) Base Offense Level (Apply the greater):

(1) 16;

(2) If the offense involved extortion, apply § 2B3.2.

Commentary

Statutory Provisions: 18 U.S.C. 1365 (c), (d).

Application Notes:

1. If the offense involved extortion, apply the guideline from § 2B3.2 (Extortion by Force or Threat of Injury or Serious Damage) rather than the guideline from this section.

2. If death or bodily injury, extreme psychological injury, or substantial property damage or monetary loss resulted, an upward departure may be warranted. See Chapter Five, Part K (Departures).

§ 2N1.3. Tampering With Intent to Injure Business

(a) Base Offense Level: 12.

Commentary

Statutory Provision: 18 U.S.C. 1365(b).

Application Note:

1. If death or bodily injury, extreme psychological injury, or substantial property damage or monetary loss resulted, an upward departure may be warranted. See Chapter Five, Part K (Departures).

2. Food, Drugs, and Agricultural Products

§ 2N2.1. Violations of Statutes and Regulations Dealing With Any Food, Drug, Biological Product, Device, Cosmetic, or Agricultural Product

(a) Base Offense Level: 6.

Commentary

Statutory Provisions: 7 U.S.C. 150bb, 150gg; 21 U.S.C. 115, 117, 122, 134–134e, 151–158, 331, 333, 458–461, 463, 466, 610–611, 614, 617, 619–620, 642–644, 676; 42 U.S.C. 262.

Application Notes:

1. This guideline assumes a regulatory offense that involved knowing conduct. Where only negligence was involved, a downward departure may be warranted. See Chapter Five, Part K (Departures).

2. If the offense involved theft, fraud, bribery, revealing trade secrets, or destruction of property, apply the guideline applicable to the underlying conduct, rather than this guideline.

3. If death or bodily injury, extreme psychological injury, property damage or monetary loss resulted, an upward departure may be warranted. See Chapter Five, Part K (Departures).

3. Odometer Laws and Regulations

§ 2N3.1. Odometer Laws and Regulations

(a) Base Offense Level: 6.

(b) If more than one vehicle was involved, apply § 2F1.1 (Offenses Involving Fraud or Deceit).

Commentary

Statutory Provisions: 15 U.S.C. 1983–1988, 1990c.

Background: The base offense level takes into account the deceptive aspect of the offense assuming a single vehicle was involved. If more than one vehicle was involved, the guideline for fraud and deception, § 2F1.1, is to be applied because it is designed to deal with a pattern or scheme.

Part P—Offenses Involving Prisons and Correctional Facilities

§ 2P1.1. Escape, Instigating or Assisting Escape

(a) Base Offense Level:

(1) 13, if from lawful custody resulting from a conviction or as a result of a lawful arrest for a felony;

(2) 8, if from lawful custody awaiting extradition, pursuant to designation as a recalcitrant witness or as a result of a lawful arrest for a misdemeanor.

(b) Specific Offense Characteristics

(1) If the use or the threat of force against any person was involved, increase by 5 levels.

(2) If the defendant escaped from non-secure custody and returned voluntarily within ninety-six hours, decrease the offense level under § 2P1.1(a)(1) by 7 levels or the offense level under § 2P1.1(a)(2) by 4 levels.

(3) If the defendant committed the offense while a correctional officer or other employee of the Department of Justice, increase by 2 levels.

Commentary

Statutory Provisions: 18 U.S.C. 751, 752, 755; 28 U.S.C. 1826.

Application Notes:

1. "Non-secure custody" means custody with no significant physical restraint (e.g., where a defendant walked away from a work detail outside the security perimeter of an institution; where a defendant failed to return to any institution from a pass or unescorted furlough; or where a defendant escaped from an institution with no physical perimeter barrier).

2. "Returned voluntarily" includes voluntarily returning to the institution or turning one's self in to a law enforcement authority as an escapee (not in connection with an arrest or other charges).

3. If the adjustment in § 2P1.1(b)(3) applies, no adjustment is to be made under § 3B1.3 (Abuse of Position of Trust or Use of Special Skill).

4. If death or bodily injury resulted, an upward departure may be warranted. See Chapter Five, Part K (Departures).

§ 2P1.2. Providing or Possessing Contraband in Prison

(a) Base Offense Level:

(1) 23, if the object was a firearm or destructive device.

(2) 13, if the object was a weapon (other than a firearm or a destructive device), any object that might be used as a weapon or as a means of facilitating escape, ammunition, LSD, PCP, or a narcotic drug.

(3) 6, if the object was an alcoholic beverage, United States or foreign currency, or a controlled substance (other than LSD, PCP, or a narcotic drug).

(4) 4, if the object was any other object that threatened the order, discipline, or security of the institution or the life, health, or safety of an individual.

(b) Specific Offense Characteristic

(1) If the defendant committed the offense while a correctional officer or other employee of the Department of Justice, increase by 2 levels.

Commentary

Statutory Provision: 18 U.S.C. 1791.

Application Note:

If the adjustment in § 2P1.2(b)(1) applies, no adjustment is to be made under § 3B1.3 (Abuse of Position of Trust or Use of Special Skill).

§ 2P1.3. Engaging In, Inciting or Attempting to Incite a Riot Involving Persons in a Facility for Official Detention

(a) Base Offense Level:

(1) 22, if the offense was committed under circumstances creating a substantial risk of death or serious bodily injury to any person.

(2) 16, if the offense involved a major disruption to the operation of an institution.

(3) 10, otherwise.

Commentary

Statutory Provision: 18 U.S.C. 1792.

Application Note:

1. If death or bodily injury resulted, an upward departure may be warranted. See Chapter Five, Part K (Departures).

§ 2P1.4. Trespass on Bureau of Prisons Facilities

(a) Base Offense Level: 6.

Commentary

Statutory Provision: 18 U.S.C. 1793.

Part Q—Offenses Involving the Environment

1. Environment

§ 2Q1.1. Knowing Endangerment Resulting From Mishandling Hazardous or Toxic Substances, Pesticides or Other Pollutants

(a) Base Offense Level: 24.

Commentary

Statutory Provision: 33 U.S.C. 1319(c) (3); 42 U.S.C. 6928(e).

Application Note::

1. If death or serious bodily injury resulted, an upward departure may be warranted. See Chapter Five, Part K (Departures).

Background: This section applies to offenses committed with knowledge that the violation placed another person in imminent danger of death or serious bodily injury.

2Q1.2. Mishandling of Hazardous or Toxic Substances or Pesticides; Recordkeeping, Tampering, and Falsification

(a) Base Offense Level: 8.

(b) Specific Offense Characteristics

(1) (A) If the offense resulted in an ongoing, continuous, or repetitive discharge, release, or emission of a hazardous or toxic substance or pesticide into the environment, increase by 6 levels; or

(B) if the offense otherwise involved a discharge, release, or emission of a hazardous or toxic substance or pesticide, increase by 4 levels.

(2) If the offense resulted in a substantial likelihood of death or serious bodily injury, increase by 9 levels.

(3) If the offense resulted in disruption of public utilities or evacuation of a community, or if cleanup required a substantial expenditure, increase by 4 levels.

(4) If the offense involved transportation, treatment, storage, or disposal without a permit or in violation of a permit, increase by 4 levels.

(5) If a recordkeeping offense reflected an effort to conceal a substantive environmental offense, use the offense level for the substantive offense.

(6) If the offense involved a simple recordkeeping or reporting violation only, decrease by 2 levels.

Commentary

Statutory Provisions: 7 U.S.C. 136j–1361; 15 U.S.C. 2614 and 2615; 33 U.S.C. 1319(c)(1), (2), 1517(b), 1321(b)(5); 42 U.S.C. 300h–2, 6928(d), 7413, 9603 (b), (c), (d); 43 U.S.C. 1350, 1816(a), 1822(b).

Application Notes:

1. "Recordkeeping offense" includes both recordkeeping and reporting offenses. The term is to be broadly construed as including failure to report discharges, releases, or

emissions where required; the giving of false information; failure to file other required reports or provide necessary information; and failure to prepare, maintain, or provide records as prescribed.

2. "Simple recordkeeping or reporting violation" means a recordkeeping or reporting offense in a situation where the defendant neither knew nor had reason to believe that the recordkeeping offense would significantly increase the likelihood of any substantive environmental harm.

3. This section applies to offenses involving pesticides or substances designated toxic or hazardous at the time of the offense by statute or regulation. A listing of hazardous and toxic substances in the guidelines would be impractical. Several federal statutes (or regulations promulgated thereunder) list toxics, hazardous wastes and substances, and pesticides. These lists, such as those of toxic pollutants for which effluent standards are published under the Federal Water Pollution Control Act (e.g., 33 U.S.C. 1317) as well as the designation of hazardous substances under the Comprehensive Environmental Response, Compensation and Liability Act (e.g., 42 U.S.C. 9601(14)), are revised from time to time. "Toxic" and "hazardous" are defined differently in various statutes, but the common dictionary meanings of the words are not significantly different.

4. Except when the adjustment in subsection (b)(6) for simple recordkeeping offenses applies, this section assumes knowing conduct. In cases involving negligent conduct, a downward departure may be warranted.

5. Subsection (b)(1) assumes a discharge or emission into the environment resulting in actual environmental contamination. A wide range of conduct, involving the handling of different quantities of materials with widely differing propensities, potentially is covered. Depending upon the harm resulting from the emission, release or discharge, the quantity and nature of the substance or pollutant, the duration of the offense and the risk associated with the violation, a departure of up to two levels in either direction from the offense levels prescribed in these specific offense characteristics may be appropriate.

6. Subsection (b)(2) applies to offenses where the public health is seriously endangered. Depending upon the nature of the risk created and the number of people placed at risk, a departure of up to three levels upward or downward may be warranted. If death or serious bodily injury results, a departure would be called for. See Chapter Five, Part K (Departures).

7. Subsection (b)(3) provides an enhancement where a public disruption, evacuation or cleanup at substantial expense has been required. Depending upon the nature of the contamination involved, a departure of up to two levels either upward or downward could be warranted.

8. Subsection (b)(4) applies where the offense involved violation of a permit, or where there was a failure to obtain a permit when one was required. Depending upon the nature and quantity of the substance involved and the risk associated with the offense, a departure of up to two levels either upward or downward may be warranted.

9. Where a defendant has previously engaged in similar misconduct established by a civil adjudication or has failed to comply with an administrative order, an upward departure may be warranted. See § 4A1.3 (Adequacy of Criminal History Category).

Background: This section applies both to substantive violations of the statute governing the handling of pesticides and toxic and hazardous substances and to recordkeeping offenses. The first four specific offense characteristics provide enhancements when the offense involved a substantive violation. The last two specific offense characteristics apply to recordkeeping offenses. Although other sections of the guidelines generally prescribe a base offense level of 6 for regulatory violations, § 2Q1.2 prescribes a base offense level of 8 because of the inherently dangerous nature of hazardous and toxic substances and pesticides. A decrease of 2 levels is provided, however, for "simple recordkeeping or reporting violations" under § 2Q1.2(b)(6).

§ 2Q1.3. Mishandling of Other Environmental Pollutants; Recordkeeping, Tampering, and Falsification

(a) Base Offense Level: 6.

(b) Specific Offense Characteristics

(1) (A) If the offense resulted in an ongoing, continuous, or repetitive discharge, release, or emission of a pollutant into the environment, increase by 6 levels; or

(B) if the offense otherwise involved a discharge, release, or emission of a pollutant, increase by 4 levels.

(2) If the offense resulted in a substantial likelihood of death or serious bodily injury, increase by 11 levels.

(3) If the offense resulted in disruption of public utilities or evacuation of a community, or if cleanup required a substantial expenditure, increase by 4 levels.

(4) If the offense involved a discharge without a permit or in violation of a permit, increase by 4 levels.

(5) If a recordkeeping offense reflected an effort to conceal a substantive environmental offense, use the offense level for the substantive offense.

Commentary

Statutory Provisions: 33 U.S.C. 403, 406, 407, 411, 1319 (c)(1), (c)(2), 1415(b), 1907, 1908; 42 U.S.C. 4912, 7413.

Application Notes:

1. "Recordkeeping offense" includes both recordkeeping and reporting offenses. The term is to be broadly construed as including failure to report discharges, releases, or emissions where required; the giving of false information; failure to file other required reports or provide necessary information; and failure to prepare, maintain, or provide records as prescribed.

2. If the offense involved mishandling of nuclear material, apply § 2M6.2 (Violation of Other Federal Atomic Energy Statutes, Rules, and Regulations) rather than this guideline.

3. The specific offense characteristics in this section assume knowing conduct. In cases involving negligent conduct, a downward departure may be warranted.

4. Subsection (b)(1) assumes a discharge or emission into the environment resulting in actual environmental contamination. A wide range of conduct, involving the handling of different quantities of materials with widely differing propensities, potentially is covered. Depending upon the harm resulting from the emission, release or discharge, the quantity and nature of the substance or pollutant, the duration of the offense and the risk associated with the violation a departure of up to two levels in either direction from that prescribed in these specific offense characteristics may be appropriate.

5. Subsection (b)(2) applies to offenses where the public health is seriously endangered. Depending upon the nature of the risk created and the number of people placed at risk, a departure of up to three levels upward or downward may be warranted. If death or serious bodily injury results, a departure would be called for. See Chapter Five, Part K (Departures).

6. Subsection (b)(3) provides an enhancement where a public disruption, evacuation or cleanup at substantial expense has been required. Depending upon the nature of the contamination involved, a departure of up to two levels in either direction could be warranted.

7. Subsection (b)(4) applies where the offense involved violation of a permit, or where there was a failure to obtain a permit when one was required. Depending upon the nature and quantity of the substance involved and the risk associated with the offense, a departure of up to two levels in either direction may be warranted.

8. Where a defendant has previously engaged in similar misconduct established by a civil adjudication or has failed to comply with an administrative order, an upward departure may be warranted. See § 4A1.3 (Adequacy of Criminal History Category).

Background: This section parallels § 2Q1.2 but applies to offenses involving substances which are not pesticides and are not designated as hazardous or toxic.

§ 2Q1.4. Tampering or Attempted Tampering With Public Water System

(a) Base Offense Level: 18.

(b) Specific Offense Characteristics.

(1) If a risk of death or serious injury was created, increase by 6 levels.

(2) If the offense resulted in disruption of a public water system or evacuation of a community, or if cleanup required a substantial expenditure, increase by 4 levels.

(3) If the offense resulted in an ongoing, continuous, or repetitive release of a contaminant into a public water system or lasted for a substantial period of time, increase by 2 levels.

(4) If the purpose of the offense was to influence government action or to extort money, increase by 6 levels.

Commentary

Statutory Provision: 42 U.S.C. 300i–1.

Application Note:

1. "Serious injury" means serious bodily injury as defined in the Commentary to § 1B1.1 (Applicable Instructions).

§ 2Q1.5. Threatened Tampering With Public Water System

(a) Base Offense Level: 10.

(b) Specific Offense Characteristics.

(1) If the threat or attempt resulted in disruption of a public water system or evacuation of a community or a substantial public expenditure, increase by 4 levels.

(2) If the purpose of the offense was to influence government action or to extort money, increase by 8 levels.

Commentary

Statutory Provision: 42 U.S.C. 300i–1.

2. Conservation and Wildlife

§ 2Q2.1. Specially Protected Fish, Wildlife, and Plants

(a) Base Offense Level: 6.

(b) Specific Offense Characteristics.

(1) If the offense involved a commercial purpose, increase by 2 levels.

(2) If the offense involved fish, wildlife, or plants that were not quarantined as required by law, increase by 2 levels.

(3) Apply the greater:

(A) If the market value of the specially protected fish, wildlife, or plants exceeded $2,000, increase the offense level by the corresponding number of levels from the table in § 2F1.1 (Fraud and Deceit); or

(B) If the offense involved a quantity of fish, wildlife, or plants that was substantial in relation either to the overall population of the species or to a discrete subpopulation, increase by 4 levels.

Commentary

Statutory Provisions: 16 U.S.C. 668(a), 707, 1174(a), 1338(a), 1375(b), 1540(b).

Background: This section applies to violations of the Endangered Species Act, the Bald Eagle Protection Act, the Migratory Bird Treaty, the Marine Mammal Protection Act, the Wild Free-Roaming Horses and Burros Act, and the Fur Seal Act.

These statutes provide special protection to particular species of fish, wildlife, and plants. Enhancements are provided where the offense involved a commercial purpose, and where the fish, wildlife, or plants were not quarantined as required by law. An additional enhancement is provided where the market value of the species exceeded $2,000 or the offense involved a quantity of fish, wildlife, or plants that was substantial in relation either to the population of the species or to a discrete subpopulation of the species.

§ 2Q2.2. Lacey Act; Smuggling and Otherwise Unlawfully Dealing in Fish, Wildlife, and Plants

(a) Base Offense Level:

(1) 6, if the defendant knowingly imported or exported fish, wildlife, or plants, or knowingly engaged in conduct involving the sale or purchase of fish, wildlife, or plants with a market value greater than $350; or

(2) 4.

(b) Specific Offense Characteristics

(1) If the offense involved a commercial purpose, increase by 2 levels.

(2) If the offense involved fish, wildlife, or plants that were not quarantined as required by law, increase by 2 levels.

(3) Apply the greater:

(A) If the market value of the fish, wildlife, or plants exceeded $2,000, increase the offense level by the corresponding number of levels from the table in § 2F1.1 (Fraud and Deceit); or

(B) If the offense involved a quantity of fish, wildlife, or plants that was substantial in relation either to the overall population of the species or to a discrete subpopulation, increase by 4 levels.

Commentary

Statutory Provisions: 16 U.S.C. 3773(d); 18 U.S.C. 545.

Application Note:

1. This section applies to violations of 18 U.S.C. 545 where the smuggling activity involved fish, wildlife, or plants. In other cases, see §§ 2T3.1 and 2T3.2.

Background: This section applies to violations of the Lacey Act Amendments of 1981, 16 U.S.C. 3373(d), and to violations of 18 U.S.C. 545 where the smuggling activity involved fish, wildlife, or plants. These are the principal enforcement statues utilized to combat interstate and foreign commerce in unlawfully taken fish, wildlife, and plants. The adjustments for specific offense characteristics are identical to those in § 2Q2.1.

Part R—Antitrust Offenses

§ 2R1.1. Bid-Rigging, Price-Fixing or Market-Allocation Agreements Among Competitors

(a) Base Offense Level: 9.

(b) Specific Offense Characteristics

(1) If the conduct involved participation in an agreement to submit non-competitive bids, increase by 1 level.

(2) If the volume of commerce attributable to the defendant was less than $1,000,000 or more than $4,000,000, adjust the offense level as follows:

Volume of commerce	Adjustment to offense level
(A) Less than $1,000,000	Subtract 1.
(B) $1,000,000–$4,000,000	No adjustment.
(C) $4,000,001–$15,000,000	Add 1.
(D) $15,000,001–$50,000,000	Add 2.
(E) Over $50,000,000	Add 3.

For purposes of this guideline, the volume of commerce attributable to an individual participant in a conspiracy is the volume of commerce done by him or his principal in goods or services that were affected by the violation. When multiple counts or conspiracies are involved, the volume of commerce should be treated cumulatively to determine a single, combined offense level.

(c) Fines

A fine shall be imposed in addition to any term of imprisonment. The guideline fine range for an individual conspirator is from 4 to 10 percent of the volume of commerce, but not less than $20,000. The fine range for an organization is from 20 to 50 percent of the volume of commerce, but not less than $100,000.

Commentary

Statutory Provision: 15 U.S.C. 1.

Application Notes:

1. Because the guideline sentences depend on the volume of commerce done by each firm, role in the offense is implicitly taken into account. Accordingly, the provisions of § 3B1.1 (Aggravating Role) are to be applied only in unusual circumstances. An increase for role under § 3B1.1 might be appropriate only where a defendant actually coerced others into participating in a conspiracy—an unusual circumstance. Conversely, a decrease for role under § 3B1.2 (Mitigating Role) would not be appropriate merely because an individual defendant or his firm did not profit substantially from the violation. An individual defendant should be considered for a downward adjustment for a mitigating role in the offense only if he was responsible in some minor way for his firm's participation in the conspiracy. A complementary bidder who did not win a bid would not for that reason qualify for a downward adjustment, but a low-level employee who participated in only one of several agreements constituting a conspiracy would.

2. In setting the fine for individuals, the court should consider the extent of the defendant's participation in the offense, his role, and the degree to which he personally profited from the offense (including salary, bonuses, and career enhancement). If the court concludes that the defendant lacks the ability to pay the guideline fine, it should impose community service in lieu of a portion of the fine. The community service should be equally as burdensome as a fine.

3. In setting the fine for an organization, the court should consider whether the organization encouraged or took steps to prevent the violation, whether high-level management was aware of the violation, and whether the organization previously engaged in antitrust violations.

4. Another consideration in setting the fine is that the average level of mark-up due to price-fixing may tend to decline with the volume of commerce involved.

5. It is the intent of the Commission that alternatives such as community confinement not be used to avoid imprisonment of antitrust offenders.

6. Understatement of seriousness is especially likely in cases involving complementary bids. If, for example, the defendant participated in an agreement not to submit a bid, or to submit an unreasonably high bid, on one occasion, in exchange for his being allowed to win a subsequent bid that he did not in fact win, his volume of commerce would be zero, although he would have contributed to harm that possibly was quite substantial. The court should consider sentences near the top of the guideline range in such cases.

7. In the case of a defendant with previous antitrust convictions, a sentence at or even above the maximum of the applicable guideline range may be warranted. See § 4A1.3 (Adequacy of Criminal History).

Background: These guidelines apply to violations of the antitrust laws. Although they are not unlawful in all countries, there is near universal agreement that restrictive agreements among competitors, such as horizontal price-fixing (including bid rigging) and horizontal market-allocation, can cause serious economic harm. There is no consensus, however, about the harmfulness of other types of antitrust offenses, which furthermore are rarely prosecuted and may involve unsettled issues of law. Consequently, only one guideline, which deals with horizontal agreements in restraint of trade, has been promulgated.

The agreements among competitors covered by this section are almost invariably covert conspiracies that are intended to and serve no purpose other than to restrict output and raise prices, and that are so plainly anticompetitive that they have been recognized as illegal per se, i.e., without any inquiry in individual cases as to their actual competitive effect. The Commission believes that the most effective method to deter individuals from committing this crime is through imposing short prison sentences coupled with large fines. The controlling consideration underlying this guideline is general deterrence.

Under the guidelines prison terms for these offenders should be much more common, and usually somewhat longer, than currently is typical. Absent adjustments, the guidelines require confinement of four months or longer in the great majority of cases that are prosecuted, including all bid-rigging cases. The court will have the discretion to impose considerably longer sentences within the guideline ranges. Adjustments from Chapter Three, Part E (Acceptance of Responsibility) and, in rare instances, Chapter Three, Part B (Role in the Offense), may decrease these minimum sentences; nonetheless, in very few cases will the guidelines not require that some confinement be imposed. Adjustments will not affect the level of fines.

The guideline imprisonment terms represent a substantial change from present practice. Currently, approximately 39 percent of all individuals convicted of antitrust violations are imprisoned. Considering all defendants sentenced, the average time served recently was only forty-five days. The guideline prison terms are, however, consistent with the parole guidelines. The fines specified in the guideline represent substantial increases over existing practice. The current average fine for individuals is only approximately $27,000; for corporations, it is approximately $160,000.

Tying the offense level to the scale or scope of the offense is important in order to ensure that the sanction is in fact punitive and that there is an incentive to desist from a violation once it has begun. The offense levels are not based directly on the damage caused or profit made by the defendant because damages are difficult and time consuming to establish. The volume of commerce is an acceptable and more readily measurable substitute. The limited empirical data currently available show that fines increase with the volume of commerce and the term of imprisonment probably does as well.

The Commission believes that the volume of commerce is liable to be an understated measure of seriousness in some bid-rigging cases. For this reason, and consistent with current practice, the Commission has specified a 1 level increase for bid-rigging.

Substantial fines are an essential part of the sanction. It is estimated that the average additional profit attributable to price fixing is 10 percent of the selling price. The Commission has specified that a fine from two to five times that amount be imposed on organizational defendants as a deterrent because of the difficulty in identifying violators. Additional monetary penalties can be provided through private treble damage actions. A lower fine is specified for individuals. The Commission believes that most antitrust defendants have the resources and earning capacity to pay these fines, at least over time. The statutory maximum fine is $250,000 for individuals and $1,000,000 for organizations, but is increased when there are convictions on multiple counts.

Part S—Money Laundering and Monetary Transaction Reporting

Introductory Commentary

Money laundering activities are essential to the operation of organized crime. Congress recently enacted new statutes prohibiting these activities and increased the maximum penalties.

The guidelines provide substantially increased punishments for these offenses. In fiscal year 1985, the time served by defendants convicted of felonies involving monetary transaction reporting under 31 U.S.C. 5313, 5316, and 5322 averaged about ten months, and only a few defendants served as much as four to five years. However, courts have been imposing higher sentences as they come to appreciate the seriousness of this activity, and sentences as long as thirty-five years have been reported. Specifically, Congress made all reporting violations felonies in 1984, and enacted the Money Laundering Control Act of 1986 (18 U.S.C. 1956, 1957), which creates new offenses and provides higher maximum sentences when knowledge, facilitation or concealment of serious criminal activity is proved.

§ 2S1.1. Laundering of Monetary Instruments

(a) Base Offense Level:

(1) 23, if convicted under 18 U.S.C. 1956 (a)(1)(A) or (a)(2)(A);

(2) 20, otherwise.

(b) Specific Offense Characteristics

(1) If the defendant knew that the funds were the proceeds of an unlawful activity involving the manufacture, importation, or distribution of narcotics or other controlled substances, increase by 3 levels.

(2) If the value of the funds exceeded $100,000, increase the offense level as follows:

Value	Increase in level
(A) $100,000 or less	No increase.
(B) $100,001–$200,000	Add 1.
(C) $200,001–$350,000	Add 2.
(D) $350,001–$600,000	Add 3.
(E) $600,001–$1,000,000	Add 4.
(F) $1,000,001–$2,000,000	Add 5.
(G) $2,000,001–$3,500,000	Add 6.
(H) $3,500,001–$6,000,000	Add 7.
(I) $6,000,001–$10,000,000	Add 8.
(J) $10,000,001–$20,000,000	Add 9.
(K) $20,000,001–$35,000,000	Add 10.
(L) $35,000,001–$60,000,000	Add 11.
(M) $60,000,001–$100,000,000	Add 12.
(N) More than $100,000,000	Add 13.

Commentary

Statutory Provision: 18 U.S.C. 1956.

Background: The statute covered by this guideline is a part of the Anti-Drug Abuse Act of 1986, and prohibits financial transactions involving funds that are the proceeds of "specified unlawful activity," if such transactions are intended to facilitate that activity, or conceal the nature of the proceeds or avoid a transaction reporting requirement. The maximum term of imprisonment authorized is twenty years.

In keeping with the clear intent of the legislation, this guideline provides for substantial punishment. The punishment is higher than that specified in § 2S1.2 and § 2S1.3 because of the higher statutory maximum, and the added elements as to source of funds, knowledge, and intent.

A higher base offense level is specified if the defendant is convicted under 18 U.S.C. 1956 (a)(1)(A) or (a)(2)(A) because those subsections apply to defendants who did not merely conceal a serious crime that had

already taken place, but encouraged or facilitated the commission of further crimes.

The amount of money involved is included as a factor because it is an indicator of the scope of the criminal enterprise as well as the degree of the defendant's involvement. Narcotics trafficking is included as a factor because of the clearly expressed Congressional intent to adequately punish persons involved in that activity.

§ 2S1.2. Engaging in Monetary Transactions in Property Derived From Specified Unlawful Activity

(a) Base Offense Level: 17.

(b) Specific Offense Characteristics.

(1) If the defendant knew that the funds were the proceeds of:

(A) an unlawful activity involving the manufacture, importation, or distribution of narcotics or other controlled substances, increase by 5 levels;

(B) any other specified unlawful activity (see 18 U.S.C. 1956(c)(7)), increase by 2 levels.

(2) If the value of the funds exceeded $100,000, increase the offense level as specified in § 2S1.1(b)(2).

Commentary

Statutory Provision: 18 U.S.C. 1957.

Application Note:

1. "Specified unlawful activity" is defined in 18 U.S.C. 1956(c)(7) to include racketeering offenses (18 U.S.C. 1961(1)), drug offenses, and most other serious federal crimes but does not include other money-laundering offenses.

Background: The statute covered by this guideline is a part of the Anti-Drug Abuse Act of 1986, and prohibits monetary transactions that exceed $10,000 and involve the proceeds of "specified unlawful activity" (as defined in 18 U.S.C. 1956), if the defendant knows that the funds are "criminally derived property." (Knowledge that the property is from a specified unlawful activity is not an element of the offense.) The maximum term of imprisonment specified is ten years.

The statute is similar to 18 U.S.C. 1956, but does not require that the recipient exchange or "launder" the funds, that he have knowledge that the funds were proceeds of a specified unlawful activity, nor that he have any intent to further or conceal such an activity. In keeping with the intent of the legislation, this guideline provides for substantial punishment. The offense levels are higher than in § 2S1.3 because of the higher statutory maximum and the added element of knowing that the funds were criminally derived property.

The 2-level increase in subsection (b)(1) applies if the defendant knew that the funds were not merely criminally derived, but were in fact the proceeds of a specified unlawful activity. Such a distinction is not made in § 2S1.1, because the level of intent required in that section effectively precludes an inference that the defendant was unaware of the nature of the activity.9

§ 2S1.3. Failure To Report Monetary Transactions; Structuring Transactions To Evade Reporting Requirements

(a) Base Offense Level:

(1) 13, if the defendant:

(A) structured transactions to evade reporting requirements;

(B) made false statements to conceal or disguise the activity; or

(C) reasonably should have believed that the funds were the proceeds of criminal activity;

(2) 5, otherwise.

(b) Specific Offense Characteristics

(1) If the defendant knew or believed that the funds were criminally derived, increase by 5 levels.

(2) If the base offense level is from (a)(1) above and the value of the funds exceeded $100,000, increase the offense level as specified in § 2S1.1(b)(2).

Commentary

Statutory Provisions: 31 U.S.C. 5313, 5314, 5316, 5322, 5324.

Application Note:

1. As used in this guideline, funds or other property are the "proceeds of criminal activity" or "criminally derived" if they are "criminally derived property," within the meaning of 18 U.S.C. 1957.

Background: The offenses covered by this guideline relate to records and reports of certain transactions involving currency and monetary instruments. The maximum prison sentence for these offenses is ten years if there is any pattern of unlawful activity, and five years otherwise.

The base offense level is set at 13 for the great majority of cases. However, the base offense level is set at 5 for those cases in which these offenses may be committed with innocent motives and the defendant reasonably believed that the funds were from legitimate sources. The higher base offense level applies in all other cases. The offense level is increased by 5 levels if the defendant knew that the funds were criminally derived.

The dollar value of the transactions not reported is an important sentencing factor, except in rare cases. It is an indicator of several factors that are pertinent to the sentence, including the size of the criminal enterprise, and the extent to which the defendant aided the enterprise.

Part T—Offenses Involving Taxation

1. Income Taxes

Introductory Commentary

The criminal tax laws are designed to protect the public interest in preserving the integrity of the nation's tax system. Criminal tax prosecutions serve to punish the violator and promote respect for the tax laws. Because of the limited number of criminal tax prosecutions relative to the estimated incidence of such violations, deterring others from violating the tax laws is a primary consideration underlying these guidelines. Recognition that the sentence for a criminal tax case will be commensurate with the gravity of the offense should act as a deterrent to would-be violators.

§ 2T1.1. Tax Evasion

(a) Base Offense Level: Level from § 2T4.1 (Tax Table) corresponding to the tax loss.

For purposes of this guideline, the "tax loss" is the greater of: (A) The total amount of tax that the taxpayer evaded or attempted to evade, including interest to the date of filing of an indictment or information; and (B) the "tax loss" defined in § 2T1.3. When more than one year is involved, the tax losses are to be added.

(b) Specific Offense Characteristics.

(1) If (A) the defendant failed to report income exceeding $10,000 per year from criminal activity, or (B) the offense concealed or furthered criminal activity from which the defendant derived a substantial portion of his income, increase by 2 levels. If the resulting offense level is less than level 12, increase to level 12.

(2) If sophisticated means were used to impede discovery of the nature or extent of the offense, increase by 2 levels.

Commentary

Statutory Provision: 26 U.S.C. 7201.

Application Notes:

1. False statements in furtherance of the evasion (see §§ 2T1.3, 2T1.5, and 2T1.8) are considered part of the offense for purposes of this guideline.

2. For purposes of the guideline, the tax loss is the amount of tax that the taxpayer evaded or attempted to evade, plus interest to the date of the filing of an indictment or information. The tax loss does not include penalties. The court is to determine this amount as it would any other guideline factor. In some instances, such as when indirect methods of proof are used, the amount of the tax loss may be uncertain; the guidelines contemplate that the court will simply make a reasonable estimate based on the available facts.

3. Although the definition of tax loss corresponds to what is commonly called the "criminal deficiency," its amount is to be determined by the same rules applicable in determining any other sentencing factor. In accordance with the "relevant conduct" approach adopted by the guidelines, tax losses resulting from more than one year are to be added whether or not the defendant is convicted of multiple counts.

4. The guideline refers to § 2T1.3 to provide an alternative minimum standard for the tax loss, which is based on a percentage of the dollar amounts of certain misstatements made in returns filed by the taxpayer. This alternative standard may be easier to determine, and should make irrelevant the issue of whether the taxpayer was entitled to offsetting adjustments that he failed to claim.

5. "Criminal activity" means any "racketeering activity" as defined in 18 U.S.C. 1961. If § 2T1.1(b)(1) applies, do not apply § 4B1.3 (Criminal Livelihood), which is substantially duplicative.

6. Whether "sophisticated means" were employed (§ 2T1.1(b)(2)) requires a subjective determination similar to that in § 2F1.1(b)(2). An enhancement would be applied for example, where the defendant used offshore bank accounts, or transactions through corporate shells.

Background: This guideline relies most heavily on the amount of tax evaded because the chief interest protected by the statute is the collection of taxes. A greater evasion is obviously more harmful to the treasury, and more serious than a smaller one with otherwise similar characteristics. Furthermore, as the potential benefit from tax evasion increases, the sanction necessary to deter also increases.

The overlapping imprisonment ranges in the Tax Table are intended to minimize the significance of disputes. The consequence of an inexact estimate of the tax loss is never severe, even when the tax loss is near the boundary of a range. For example, although the difference between $39,999 and $40,001 results in a change from level 10 to level 11, any sentence of eight to twelve months would be within the guidelines regardless of the offense level determination made by the court. Indeed, any sentence between ten and twelve months would be within the guidelines for a tax loss ranging from $20,000 to $150,000. As a consequence, for all dollar amounts, the Tax Table affords the court considerable latitude in evaluating other factors, even when the amount of the tax loss is uncertain.

Roughly half of all tax evaders are now sentenced to probation without imprisonment, while the other half receives sentences that require them to serve an average prison term of twelve months. This guideline is intended to reduce disparity in sentencing for tax evasion and to somewhat increase average sentence length. As a result, the number of purely probationary sentences will be reduced. The Commission believes that any additional costs of imprisonment that may be incurred as a result of the increase in the average term of imprisonment for tax evasion are inconsequential in relation to the potential increase in revenue. Current estimates are that income taxes are underpaid by approximately $90 billion annually.

Although currently some large-scale evaders serve as much as five years in prison, in practice the average sentence length for defendants sentenced to a term of imprisonment does not increase rapidly with the amount of tax evaded. Thus, the average time served by those sentenced to a term of imprisonment for evading less than $10,000 in taxes is about nine months, while the corresponding figure for those evading over $100,000 in taxes is about sixteen months. Guideline sentences should result in small increases in the average length of imprisonment for most tax cases that involve less than $100,000 in tax evaded. The increase is expected to be somewhat larger for cases involving more taxes.

Failure to report criminally-derived income is included as a factor for deterrence purposes. Criminally-derived income is generally difficult to establish, so that the tax loss in such cases will tend to be substantially understated. An enhancement for offenders who violate the tax laws as part of a pattern of criminal activity from which they derive a substantial portion of their income also serves to implement the mandate of 28 U.S.C. 994(n). Current-practice estimates are that, on average, the presence of this factor increases time served by the equivalent of 2 levels.

Although tax evasion always involves some planning, unusually sophisticated efforts to conceal the evasion decrease the likelihood of detection and therefore warrant an additional sanction for deterrence purposes. Analyses of data for other frauds and property crimes show that careful planning or sophistication generally results in an average increase of at least 2 levels.

The guideline does not make a distinction for an employee who prepares fraudulent returns on behalf of his employer. The adjustments in Chapter Three, Part B (Role in the Offense) should be used to make appropriate distinctions.

§ 2T1.2. Willful Failure To File Return, Supply Information, or Pay Tax

(a) Base Offense Level:

(1) 1 level less than the level from § 2T4.1 (Tax Table) corresponding to the tax loss; or

(2) 5, if there is no tax loss.

For purposes of this guideline, "tax loss" means the total amount of tax that the taxpayer owed and did not pay, but, in the event of a failure to file in any year, not less than 10 percent of the amount by which the taxpayer's gross income for that year exceeded $20,000.

(b) Specific Offense Characteristics

(1) If (A) the defendant failed to report income exceeding $10,000 per year from criminal activity, or (B) the offense concealed or furthered criminal activity from which the defendant derived a substantial portion of his income, increase by 2 levels. If the resulting offense level is less than level 12, increase to level 12.

(2) If sophisticated means were used to impede discovery of the nature or extent of the offense, increase by 2 levels.

Commentary

Statutory Provision: 26 U.S.C. 7203.

Application Note:

1. "Criminal activity" means any "racketeering activity" as defined in 18 U.S.C. 1961. If § 2T1.2(b)(1) applies, do not apply § 4B1.3 (Criminal Livelihood), which is substantially duplicative.

2. Whether "sophisticated means" were employed (§ 2T1.2(b)(2)) requires a determination similar to that in § 2F1.1(b)(2). An enhancement would be applied, for example, where the defendant used offshore bank accounts or transactions through corporate shells.

Background: Violations of 26 U.S.C. 7203 are usually serious misdemeanors that are similar to tax evasion, except that there need be no affirmative act in support of the offense. They are rarely prosecuted unless the defendant also owed taxes that he failed to pay.

Because the conduct generally is tantamount to tax evasion, the guideline is similar to § 2T1.1. Because the offense is a misdemeanor, the offense level has been set at one below the level corresponding to evasion of the same amount of taxes.

An alternative measure of the tax loss, 10 percent of gross income in excess of $20,000, has been provided because of the difficulty of computing the tax loss, which may become the subject of protracted civil litigation. It is expected that the measure used will generally understate the tax due, and will not call for a sentence approaching the maximum unless very large incomes are involved. Thus, the burden will remain on the prosecution to provide a more accurate estimate of the tax loss if it seeks enhanced punishment.

The intended impact of this guideline is to increase the average time served for this offense, and to increase significantly the number of violators who receive a term of imprisonment. Currently, the average time served for this offense is approximately 2.5 months, including those who are not sentenced to prison. Considering only those who do serve a term of imprisonment, the average term is about six to seven months.

§ 2T1.3. Fraud and False Statements Under Penalty of Perjury

(a) Base Offense Level:

(1) Level from § 2T4.1 (Tax Table) corresponding to the tax loss, if the offense was committed in order to facilitate evasion of a tax; or

(2) 6, otherwise.

For purposes of this guideline, the "tax loss" is 28 percent of the amount by which the greater of gross income and taxable income was understated, plus 100 percent of the total amount of any false credits claimed against tax. If the taxpayer is a corporation, use 34 percent in lieu of 28 percent.

(b) Specific Offense Characteristics.

(1) If (A) the defendant failed to report income exceeding $10,000 per year from criminal activity, or (B) the offense concealed or furthered criminal activity from which the defendant derived a substantial portion of his income, increase by 2 levels. If the resulting offense level is less than level 12, increase to level 12.

(2) If sophisticated means were used to impede discovery of the nature or extent of the offense, increase by 2 levels.

Commentary

Statutory Provision: 26 U.S.C. 7206, except § 7206(2).

Application Notes:

1. "Criminal activity" means any "racketeering activity" as defined in 18 U.S.C. 1961. If § 2T1.3(b)(1) applies, do not apply § 4B1.3 (Criminal Livelihood), which is substantially duplicative.

2. Whether "sophisticated means" were employed (§ 2T1.3(b)(2)) requires a determination similar to that in § 2F1.1(b)(2). An enhancement would be applied, for example, where the defendant used offshore bank accounts or transactions through corporate shells.

Background: This guideline covers conduct that usually is analogous to tax evasion, although the elements differ. Accordingly, the offense is treated much like tax evasion.

Existence of a tax loss is not an element of these offenses. Furthermore, in instances where the defendant is setting the groundwork for evasion of a tax that is expected to become due in the future, he may make false statements that underreport income that as of the time of conviction may not yet have resulted in a tax loss. In order to gauge the seriousness of these offenses, the guidelines establish a rule for determining a "tax loss" based on the nature and magnitude of the false statements made. Use of this approach also avoids complex problems of proof and invasion of privacy when returns of persons other than the defendant and co-defendants are involved.

§ 2T1.4. Aiding, Assisting, Procuring, Counseling, or Advising Tax Fraud

(a) Base Offense Level:

(1) Level from § 2T4.1 (Tax Table) corresponding to the resulting tax loss, if any; or

(2) 6, otherwise.

For purposes of this guideline, the "tax loss" is the tax loss, as defined in § 2T1.3, resulting from the defendant's aid, assistance, procurance or advice.

(b) Specific Offense Characteristics.

(1) If the defendant committed the offense as part of a pattern or scheme from which he derived a substantial portion of his income, increase by 2 levels.

(2) If sophisticated means were used to impede discovery of the nature or extent of the offense, increase by 2 levels.

(3) If the defendant was in the business of preparing or assisting in the preparation of tax returns, increase by 2 levels.

Commentary

Statutory Provision: 26 U.S.C. 7206(2).

Application Notes:

1. Subsection (b)(1) applies to persons who derive a substantial portion of their income through the promotion of tax fraud or tax evasion, e.g., through promoting fraudulent tax shelters. If this subsection applies, do not apply § 4B1.3 (Criminal Livelihood), which is substantially duplicative.

2. Whether "sophisticated means" were employed (§ 2T1.1(b)(2)) requires a determination similar to that in § 2F1.1(b)(2). An enhancement would be applied, for example, where the defendant used offshore bank accounts or transactions through corporate shells.

3. Subsection (b)(3) applies to persons who regularly act as tax preparers or advisers for profit. Do not employ § 3B1.3 (Abuse of Position of Trust or Special Skill) if this adjustment applies. Subsection (b)(1) may also apply to such persons.

4. In certain instances, such as promotion of a tax shelter scheme, the defendant may advise other persons to violate their tax obligations through filing returns that find no support in the tax laws. If this type of conduct can be shown to have resulted in the filing of false returns (regardless of whether the principals were aware of their falsity), the misstatements in all such returns will contribute to one aggregate "tax loss."

Background: An increased offense level is specified for tax preparers and advisers because their misconduct poses a greater risk of revenue loss and is more clearly willful. Other considerations are similar to those in § 2T1.3.

§ 2T1.5. Fraudulent Returns, Statements, or Other Documents

(a) Base Offense Level: 6

Commentary

Statutory Provision: 26 U.S.C. 7207.

Background: The offense is a misdemeanor. It is to be distinguished from 26 U.S.C. 7206(1) (§ 2T1.3), which is a felony involving a false statement under penalty of perjury. The offense level has been set at 6 in order to give the sentencing judge considerable latitude because the conduct could be similar to tax evasion.

§ 2T1.6. Failing to Collect or Truthfully Account for and Pay Over Tax

(a) Base Offense Level: Level from § 2T4.1 (Tax Table) corresponding to the tax not collected or accounted for and paid over, plus interest.

Commentary

Statutory Provision: 26 U.S.C. 7202.

Application Note:

1. In the event that the employer not only failed to account to the Internal Revenue Service and pay over the tax, but also collected the tax from employees and did not account to them for it, it is both tax evasion and a form of embezzlement. In such instances, an upward departure may be warranted.

Background: The offense is a felony that is infrequently prosecuted. The failure to collect or truthfully account for the tax must be willful, as must the failure to pay. Where no effort is made to defraud the employee, the offense is a form of tax evasion, and is treated as such in the guidelines.

§ 2T1.7. Failing To Deposit Collected Taxes in Trust Account as Required After Notice

(a) Base Offense Level (Apply the greater):

(1) 4; or

(2) 5 less than the level from § 2T4.1 (Tax Table) corresponding to the amount not deposited.

Commentary

Statutory Provisions: 26 U.S.C. 7215, 7512(b).

Application Notes:

1. If funds are deposited and withdrawn without being paid to the Internal Revenue Service, they should be treated as never having been deposited.

2. It is recommended that the fine be based on the total amount of funds not deposited.

Background: This offense is a misdemeanor that does not require any intent to evade taxes, nor even that taxes have not been paid. The more serious offense is 26 U.S.C. 7202 (see § 2T1.6).

This offense should be relatively easy to detect and fines may be feasible. Accordingly, the offense level has been set considerably lower than for tax evasion, although some effort has been made to tie the offense level to the level of taxes that were not deposited.

§ 2T1.8. Offenses Relating to Withholding Statements

(a) Base Offense Level: 4.

Commentary

Statutory Provisions: 26 U.S.C. 7204, 7205.

Application Note:

1. If the defendant was attempting to evade, rather than merely delay, payment of taxes, a sentence above the guidelines may be warranted.

Background: The offenses are misdemeanors. Currently, imprisonment is unusual.

§ 2T1.9. Conspiracy To Impair, Impede or Defeat Tax

(a) Base Offense Level (Apply the greater):

(1) Offense level determined from § 2T1.1 or § 2T1.3, as applicable; or

(2) 10.

(b) Specific Offense Characteristics. If either of the following adjustments applies, use the greater:

(1) If the offense involved the planned or threatened use of violence, increase by 4 levels.

(2) If the conduct was intended to encourage persons other than or in addition to co-conspirators to violate the internal revenue laws or impede or impair the Internal Revenue Service in the assessment and collection of revenue, increase by 2 levels.

Commentary

Statutory Provision: 18 U.S.C. 371.

Application Notes:

1. This section applies to conspiracies to "defraud the United States by impeding, impairing, obstructing and defeating . . . the collection of revenue." United States v. Carruth, 699 F.2d 1017, 1021 (9th Cir. 1983), cert. denied, 104 S. Ct. 698 (1984). See also United States v. Browning, 723 F.2d 1544 (11th Cir. 1984); United States v. Klein, 247 F.2d 908, 915 (2d Cir. 1957), cert. denied, 355 U.S. 924 (1958). It does not apply to taxpayers, such as a husband and wife, who merely evade taxes jointly or file a fraudulent return.

2. The minimum base offense level is 10. If a tax loss from the conspiracy can be established under either § 2T1.1 or § 2T1.3

(whichever applies to the underlying conduct), and that tax loss corresponds to a higher offense level in the Tax Table (§ 2T4.1), use that higher base offense level.

3. The specific offense characteristics are in addition to those specified in § 2T1.1 and § 2T1.3.

4. Because the offense is a conspiracy, adjustments from Chapter Three, Part B (Role in the Offense) usually will apply.

Background: This type of conspiracy generally involves substantial sums of money. It also typically is complex and may be far-reaching, making it quite difficult to evaluate the extent of the revenue loss caused. Additional specific offense characteristics are included because of the potential for these tax conspiracies to subvert the revenue system and the danger to law enforcement agents and the public.

2. Alcohol and Tobacco Taxes

Introductory Commentary

This section deals with offenses contained in Parts I–IV of Subchapter J of Title 26, chiefly 26 U.S.C. 5601–5605, 5607, 5608, 5661, 5671, 5691, and 5762, where the essence of the conduct is tax evasion or a regulatory violation. Because these offenses are no longer a major enforcement priority, no effort has been made to provide a section-by-section set of guidelines. Rather, the conduct is dealt with by dividing offenses into two broad categories: tax evasion offenses and regulatory offenses.

§ 2T2.1. Non-Payment of Taxes

(a) Base Offense Level: Level from § 2T4.1 (Tax Table) corresponding to the tax loss.

For purposes of this guideline, the "tax loss" is the amount of taxes that the taxpayer failed to pay or attempted not to pay.

Commentary

Statutory Provisions: 26 U.S.C. 5601–5605, 5607, 5608, 5661, 5671, 5691, 5762, provided the conduct constitutes non-payment, evasion or attempted evasion of taxes.

Application Notes:

1. The tax loss is the total amount of unpaid taxes that were due on the alcohol and/or tobacco, or that the defendant was attempting to evade.

2. Offense conduct directed at more than tax evasion (e.g., theft or fraud) may warrant an upward departure.

Background: The most frequently prosecuted conduct violating this section is operating an illegal still. 26 U.S.C. 5601(a)(1).

§ 2T2.2. Regulatory Offenses

(a) Base Offense Level: 4.

Commentary

Statutory Provisions: 26 U.S.C. 5601–5605, 5607, 5608, 5661, 5671, 5691, 5762, provided the conduct is tantamount to a record-keeping violation rather than an effort to evade payment of taxes.

Background: Prosecutions of this type are infrequent.

3. Customs Taxes

Introductory Commentary

This part deals with violations of 18 U.S.C. 496, 541–545, 547, 548, 550, 551, 1915 and 19 U.S.C. 283, 1436, 1464, 1465, 1586(e), 1708(b). These guidelines are primarily aimed at revenue collection or trade regulation. They are not intended to deal with the importation of contraband, such as drugs, or other items such as obscene material, firearms or pelts of endangered species, the importation of which is prohibited or restricted for non-economic reasons. Other, more specific legislation generally applies to most of these offenses. Importation of contraband or stolen goods would be a reason for referring to another, more specific guideline, or for imposing a sentence above that specified in these guidelines.

§ 2T3.1. Evading Import Duties or Restrictions (Smuggling)

(a) Base Offense Level: Level from § 2T4.1 (Tax Table) corresponding to the tax loss.

For purposes of this guideline, the "tax loss" is the amount of the duty.

Commentary

Statutory Provisions: 18 U.S.C. 496, 541–545, 547, 548, 550, 551, 1915; 19 U.S.C. 283, 1436, 1464, 1465, 1586(e), 1708(b).

Application Notes:

1. A sentence at or near the minimum of the guideline range typically would be appropriate for cases involving tourists who bring in items for their own use. Such conduct generally poses a lesser threat to revenue collection.

2. Particular attention should be given to those items for which entry is prohibited, limited, or restricted. Especially when such items are harmful or protective quotas are in effect, the duties evaded on such items may not adequately reflect the harm to society or protected industries resulting from their importation. In such instances, the court should impose a sentence above the guideline. A sentence based upon an alternative measure of the "duty" evaded, such as the increase in market value due to importation, or 25 percent of the items' fair market value in the United States, might be considered.

§ 2T3.2. Receiving or Trafficking in Smuggled Property

(a) Base Offense Level: Level from § 2T4.1 (Tax Table) corresponding to the tax loss.

For purposes of this guideline, the "tax loss" is the amount of the duty.

Commentary

Statutory Provision: 18 U.S.C. 545.

4. Tax Table

§ 2T4.1. Tax Table

Tax loss	Offense level
(A) Less than $2,000	6
(B) $2,000–$5,000	7
(C) $5,001–$10,000	8
(D) $10,001–$20,000	9
(E) $20,001–$40,000	10
(F) $40,001–$80,000	11
(G) $80,001–$150,000	12
(H) $150,001–$300,000	13
(I) $300,001–$500,000	14
(J) $500,001–$1,000,000	15
(K) $1,000,001–$2,000,000	16
(L) $2,000,001–$5,000,000	17
(M) More than $5,000,000	18

Part X—Other Offenses

1. Conspiracies, Attempts, Solicitations

§ 2X1.1. Attempt, Solicitation, or Conspiracy Not Covered by a Specific Guideline

(a) Base Offense Level: The base offense level from the guideline for the object offense, plus any adjustments from such guideline for any intended offense conduct that can be established with reasonable certainty.

(b) Specific Offense Characteristics

(1) If an attempt or solicitation, decrease by 3 levels, unless the defendant completed all the acts the defendant believed necessary for successful completion of the offense or the circumstances demonstrate that the defendant was about to complete all such acts but for apprehension or interruption by some similar event beyond the defendant's control.

(2) If a conspiracy, decrease by 3 levels, unless the defendant or a co-conspirator completed all the acts the conspirators believed necessary on their part for the successful completion of the offense or the circumstances demonstrate that the conspirators were about to complete all such acts but for apprehension or interruption by some similar event beyond their control.

(3) If a solicitation, and the statute treats solicitation identically with the object of the offense, do not apply § 2X1.1(b)(1); i.e., the offense level for solicitation is the same as that for the object offense.

Commentary

Statutory Provisions: 18 U.S.C. 371, 372, 2271.

Application Notes:

1. Certain attempts, conspiracies, and solicitations are covered by specific guidelines (e.g., § 2A2.1 includes attempt, conspiracy, or solicitation to commit murder;

§ 2A3.1 includes attempted criminal sexual abuse; and § 2A4.1 includes attempts and conspiracies to commit controlled substance offenses). Section 2X1.1 applies only in the absence of a more specific guideline.

2. Under § 2X1.1(a) the base offense level will be the same as that for the object offense which the defendant solicited, or conspired or attempted to commit. But the only specific offense characteristics from the guideline for the object offense that apply are those that are determined to have been specifically intended or actually occurred. Speculative specific offense characteristics will not be applied. For example, if two defendants are arrested during the conspiratorial stage of planning an armed bank robbery, the offense level ordinarily would not include aggravating factors regarding possible injury to others, hostage taking, discharge of a weapon, or obtaining a large sum of money, because such factors would be speculative. The offense level would simply reflect the level applicable to robbery of a financial institution, with the enhancement for possession of a weapon. If it was established that the defendants actually intended to physically restrain the teller, the specific offense characteristic for physical restraint would be added. In an attempted theft, the value of the items that the defendant intended to steal would be considered.

3. If the object offense is not covered by a specific guideline, see § 2X5.1 (Other Offenses).

4. If the defendant was convicted of conspiracy or solicitation and also for the completed offense, the conviction for the conspiracy or solicitation shall be imposed to run concurrently with the sentence for the object offense, except in cases where it is otherwise specifically provided for by the guidelines or by law. 28 U.S.C. 994(1)(2).

Background: In most prosecutions for conspiracies or attempts, the object offense was substantially completed or was interrupted or prevented on the verge of completion by the intercession of law enforcement authorities or the victim. In such cases, no reduction of the offense level is warranted. Sometimes, however, the arrest occurs well before the defendant or any co-conspirator has completed the necessary acts of the object offense. Under such circumstances, a reduction of 3 levels is provided under § 2X1.1(b) (1) or (2).

2. Aiding and Abetting

§ 2X2.1. Aiding and Abetting

The offense level is the same level as that for the underlying offense.

Commentary

Statutory Provisions: 18 U.S.C. 2, 755–757.

Application Note:

1. "Underlying offense" means the offense the defendant is convicted of aiding or abetting.

Background: A defendant convicted of aiding and abetting is punishable as a principal. 18 U.S.C. 2. This section provides that aiding and abetting the commission of an offense has the same offense level as the underlying offense. An adjustment for a mitigating role (§ 3B1.2) may be applicable.

3. Accessory After the Fact

§ 2X3.1. Accessory After the Fact

(a) Base Offense Level: 6 levels lower than the offense level for the underlying offense, but in no event less than 4, or more than 30.

Commentary

Statutory Provisions: 18 U.S.C. 3, 757, 1071, 1072.

Application Notes:

1. "Underlying offense" means the offense as to which the defendant was an accessory.

2. The adjustment from § 3B1.2 (Mitigating Role) normally would not apply because an adjustment for reduced culpability is incorporated in the base offense level.

4. Misprision of Felony

§ 2X4.1. Misprision of Felony

(a) Base Offense Level: 9 levels lower than the offense level for the underlying offense, but in no event less than 4, or more than 19.

Commentary

Statutory Provision: 18 U.S.C. 4.

Application Notes:

1. "Underlying offense" means the offense as to which the misprision was committed.

2. The adjustment from § 3B1.2 (Mitigating Role) normally would not apply because an adjustment for reduced culpability is incorporated in the base offense level.

5. All Other Offenses

§ 2X5.1 Other Offenses (Policy Statement)

For offenses for which no specific guideline has been promulgated:

(a) If the offense is a felony or class A misdemeanor, the most analogous guideline should be applied. If no sufficiently analogous guideline exists, any sentence that is reasonable and consistent with the purposes of sentencing should be imposed. See 18 U.S.C. 3553(b).

(b) If the offense is a Class B or C misdemeanor or an infraction, any sentence that is reasonable and consistent with the purpose of sentencing should be imposed. See 18 U.S.C. 3553(b).

Commentary

Background: This policy statement addresses cases in which a defendant has been convicted of an offense for which no specific guideline has been written. For a felony or a class A misdemeanor (see 18 U.S.C. 3559(a) and 3581(b)), the court is directed to apply the most analogous guideline. If no sufficiently analogous guideline exists, the court is directed to sentence without reference to a specific guideline or guideline range, as provided in 18 U.S.C. 3553(b).

For a class B or C misdemeanor or an infraction (see 18 U.S.C. 3559(a) and 3581(b)) that is not covered by a specific guideline, the court is directed to sentence without reference to a specific guideline or guideline range, as provided in 18 U.S.C. 3553(b). An inquiry as to whether there is a sufficiently analogous guideline that might be applied is not required. The Commission makes this distinction in treatment because for many lesser offenses (e.g., traffic infractions), generally handled under assimilative offense provisions by magistrates, there will be no sufficiently analogous guideline, and a case-by-case determination in respect to this issue for the high volume of cases processed each year would be unduly burdensome and would not significantly reduce disparity.

CHAPTER THREE—ADJUSTMENTS

Part A—Victim-Related Adjustments

1. Victim-Related Adjustments

Introductory Commentary

The following adjustments are included in this Part because they may apply to a wide variety of offenses. They are to be treated as specific offense characteristics.

§ 3A1.1. Vulnerable Victim

If the defendant knew or should have known that the victim of the offense was unusually vulnerable due to age, physical or mental condition, or that the victim was particularly susceptible to the criminal conduct, increase by 2 levels.

Commentary

Application Notes:

1. This adjustment applies to any offense where the victim's vulnerability played any part in the defendant's decision to commit the offense. The adjustment would apply, for example, in a fraud case where the defendant marketed an ineffective cancer cure or in a robbery where the defendant selected a handicapped victim. But it would not apply in a case where the defendant sold fraudulent securities to the general public and one of the purchasers happened to be senile.

2. Do not apply this adjustment if the offense guideline specifically incorporates this factor.

§ 3A1.2. Official Victim

If the victim was any law-enforcement or corrections officer, any other official as defined in 18 U.S.C. 1114, or a member of the immediate family thereof, and the crime was motivated by such status, increase by 3 levels.

Commentary

Application Notes:

1. "Victim" refers to an individual directly victimized by the offense. This term does not include an organization, agency, or the government itself.

2. Certain high-level officials, e.g., the President and Vice President, are not expressly covered by this section. The court should make an upward departure of at least three levels in those unusual cases in which such persons are victims.

3. Do not apply this adjustment if the offense guideline specifically incorporates this factor.

§ 3A1.3. Restraint of Victim

If the victim of a crime was physically restrained in the course of the offense, increase by 2 levels.

Commentary

Application Notes:

1. "Physically restrained" is defined in the Commentary to § 1B1.1 (Application Instructions).

2. This adjustment applies to any offense in which the victim was physically restrained in the course of the offense, except where such restraint is an element of the offense, specifically incorporated into the base offense level, or listed as a specific offense characteristic.

Part B—Role in the Offense

Introductory Commentary

This Part provides adjustments to the offense level based upon the role the defendant played in committing the offense. When an offense is committed by more than one participant, § 3B1.1 or § 3B1.2 (or neither) may apply. Section 3B1.3 may apply to offenses committed by any number of participants.

§ 3B1.1. Aggravating Role

Based on the defendant's role in the offense, increase the offense level as follows:

(a) If the defendant was an organizer or leader of a criminal activity that involved five or more participants or was otherwise extensive, increase by 4 levels.

(b) If the defendant was a manager or supervisor (but not an organizer or leader) and the criminal activity involved five or more participants or was otherwise extensive, increase by 3 levels.

(c) If the defendant was an organizer, leader, manager, or supervisor in any criminal activity other than described in (a) or (b), increase by 2 levels.

Commentary

Application Notes:

1. A "participant" is a person who is criminally responsible for the commission of the offense, but need not have been convicted.

2. In assessing whether an organization is "otherwise extensive," all persons involved during the course of the entire offense are to be considered. Thus, a fraud that involved only three participants but used the unknowing services of many outsiders could be considered extensive.

3. In distinguishing a leadership and organizational role from one of mere management or supervision, titles such as "kingpin" or "boss" are not controlling. Factors the court should consider include the exercise of decision making authority, the nature of participation in the commission of the offense, the recruitment of accomplices, the claimed right to a larger share of the fruits of the crime, the degree of participation in planning or organizing the offense, the nature and scope of the illegal activity, and the degree of control and authority exercised over others. There can, of course, be more than one person who qualifies as a leader or organizer of a criminal association or conspiracy. This adjustment does not apply to a defendant who merely suggests committing the offense.

Background: This section provides a range of adjustments to increase the offense level based upon the size of a criminal organization (i.e., the number of participants in the offense) and the degree to which the defendant was responsible for committing the offense. This adjustment is included primarily because of concerns about relative responsibility. However, it is also likely that persons who exercise a supervisory or managerial role in the commission of an offense tend to profit more from it and present a greater danger to the public and/or are more likely to recidivate. The Commission's intent is that this adjustment should increase with both the size of the organization and the degree of the defendant's responsibility.

In relatively small criminal enterprises that are not otherwise to be considered as extensive in scope or in planning or preparation, the distinction between organization and leadership, and that of management or supervision, is of less significance than in larger enterprises that tend to have clearly delineated divisions of responsibility. This is reflected in the inclusiveness of § 3B1.1(c).

§ 3B1.2. Mitigating Role

Based on the defendant's role in the offense, decrease the offense level as follows:

(a) If the defendant was a minimal participant in any criminal activity, decrease by 4 levels.

(b) If the defendant was a minor participant in any criminal activity, decrease by 2 levels.

In cases falling between (a) and (b), decrease by 3 levels.

Commentary

Application Notes:

1. Subsection (a) applies to a defendant who plays a minimal role in concerted activity. It is intended to cover defendants who are plainly among the least culpable of those involved in the conduct of a group. Under this provision, the defendant's lack of knowledge or understanding of the scope and structure of the enterprise and of the activities of others is indicative of a role as minimal participant.

2. It is intended that the downward adjustment for a minimal participant will be used infrequently. It would be appropriate, for example, for someone who played no other role in a very large drug smuggling operation than to offload part of a single marihuana shipment, or in a case where an individual was recruited as a courier for a single smuggling transaction involving a small amount of drugs.

3. For purposes of § 3B1.2(b), a minor participant means any participant who is less culpable than most other participants, but whose role could not be described as minimal.

Background: This section provides a range of adjustments for a defendant who plays a part in committing the offense that makes him substantially less culpable than the average participant. The determination whether to apply subsection (a) or subsection (b), or an intermediate adjustment, involves a determination that is heavily dependent upon the facts of the particular case.

§ 3B1.3. Abuse of Position of Trust or Use of Special Skill

If the defendant abused a position of public or private trust, or used a special skill, in a manner that significantly facilitated the commission or concealment of the offense, increase by 2 levels. This adjustment may not be employed in addition to that provided for in § 3B1.1, nor may it be employed if an abuse of trust or skill is included in the base offense level or specific offense characteristic.

Commentary

Application Notes:

1. The position of trust must have contributed in some substantial way to facilitating the crime and not merely have provided an opportunity that could as easily have been afforded to other persons. This adjustment, for example, would not apply to an embezzlement by an ordinary bank teller.

2. "Special skill" refers to a skill not possessed by members of the general public and usually requiring substantial education, training or licensing. Examples would include pilots, lawyers, doctors, accountants, chemists, and demolition experts.

Background: This adjustment applies to persons who abuse their positions of trust or their special skills to facilitate significantly the commission or concealment of a crime. Such persons generally are viewed as more culpable.

§ 3B1.4. In Any Other Case, No Adjustment is Made for Role in the Offense

Commentary

Many offenses are committed by a single individual or by individuals of roughly equal culpability so that none of them will receive an adjustment under this Part. In addition, some participants in a criminal organization may receive increases under § 3B1.1 (Role in the Offense) while others receive decreases under § 3B1.2 (Role in the Offense) and still other participants receive no adjustment.

Part C—Obstruction

§ 3C1.1. Willfully Obstructing or Impeding Proceedings

If the defendant willfully impeded or obstructed, or attempted to impede or obstruct the administration of justice during the investigation or prosecution

of the instant offense, increase the offense level from Chapter Two by 2 levels.

Commentary

This section provides a sentence enhancement for a defendant who engages in conduct calculated to mislead or deceive authorities or those involved in a judicial proceeding, or otherwise to willfully interfere with the disposition of criminal charges, in respect to the instant offense.

Application Notes:

1. The following conduct, while not exclusive, may provide a basis for applying this adjustment:

(a) Destroying or concealing material evidence, or attempting to do so;

(b) Directing or procuring another person to destroy or conceal material evidence, or attempting to do so;

(c) Testifying untruthfully or suborning untruthful testimony concerning a material fact, or producing or attempting to produce an altered, forged, or counterfeit document or record during a preliminary or grand jury proceeding, trial, sentencing proceeding, or any other judicial proceeding;

(d) Threatening, intimidating, or otherwise unlawfully attempting to influence a co-defendant, witness, or juror, directly or indirectly;

(e) Furnishing material falsehoods to a probation officer in the course of a presentence or other investigation for the court.

2. In applying this provision, suspect testimony and statements should be evaluated in a light most favorable to the defendant.

3. This provision is not intended to punish a defendant for the exercise of a constitutional right. A defendant's denial of guilt is not a basis for application of this provision.

4. Where the defendant is convicted for an offense covered by § 2J1.1 (Contempt), § 2J1.2 (Obstruction of Justice), § 2J1.3 (Perjury), § 2J1.8 (Bribery of Witness), or § 2J1.9 (Payment to Witness), this adjustment is not to be applied, except in determining the combined offense level as specified in Chapter Three, Part D (Multiple Counts). Under § 3D1.2(e), a count for obstruction will be grouped with the count for the underlying offense. Ordinarily, the offense level for that Group of Closely Related Counts will be the offense level for the underlying offense, as increased by the 2-level adjustment specified by this section. In some instances, however, the offense level for the obstruction offense may be higher, in which case that will be the offense level for the Group. See § 3D1.3(a). In cases in which a significant further obstruction occurred during the investigation or prosecution of an obstruction offense itself (one of the above listed offenses), an upward departure may be warranted (e.g., where a witness to an obstruction offense is threatened during the course of the prosecution for the obstruction offense).

Part D—Multiple Counts

Introductory Commentary

This Part provides rules for determining a single offense level that encompasses all the counts of which the defendant is convicted. The single, "combined" offense level that results from applying these rules is used, after adjustment pursuant to the guidelines in subsequent parts, to determine the sentence. These rules have been designed primarily with the more commonly prosecuted federal offenses in mind.

The rules in this Part seek to provide incremental punishment for significant additional criminal conduct. The most serious offense is used as a starting point. The other counts determine how much to increase the offense level. The amount of the additional punishment declines as the number of additional offenses increases.

Some offenses that may be charged in multiple-count indictments are so closely intertwined with other offenses that conviction for them ordinarily would not warrant increasing the guideline range. For example, embezzling money from a bank and falsifying the related records, although legally distinct offenses, represent essentially the same type of wrongful conduct with the same ultimate harm, so that it would be more appropriate to treat them as a single offense for purposes of sentencing. Other offenses, such as an assault causing bodily injury to a teller during a bank robbery, are so closely related to the more serious offense that it would be appropriate to treat them as part of the more serious offense, leaving the sentence enhancement to result from application of a specific offense characteristic.

In order to limit the significance of the formal charging decision and to prevent multiple punishment for substantially identical offense conduct, this Part provides rules for grouping offenses together. Convictions on multiple counts do not result in a sentence enhancement unless they represent additional conduct that is not otherwise accounted for by the guidelines. In essence, counts that are grouped together are treated as constituting a single offense for purposes of the guidelines.

Some offense guidelines, such as those for theft, fraud and drug offenses, contain provisions that deal with repetitive or ongoing behavior. Other guidelines, such as those for assault, robbery, and bribery, are oriented more toward single episodes of criminal behavior. Accordingly, different rules are required for dealing with multiple-count convictions involving these two different general classes of offenses. More complex cases involving different types of offenses may require application of one rule to some of the counts and another rule to other counts.

Some offenses, e.g., racketeering and conspiracy, may be "composite" in that they involve a pattern of conduct or scheme involving multiple underlying offenses. The rules in this Part are to be used to determine the offense level for such composite offenses from the offense level for the underlying offenses.

Essentially, the rules in this Part can be summarized as follows: (1) If the offense guidelines in Chapter Two base the offense level primarily on the amount of money or quantity of substance involved (e.g., theft, fraud, drug trafficking, firearms dealing), or otherwise contain provisions dealing with repetitive or ongoing misconduct (e.g., many environmental offenses), add the numerical quantities and apply the pertinent offense guideline, including any specific offense characteristics for the conduct taken as a whole. (2) When offenses are closely interrelated, group them together for purposes of the multiple-count rules, and use only the offense level for the most serious offense in that group. (3) As to other offenses (e.g., independent instances of assault, robbery, or bribery), start with the offense level for the most serious count and use the number and severity of additional counts to determine the amount by which to increase that offense level.

§ 3D1.1. Procedure for Determining Offense Level on Multiple Counts

When a defendant has been convicted of more than one count, the court shall:

(a) Group the counts resulting in conviction into distinct Groups of Closely-Related Counts ("Groups") by applying the rules specified in § 3D1.2.

(b) Determine the offense level applicable to each Group by applying the rules specified in § 3D1.3.

(c) Determine the combined offense level applicable to all Groups taken together by applying the rules specified in § 3D1.4.

Commentary

Application Note:

1. Certain offenses, e.g., 18 U.S.C. 924(c) (use of a deadly or dangerous weapon in relation to a crime of violence or drug trafficking) by law carry mandatory consecutive sentences. Such offenses are exempted from the operation of these rules. See § 3D1.2.

Background: This section outlines the procedure to be used for determining the combined offense level. After any adjustments from Chapter 3, Part E (Acceptance of Responsibility) and Chapter 4, Part B (Career Offenders and Criminal Livelihood) are made, this combined offense level is used to determine the guideline sentence range. Chapter Five (Determining the Sentence) discusses how to determine the sentence from the (combined) offense level; § 5G1.2 deals specifically with determining the sentence of imprisonment when convictions on multiple counts are involved. References in Chapter Five (Determining the Sentence) to the "offense level" should be treated as referring to the combined offense level after all subsequent adjustments have been made.

§ 3D1.2. Groups of Closely-Related Counts

All counts involving substantially the same harm shall be grouped together into a single Group. A count for which the statute mandates imposition of a consecutive sentence is excluded from such Groups for purposes of §§ 3D1.2–3D1.5. Counts involve substantially the

same harm within the meaning of this rule:

(a) When counts involve the same victim and the same act or transaction.

(b) When counts involve the same victim and two or more acts or transactions connected by a common criminal objective or constituting part of a common scheme or plan, including, but not limited to:

(1) A count charging conspiracy or solicitation and a count charging any substantive offense that was the sole object of the conspiracy or solicitation. 28 U.S.C. 994(1)(2).

(2) A count charging an attempt to commit an offense and a count charging the commission of the offense. 18 U.S.C. 3584(a).

(3) A count charging an offense based on a general prohibition and a count charging violation of a specific prohibition encompassed in the general prohibition. 28 U.S.C. 994(u).

(c) When one of the counts embodies conduct that is treated as a specific offense characteristic in, or other adjustment to, the guideline applicable to another of the counts.

(d) When counts involve the same general type of offense and the guidelines for that type of offense determine the offense level primarily on the basis of the total amount of harm or loss, the quantity of a substance involved, or some other measure of aggregate harm. Offenses of this kind are found in Chapter Two, Part B (except §§ 2B2.1–2B3.3), Part D (except §§ 2D1.6–2D3.4), Part E (except §§ 2E1.1–2E2.1), Part F, Part G (§§ 2G2.2–2G3.1), Part K (§ 2K2.3), Part N (§§ 2N2.1, 2N3.1), Part Q (§§ 2Q2.1, 2Q2.2), Part R, Part S, and Part T. This rule also applies where the guidelines deal with offenses that are continuing, e.g., §§ 2L1.3 and 2Q1.3(b)(1)(A).

Commentary

Application Notes:

1. Counts for which the statute mandates imposition of a consecutive sentence are excepted from application of the multiple count rules. Convictions under such counts are excluded from the determination of the combined offense level. Convictions for 18 U.S.C. 924(c) (use of firearm in commission of a crime of violence) provide a common example. Note that such a conviction usually does affect the offense level for other counts, however, in that in the event of such a conviction the specific offense characteristic for weapon use in the primary offense is to be disregarded. See Commentary to § 2K2.4. Example: The defendant is convicted of one count of bank robbery in which he took $5,000 and discharged a weapon causing permanent bodily injury (18 U.S.C. 2113), and one count of use of a firearm in the commission of a crime of violence (18 U.S.C. 924(c)). The two counts are not grouped together, but the offense level for the bank robbery count is 25 (18+1+6) rather than 28. The mandatory five year sentence on the weapon-use count runs consecutively, as required by law.

2. The term "victim" is not intended to include indirect or secondary victims. Generally, there will be one person who is directly and most seriously affected by the offense and is therefore identifiable as the victim. Ambiguities should be resolved in accordance with the purpose of this section as stated in the lead paragraph, i.e. to identify and group "counts involving substantially the same harm." Thus, for so-called "victimless" crimes (crimes in which society at large is the victim), the grouping decision must be based primarily upon the nature of the interest invaded by each offense.

3. Under subsection (a), counts are to be grouped together when they represent essentially a single injury or are part of a single criminal episode or transaction involving the same victim.

Examples: (1) The defendant is convicted of forging and uttering the same check. The counts are to be grouped together. (2) The defendant is convicted of kidnapping and assaulting the victim during the course of the kidnapping. The counts are to be grouped together. (3) The defendant is convicted of bid rigging (an antitrust offense) and of mail fraud for signing and mailing a false statement that the bid was competitive. The counts are to be grouped together. (4) The defendant is convicted of two counts of assault on a federal officer for shooting at the same officer twice while attempting to prevent apprehension as part of a single criminal episode. The counts are to be grouped together. (6) The defendant is convicted of three counts of unlawfully bringing aliens into the United States, all counts arising out of a single incident. The three counts are to be grouped together. But: (7) The defendant is convicted of two counts of assault on a federal officer for shooting at the officer on two separate days. The counts are not to be grouped together. (8) The defendant is convicted of two counts, each for unlawfully bringing one alien into the United States, but on different occasions. The counts are not to be grouped together.

4. Subsection (b) states the principle that counts that are part of a single course of conduct with a single criminal objective and represent essentially one composite harm to the same victim are to be grouped together, even if they constitute legally distinct offenses occurring at different times.

Examples: (1) The defendant is convicted of one count of conspiracy to commit extortion and one count of extortion for the offense he conspired to commit. The counts are to be grouped together. (2) The defendant is convicted of two counts of mail fraud and one count of wire fraud, each in furtherance of a single fraudulent scheme. The counts are to be grouped together, even if the mailings and telephone call occurred on different days. (3) The defendant is convicted of one count of auto theft and one count of altering the vehicle identification number of the car he stole. The counts are to be grouped together. But: (4) The defendant is convicted of two counts of rape for raping the same person on different days. The counts are not to be grouped together.

5. Subsection (c) provides that when conduct that represents a separate count, e.g., bodily injury or obstruction of justice, is also a specific offense characteristic in or other adjustment to another count, the count represented by that conduct is to be grouped with the count to which it constitutes an aggravating factor. This provision prevents "double counting" of offense behavior. Of course, this rule applies only if the offenses are closely related. It is not, for example, the intent of this rule that (assuming they could be joined together) a bank robbery on one occasion and an assault resulting in bodily injury on another occasion be grouped together. The bodily injury (the harm from the assault) would not be a specific offense characteristic to the robbery and would represent a different harm. On the other hand, use of a firearm in a bank robbery and unlawful possession of that firearm are sufficiently related to warrant grouping of counts under this subsection. Frequently, this provision will overlap subsection (a), at least with respect to specific offense characteristics. However, a count such as obstruction of justice, which represents a Chapter Three adjustment and involves a different harm or societal interest than the underlying offense, is covered by subsection (c) even though it is not covered by *subsection (a)*.

A cross-reference to another offense guideline does not constitute "a specific offense characteristic . . . or other adjustment" within the meaning of subsection (c). For example, the guideline for bribery of a public official contains a cross-reference to the guideline for accessory after the fact for the offense that the bribe was to facilitate. Nonetheless, if the defendant were convicted of one count of securities fraud and one count of bribing a public official to facilitate the fraud, the two counts would not be grouped together by virtue of the cross-reference. If, however, the bribe was given for the purpose of hampering a criminal investigation into the offense, it would constitute obstruction and under § 3C1.1 would result in a 2-level enhancement to the offense level for the fraud. Under the latter circumstances, the counts would be grouped together.

6. Subsection (d) likely will be used with the greatest frequency. It provides that most property crimes (except robbery, burglary, extortion and the like), drug offenses, firearms offenses, and other crimes where the guidelines are based primarily on quantity or contemplate continuing behavior are to be grouped together. "The same general type of offense" is to be construed broadly, and would include, for example, larceny, embezzlement, forgery, and fraud. The list of instances in which this subsection should be applied is not exhaustive. Note, however, that certain guidelines are specifically excluded from the operation of subsection (d).

Examples: (1) The defendant is convicted of five counts of embezzling money from a bank. The five counts are to be grouped together. (2) The defendant is convicted of two counts of theft of social security checks

and three counts of theft from the mail, each from a different victim. All five counts are to be grouped together. (3) The defendant is convicted of five counts of mail fraud and ten counts of wire fraud. Although the counts arise from various schemes, each involves a monetary objective. All fifteen counts are to be grouped together. (4) The defendant is convicted of three counts of unlicensed dealing in firearms. All three counts are to be grouped together. (5) The defendant is convicted of one count of selling heroin, one count of selling PCP, and one count of selling cocaine. The counts are to be grouped together. The Commentary to § 2D1.1 provides rules for combining (adding) quantities of different drugs to determine a single combined offense level. (6) The defendant is convicted of three counts of tax evasion. The counts are to be grouped together. (7) The defendant is convicted of three counts of discharging toxic substances from a single facility. The counts are to be grouped together. (8) The defendant is convicted on two counts of check forgery and one count of uttering the first of the forged checks. All three counts are to be grouped together. Note, however, that the uttering count is first grouped with the first forgery count under subsection (a) of this guideline, so that the monetary amount of that check counts only once when the rule in § 3D1.3(b) is applied. But: (9) The defendant is convicted of three counts of bank robbery. The counts are not to be grouped together, nor are the amounts of money involved to be added.

7. A single case may result in application of several of the rules in this section. Thus, for example, example (8) in the discussion of subsection (d) involves an application of § 3D1.2(a) followed by an application of § 3D1.2(d). Note also that a Group may consist of a single count; conversely, all counts may form a single Group.

8. Sometimes there may be several counts, each of which could be treated as an aggravating factor to another more serious count, but the guideline for the more serious count provides an adjustment for only one occurrence of that factor. In such cases, only the count representing the most serious of those factors is to be grouped with the other count. For example, if in a robbery of a credit union on a military base the defendant is also convicted of assaulting two employees, one of whom is injured seriously, the assault with serious bodily injury would be grouped with the robbery count, while the remaining assault conviction would be treated separately.

9. A defendant may be convicted of conspiring to commit several substantive offenses and also of committing one or more of the substantive offenses. In such cases, treat the conspiracy count as if it were several counts, each charging conspiracy to commit one of the substantive offenses. Then apply the ordinary grouping rules to determine the combined offense level based upon the substantive counts of which the defendant is convicted and the various acts cited by the conspiracy count that would constitute behavior of a substantive nature. Example: The defendant is convicted of two counts: conspiring to commit offenses A, B, and C, and committing offense A. Treat this as if the defendant was convicted of (1) committing offense A; (2) conspiracy to commit offense A; (3) conspiracy to commit offense B; and (4) conspiracy to commit offense C. Count (1) and count (2) are grouped together under § 3D1.2(b). Group the remaining counts, including the various acts cited by the conspiracy count that would constitute behavior of a substantive nature, according to the rules in this section.

Background: Ordinarily, the first step in determining the combined offense level in a case involving multiple counts is to identify those counts that are sufficiently related to be placed in the same Group of Closely Related Counts ("Group"). This section specifies four situations in which counts are to be grouped together. Although it appears last for conceptual reasons, subsection (d) probably will be used most frequently.

A primary consideration in this section is whether the offenses involve different victims. For example, a defendant may stab three prison guards in a single escape attempt. Some would argue that all counts arising out of a single transaction or occurrence should be grouped together even when there are distinct victims. Although such a proposal was considered, it was rejected because it probably would require departure in many cases in order to capture adequately the criminal behavior. Cases involving injury to distinct victims are sufficiently comparable, whether or not the injuries are inflicted in distinct transactions, so that each such count should be treated separately rather than grouped together. In general, counts are grouped together only when they involve both the same victim (or societal harm in "victimless" offenses) and the same or contemporaneous transactions, except as provided in § 3D1.2 (c) or (d).

Even if counts involve a single victim, the decision as to whether to group them together may not always be clear cut. For example, how contemporaneous must two assaults on the same victim be in order to warrant grouping together as constituting a single transaction or occurrence? Existing case law may provide some guidance as to what constitutes distinct offenses, but such decisions often turn on the technical language of the statute and cannot be controlling. In interpreting this Part and resolving ambiguities, the court should look to the underlying policy of this Part as stated in the Introductory Commentary.

§ 3D1.3. Offense Level Applicable to Each Group of Closely-Related Counts

Determine the offense level applicable to each of the Groups as follows:

(a) In the case of counts grouped together pursuant to § 3D1.2(a)—(c), the offense level applicable to a Group is the offense level, determined in accordance with Chapter Two and Parts A, B, and C of Chapter Three, for the most serious of the counts comprising the Group, i.e., the highest offense level of the counts in the Group.

(b) In the case of counts grouped together pursuant to § 3D1.2(d), the offense level applicable to a Group is the offense level corresponding to the aggregated quantity, determined in accordance with Chapter Two and Parts A, B and C of Chapter Three. When the counts involve varying offenses, apply the offense guideline that produces the highest offense level.

Commentary

Application Notes:

1. The "offense level" for a count refers to the offense level from Chapter Two after all adjustments from Parts A, B, and C of Chapter Three.

2. When counts are grouped pursuant to § 3D1.2(a)—(c), the highest offense level of the counts in the group is used. Ordinarily, it is necessary to determine the offense level for each of the counts in a Group in order to ensure that the highest is correctly identified. Sometimes, it will be clear that one count in the Group cannot have a higher offense level than another, as with a count for an attempt or conspiracy to commit the completed offense. The formal determination of the offense level for such a count may be unnecessary.

3. When counts are grouped pursuant to § 3D1.2(d), the offense guideline applicable to the aggregate behavior is used. If the counts in the Group are covered by different guidelines (e.g., theft and fraud), use the guideline that produces the highest offense level. Determine whether the specific offense characteristics or adjustments from Chapter Three, Parts A, B, and C apply based upon the combined offense behavior taken as a whole. Note that guidelines for similar property offenses have been coordinated to produce identical offense levels, at least when substantial property losses are involved. However, when small sums are involved the differing specific offense characteristics that require increasing the offense level to a certain minimum may affect the outcome. In addition, the adjustment for "more than minimal planning" frequently will apply to multiple count convictions for property offenses.

4. Sometimes the rule specified in this section may not result in incremental punishment for additional criminal acts because of the grouping rules. For example, if the defendant commits forcible criminal sexual abuse (rape), aggravated assault, and robbery, all against the same victim on a single occasion, all of the counts are grouped together under § 3D1.2. The aggravated assault will increase the guideline range for the rape. The robbery, however, will not. This is because the offense guideline for rape (§ 2A3.1) includes the most common aggravating factors, including injury, that data showed to be significant in actual practice. The additional factor of property loss ordinarily can be taken into account adequately within the guideline range for rape, which is fairly wide. However, an exceptionally large property loss in the course of the rape would provide grounds for a sentence above the guideline range. See § 5K2.5 (Property Loss or Damage).

Background: This section provides rules for determining the offense level associated with each Group of Closely-Related Counts.

Summary examples of the application of these rules are provided at the end of the Commentary to this Part.

§ 3D1.4. Determining the Combined Offense Level

The combined offense level is determined by taking the offense level applicable to the Group with the highest offense level and increasing that offense level by the amount indicated in the following table:

Number of units	Increase in offense level
1	None.
1½	Add 1 level.
2	Add 2 levels.
3	Add 3 levels.
4 or 5	Add 4 levels.
More than 5	Add 5 levels.

In determining the number of Units for purposes of this section:

(a) Count as one Unit the Group with the highest offense level. Count one additional Unit for each Group that is equally serious or from 1 to 4 levels less serious.

(b) Count as one-half Unit any Group that is 5 to 8 levels less serious than the Group with the highest offense level.

(c) Disregard any Group that is 9 or more levels less serious than the Group with the highest offense level. Such Groups will not increase the applicable offense level but may provide a reason for sentencing at the higher end of the sentencing range for the applicable offense level.

(d) Except when the total number of Units is 1½, round up to the next largest whole number.

Commentary

Application Notes:

1. Application of the rules in §§ 3D1.2 and 3D1.3 may produce a single Group of Closely Related Counts. In such cases, the combined offense level is the level corresponding to the Group determined in accordance with § 3D1.3.

2. The procedure for calculating the combined offense level when there is more than one Group of Closely Related Counts is as follows: First, identify the offense level applicable to the most serious Group; assign it one Unit. Next, determine the number of Units that the remaining Groups represent. Finally, increase the offense level for the most serious Group by the number of levels indicated in the table corresponding to the total number of Units.

Background: When Groups are of roughly comparable seriousness, each Group will represent one Unit. When the most serious Group carries an offense level substantially higher than that applicable to the other Groups, however, counting the lesser Groups fully for purposes of the table could add excessive punishment, possibly even more than those offenses would carry if prosecuted separately. To avoid this anomalous result and produce declining marginal punishment, Groups 9 or more levels less serious than the most serious Group should not be counted for purposes of the table, and that Groups 5 to 8 levels less serious should be treated as equal to one-half of a Group. Thus, if the most serious Group is at offense level 15 and if two other Groups are at level 10, there would be a total of two Units for purposes of the table (one plus one-half plus one-half) and the combined offense level would be 17. When this approach produces a fraction in the total Units, other than 1½, it is rounded up to the nearest whole number. Inasmuch as the maximum increase provided in the guideline is 5 levels, departure would be warranted in the unusual case where the additional offenses resulted in a total of significantly more than 5 Units.

In unusual circumstances, the approach adopted in this section could produce adjustments for the additional counts that are inadequate or excessive. If there are several groups and the most serious offense is considerably more serious than all of the others, there will be no increase in the offense level resulting from the additional counts. Ordinarily, the court will have latitude to impose added punishment by sentencing toward the upper end of the range authorized for the most serious offense. Situations in which there will be inadequate scope for ensuring appropriate additional punishment for the additional crimes are likely to be unusual and can be handled by departure from the guidelines. Conversely, it is possible that if there are several minor offenses that are not grouped together, application of the rules in this Part could result in an excessive increase in the sentence range. Again, such situations should be infrequent and can be handled through departure. An alternative method for ensuring more precise adjustments would have been to determine the appropriate offense level adjustment through a more complicated mathematical formula; that approach was not adopted because of its complexity.

§ 3D1.5. Determining the Total Punishment

Use the combined offense level to determine the appropriate sentence in accordance with the provisions of Chapter Five.

Commentary

This section refers the court to Chapter Five (Determining the Sentence) in order to determine the total punishment to be imposed based upon the combined offense level. The combined offense level is subject to adjustments from Chapter Three, Part E (Acceptance of Responsibility) and Chapter Four, Part B (Career Offenders and Criminal Livelihood).

Illustrations of the Operation of the Multiple-Count Rules

The following examples, drawn from presentence reports in the Commission's files, illustrate the operation of the guidelines for multiple counts. The examples are discussed summarily; a more thorough, step-by-step approach is recommended until the user is thoroughly familiar with the guidelines.

1. Defendant A was convicted on four counts, each charging robbery of a different bank. Each would represent a distinct Group. § 3D1.2. In each of the first three robberies, the offense level was 19 (11 plus a 1-level increase because a financial institution was robbed) (§ 2B3.1(b)). In the fourth robbery $12,000 was taken and a gun was discharged; the offense level was therefore 25. As the first three counts are 6 levels lower than the fourth, each of the first three represents one-half unit for purposes of § 3D1.4. Altogether there are 2½ Units (rounded up to 3), and the offense level for the most serious (25) is therefore increased by 3 levels under the table. The combined offense level is 28.

2. Defendant B, a federal housing inspector, was convicted on four counts of bribery. Counts one and two charged receiving payments of $3,000 and $2,000 from Landlord X in return for a single action with respect to a single property. Count three charged receipt of $1,500 from Landlord X for taking action with respect to another property, and count four charged receipt of $1,000 from Landlord Y for taking action with respect to a third property. Counts one and two, which arise out of the same transaction, are combined into a single Group involving a $5,000 bribe and hence an offense level of 11 (§ 2C1.1(a)(1), § 2F1.1). Each of the two remaining counts represents a distinct Group, at offense level 10. As there are three Count Units, the offense level for the most serious (11) is increased by 3 levels. The combined offense level is 14.

3. Defendant C was convicted on the following seven counts: (1) theft of a $2,000 check; (2) uttering the same $2,000 check; (3) possession of a stolen $1,200 check; (4) forgery of a $600 check; (5) possession of a stolen $1,000 check; (6) forgery of the same $1,000 check; (7) uttering the same $1,000 check. Counts 1, 3 and 5 involve offenses under Part B (Theft), while Counts 2, 4, 6 and 7 involve offenses under Part F (Fraud and Deceit). For purposes of § 3D1.2(d), fraud and theft are treated as offenses of the same kind, and therefore all counts are grouped into a single Group, for which the offense level depends on the aggregate harm. The total value of the checks is $4,800. The fraud guideline is applied, because it produces an offense level that is as high as or higher than the theft guideline. The base offense level is 6, and there is an aggravator of 1 level for property value. However, because the conduct involved repeated acts with some planning, the offense level is raised to 10 (§ 2F1.1(b)(2)(B)). The combined offense level therefore is 10.

4. Defendant D was convicted on four counts: (1) distribution of 230 grams of cocaine; (2) distribution of 150 grams of cocaine; (3) distribution of seventy-five grams of heroin; (4) offering a DEA agent $20,000 to

avoid prosecution. The combined offense level for drug offenses is determined by the total quantity of drugs, converted to heroin equivalents. The first count translates into forty-six grams of heroin; the second count translates into thirty grams of heroin. The total is 151 grams of heroin. Under § 2D1.1, the combined offense level for the drug offenses is 26. In addition, because of the attempted bribe of the DEA agent, this offense level is increased by 2 levels to 28 under § 3C1.1 (Obstruction). Because the conduct constituting the bribery offense is accounted for by § 3C1.1, it becomes part of the same Group as the drug offenses pursuant to § 3D1.2(c). The combined offense level is 28 pursuant to § 3D1.3(a), because the offense level for bribery (22) is less than the offense level for the drug offenses (28).

5. Defendant E was convicted of four counts arising out of a scheme pursuant to which he received kickbacks from subcontractors. The counts were as follows: (1) The defendant received $27,000 from subcontractor A relating to contract X (Mail Fraud). (2) The defendant received $12,000 from subcontractor A relating to contract X (Commercial Bribery). (3) The defendant received $15,000 from subcontractor A relating to contract Y (Mail Fraud). (4) The defendant received $20,000 from subcontractor B relating to contract Z (Commercial Bribery). The mail fraud counts are covered by § 2F1.1 (Fraud and Deceit). The bribery counts are covered by § 2B4.1 (Commercial Bribery), which treats the offense as a sophisticated fraud. The total money involved is $74,000, which results in an offense level of 13 under either § 2B4.1 or § 2F1.1. Since these two guidelines produce identical offense levels, the combined offense level is 13.

Part E—Acceptance of Responsibility

§ 3E1.1. Acceptance of Responsibility

(a) If the defendant clearly demonstrates a recognition and affirmative acceptance of personal responsibility for the offense of conviction, reduce the offense level by 2 levels.

(b) A defendant may be given consideration under this section without regard to whether his conviction is based upon a guilty plea or a finding of guilt by the court or jury or the practical certainty of conviction at trial.

(c) A defendant who enters a guilty plea is not entitled to a sentencing reduction under this section as a matter of right.

Commentary

Application Notes:

1. In determining whether a defendant qualifies for this provision, appropriate considerations include, but are not limited to, the following:

(a) Voluntary termination or withdrawal from criminal conduct or associations;

(b) Voluntary payment of restitution prior to adjudication of guilt;

(c) Voluntary and truthful admission to authorities of involvement in the offense and related conduct;

(d) Voluntary surrender to authorities promptly after commission of the offense;

(e) Voluntary assistance to authorities in the recovery of the fruits and instrumentalities of the offense;

(f) Voluntary resignation from the office or position held during the commission of the offense; and

(g) The timeliness of the defendant's conduct in manifesting the acceptance of responsibility.

2. Conviction by trial does not preclude a defendant from consideration under this section. A defendant may manifest sincere contrition even if he exercises his constitutional right to a trial. This may occur, for example, where a defendant 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 his conduct).

3. A guilty plea may provide some evidence of the defendant's acceptance of responsibility. However, it does not, by itself, entitle a defendant to a reduced sentence under this section.

4. An adjustment under this section is not warranted where a defendant perjures himself, suborns perjury, or otherwise obstructs the trial or the administration of justice (see § 3C1.1), regardless of other factors.

5. The sentencing judge is in a unique position to evaluate a defendant's acceptance of responsibility. For this reason, the determination of the sentencing judge is entitled to great deference on review and should not be disturbed unless it is without foundation.

Background: The reduction of offense level provided by this section recognizes legitimate societal interests. For several reasons, a defendant who clearly demonstrates a recognition and affirmative acceptance of personal responsibility for the offense by taking, in a timely fashion, one or more of the actions listed above (or some equivalent action) is appropriately given a lesser sentence than a defendant who has not demonstrated sincere remorse.

The availability of a reduction under § 3E1.1 is not controlled by whether the conviction was by trial or plea of guilty. Although a guilty plea may show some evidence of acceptance of responsibility, it does not automatically entitle the defendant to a sentencing adjustment.

CHAPTER FOUR—CRIMINAL HISTORY AND CRIMINAL LIVELIHOOD

Part A—Criminal History

Introductory Commentary

The Comprehensive Crime Control Act sets forth four purposes of sentencing. (See 18 U.S.C. 3553(a)(2).) A defendant's record of past criminal conduct is directly relevant to those purposes. A defendant with a record of prior criminal behavior is more culpable than a first offender and thus deserving of greater punishment. General deterrence of criminal conduct dictates that a clear message be sent to society that repeated criminal behavior will aggravate the need for punishment with each recurrence. To protect the public from further crimes of the particular defendant, the likelihood of recidivism and future criminal behavior must be considered. Repeated criminal behavior is an indicator of a limited likelihood of successful rehabilitation.

The specific factors included in § 4A1.1 and § 4A1.3 are consistent with the extant empirical research assessing correlates of recidivism and patterns of career criminal behavior. While empirical research has shown that other factors are correlated highly with the likelihood of recidivism, e.g., age and drug abuse, for policy reasons they were not included here at this time. The Commission has made no definitive judgment as to the reliability of the existing data. However, the Commission will review additional data insofar as they become available in the future.

§ 4A1.1. Criminal History Category

The total points from items (a) through (e) determine the criminal history category in the Sentencing Table in Chapter Five, Part A.

(a) Add 3 points for each prior sentence of imprisonment exceeding one year and one month.

(b) Add 2 points for each prior sentence of imprisonment of at least sixty days not counted in (a).

(c) Add 1 point for each prior sentence not included in (a) or (b), up to a total of 4 points for this item.

(d) Add 2 points if the defendant committed the instant offense while under any criminal justice sentence, including probation, parole, supervised release, imprisonment, work release, or escape status.

(e) Add 2 points if the defendant committed the instant offense less than two years after release from imprisonment on a sentence counted under (a) or (b). If 2 points are added for item (d), add only 1 point for this item.

Commentary

The total criminal history points from § 4A1.1 determine the criminal history category (I–VI) in the Sentencing Table in Chapter Five, Part A. The definitions and instructions in § 4A1.2 govern the computation of the criminal history points. Therefore, §§ 4A1.1 and 4A1.2 must be read together. The following notes highlight the interaction of §§ 4A1.1 and 4A1.2.

Application Notes:

1. *§ 4A1.1(a).* Three points are added for each prior sentence of imprisonment exceeding one year and one month. There is no limit to the number of points that may be counted under this item. The term "prior sentence" is defined at § 4A1.2(a). The term "sentence of imprisonment" is defined at § 4A1.2(b). Where a prior sentence of imprisonment resulted from a revocation of probation, parole, or a similar form of release, see § 4A1.2(k).

Certain prior sentences are not counted or are counted only under certain conditions:

A sentence imposed more than fifteen years prior to the defendant's commencement of the instant offense is not counted unless the defendant's incarceration extended into this fifteen year period. See § 4A1.2(e).

A sentence imposed for an offense committed prior to the defendant's eighteenth birthday is counted under this item only if it resulted from an adult conviction. See § 4A1.2(d).

A sentence for a foreign conviction, a conviction that has been expunged, or an invalid conviction, is not counted. See § 4A1.2 (h) and (j) and the Commentary to § 4A1.2.

2. *§ 4A1.1(b).* Two points are added for each prior sentence of imprisonment of at least sixty days not counted in § 4A1.1(a). There is no limit to the number of points that may be counted under this item. The term "prior sentence" is defined at § 4A1.2(a). The term "sentence of imprisonment" is defined at § 4A1.2(b). Where a prior sentence of imprisonment resulted from a revocation of probation, parole, or a similar form of release, see § 4A1.2(k).

Certain prior sentences are not counted or are counted only under certain conditions:

A sentence imposed more than ten years prior to the defendant's commencement of the instant offense is not counted. See § 4A1.2(e).

An adult or juvenile sentence imposed for an offense committed prior to the defendant's eighteenth birthday is counted only if confinement resulting from such sentence extended into the five year period preceding the defendant's commencement of the instant offense. See § 4A1.2(d).

Sentences for certain specified non-felony offenses are never counted. See § 4A1.2(c)(2).

A sentence for a foreign conviction or a tribal court conviction, an expunged conviction, or an invalid conviction, is not counted. See § 4A1.2 (h), (i), (j), and the Commentary to § 4A1.2.

A military sentence is counted only if imposed by a general or special court martial. See § 4A1.2(g).

3. *§ 4A1.1(c).* One point is added for each prior sentence not counted under § 4A1.1 (a) or (b). A maximum of four points may be counted under this item. The term "prior sentence" is defined at § 4A1.2(a).

Certain prior sentences are not counted or are counted only under certain conditions:

A sentence imposed more than ten years prior to the defendant's commencement of the instant offense is not counted. See § 4A1.2(e).

An adult or juvenile sentence imposed for an offense committed prior to the defendant's eighteenth birthday is counted only if imposed within five years of the defendant's commencement of the current offense. See § 4A1.2(d).

Sentences for certain specified non-felony offenses are counted only if they meet certain requirements. See § 4A1.2(c)(1).

Sentences for certain specified non-felony offenses are never counted. See § 4A1.2(c)(2).

A diversionary disposition is counted only where there is a finding or admission of guilt in a judicial proceeding. See § 4A1.2(f).

A sentence for a foreign conviction, a tribal court conviction, an expunged conviction, or an invalid conviction, is not counted. See § 4A1.2 (h), (i), (j), and the Commentary to § 4A1.2.

A military sentence is counted only if imposed by a general or special court martial. See § 4A1.2(g).

4. *§ 4A1.1(d).* Two points are added if the defendant committed any part of the instant offense (i.e., any relevant conduct) while under any criminal justice sentence, including probation, parole, supervised release, imprisonment, work release, or escape status.

5. *§ 4A1.1(e).* Two points are added if the defendant committed any part of the instant offense (i.e., any relevant conduct) less than two years following release from confinement on a sentence counted under § 4A1.1 (a) or (b). This also applies if the defendant committed the instant offense while still in confinement on such a sentence. However, if two points are added under § 4A1.1(d), only one point is added under § 4A1.1(e).

Background: Prior convictions may represent convictions in the federal system, fifty state systems, the District of Columbia, territories, and foreign, tribal, and military courts. There are jurisdictional variations in offense definitions, sentencing structures, and manner of sentence pronouncement. To minimize problems with imperfect measures of past crime seriousness, criminal history categories are based on the maximum term imposed in previous sentences rather than on other measures, such as whether the conviction was designated a felony or misdemeanor. In recognition of the imperfection of this measure however, § 4A1.3 permits information about the significance or similarity of past conduct underlying prior convictions to be used as a basis for imposing a sentence outside the applicable guideline range.

Subdivisions (a), (b), and (c) of § 4A1.1 distinguish confinement sentences longer than one year and one month, shorter confinement sentences of at least sixty days, and all other sentences, such as confinement sentences of less than sixty days, probation, fines, and residency in a halfway house.

Section 4A1.1(d) implements one measure of recency by adding two points if the defendant was under criminal justice control during any part of the instant offense.

Section 4A1.1(e) implements another measure of recency by adding two points if the defendant committed any part of the instant offense less than two years immediately following his release from confinement on a sentence counted under § 4A1.1 (a) or (b). Because of the potential overlap of (d) and (e), their combined impact is limited to three points. However, a defendant who falls within both (d) and (e) is more likely to commit additional crimes; thus, (d) and (e) are not completely combined.

§ 4A1.2. Definitions and Instructions for Computing Criminal History

(a) Prior Sentence Defined

(1) The term "prior sentence" means any sentence previously imposed upon adjudication of guilt, whether by guilty plea, trial, or plea of nolo contendere, for conduct not part of the instant offense.

(2) Prior sentences imposed in unrelated cases are to be counted separately. Prior sentences imposed in related cases are to be treated as one sentence for purposes of the criminal history. Use the longest sentence of imprisonment if concurrent sentences were imposed and the aggregate sentence of imprisonment imposed in the case of consecutive sentences.

(3) A conviction for which the imposition of sentence was totally suspended or stayed shall be counted as a prior sentence under § 4A1.1(c).

(b) Sentence of Imprisonment Defined

(1) The term "sentence of imprisonment" means a sentence of incarceration and refers to the maximum sentence imposed.

(2) If part of a sentence of imprisonment was suspended, "sentence of imprisonment" refers only to the portion that was not suspended.

(c) Sentences Counted and Excluded

Sentences for all felony offenses are counted. Sentences for misdemeanor and petty offenses are counted, except as follows:

(1) Sentences for the following prior offenses and offenses similar to them, by whatever name they are known, are counted only if (A) the sentence was a term of probation of at least one year or a term of imprisonment of at least thirty days, or (B) the prior offense was similar to an instant offense:

Contempt of court
Disorderly conduct or disturbing the peace
Driving without a license or with a revoked or suspended license
False information to a police officer
Fish and game violations
Gambling
Hindering or failure to obey a police officer
Leaving the scene of an accident
Local ordinance violations
Non-support
Prostitution
Resisting arrest
Trespassing

(2) Sentences for the following prior offenses and offenses similar to them, by whatever name they are known, are never counted:

Hitchhiking
Juvenile status offenses and truancy
Loitering
Minor traffic infractions
Public intoxication
Vagrancy

(d) Offenses Committed Prior to Age Eighteen

(1) If the defendant was convicted as an adult and received a sentence of imprisonment exceeding one year and

one month, add 3 points under § 4A1.1(a) for each such sentence.

(2) In any other case;

(A) Add 2 points under § 4A1.1(b) for each adult or juvenile sentence to confinement of at least sixty days if the defendant was released from such confinement within five years of his commencement of the instant offense;

(B) Add 1 point under § 4A1.1(c) for each adult or juvenile sentence imposed within five years of the defendant's commencement of the instant offense not covered in (A).

(e) Applicable Time Period

(1) Any prior sentence of imprisonment exceeding one year and one month that was imposed within fifteen years of the defendant's commencement of the instant offense is counted. Also count any prior sentence of imprisonment exceeding one year and one month that resulted in the defendant's incarceration during any part of such fifteen-year period.

(2) Any other prior sentence that was imposed within ten years of the defendant's commencement of the instant offense is counted.

(3) Any prior sentence not within the time periods specified above is not counted.

(f) Diversionary Dispositions

Diversion from the judicial process without a finding of guilt (e.g., deferred prosecution) is not counted. A diversionary disposition resulting from a finding or admission of guilt in a judicial proceeding is counted as a sentence under § 4A1.1(c) even if a conviction is not formally entered, except that diversion from juvenile court is not counted.

(g) Military Sentences

Sentences resulting from military offenses are counted if imposed by a general or special court martial. Sentences imposed by a summary court martial or Article 15 proceeding are not counted.

(h) Foreign Sentences

Sentences resulting from foreign convictions are not counted, but may be considered under § 4A1.3 (Adequacy of Criminal History Category).

(i) Tribal Court Sentences

Sentences resulting from tribal court convictions are not counted, but may be considered under § 4A1.3 (Adequacy of Criminal History Category).

(j) Expunged Convictions

Sentences for expunged convictions are not counted, but may be considered under § 4A1.3 (Adequacy of Criminal History Category).

(k) Revocations of Probation, Parole, Mandatory Release, or Supervised Release

(1) In the case of a prior revocation of probation, parole, supervised release, special parole, or mandatory release, add the original term of imprisonment to any term of imprisonment imposed upon revocation. The resulting total is used to compute the criminal history points for § 4A2.1 (a), (b), or (c), as applicable.

(2) Revocation of probation, parole, supervised release, special parole, or mandatory release may affect the points for § 4A1.1(e) in respect to the recency of last release from confinement. It may also affect the time period under which certain sentences are counted as provided in § 4A2.2(e)(1).

Commentary

Application Notes:

1. *Prior Sentences.* "Prior sentence" means a sentence imposed prior to sentencing on the instant offense, other than a sentence for conduct that is part of the instant offense. See § 4A1.2(a). A sentence imposed after the defendant's commencement of the instant offense, but prior to sentencing on the instant offense, is a prior sentence if it was for conduct other than conduct that was part of the instant offense.

2. *Sentences of Imprisonment.* To qualify as a sentence of imprisonment, the defendant must have actually served a period of imprisonment on such sentence (or, if the defendant escaped, would have served time). See §§ 4A1.2 (a)(3) and (b)(2). For the purposes of applying § 4A1.1 (a), (b), or (c), the length of a sentence of imprisonment is the stated maximum. That is, criminal history points are based on the sentence pronounced, not the length of time actually served. See § 4A1.2(b)(1) and (2). A sentence of probation is to be treated as a sentence under § 4A1.1(c) unless a condition of probation requiring imprisonment of at least sixty days was imposed.

3. *Related Cases.* Cases are considered related if they (1) occurred on a single occasion, (2) were part of a single common scheme or plan, or (3) were consolidated for trial or sentencing. The court should be aware that there may be instances in which this definition is overly broad and will result in a criminal history score that underrepresents the seriousness of the defendant's criminal history and the danger that he presents to the public. 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.

4. *Sentences Imposed in the Alternative.* A sentences which specifies a fine or other non-incarcerative disposition as an alternative to a term of imprisonment (e.g., $1,000 fine or ninety days' imprisonment) is treated as a non-imprisonment sentence.

5. *Sentences for Driving While Intoxicated or Under the Influence.* Convictions for driving while intoxicated or under the influence (and similar offenses by whatever name they are known) are counted. Such offenses are not minor traffic infractions within the meaning of § 4A1.2(c).

6. *Invalid Convictions.* Sentences resulting from convictions that have been reversed or vacated because of errors of law, or because of subsequently-discovered evidence exonerating the defendant, are not to be counted. Any other sentence resulting in a valid conviction is to be counted in the criminal history score. Convictions which the defendant shows to have been constitutionally invalid may not be counted in the criminal history score. Also, if to count an uncounseled misdemeanor conviction would result in the imposition of a sentence of imprisonment under circumstances that would violate the United States Constitution, then such conviction shall not be counted in the criminal history score. Nonetheless, any conviction that is not counted in the criminal history score may be considered pursuant to § 4A1.3 if it provides reliable evidence of past criminal activity.

7. *Offenses Committed Prior to Age Eighteen.* Section 4A1.2(d) covers offenses committed prior to age eighteen. Attempting to count every juvenile adjudication would have the potential for creating large disparities due to the differential availability of records. Therefore, for offenses committed prior to age eighteen, only those that resulted in adult sentences of imprisonment exceeding one year and one month, or resulted in imposition of an adult or juvenile sentence or release from confinement on that sentence within five years of the defendant's commencement of the instant offense are counted. To avoid disparities from jurisdiction to jurisdiction in the age at which a defendant is considered a "juvenile," this provision applies to all offenses committed prior to age eighteen.

8. *Applicable Time Period.* Section 4A1.2(e) establishes the time period within which prior sentences are counted. If the government is able to show that a sentence imposed outside this time period is evidence of similar misconduct or the defendant's receipt of a substantial portion of income from criminal livelihood, the court may consider this information in determining whether to depart and sentence above the applicable guideline range.

9. *Diversionary Dispositions.* Section 4A1.2(f) requires counting prior adult diversionary dispositions if they involved a judicial determination of guilt or an admission of guilt in open court. This reflects a policy that defendants who receive the benefit of a rehabilitative sentence and continue to commit crimes should not be treated with further leniency.

10. *Convictions Set Aside or Defendant Pardoned.* A number of jurisdictions have various procedures pursuant to which previous convictions may be set aside or the defendant may be pardoned for reasons unrelated to innocence or errors of law, e.g., in order to restore civil rights or to remove the stigma associated with a criminal conviction. Sentences resulting from such convictions are to be counted. However,

expunged convictions are not counted. § 4A1.2(j).

11. *Revocations to be Considered.* Section 4A1.2(k) covers revocations of probation and other conditional sentences where the original term of imprisonment imposed, if any, did not exceed one year and one month. Rather than count the original sentence and the resentence after revocation as separate sentences, the sentence given upon revocation should be added to the original sentence of imprisonment, if any, and the total should be counted as if it were one sentence. By this approach, no more than three points will be assessed for a single conviction, even if probation or conditional release was subsequently revoked. If the sentence originally imposed, the sentence imposed upon revocation, or the total of both sentences exceeded one year and one month, the maximum three points would be assigned. If, however, at the time of revocation another sentence was imposed for a new criminal conviction, that conviction would be computed separately from the sentence imposed for the revocation.

§ 4A1.3. Adequacy of Criminal History Category (Policy Statement)

If reliable information indicates that the criminal history category does not adequately reflect the seriousness of the defendant's past criminal conduct or the likelihood that the defendant will commit other crimes, the court may consider imposing a sentence departing from the otherwise applicable guideline range. Such information may include, but is not limited to, information concerning:

(a) Prior sentence(s) not used in computing the criminal history category (e.g., sentences for foreign and tribal offenses);

(b) Prior sentence(s) of substantially more than one year imposed as a result of independent crimes committed on different occasions;

(c) Prior similar misconduct established by a civil adjudication or by a failure to comply with an administrative order;

(d) Whether the defendant was pending trial, sentencing, or appeal on another charge at the time of the instant offense;

(e) Prior similar adult criminal conduct not resulting in a criminal conviction.

A departure under this provision is warranted when the criminal history category significantly under-represents the seriousness of the defendant's criminal history or the likelihood that the defendant will commit further crimes. Examples might include the case of a defendant who (1) had several previous foreign sentences for serious offenses, (2) had received a prior consolidated sentence of ten years for a series of serious assaults, (3) had a similar instance of large scale fraudulent misconduct established by an adjudication in a Securities and Exchange Commission enforcement proceeding, (4) committed the instant offense while on bail or pretrial release for another serious offense or (5) for appropriate reasons, such as cooperation in the prosecution of other defendants, had previously received an extremely lenient sentence for a serious offense. The court may, after a review of all the relevant information, conclude that the defendant's criminal history was significantly more serious than that of most defendants in the same criminal history category, and therefore consider an upward departure from the guidelines. However, a prior arrest record itself shall not be considered under § 4A1.3.

There may be cases where the court concludes that a defendant's criminal history category significantly over-represents the seriousness of a defendant's criminal history or the likelihood that the defendant will commit further crimes. An example might include the case of a defendant with two minor misdemeanor convictions close to ten years prior to the instant offense and no other evidence of prior criminal behavior in the intervening period. The court may conclude that the defendant's criminal history was significantly less serious than that of most defendants in the same criminal history category (Category II), and therefore consider a downward departure from the guidelines.

In considering a departure under this provision, the Commission intends that the court use, as a reference, the guideline range for a defendant with a higher or lower criminal history category, as applicable. For example, if the court concludes that the defendant's criminal history category of III significantly under-represents the seriousness of the defendant's criminal history, and that the seriousness of the defendant's criminal history most closely resembles that of most defendants with a Category IV criminal history, the court should look to the guideline range specified for a defendant with a Category IV criminal history to guide its departure. The Commission contemplates that there may, on occasion, be a case of an egregious, serious criminal record in which even the guideline range for a Category VI criminal history is not adequate to reflect the seriousness of the defendant's criminal history. In such a case, a decision above the guideline range for a defendant with a Category VI criminal history may be warranted. However, this provision is not symmetrical. The lower limit of the range for a Category I criminal history is set for a first offender with the lowest risk of recidivism. Therefore, a departure below the lower limit of the guideline range for a Category I criminal history on the basis of the adequacy of criminal history cannot be appropriate.

Commentary

Background: This policy statement recognizes that the criminal history score is unlikely to take into account all the variations in the seriousness of criminal history that may occur. For example, a defendant with an extensive record of serious, assaultive conduct who had received what might now be considered extremely lenient treatment in the past might have the same criminal history category as a defendant who had a record of less serious conduct. Yet, the first defendant's criminal history clearly may be more serious. This may be particularly true in the case of younger defendants (e.g., defendants in their early twenties or younger) who are more likely to have received repeated lenient treatment, yet who may actually pose a greater risk of serious recidivism than older defendants. This policy statement authorizes the consideration of a departure from the guidelines in the limited circumstances where reliable information indicates that the criminal history category does not adequately reflect the seriousness of the defendant's criminal history or likelihood of recidivism, and provides guidance for the consideration of such departures.

Part B—Career Offenders and Criminal Livelihood

§ 4B1.1. Career Offender

A defendant is a career offender if (1) the defendant was at least eighteen years old at the time of the instant offense, (2) the instant offense is a crime of violence or trafficking in a controlled substance, and (3) the defendant has at least two prior felony convictions of either a crime of violence or a controlled substance offense. If the offense level for a career criminal from the table below is greater than the offense level otherwise applicable, the offense level from the table below shall apply. A career offender's criminal history category in every case shall be Category VI.

Offense statutory maximum	Offense level
(A) Life	37
(B) 20 years or more	34
(C) 10 years or more, but less than 20 years	26
(D) 5 years or more, but less than 10 years	19
(E) More than 1 year, but less than 5 years	12
(F) 1 year or less	4

Commentary

Application Note:

1. "Crime of violence," "controlled substance offense," and "felony conviction" are defined in § 4B1.2.

Background: 28 U.S.C. 994(h) mandates that the Commission assure that certain "career" offenders, as defined in the statute, receive a sentence of imprisonment "at or near the maximum term authorized." Section 4B1.1 implements this mandate. The legislative history of this provision suggests that the phrase "maximum term authorized" should be construed as the maximum term authorized by statute. See S. Rep. 98-225, 98th Cong., 1st Sess. 175 (1983), 128 Cong. Rec. 12792; 97th Cong., 2d Sess. (1982) ("Career Criminals" amendment No. 13 by Senator Kennedy), 12796 (explanation of amendment), and 12798 (remarks by Senator Kennedy).

The guideline levels for career offenders were established by using the statutory maximum for the offense of conviction to determine the class of felony provided in 18 U.S.C. 3559. Then the maximum authorized sentence of imprisonment for each class of felony was determined as provided by 18 U.S.C. 3581. A guideline range for each class of felony was then chosen so that the maximum of the guideline range was at or near the maximum provided in 18 U.S.C. 3581.

§ 4B1.2. Definitions

(1) The term "crime of violence" as used in this provision is defined under 18 U.S.C. 16.

(2) The term "controlled substance offense" as used in this provision means an offense identified in 21 U.S.C. 841, 952(a), 955, 955a, 959; 405B and 416 of the Controlled Substance Act as amended in 1986, and similar offenses.

(3) The term "two prior felony convictions" means (1) the defendant committed the instant offense subsequent to sustaining at least two felony convictions for either a crime of violence or a controlled substance offense (i.e., two crimes of violence, two controlled substance offenses, or one crime of violence and one controlled substance offense), and (2) the sentences for at least two of the aforementioned felony convictions are counted separately under the provisions of Part A of this Chapter. The date that a defendant sustained a conviction shall be the date the judgment of conviction was entered.

Commentary

Application Notes:

1. "Crime of violence" is defined in 18 U.S.C. 16 to mean an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or any other offense that is a felony and that by its nature involves a substantial risk that physical force against the person or property of another may be used in committing the offense. The Commission interprets this as follows: murder, manslaughter, kidnapping, aggravated assault, extortionate extension of credit, forcible sex offenses, arson, or robbery are covered by this provision. Other offenses are covered only if the conduct for which the defendant was specifically convicted meets the above definition. For example, conviction for an escape accomplished by force or threat of injury would be covered; conviction for an escape by stealth would not be covered. Conviction for burglary of a dwelling would be covered; conviction for burglary of other structures would not be covered.

2. "Controlled substance offense" means any of the federal offenses identified in the statutes referenced in § 4B1.2, or substantially equivalent state offenses. These offenses include manufacturing, distributing, dispensing, or possessing with intent to manufacture, distribute, or dispense, a controlled substance (or a counterfeit substance). This definition also includes aiding and abetting, conspiring, or attempting to commit such offenses, and other offenses that are substantially equivalent to the offenses listed.

3. "Felony conviction" means a prior adult federal or state conviction for an offense punishable by death or imprisonment for a term exceeding one year, regardless of whether such offense is specifically designated as a felony and regardless of the actual sentence imposed.

4. The provisions of § 4A1.2(e) (Applicable Time Period), § 4A1.2(h) (Foreign Sentences), and § 4A1.2(j) (Expunged Convictions) are applicable to the counting of convictions under § 4B1.1. Also applicable is the Commentary to § 4A1.2 pertaining to invalid convictions.

§ 4B1.3. Criminal Livelihood

If the defendant committed an offense as part of a pattern of criminal conduct from which he derived a substantial portion of his income, his offense level shall be not less than 13. In no such case will the defendant be eligible for a sentence of probation.

Commentary

21Application Note:

1. "Pattern of criminal conduct" means planned criminal acts occurring over a substantial period of time. Such acts may involve a single course of conduct (e.g., an ongoing fraudulent scheme) or may involve independent offenses (e.g., a number of burglaries or robberies, or both). This guideline is not intended to apply to minor or petty offenses.

Background: Section 4B1.3 implements 28 U.S.C. 994(i)(2) which directs the Commission to ensure that the guidelines specify a "substantial term of imprisonment" for a defendant who committed that offense as part of a pattern of criminal conduct from which he derived a substantial proportion of his income. Under this provision, the offense level is raised to 13, if it is not already 13 or greater.

CHAPTER FIVE—DETERMINING THE SENTENCE

Introductory Commentary

For certain categories of offenses and offenders, the guidelines permit the court to impose either imprisonment or some other sanction or combination of sanctions. In determining the type of sentence to impose, the sentencing judge should consider the nature and seriousness of the conduct, the statutory purposes of sentencing, and the pertinent offender characteristics. A sentence is within the guidelines if it complies with each applicable section of this chapter. The court should impose a sentence sufficient, but not greater than necessary, to comply with the statutory purposes of sentencing. 18 U.S.C. 3553(a).

Part A—Sentencing Table

The Sentencing Table used to determine the guideline range follows:

SENTENCING TABLE

[Criminal History Category]

Offense level	I	II	III	IV	V	VI
	0 or 1	2 or 3	4, 5, 6	7, 8, 9	10, 11, 12	13 or more
1	0 to 1	0 to 2	0 to 3	0 to 4	0 to 5	0 to 6.
2	0 to 2	0 to 3	0 to 4	0 to 5	0 to 6	1 to 7.
3	0 to 3	0 to 4	0 to 5	0 to 6	2 to 8	3 to 9.
4	0 to 4	0 to 5	0 to 6	2 to 8	4 to 10	6 to 12.
5	0 to 5	0 to 6	1 to 7	4 to 10	6 to 12	9 to 15.

SENTENCING TABLE—Continued

[Criminal History Category]

Offense level	I	II	III	IV	V	VI
	0 or 1	2 or 3	4, 5, 6	7, 8, 9	10, 11, 12	13 or more
6	0 to 6	1 to 7	2 to 8	6 to 12	9 to 15	12 to 18.
7	1 to 7	2 to 8	4 to 10	8 to 14	12 to 18	15 to 21.
8	2 to 8	4 to 10	6 to 12	10 to 16	15 to 21	18 to 24.
9	4 to 10	6 to 12	8 to 14	12 to 18	18 to 24	21 to 27.
10	6 to 12	8 to 14	10 to 16	15 to 21	21 to 27	24 to 30.
11	8 to 14	10 to 16	12 to 18	18 to 24	24 to 30	27 to 33.
12	10 to 16	12 to 18	15 to 21	21 to 27	27 to 33	30 to 37.
13	12 to 18	15 to 21	18 to 24	24 to 30	30 to 37	33 to 41.
14	15 to 21	18 to 24	21 to 27	27 to 33	33 to 41	37 to 46.
15	18 to 24	21 to 27	24 to 30	30 to 37	37 to 46	41 to 51.
16	21 to 27	24 to 30	27 to 33	33 to 41	41 to 51	46 to 57.
17	24 to 30	27 to 33	30 to 37	37 to 46	46 to 57	51 to 63.
18	27 to 33	30 to 37	33 to 41	41 to 51	51 to 63	57 to 71.
19	30 to 37	33 to 41	37 to 46	46 to 57	57 to 71	63 to 78.
20	33 to 41	37 to 46	41 to 51	51 to 63	63 to 78	70 to 87.
21	37 to 46	41 to 51	46 to 57	57 to 71	70 to 87	77 to 96.
22	41 to 51	46 to 57	51 to 63	63 to 78	77 to 96	84 to 105.
23	46 to 57	51 to 63	57 to 71	70 to 87	84 to 105	92 to 115.
24	51 to 63	57 to 71	63 to 78	77 to 96	92 to 115	100 to 125.
25	57 to 71	63 to 78	70 to 87	84 to 105	100 to 125	110 to 137.
26	63 to 78	70 to 87	78 to 97	92 to 115	110 to 137	120 to 150.
27	70 to 87	78 to 97	87 to 108	100 to 125	120 to 150	130 to 162.
28	78 to 97	87 to 108	97 to 121	110 to 137	130 to 162	140 to 175.
29	87 to 108	97 to 121	108 to 135	121 to 151	140 to 175	151 to 188.
30	97 to 121	108 to 135	121 to 151	135 to 168	151 to 188	168 to 210.
31	108 to 135	121 to 151	135 to 168	151 to 188	168 to 210	188 to 235.
32	121 to 151	135 to 168	151 to 188	168 to 210	188 to 235	210 to 262.
33	135 to 168	151 to 188	168 to 210	188 to 235	210 to 262	235 to 293.
34	151 to 188	168 to 210	188 to 235	210 to 262	235 to 293	262 to 327.
35	168 to 210	188 to 235	210 to 262	235 to 293	262 to 327	292 to 365.
36	188 to 235	210 to 262	235 to 293	262 to 327	292 to 365	324 to 405.
37	210 to 262	235 to 293	262 to 327	292 to 365	324 to 405	360 to life.
38	235 to 293	262 to 327	292 to 365	324 to 405	360 to life	360 to life.
39	262 to 327	292 to 365	324 to 405	360 to life	360 to life	360 to life.
40	292 to 365	324 to 405	360 to life	360 to life	360 to life	360 to life.
41	324 to 405	360 to life	360 to life	360 to life	360 to life	360 to life.
42	360 to life	360 to life	360 to life	360 to life	360 to life	360 to life.
43	Life	Life	Life	Life	Life	Life.

Commentary to Sentencing Table

Application Notes:

1. The Offense Level (1–43) forms the vertical axis of the Sentencing Table. The Criminal History Category (I–VI) forms the horizontal axis of the Table. The intersection of the Offense Level and Criminal History Category displays the Guideline Range in months of imprisonment. "Life" means life imprisonment. For example, the guideline range applicable to a defendant with an Offense Level of 15 and a Criminal History Category of III is 24–30 months of imprisonment.

2. In rare cases, a total offense level of less than 1 or more than 43 may result from application of the guidelines. A total offense level of less than 1 is to be treated as an offense level of 1. An offense level of more than 43 is to be treated as an offense level of 43.

3. The Criminal History Category is determined by the total criminal history points from Chapter Four, Part A. The total criminal history points associated with each Criminal History Category are shown under each Criminal History Category in the Sentencing Table.

Part B—Probation

Introductory Commentary

The Comprehensive Crime Control Act of 1984 makes probation a sentence in and of itself. 18 U.S.C. 3561. Probation may be used as an alternative to incarceration, provided that the terms and conditions of probation can be fashioned so as to meet fully the statutory purposes of sentencing, including promoting respect for law, providing just punishment for the offense, achieving general deterrence, and protecting the public from further crimes by the defendant.

§ 5B1.1. Imposition of a Term of Probation

(a) Subject to the statutory restrictions in subsection (b) below, sentence of probation is authorized:

(1) If the minimum term of imprisonment in the range specified by the Sentencing Table in Part A, is zero months;

(2) If the minimum term of imprisonment specified by the Sentencing Table is at least one but not more than six months, provided that the court imposes a condition or combination of conditions requiring intermittent confinement or community confinement as provided in § 5C2.1(c)(2) (Imposition of a Term of Imprisonment).

(b) A sentence of probation may not be imposed in the event:

(1) The offense of conviction is a Class A or B felony, 18 U.S.C. 3561(a)(1);

(2) The offense of conviction expressly precludes probation as a sentence, 18 U.S.C. 3561(a)(2);

(3) The defendant is sentenced at the same time to a sentence of imprisonment for the same or a different offense, 18 U.S.C. 3561(a)(3).

Commentary

Application Notes:

1. Except where prohibited by statute or by the guideline applicable to the offense in Chapter Two, the guidelines authorize, but do not require, a sentence of probation in the following circumstances:

(a) Where the minimum term of imprisonment specified in the guideline range from the Sentencing Table is zero months. In such case, a condition requiring a period of community confinement or intermittent confinement may be imposed but is not required.

(b) Where the minimum term of imprisonment specified in the guideline range from the Sentencing Table is at least one but not more than six months. In such cases, the court may impose probation only if it imposes a condition or combination of conditions requiring a period of community confinement or intermittent confinement sufficient to satisfy the minimum term of imprisonment specified in the guideline range. For example, where the Offense Level is 8 and the Criminal History Category is I, the guideline range from the Sentencing Table is 2–8 months. In such case, the court may impose a sentence of probation only if it imposes a condition or conditions requiring at least two months of community confinement or intermittent confinement, or a combination of community confinement and intermittent confinement totaling at least two months.

2. Where the minimum term of imprisonment specified in the guideline range from the Sentencing Table is more than six months, the guidelines do not authorize a sentence of probation. See § 5C2.1 (Imposition of a Term of Imprisonment).

Background: This section provides for the imposition of a sentence of probation. The court may sentence a defendant to a term of probation in any case unless (1) prohibited by statute, or (2) where a term of imprisonment is required under § 5C2.1 (Imposition of a Term of Imprisonment). Under 18 U.S.C. 3561(a)(3), the imposition of a sentence of probation is prohibited where the defendant is sentenced at the same time to a sentence of imprisonment for the same or a different offense. Although this provision has effectively abolished the use of "split sentences" imposable pursuant to the former 18 U.S.C. 3651, the drafters of the Sentencing Reform Act noted that the functional equivalent of the split sentence could be "achieved by a more direct and logically consistent route" by providing that a defendant serve a term of imprisonment followed by a period of supervised release. (S. Rep. No. 225, 98th Cong., 1st Sess. 89). Subsection 5B1.1(a)(2) provides a transition between the circumstances under which a "straight" probationary term is authorized and those where probation is prohibited.

§ 5B1.2. Term of Probation

(a) When probation is imposed, the term shall be:

(1) At least one year but not more than five years if the offense level is 6 or greater;

(2) No more than three years in any other case.

Commentary

Background: This section governs the length of a term of probation. Subject to statutory restrictions, the guidelines provide that a term of probation may not exceed three years if the offense level is less than 6. If a defendant has an offense level of 6 or greater, the guidelines provide that a term of probation be at least one year but not more than five years. Although some distinction in the length of a term of probation is warranted based on the circumstances of the case, a term of probation may also be used to enforce conditions such as fine or restitution payments, or attendance in a program of treatment such as drug rehabilitation. Often, it may not be possible to determine the amount of time required for the satisfaction of such payments or programs in advance. This issue has been resolved by setting forth two broad ranges for the duration of a term of probation depending upon the offense level. Within the guidelines set forth in this section, the determination of the length of a term of probation is within the discretion of the sentencing judge.

§ 5B1.3. Conditions of Probation

(a) If a term of probation is imposed, the court shall impose a condition that the defendant shall not commit another federal, state, or local crime during the term of probation. 18 U.S.C. 3563(a)(1).

(b) The court may impose other conditions that (1) are reasonably related to the nature and circumstances of the offense, the history and characteristics of the defendant, and the purposes of sentencing and (2) involve only such deprivations of liberty or property as are reasonably necessary to effect the purposes of sentencing. 18 U.S.C. 3563(b). Recommended conditions are set forth in § 5B1.4.

(c) If a term of probation is imposed for a felony, the court shall impose at least one of the following as a condition of probation: a fine, an order of restitution, or community service. 18 U.S.C. 3563(a)(2).

(d) Intermittent confinement (custody for intervals of time) may be ordered as a condition of probation during the first year of probation. 18 U.S.C. 3563(b)(11). Intermittent confinement shall be credited toward the guideline term of imprisonment at § 5C2.1 as provided in the schedule at § 5C2.1(e).

§ 5B1.4. Recommended Conditions of Probation and Supervised Release (Policy Statement)

(a) The following "standard" conditions (1–13) are generally recommended for both probation and supervised release:

(1) The defendant shall not leave the judicial district or other specified geographic area without the permission of the court or probation officer;

(2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month;

(3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;

(4) The defendant shall support his dependents and meet other family responsibilities;

(5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;

(6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment;

(7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;

(8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered, or other places specified by the court;

(9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;

(10) The defendant shall permit a probation officer to visit him at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;

(11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;

(12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;

(13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

(b) The following "special" conditions of probation and supervised release (14–24) are either recommended or required by law under the circumstances described, or may be appropriate in a particular case:

(14) *Possession of Weapons.*

If the instant conviction is for a felony, or if the defendant was previously convicted of a felony or used a firearm or other dangerous weapon in the course of the instant offense, it is recommended that the court impose a condition prohibiting the defendant from possessing a firearm or other dangerous weapon.

(15) *Restitution.*

If the court imposes an order of restitution, it is recommended that the court impose a condition requiring the defendant to make payment of restitution or adhere to a court ordered installment schedule for payment of restitution. See § 5E4.1 (Restitution).

(16) *Fines.*

If the court imposes a fine, it is recommended that the court impose a condition requiring the defendant to pay the fine or adhere to a court ordered installment schedule for payment of the fine.

(17) *Debt Obligations.*

If an installment schedule of payment of restitution or fines is imposed, it is recommended that the court impose a condition prohibiting the defendant from incurring new credit charges or opening additional lines of credit without approval of the probation officer unless the defendant is in compliance with the payment schedule.

(18) *Access to Financial Information.*

If the court imposes an order of restitution, forfeiture, or notice to victims, or orders the defendant to pay a fine, it is recommended that the court impose a condition requiring the defendant to provide the probation officer access to any requested financial information.

(19) *Community Confinement.*

Residence in a community treatment center, halfway house or similar facility may be imposed as a condition of probation or supervised release. See § 5F5.1 (Community Confinement).

(20) *Home Detention.*

Home detention may be imposed as a condition of probation or supervised release. See § 5F5.2 (Home Detention).

(21) *Community Service.*

Community service may be imposed as a condition of probation or supervised release. See § 5F5.3 (Community Service).

(22) *Occupational Restrictions.*

Occupational restrictions may be imposed as a condition of probation or supervised release. See § 5F5.5 (Occupational Restrictions).

(23) *Substance Abuse Program Participation.*

If the court has reason to believe that the defendant is an abuser of narcotics, other controlled substances or alcohol, it is recommended that the court impose a condition requiring the defendant to participate in a program approved by the United States Probation Office for substance abuse, which program may include testing to determine whether the defendant has reverted to the use of drugs or alcohol.

(24) *Mental Health Program Participation.*

If the court has reason to believe that the defendant is in need of psychological or psychiatric treatment, it is recommended that the court impose a condition requiring that the defendant participate in a mental health program approved by the United States Probation Office.

Part C—Imprisonment

§ 5C2.1. Imposition of a Term of Imprisonment

(a) A sentence conforms with the guidelines for imprisonment if it is within the minimum and maximum terms of the guideline range.

(b) If the minimum term of imprisonment in the applicable guideline range in the Sentencing Table is zero months, a sentence of imprisonment is not required, unless the applicable guideline in Chapter Two expressly requires such a term.

(c) If the minimum term of imprisonment in the applicable guideline range in the Sentencing Table is at least one but not more than six months, the minimum term may be satisfied by (1) a sentence of imprisonment; (2) a sentence of probation that includes a condition or combination of conditions that substitute intermittent confinement or community confinement for imprisonment according to the schedule in § 5C2.1(e); or (3) a sentence of imprisonment that includes a term of supervised release with a condition that substitutes community confinement according to the schedule in § 5C2.1(e), provided that at least one-half of the minimum term, but in no event less than one month, is satisfied by imprisonment.

(d) If the minimum term of imprisonment in the applicable guideline range in the Sentencing Table is more than six months but not more than ten months, the minimum term may be satisfied by (1) a sentence of imprisonment; or (2) a sentence of imprisonment that includes a term of supervised release with a condition that substitutes community confinement according to the schedule in § 5C2.1(e), provided that at least one-half of the minimum term is satisfied by imprisonment.

(e) Schedule of Substitute Punishments:

(1) Thirty days of intermittent confinement in prison or jail for one month of imprisonment (each 24 hours of confinement is credited as one day of intermittent confinement, provided, however, that one day shall be credited for any calendar day during which the defendant is employed in the community and confined during all remaining hours);

(2) One month of community confinement (residence in a community treatment center, halfway house, or similar residential facility) for one month of imprisonment.

(f) If the minimum term of imprisonment in the applicable guideline range in the Sentencing Table is more than ten months, the guidelines require that the minimum term be satisfied by a sentence of imprisonment.

Commentary

Application Notes:

1. Subsection 5C2.1(a) provides that a sentence conforms with the guidelines for imprisonment if it is within the minimum and maximum terms of the guideline range specified in the Sentencing Table. For example, if the defendant has an Offense Level of 20 and a Criminal History Category of I, the applicable guideline range is 33–41 months of imprisonment. Therefore, a sentence of imprisonment of at least thirty-three months, but not more than forty-one months, is within the applicable guideline range.

2. Subsection 5C2.1(b) provides that where the minimum term of imprisonment specified in the guideline range from the Sentencing Table is zero months, the court is not required to impose a sentence of imprisonment unless a sentence of imprisonment or its equivalent is specifically required by the guideline applicable to the offense. Where imprisonment is not required, the court may, for example, impose a sentence of probation. In some cases, a fine appropriately may be imposed as the sole sanction.

3. Subsection 5C2.1(c) provides that where the minimum term of imprisonment specified in the guideline range from the Sentencing Table is at least one but not more than six months, the court has three options:

It may impose a sentence of imprisonment.

It may impose a sentence of probation provided that it includes a condition of probation requiring a period of intermittent confinement or community confinement, or combination of intermittent and community confinement, sufficient to satisfy the minimum period of imprisonment specified in the guideline range. For example, where the guideline range is 3–9 months, a sentence of probation with a condition requiring at least three months of intermittent or community confinement would satisfy the minimum term of imprisonment specified in the guideline range.

Or, it may impose a sentence of imprisonment that includes a term of supervised release with a condition that

requires community confinement. In such case, at least one-half of the minimum term specified in the guideline range from the Sentencing Table, but in no event less than one month, must be satisfied by actual imprisonment and the remainder of the minimum term specified in the guideline range must be satisfied by community confinement. For example, where the guideline range is 4–10 months, a sentence of imprisonment of two months followed by a term of supervised release with a condition requiring two months of community confinement would satisfy the minimum term of imprisonment specified in the guideline range.

The preceding examples illustrate sentences that satisfy the minimum term of imprisonment required by the guideline range. The court, of course, may impose a sentence at a higher point within the applicable guideline range. For example, where the guideline range is 3–9 months, both a sentence of probation with a condition requiring six months of community confinement (under § 5C2.1(c)(2)) and a sentence of two months imprisonment followed by a term of supervised release with a condition requiring four months of community confinement (under § 5C2.1(c)(3)) would be within the guideline range.

4. Subsection 5C2.1(d) provides that where the minimum term specified in the guideline range from the Sentencing Table is at least six but not more than ten months, the court has two options:

It may impose a sentence of imprisonment.

Or, it may impose a sentence of imprisonment that includes a term of supervised release with a condition requiring community confinement. In such case, at least one-half of the minimum term specified in the guideline range must be satisfied by imprisonment, and the remainder of the minimum term specified in the guideline range must be satisfied by community confinement. For example, where the guideline range is 6–12 months, a sentence of three months imprisonment followed by a term of supervised release with a condition requiring three months community confinement would satisfy the minimum term of imprisonment required by the guideline range.

The preceding example illustrates a sentence that satisfies the minimum term of imprisonment required by the guideline range. The court, of course, may impose a sentence at a higher point within the guideline range. For example, where the guideline range is 6–12 months, both a sentence of three months imprisonment followed by a term of supervised release with a condition requiring six months of community confinement (under § 5C2.1(d)), and a sentence of five months imprisonment followed by a term of supervised release with a condition requiring four months of community confinement (also under § 5C2.1(d)) would be within the guideline range.

5. Subsection 5C2.1(e) sets forth a schedule of imprisonment substitutes. Home detention may not be substituted for imprisonment.

6. There may be cases in which a departure from the guidelines by substitution of a longer period of community confinement than otherwise authorized for an equivalent number of months of imprisonment is warranted to accomplish a specific treatment purpose (e.g., substitution of twelve months in an approved residential drug treatment program for twelve months of imprisonment). Such a substitution should be considered only in cases where the defendant's criminality is related to the treatment problem to be addressed and there is a reasonable likelihood that successful completion of the treatment program will eliminate that problem.

7. The use of substitutes for imprisonment as provided in § 5C2.1 (c) and (d) is not recommended for most defendants with a criminal history category of III or above. Generally, such defendants have failed to reform despite the use of such alternatives.

8. Subsection 5C2.1(f) provides that, if the minimum term of imprisonment set forth in the Sentencing Table is more than ten months, the minimum term must be satisfied by a sentence of imprisonment without the use of any of the incarceration alternatives in § 5C2.1(e).

Part D—Supervised Release

§ 5D3.1. Imposition of a Term of Supervised Release

(a) The court shall order a term of supervised release to follow imprisonment when a sentence of imprisonment of more than one year is imposed, or when required by statute.

(b) The court may order a term of supervised release to follow imprisonment in any other case.

Commentary

Application Notes:

1. Subsection 5D3.1(a) requires imposition of supervised release following any sentence of imprisonment for a term of more than one year or if required by a specific statute. While there may be cases within this category that do not require post release supervision, these cases are the exception and may be handled by a departure from this guideline.

2. Under § 5D3.1(b), the court may impose a term of supervised release in cases involving imprisonment for a term of one year or less. The court may consider the need for a term of supervised release to facilitate the reintegration of the defendant into the community; to enforce a fine, restitution order, or other condition; or to fulfill any other purpose authorized by statute.

§ 5D3.2. Term of Supervised Release

(a) If a defendant is convicted under a statute that requires a term of supervised release, the term shall be at least three years but not more than five years, or the minimum period required by statute, whichever is greater.

(b) Otherwise, when a term of supervised release is ordered, the length of the term shall be:

(1) Three years for a defendant convicted of a Class A or B felony;

(2) Two years for a defendant convicted of a Class C or D felony;

(3) One year for a defendant convicted of a Class E felony or a misdemeanor.

Commentary

Background: This section specifies the length of a term of supervised release that is to be imposed. Subsection (a) applies to statutes, such as the Anti-Drug Abuse Act of 1986, that require imposition of a specific minimum term of supervised release. Subsection (b) applies to all other statutes.

§ 5D3.3. Conditions of Supervised Release

(a) If a term of supervised release is imposed, the court shall impose a condition that the defendant not commit another federal, state, or local crime. 18 U.S.C. 3583(d).

(b) In order to fulfill any authorized purposes of sentencing, the court may impose other conditions reasonably related to (1) the nature and circumstances of the offense, and (2) the history and characteristics of the defendant. 18 U.S.C. 3583(d).

(c) Recommended conditions of supervised release are set forth in § 5B1.4.

Commentary

Background: This section applies to conditions of supervised release. The conditions generally recommended for supervised release are those recommended for probation. See § 5B1.4.

Part E—Restitution, Fines, Assessments, Forfeitures

§ 5E4.1. Restitution

(a) Restitution shall be ordered for convictions under Title 18 of the United States Code or under 49 U.S.C. 1472 (h), (i), (j) or (n) in accordance with 18 U.S.C. 3663(d).

(b) If a defendant is ordered to make restitution and to pay a fine, the court shall order that any money paid by the defendant shall first be applied to satisfy the order of restitution.

Commentary

Background: Section 3553(a)(7) of Title 18 requires the court, "in determining the particular sentence to be imposed," to consider "the need to provide restitution to any victims of the offense." Section 3556 of Title 18 authorizes the court to impose restitution in accordance with 18 U.S.C. 3663 and 3664, which authorize restitution for violations of Title 18 and of designated subdivisions of 49 U.S.C. 1472. For other offenses, restitution may be imposed as a condition of probation or supervised release. See S. Rep. No. 225, 98th Cong., 1st Sess. 95–96. 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.

Subsection 5E4.1 requires the court to order restitution for offenses under Title 18 or 49 U.S.C. 1472 (h), (i), (j), or (n), unless "the court determines that the complication and prolongation of the sentencing process resulting from the fashioning of an order of restitution * * * outweighs the need to provide restitution to any victims." 18 U.S.C. 3663(d). If the court does not order restitution, or orders only partial restitution, it must state its reasons for doing so. 18 U.S.C. 3553(c).

In determining whether to impose an order of restitution, and the amount of restitution, the court shall consider the amount of loss the victim suffered as a result of the offense, the financial resources of the defendant, the financial needs of the defendant and his dependents, and other factors the court deems appropriate. 18 U.S.C. 3664(a).

Pursuant to Rule 32(c)(2)(D), Federal Rules of Criminal Procedure, the probation officer's presentence investigation report must contain a victim impact statement. That report must contain information about the financial impact on the victim and the defendant's financial condition. The sentencing judge may base findings on the presentence report or other testimony or evidence supported by a preponderance of the evidence. 18 U.S.C. 3664(d).

A court's authority to deny restitution is limited. Even "in those unusual cases where the precise amount owed is difficult to determine, section 3579(d) authorizes the court to reach an expeditious, reasonable determination of appropriate restitution by resolving uncertainties with a view toward achieving fairness to the victim." S. Rep. No. 532, 97th Cong., 2d Sess. 31, reprinted in 1982 U.S. Code Cong. & Ad. News 2515, 2537.

Unless the court orders otherwise, restitution must be made immediately. 18 U.S.C. 3663(f)(3). The court may permit the defendant to make restitution within a specified period or in specified installments, provided that the last installment is paid not later than the expiration of probation, five years after the end of the defendant's term of imprisonment, or in any other case five years after the date of sentencing. 18 U.S.C. 3663(f)(1) and (2). The restitution order should specify how and to whom payment is to be made.

§ 5E4.2. Fines for Individual Defendants

(a) Except as provided in subsection (f) below, the court shall impose a fine in all cases. If the guideline for the offense in Chapter Two prescribes a different rule for imposing fines, that rule takes precedence over this subsection.

(b) The generally applicable minimum and maximum fine for each offense level is shown in the Fine Table in subsection (c) below. Unless a statute expressly authorizes a greater amount, no fine may exceed $250,000 for a felony or a misdemeanor resulting in the loss of human life; $25,000 for any other misdemeanor; or $1,000 for an infraction. 18 U.S.C. 3571(b)(1).

(c)(1) The minimum fine range is the greater of:

(A) The amount shown in column A of the table below; or

(B) Any monetary gain to the defendant, less any restitution made or ordered.

(2) Except as specified in (4) below, the maximum fine is the greater of:

(A) The amount shown in column B of the table below;

(B) Twice the estimated loss caused by the offense; or

(C) Three times the estimated gain to the defendant.

(3) Fine Table:

Offense level	A	B
	Minimum	Maximum
1	$25	$250
2-3	100	1,000
4-5	250	2,500
6-7	500	5,000
8-9	1,000	10,000
10-11	2,000	20,000
12-13	3,000	30,000
14-15	4,000	40,000
16-17	5,000	50,000
18-19	6,000	60,000
20-22	7,500	75,000
23-25	10,000	100,000
26-28	12,500	125,000
29-31	15,000	150,000
32-34	17,500	175,000
35-37	20,000	200,000
38 and above	25,000	250,000

(4) Subsection (c)(2), limiting the maximum fine, does not apply if the defendant is convicted under a statute authorizing (A) a maximum fine greater than $250,000, or (B) a fine for each day of violation. In such cases, the court may impose a fine up to the maximum authorized by the statute.

(d) In determining the amount of the fine, the court shall consider:

(1) The need for the combined sentence to reflect the seriousness of the offense (including the harm or loss to the victim and the gain to the defendant), to promote respect for the law, to provide just punishment and to afford adequate deterrence;

(2) The ability of the defendant to pay the fine (including the ability to pay over a period of time) in light of his earning capacity and financial resources;

(3) The burden that the fine places on the defendant and his dependents relative to alternative punishments;

(4) Any restitution or reparation that the defendant has made or is obligated to make;

(5) Any collateral consequences of conviction, including civil obligations arising from the defendant's conduct;

(6) Whether the defendant previously has been fined for a similar offense; and

(7) Any other pertinent equitable considerations.

(e) The amount of the fine should always be sufficient to ensure that the fine, taken together with other sanctions imposed, is punitive.

(f) If the defendant establishes that (1) he is not able and, even with the use of a reasonable installment schedule, is not likely to become able to pay all or part of the fine required by the preceding provisions, or (2) imposition of a fine would unduly burden the defendant's dependents, the court may impose a lesser fine or waive the fine. In these circumstances, the court shall consider alternative sanctions in lieu of all or a portion of the fine, and must still impose a total combined sanction that is punitive. Although any additional sanction not proscribed by the guidelines is permissible, community service is the generally preferable alternative in such instances.

(g) If the defendant establishes that payment of the fine in a lump sum would have an unduly severe impact on him or his dependents, the court should establish an installment schedule for payment of the fine. The length of the installment schedule generally should not exceed twelve months, and shall not exceed the maximum term of probation authorized for the offense. The defendant should be required to pay a substantial installment at the time of sentencing. If the court authorizes a defendant sentenced to probation or supervised release to pay a fine on an installment schedule, the court shall require as a condition of probation or supervised release that the defendant pay the fine according to the schedule. The court also may impose a condition prohibiting the defendant from incurring new credit charges or opening additional lines of credit unless he is in compliance with the payment schedule.

(h) If the defendant knowingly fails to pay a delinquent fine, the court shall resentence him in accordance with 18 U.S.C. 3614.

(i) Notwithstanding of the provisions of subsection (c) of this section, but subject to the provisions of subsection (f) herein, the court shall impose an additional fine amount that is at least sufficient to pay the costs to the government of any imprisonment, probation, or supervised release ordered.

Commentary

Application Notes:

1. A fine may be the sole sanction if the guidelines do not require a term of

imprisonment. If, however, the fine is not paid in full at the time of sentencing, it is recommended that the court sentence the defendant to a term of probation, with payment of the fine as a condition of probation. If a fine is imposed in addition to a term of imprisonment, it is recommended that the court impose a term of supervised release following imprisonment as a means of enforcing payment of the fine.

2. The maximum fines generally authorized by statute are restated in subsection (b). These apply to each count of conviction. Ordinarily, the maximum fines on each count are independent and cumulative. However, if the offenses "arise from a common scheme or plan" and "do not cause separable or distinguishable kinds of harm or damage," the aggregate fine may not exceed "twice the amount imposable for the most serious offense." 18 U.S.C. 3572(b) (former 18 U.S.C. 3623(c)(2)).

3. Alternative fine limits are provided in subsection (c)(2). The term "estimated gain" is used to emphasize that the Commission does not intend precise or detailed calculation of the monetary gain (nor of the loss) in using the alternative fine limits. In many cases, circumstances will make it unnecessary to consider these standards other than in the most general terms.

4. "Any restitution made or ordered" refers to restitution for the instant offense made before or at the time of sentencing, as well as any restitution ordered at the time of sentencing for the instant offense.

5. Subsection (c)(4) applies to statutes that contain special provisions permitting larger fines; the guidelines do not limit maximum fines in such cases. These statutes include, among others: 21 U.S.C. 841(b) and 960(b), which authorize fines up to $8 million in offenses involving the manufacture, distribution, or importation of certain controlled substances; 21 U.S.C. 848(a), which authorizes fines up to $4 million in offenses involving the manufacture or distribution of controlled substances by a continuing criminal enterprise; 18 U.S.C. 1956(a), which authorizes a fine equal to the greater of $500,000 or two times the value of the monetary instruments or funds involved in offenses involving money laundering of financial instruments; 18 U.S.C. 1957(b)(2), which authorizes a fine equal to two times the amount of any criminally derived property involved in a money laundering transaction; 33 U.S.C. 1319(c), which authorizes a fine of up to $50,000 per day for violations of the Water Pollution Control Act; 42 U.S.C. 6928(d), which authorizes a fine of up to $50,000 per day for violations of the Resource Conservation Act; and 42 U.S.C. 7413(c), which authorizes a fine of up to $25,000 per day for violations of the Clean Air Act.

6. The existence of income or assets that the defendant failed to disclose may justify a larger fine than that which otherwise would be warranted under § 5E4.2. The court may base its conclusion as to this factor on information revealing significant unexplained expenditures by the defendant or unexplained possession of assets that do not comport with the defendant's reported income. If the court concludes that the defendant willfully misrepresented all or part of his income or assets, it may increase the offense level and resulting sentence in accordance with Chapter Three, Part C (Obstruction).

7. Subsection (i) provides for an additional fine sufficient to pay the costs of any imprisonment, probation, or supervised release ordered, subject to the defendant's ability to pay as prescribed in subsection (f). In making a determination as to the amount of any fine to be imposed under this provision, the court may be guided by reports published by the Bureau of Prisons and the Administrative Office of the United States Courts concerning average costs.

Background: These guidelines permit a relatively wide range of fines. The Commission may promulgate more detailed guidelines for the imposition of fines after analyzing practice under these initial guidelines.

Recent legislation provides for substantial increases in fines. 18 U.S.C. 3571(b). With few restrictions, 42 U.S.C. 10601 (b), and (c) authorize fine payments up to $100 million to be deposited in the Crime Victims Fund in the United States Treasury. With vigorous enforcement, higher fines should be effective punitive and deterrent sanctions.

A larger multiple of the gain than of the loss is used in subsection (c)(2) because most offenses result in losses to society that exceed the gain to the defendant. In addition, the Commission concluded that greater latitude with a gain-based fine was justified; when the court finds it necessary to rely on the gain, rather than the loss, to set the fine, ordering restitution usually will not be feasible because of the difficulty in computing the amount. These larger fines authorized under subsection (c)(2) are, of course, subject to the absolute limits on fines that are imposed by statute.

The Commission has not attempted to define gain or loss precisely. It is expected that the terms will be used flexibly and consistently with their use in the criminal code, including former 18 U.S.C. 3623(c)(1).

§ 5E4.3. Special Assessments

A special assessment must be imposed on a convicted defendant in the amount prescribed by statute.

Commentary

Background: The Victims of Crime Act of 1984, Pub. L. No. 98-473, Title II, Chap. XIV, requires the courts to impose special assessments on convicted defendants for the purpose of funding the Crime Victims Fund established by the same legislation. Monies deposited in the fund are awarded to the states by the Attorney General for victim assistance and compensation programs.

The Act requires the court to impose assessments in the following amounts:

$25, if the defendant is an individual convicted of a misdemeanor;
$50, if the defendant is an individual convicted of a felony;
$100, if the defendant is an organization convicted of a misdemeanor; and
$200, if the defendant is an organization convicted of a felony. 18 U.S.C. 3013.

The Act does not authorize the court to waive imposition of the assessment.

§ 5E4.4. Forfeiture

Forfeiture is to be imposed upon a convicted defendant as provided by statute.

Commentary

Background: Forfeiture provisions exist in various statutes. For example, 18 U.S.C. 3554 requires the court imposing a sentence under 18 U.S.C. 1962 (proscribing the use of the proceeds of racketeering activities in the operation of an enterprise engaged in interstate commerce) or Titles II and III of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (proscribing the manufacture and distribution of controlled substances) to order the forfeiture of property in accordance with 18 U.S.C. 1963 and 21 U.S.C. 853, respectively. Those provisions require the automatic forfeiture of certain property upon conviction of their respective underlying offenses.

In addition, the provisions of 18 U.S.C. 3681-3682 authorizes the court, in certain circumstances, to order the forfeiture of a violent criminal's proceeds from the depiction of his crime in a book, movie, or other medium. Those sections authorize the deposit of proceeds in an escrow account in the Crime Victims Fund of the United States Treasury. The money is to remain available in the account for five years to satisfy claims brought against the defendant by the victim(s) of his offenses. At the end of the five-year period, the court may require that any proceeds remaining in the account be released from escrow and paid into the Fund. 18 U.S.C. 3681(c)(2).

Part F—Sentencing Options

§ 5F5.1. Community Confinement

Community confinement may be imposed as a condition of probation or supervised release.

Commentary

Application Notes:

1. "Community confinement" means residence in a community treatment center, halfway house, restitution center, mental health facility, alcohol or drug rehabilitation center, or other community facility; and participation in gainful employment, employment search efforts, community service, vocational training, treatment, educational programs, or similar facility-approved programs during non-residential hours.

2. Community confinement generally should not be imposed for a period in excess of six months. A longer period may be imposed to accomplish the objectives of a specific rehabilitative program, such as drug rehabilitation. The sentencing judge may impose other discretionary conditions of probation or supervised release appropriate to effectuate community confinement.

§ 5F5.2. Home Detention

Home detention may be imposed as a condition of probation or supervised release.

Commentary

Application Notes:

1. "Home detention" means a program of confinement and supervision that restricts the defendant to his place of residence continuously, or during specified hours, enforced by appropriate means of surveillance by the probation office. The judge may also impose other conditions of probation or supervised release appropriate to effectuate home detention. If the confinement is only during specified hours, the defendant shall engage exclusively in gainful employment, community service or treatment during the non-residential hours.

2. Home detention generally should not be imposed for a period in excess of six months. However, a longer term may be appropriate for disabled, elderly or extremely ill defendants who would otherwise be imprisoned.

§ 5F5.3. Community Service

(a) Community service may be ordered as a condition of probation or supervised release. If the defendant was convicted of a felony, the court must order one or more of the following sanctions: a fine, restitution, or community service. 18 U.S.C. 3563(a)(2).

(b) With the consent of the victim of the offense, the court may order a defendant to perform services for the benefit of the victim in lieu of monetary restitution. 18 U.S.C. 3663(b)(4).

Commentary

Application Note:

1. Community service generally should not be imposed in excess of 400 hours. Longer terms of community service impose heavy administrative burdens relating to the selection of suitable placements and the monitoring of attendance.

§ 5F5.4. Order of Notice to Victims

The court may order the defendant to pay the cost of giving notice to victims pursuant to 18 U.S.C. 3555. This cost may be set off against any fine imposed if the court determines that the imposition of both sanctions would be excessive.

Commentary

Background: In cases where a defendant has been convicted of an offense involving fraud or "other intentionally deceptive practices," the court may order the defendant to "give reasonable notice and explanation of the conviction, in such form as the court may approve" to the victims of the offense. 18 U.S.C. 3555. The court may order the notice to be given by mail, by advertising in specific areas or through specific media, or by other appropriate means. In determining whether a notice is appropriate, the court must consider the generally applicable sentencing factors listed in 18 U.S.C. 3553(a) and the cost involved in giving the notice as it relates to the loss caused by the crime. The court may not require the defendant to pay more than $20,000 to give notice.

If an order of notice to victims is under consideration, the court must notify the government and the defendant. 18 U.S.C. 3553(d). Upon motion of either party, or on its own motion, the court must: (1) permit the parties to submit affidavits and memoranda relevant to the imposition of such an order; (2) provide counsel for both parties the opportunity to address orally, in open court, the appropriateness of such an order; and (3) if it issues such an order, state its reasons for doing so. The court may also order any additional procedures that will not unduly complicate or prolong the sentencing process.

The legislative history indicates that, although the sanction was designed to provide actual notice to victims, a court might properly limit notice to only those victims who could be most readily identified, if to do otherwise would unduly prolong or complicate the sentencing process.

§ 5F5.5. Occupational Restrictions

(a) The court may impose a condition of probation or supervised release prohibiting the defendant from engaging in a specified occupation, business, or profession, or limiting the terms on which the defendant may do so, only if it determines that:

(1) A reasonably direct relationship existed between the defendant's occupation, business, or profession and the conduct relevant to the offense of conviction;

(2) There is a risk that, absent such restriction, the defendant will continue to engage in unlawful conduct similar to that for which the defendant was convicted; and

(3) Imposition of such a restriction is reasonably necessary to protect the public.

(b) If the court decides to impose a condition of probation or supervised release restricting a defendant's engagement in a specified occupation, business, or profession, the court shall impose the condition for the minimum time and to the minimum extent necessary to protect the public.

Commentary

Background: The Comprehensive Crime Control Act authorizes the imposition of occupational restrictions as a condition of probation, 18 U.S.C. 3563(b)(6), or supervised release, 18 U.S.C. 3583(d). Pursuant to section 3563(b)(6), a court may require a defendant to:

[R]efrain, in the case of an individual, from engaging in a specified occupation, business, or profession bearing a reasonably direct relationship to the conduct constituting the offense, or engage in such a specified occupation, business, or profession only to a stated degree or under stated circumstances.

Section 3583(d) incorporates this section by reference. The Senate Judiciary Committee Report on the Comprehensive Crime Control Act explains that the provision was "intended to be used to preclude the continuation or repetition of illegal activities while avoiding a bar from employment that exceeds that needed to achieve that result." S. Rep. No. 225, 98th Cong., 1st Sess. 96–97. The condition "should only be used as reasonably necessary to protect the public. It should not be used as a means of punishing the convicted person." Id. at 96. Section 5F5.5 accordingly limits the use of the condition and, if imposed, limits its scope, to the minimum reasonably necessary to protect the public.

The appellate review provisions permit a defendant to challenge the imposition of a probation condition under 18 U.S.C. 3563(b)(6) if "the sentence includes . . . a more limiting condition of probation or supervised release under section 3563(b)(6) . . . than the maximum established in the guideline." 18 U.S.C. 3742(a)(3)(A). The government may appeal if the sentence includes a "less limiting" condition of probation than the minimum established in the guideline. 18 U.S.C. 3742(b)(3)(A).

The Comprehensive Crime Control Act expressly authorizes promulgation of policy statements regarding the appropriate use of conditions of probation and supervised release. 28 U.S.C. 994(a)(2)(B). The Act does not expressly grant the authority to issue guidelines on the subject. The appellate review provisions of the Act, however, authorize appeals of occupational restrictions that deviate from the minimum and maximum limitations "established in the guideline" (emphasis added).

Part G—Implementing the Total Sentence of Imprisonment

§ 5G1.1. Sentencing on a Single Count of Conviction

(a) If application of the guidelines results in a sentence above the maximum authorized by statute for the offense of conviction, the statutory maximum shall be the guideline sentence.

(b) If application of the guidelines results in a sentence below the minimum sentence required by statute, the statutory minimum shall be the guideline sentence.

(c) In any other case, the sentence imposed shall be the sentence as determined from application of the guidelines.

Commentary

If the statute requires imposition of a sentence other than that required by the guidelines, the statute shall control. The sentence imposed should be consistent with the statute but as close as possible to the guidelines.

§ 5G1.2. Sentencing on Multiple Counts of Conviction

(a) The sentence to be imposed on a count for which the statute mandates a consecutive sentence shall be determined and imposed independently.

(b) Except as otherwise required by law (see § 5G1.1(a), (b)), the sentence imposed on each other count shall be the total punishment as determined in accordance with Part D of Chapter Three, and Part C of this Chapter.

(c) If the sentence imposed on the count carrying the highest statutory maximum is adequate to achieve the total punishment, then the sentences on all counts shall run concurrently, except to the extent otherwise required by law.

(d) If the sentence imposed on the count carrying the highest statutory maximum is less than the total punishment, then the sentence imposed on one or more of the other counts shall run consecutively, but only to the extent necessary to produce a combined sentence equal to the total punishment.

In all other respects sentences on all counts shall run concurrently, except to the extent otherwise required by law.

Commentary

This section specifies the procedure for determining the specific sentence to be formally imposed on each count in a multiple-count case. The combined length of the sentences ("total punishment") is determined by the adjusted combined offense level. To the extent possible, the total punishment is to be imposed on each count. Sentences on all counts run concurrently, except as required to achieve the total sentence, or as required by law.

Usually, at least one of the counts will have a statutory maximum adequate to permit imposition of the total punishment as the sentence on that count. The sentence on each of the other counts will then be set at the lesser of the total punishment and the applicable statutory maximum, and be made to run concurrently with all or part of the longest sentence. If no count carries an adequate statutory maximum, any combination of concurrent and consecutive sentences that produces the total punishment may be imposed.

Counts for which a statute mandates a consecutive sentence, such as counts charging the use of a firearm in a violent crime (18 U.S.C. 924(c)) are treated separately. The sentence imposed on such a count is the sentence indicated for the particular offense of conviction. That sentence then runs consecutively to the sentences imposed on the other counts. See Commentary to §§ 2K2.4 and 3D1.2 regarding determination of the offense levels for related counts when a conviction under 18 U.S.C. 924(c) is involved.

§ 5G1.3. Convictions on Counts Related to Unexpired Sentences

If at the time of sentencing, the defendant is already serving one or more unexpired sentences, then the sentences for the instant offense(s) shall run consecutively to such unexpired sentences, unless one or more of the instant offense(s) arose out of the same transactions or occurrences as the unexpired sentences. In the latter case, such instant sentences and the unexpired sentences shall run concurrently, except to the extent otherwise required by law.

Commentary

This section reflects the statutory presumption that sentences imposed at different times ordinarily run consecutively. See 18 U.S.C. 3584(a). This presumption does not apply when the new counts arise out of the same transaction or occurrence as a prior conviction.

Departure would be warranted when independent prosecutions produce anomalous results that circumvent or defeat the intent of the guidelines.

Part H—Specific Offender Characteristics

Introductory Commentary

Congress has directed the Commission to consider whether certain specific offender characteristics "have any relevance to the nature, extent, place of service, or other incidents of an appropriate sentence" and to take them into account only to the extent they are determined relevant by the Commission. 28 U.S.C. 994(d).

§ 5H1.1. Age (Policy Statement)

Age is not ordinarily relevant in determining whether a sentence should be outside the guidelines. Neither is it ordinarily relevant in determining the type of sentence to be imposed when the guidelines provide sentencing options. Age may be a reason to go below the guidelines when the offender is elderly and infirm and where a form of punishment (e.g., home confinement) might be equally efficient as and less costly than incarceration. If, independent of the 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.

§ 5H1.2. Education and Vocational Skills (Policy Statement)

Education and vocational skills are not ordinarily relevant in determining whether a sentence should be outside the guidelines, but the extent to which a defendant may have misused special training or education to facilitate criminal activity is an express guideline factor. See § 3B1.3 (Abuse of Position of Trust or Use of Special Skill). Neither are education and vocational skills relevant in determining the type of sentence to be imposed when the guidelines provide sentencing options. If, independent of consideration of education and vocational skills, a defendant is sentenced to probation or supervised release, these considerations may be relevant in the determination of the length and conditions of supervision for rehabilitative purposes, for public protection by restricting activities that allow for the utilization of a certain skill, or in determining the type or length of community service.

§ 5H1.3. Mental and Emotional Conditions (Policy Statement)

Mental and emotional conditions are not ordinarily relevant in determining whether a sentence should be outside the guidelines, except as provided in the general provisions in Chapter Five. Mental and emotional conditions, whether mitigating or aggravating, may be relevant in determining the length and conditions of probation or supervised release.

§ 5H1.4. Physical Condition, Including Drug Dependence and Alcohol Abuse (Policy Statement)

Physical condition is not ordinarily relevant in determining whether a sentence should be outside the guidelines or where within the guidelines a sentence should fall. However, an extraordinary physical impairment may be a reason to impose a sentence other than imprisonment.

Drug dependence or alcohol abuse is not a reason for imposing a sentence below the guidelines. Substance abuse is highly correlated to an increased propensity to commit crime. Due to this increased risk, it is highly recommended that a defendant who is incarcerated also be sentenced to supervised release with a requirement that the defendant participate in an appropriate substance abuse program. If participation in a substance abuse program is required, the length of supervised release should take into account the length of time necessary for the supervisory body to judge the success of the program.

This provision would also apply in cases where the defendant received a sentence of probation. The substance abuse condition is strongly recommended and the length of probation should be adjusted accordingly. Failure to comply would normally result in revocation of probation.

§ 5H1.5. Previous Employment Record (Policy Statement)

Employment record is not ordinarily relevant in determining whether a sentence should be outside the guidelines or where within the

guidelines a sentence should fall. Employment record may be relevant in determining the type of sentence to be imposed when the guidelines provide for sentencing options. If, independent of the consideration of employment record, a defendant is sentenced to probation or supervised release, considerations of employment record may be relevant in the determination of the length and conditions of supervision.

§ 5H1.6. Family Ties and Responsibilities, and Community Ties (Policy Statement)

Family ties and responsibilities and community ties are not ordinarily relevant in determining whether a sentence should be outside the guidelines. Family responsibilities that are complied with are relevant in determining whether to impose restitution and fines. Where the guidelines provide probation as an option, these factors may be relevant in this determination. If a defendant is sentenced to probation or supervised release, family ties and responsibilities that are met may be relevant in the determination of the length and conditions of supervision.

§ 5H1.7. Role in the Offense (Policy Statement)

A defendant's role in the offense is relevant in determining the appropriate sentence. See Chapter Three, Part B, (Role in the Offense).

§ 5H1.8. Criminal History (Policy Statement)

A defendant's criminal history is relevant in determining the appropriate sentence. See Chapter Four, (Criminal History and Criminal Livelihood).

§ 5H1.9. Dependence upon Criminal Activity for a Livelihood (Policy Statement)

The degree to which a defendant depends upon criminal activity for a livelihood is relevant in determining the appropriate sentence. See Chapter Four, Part B (Career Offenders and Criminal Livelihood).

§ 5H1.10. Race, Sex, National Origin, Creed, Religion and Socio-Economic Status (Policy Statement)

These factors are not relevant in the determination of a sentence.

Part J—Relief From Disability Pertaining to Certain Employment

§ 5J1.1. Relief From Disability Pertaining to Certain Employment (Policy Statement)

With regard to labor racketeering offenses, a part of the punishment imposed by 29 U.S.C. 504 and 511 is the prohibition of convicted persons from service in labor unions, employer associations, employee benefit plans, and as labor relations consultants. Violations of these provisions are felony offenses. Persons convicted after October 12, 1984, may petition the sentencing court to reduce the statutory disability (thirteen years after sentence or imprisonment, whichever is later) to a lesser period (not less than three years after entry of judgment in the trial court). After November 1, 1987, petitions for exemption from the disability that were formerly administered by the United States Parole Commission will be transferred to the courts. Relief shall not be given in such cases to aid rehabilitation, but may be granted only following a clear demonstration by the convicted person that he has been rehabilitated since commission of the crime.

Part K—Departures

1. Substantial Assistance to Authorities

§ 5K1.1. Substantial Assistance to Authorities (Policy Statement)

Upon motion of the government stating that the defendant has made a good faith effort to provide substantial assistance in the investigation or prosecution of another person who has committed an offense, the court may depart from the guidelines.

(a) The appropriate reduction shall be determined by the court for reasons stated that may include, but are not limited to, consideration of the following conduct:

(1) The court's evaluation of the significance and usefulness of the defendant's assistance, taking into consideration the government's evaluation of the assistance rendered;

(2) The truthfulness, completeness, and reliability of any information or testimony provided by the defendant;

(3) The nature and extent of the defendant's assistance;

(4) Any injury suffered, or any danger or risk of injury to the defendant or his family resulting from his assistance;

(5) The timeliness of the defendant's assistance.

Commentary

Application Notes:

1. Under circumstances set forth in 18 U.S.C. 3553(e) and 28 U.S.C. 994(n), as amended, substantial assistance in the investigation or prosecution of another person who has committed an offense may justify a sentence below a statutorily required minimum sentence.

2. The sentencing reduction for assistance to authorities shall be considered independently of any reduction for acceptance of responsibility. Substantial assistance is directed to the investigation and prosecution of criminal activities by persons other than the defendant, while acceptance of responsibility is directed to the defendant's affirmative recognition of responsibility for his own conduct.

3. Substantial weight should be given to the government's evaluation of the extent of the defendant's assistance, particularly where the extent and value of the assistance are difficult to ascertain.

Background: A defendant's assistance to authorities in the investigation of criminal activities has been recognized in practice and by statute as a mitigating sentencing factor. The nature, extent, and significance of assistance can involve a broad spectrum of conduct that must be evaluated by the court on an individual basis. Latitude is, therefore, afforded the sentencing judge to reduce a sentence based upon variable relevant factors, including those listed above. The sentencing judge must, however, state the reasons for reducing a sentence under this section. 18 U.S.C. 3553(c). The court may elect to provide its reasons to the defendant in camera and in writing under seal for the safety of the defendant or to avoid disclosure of an ongoing investigation.

§ 5K1.2. Refusal to Assist (Policy Statement)

A defendant's refusal to assist authorities in the investigation of other persons may not be considered as an aggravating sentencing factor.

Commentary

Background: The Commission considered and rejected the use of a defendant's refusal to assist authorities as an aggravating sentencing factor. Refusal to assist authorities based upon continued involvement in criminal activities and association with accomplices may be considered, however, in evaluating a defendant's sincerity in claiming acceptance of responsibility.

2. General Provisions

§ 5K2.0. Grounds for Departure (Policy Statement)

Under 18 U.S.C. 3553(b) the sentencing court may impose a sentence outside the range established by the applicable guideline, if the court finds "that an aggravating or mitigating circumstance exists that was not adequately taken into consideration by the Sentencing Commission in formulating the guidelines." Circumstances that may warrant departure from the guidelines pursuant to this provision cannot, by their very nature, be comprehensively listed and analyzed in advance. The controlling decision as to whether and to what extent departure is warranted can only be made by the court at the time of sentencing. Nonetheless, the present section seeks to aid the court by identifying some of the factors that the

Commission has not been able to fully take into account in formulating precise guidelines. Any case may involve factors in addition to those identified that have not been given adequate consideration by the Commission. Presence of any such factor may warrant departure from the guidelines, under some circumstances, in the discretion of the sentencing judge. Similarly, the court may depart from the guidelines, even though the reason for departure is listed elsewhere in the guidelines (e.g., as an adjustment or specific offense characteristic), if the court determines that, in light of unusual circumstances, the guideline level attached to that factor is inadequate.

Where the applicable guidelines, specific offense characteristics, and adjustments do take into consideration a factor listed in this part, departure from the guideline is warranted only if the factor is present to a degree substantially in excess of that which ordinarily is involved in the offense of conviction. Thus, disruption of a governmental function, § 5K2.7, would have to be quite serious to warrant departure from the guidelines when the offense of conviction is bribery or obstruction of justice. When the offense of conviction is theft, however, and when the theft caused disruption of a governmental function, departure from the applicable guideline more readily would be appropriate. Similarly, physical injury would not warrant departure from the guidelines when the offense of conviction is robbery because the robbery guideline includes a specific sentence adjustment based on the extent of any injury. However, because the robbery guideline does not deal with injury to more than one victim, departure would be warranted if several persons were injured.

Also, a factor may be listed as a specific offense characteristic under one guideline but not under all guidelines. Simply because it was not listed does not mean that there may not be circumstances when that factor would be relevant to sentencing. For example, the use of a weapon has been listed as a specific offense characteristic under many guidelines, but not under immigration violations. Therefore, if a weapon is a relevant factor to sentencing for an immigration violation, the court may depart for this reason.

Harms identified as a possible basis for departure from the guidelines should be taken into account only when they are relevant to the offense of conviction, within the limitations set forth in § 1B1.3.

§ 5K2.1. Death (Policy Statement)

If death resulted, the court may increase the sentence above the authorized guideline range.

Loss of life does not automatically suggest a sentence at or near the statutory maximum. The sentencing judge must give consideration to matters that would normally distinguish among levels of homicide, such as the defendant's state of mind and the degree of planning or preparation. Other appropriate factors are whether multiple deaths resulted, and the means by which life was taken. The extent of the increase should depend on the dangerousness of the defendant's conduct, the extent to which death or serious injury was intended or knowingly risked, and the extent to which the offense level for the offense of conviction, as determined by the other Chapter Two guidelines, already reflects the risk of personal injury. For example, a substantial increase may be appropriate if the death was intended or knowingly risked or if the underlying offense was one for which base offense levels do not reflect an allowance for the risk of personal injury, such as fraud.

§ 5K2.2. Physical Injury (Policy Statement)

If significant physical injury resulted, the court may increase the sentence above the authorized guideline range. The extent of the increase ordinarily should depend on the extent of the injury, the degree to which it may prove permanent, and the extent to which the injury was intended or knowingly risked. When the victim suffers a major, permanent disability and when such injury was intentionally inflicted, a substantial departure may be appropriate. If the injury is less serious or if the defendant (though criminally negligent) did not knowingly create the risk of harm, a less substantial departure would be indicated. In general, the same considerations apply as in § 5K2.1.

§ 5K2.3. Extreme Psychological Injury (Policy Statement)

If a victim or victims suffered psychological injury much more serious than that normally resulting from commission of the offense, the court may increase the sentence above the authorized guideline range. The extent of the increase ordinarily should depend on the severity of the psychological injury and the extent to which the injury was intended or knowingly risked.

Normally, psychological injury would be sufficiently severe to warrant application of this adjustment only when there is a substantial impairment of the intellectual, psychological, emotional, or behavioral functioning of a victim, when the impairment is likely to be of an extended or continuous duration, and when the impairment manifests itself by physical or psychological symptoms or by changes in behavior patterns. The court should consider the extent to which such harm was likely, given the nature of the defendant's conduct.

§ 5K2.4. Abduction or Unlawful Restraint (Policy Statement)

If a person was abducted, taken hostage, or unlawfully restrained to facilitate commission of the offense or to facilitate the escape from the scene of the crime, the court may increase the sentence above the authorized guideline range.

§ 5K2.5. Property Damage or Loss (Policy Statement)

If the offense caused property damage or loss not taken into account within the guidelines, the court may increase the sentence above the authorized guideline range. The extent of the increase ordinarily should depend on the extent to which the harm was intended or knowingly risked and on the extent to which the harm to property is more serious than other harm caused or risked by the conduct relevant to the offense of conviction.

§ 5K2.6. Weapons and Dangerous Instrumentalities (Policy Statement)

If a weapon or dangerous instrumentality was used or possessed in the commission of the offense the court may increase the sentence above the authorized guideline range. The extent of the increase ordinarily should depend on the dangerousness of the weapon, the manner in which it was used, and the extent to which its use endangered others. The discharge of a firearm might warrant a substantial sentence increase.

§ 5K2.7. Disruption of Governmental Function (Policy Statement)

If the defendant's conduct resulted in a significant disruption of a governmental function, the court may increase the sentence above the authorized guideline range to reflect the nature and extent of the disruption and the importance of the governmental function affected. Departure from the guidelines ordinarily would not be justified when the offense of conviction is an offense such as bribery or obstruction of justice; in such cases

interference with a governmental function is inherent in the offense, and unless the circumstances are unusual the guidelines will reflect the appropriate punishment for such interference.

§ 5K2.8. Extreme Conduct (Policy Statement)

If the defendant's conduct was unusually heinous, cruel, brutal, or degrading to the victim, the court may increase the sentence above the guideline range to reflect the nature of the conduct. Examples of extreme conduct include torture of a victim, gratuitous infliction of injury, or prolonging of pain or humiliation.

§ 5K2.9. Criminal Purpose (Policy Statement)

If the defendant committed the offense in order to facilitate or conceal the commission of another offense, the court may increase the sentence above the guideline range to reflect the actual seriousness of the defendant's conduct.

§ 5K2.10. Victim's Conduct (Policy Statement)

If the victim's wrongful conduct contributed significantly to provoking the offense behavior, the court may reduce the sentence below the guideline range to reflect the nature and circumstances of the offense. In deciding the extent of a sentence reduction, the court should consider:

(a) The size and strength of the victim, or other relevant physical characteristics, in comparison with those of the defendant;

(b) The persistence of the victim's conduct and any efforts by the defendant to prevent confrontation;

(c) The danger reasonably perceived by the defendant, including the victim's reputation for violence;

(d) The danger actually presented to the defendant by the victim; and

(e) Any other relevant conduct by the victim that substantially contributed to the danger presented.

Victim misconduct ordinarily would not be sufficient to warrant application of this provision in the context of offenses under Chapter Two, Part A.3 (Criminal Sexual Abuse). In addition, this provision usually would not be relevant in the context of non-violent offenses. There may, however, be unusual circumstances in which substantial victim misconduct would warrant a reduced penalty in the case of a non-violent offense. For example, an extended course of provocation and harassment might lead a defendant to steal or destroy property in retaliation.

§ 5K2.11. Lesser Harms (Policy Statement)

Sometimes, a defendant may commit a crime in order to avoid a perceived greater harm. In such instances, a reduced sentence may be appropriate, provided that the circumstances significantly diminish society's interest in punishing the conduct, for example, in the case of a mercy killing. Where the interest in punishment or deterrence is not reduced, a reduction in sentence is not warranted. For example, providing defense secrets to a hostile power should receive no lesser punishment simply because the defendant believed that the government's policies were misdirected.

In other instances, conduct may not cause or threaten the harm or evil sought to be prevented by the law proscribing the offense at issue. For example, where a war veteran possessed a machine gun or grenade as a trophy, or a school teacher possessed controlled substances for display in a drug education program, a reduced sentence might be warranted.

§ 5K2.12. Coercion and Duress (Policy Statement)

If the defendant committed the offense because of serious coercion, blackmail or duress, under circumstances not amounting to a complete defense, the court may decrease the sentence below the applicable guideline range. The extent of the decrease ordinarily should depend on the reasonableness of the defendant's actions and on the extent to which the conduct would have been less harmful under the circumstances as the defendant believed them to be. Ordinarily coercion will be sufficiently serious to warrant departure only when it involves a threat of physical injury, substantial damage to property or similar injury resulting from the unlawful action of a third party or from a natural emergency. The Commission considered the relevance of economic hardship and determined that personal financial difficulties and economic pressures upon a trade or business do not warrant a decrease in sentence.

§ 5K2.13. Diminished Capacity (Policy Statement)

If the defendant committed a non-violent offense while suffering from significantly reduced mental capacity not resulting from voluntary use of drugs or other intoxicants, a lower sentence may be warranted to reflect the extent to which reduced mental capacity contributed to the commission of the offense, provided that the defendant's criminal history does not indicate a need for incarceration to protect the public.

§ 5K2.14. Public Welfare (Policy Statement)

If national security, public health, or safety was significantly endangered, the court may increase the sentence above the guideline range to reflect the nature and circumstances of the offense.

CHAPTER SIX—SENTENCING PROCEDURES AND PLEA AGREEMENTS

Part A—Sentencing Procedures

Introductory Commentary

This Part addresses sentencing procedures that are applicable in all cases, including those in which guilty or nolo contendere pleas are entered with or without a plea agreement between the parties, and convictions based upon judicial findings or verdicts. It sets forth the procedures for establishing the facts upon which the sentence will be based. Reliable fact-finding is essential to procedural due process and to the accuracy and uniformity of sentencing.

§ 6A1.1. Presentence Report

(a) A probation officer shall conduct a presentence investigation and report to the court before the imposition of sentence unless the court finds that there is information in the record sufficient to enable the meaningful exercise of sentencing authority pursuant to 18 U.S.C. 3553, and the court explains this finding on the record. Rule 32(c)(1), Fed.R.Crim.P. The defendant may not waive preparation of the presentence report.

(b) The presentence report shall be disclosed to the defendant, counsel for the defendant and the attorney for the government, to the maximum extent permitted by Rule 32(c), Fed.R.Crim.P. Disclosure shall be made at least ten days prior to the date set for sentencing, unless this minimum period is waived by the defendant. 18 U.S.C. 3552(d).

Commentary

A thorough presentence investigation is essential in determining the facts relevant to sentencing. In order to ensure that the sentencing judge will have information sufficient to determine the appropriate sentence, Congress deleted provisions of Rule 32(c), Fed.R.Crim.P., which previously permitted the defendant to waive the presentence report. Rule 32(c)(1) permits the judge to dispense with a presentence report, but only after explaining, on the record, why sufficient information is already available.

§ 6A1.2. Position of Parties with Respect to Sentencing Factors

(a) After receipt of the presentence report and within a reasonable time

before sentencing, the attorney for the government and the attorney for the defendant, or the pro se defendant, shall each file with the court a written statement of the sentencing factors to be relied upon at sentencing. The parties are not precluded from asserting additional sentencing factors if notice of the intention to rely upon another factor is filed with the court within a reasonable time before sentencing.

(b) Copies of all sentencing statements filed with the court shall be contemporaneously served upon all other parties and submitted to the probation officer assigned to the case.

(c) In lieu of the written statement required by § 6A1.2(a), any party may file:

(1) A written statement adopting the findings of the presentence report;

(2) A written statement adopting such findings subject to certain exceptions or additions; or

(3) A written stipulation in which the parties agree to adopt the findings of the presentence report or to adopt such findings subject to certain exceptions or additions.

(d) A district court may, by local rule, identify categories of cases for which the parties are authorized to make oral statements at or before sentencing, in lieu of the written statement required by this section.

(e) Except to the extent that a party may be privileged not to disclose certain information, all statements filed with the court or made orally to the court pursuant to this section shall:

(1) Set forth, directly or by reference to the presentence report, the relevant facts and circumstances of the actual offense conduct and offender characteristics; and

(2) Not contain misleading facts.

Commentary

In order to focus the issues prior to sentencing, the parties are required to respond to the presentence report and to identify any issues in dispute. The potential complexity of factors important to the sentencing determination normally requires that the position of the parties be presented in writing. However, because courts differ greatly with respect to their reliance on written plea agreements and with respect to the feasibility of written statements under guidelines, district courts are encouraged to consider the approach that is most appropriate under local conditions. The Commission intends to reexamine this issue in light of experience under the guidelines.

§ 6A1.3. Resolution of Disputed Factors

(a) When any factor important to the sentencing determination is reasonably in dispute, the parties shall be given an adequate opportunity to present information to the court regarding that factor. In resolving any reasonable dispute concerning a factor important to the sentencing determination, the court may consider relevant information without regard to its admissibility under the rules of evidence applicable at trial, provided that the information has sufficient indicia of reliability to support its probable accuracy.

(b) The court shall resolve disputed sentencing factors in accordance with Rule 32(a)(1), Fed.R.Crim.P. (effective Nov. 1, 1987), notify the parties of its tentative findings and provide a reasonable opportunity for the submission of oral or written objections before imposition of sentence.

Commentary

In current practice, factors relevant to sentencing are often determined in an informal fashion. The informality is to some extent explained by the fact that particular offense and offender characteristics rarely have a highly specific or required sentencing consequence. This situation will no longer exist under sentencing guidelines. The court's resolution of disputed sentencing factors will usually have a measurable effect on the applicable punishment. More formality is therefore unavoidable if the sentencing process is to be accurate and fair. Although lengthy sentencing hearings should seldom be necessary, disputes about sentencing factors must be resolved with care. When a reasonable dispute exists about any factor important to the sentencing determination, the court must ensure that the parties have an adequate opportunity to present relevant information. Written statements of counsel or affidavits of witnesses may be adequate under many circumstances. An evidentiary hearing may sometimes be the only reliable way to resolve disputed issues. See United States v. Fatico, 603 F.2d 1053, 1057 n.9 (2d Cir. 2979). The sentencing court must determine the appropriate procedure in light of the nature of the dispute, its relevance to the sentencing determination, and applicable case law.

In determining the relevant facts, sentencing judges are not restricted to information that would be admissible at trial. 18 U.S.C. 3661. Any information may be considered, so long as it has "sufficient indicia of reliability to support its probable accuracy." United States v. Marshall, 519 F.Supp. 751 (D.C. Wis. 1981), aff'd, 719 F.2d 887 (7th Cir. 1983); United States v. Fatico, 579 F.2d 707 (2d Cir. 1978). Reliable hearsay evidence may be considered. Out-of-court declarations by an unidentified informant may be considered "where there is good cause for the nondisclosure of his identity and there is sufficient corroboration by other means." United States v. Fatico, 579 F.2d at 713. Unreliable allegations shall not be considered. United States v. Weston, 448 F.2d 626 (9th Cir. 1971).

If sentencing factors are the subject of reasonable dispute, the court should, where appropriate, notify the parties of its tentative findings and afford an opportunity for correction of oversight or error before sentence is imposed.

Part B—Plea Agreements

Introductory Commentary

Policy statements governing the acceptance of plea agreements under Rule 11(e)(1), Fed.R.Crim.P., are intended to ensure that plea negotiation practices:

(1) promote the statutory purposes of sentencing prescribed in 18 U.S.C. 3553(a); and

(2) do not perpetuate unwarranted sentencing disparity.

These policy statements are a first step toward implementing 28 U.S.C. 994(a)(2)(E). Congress indicated that it expects judges "to examine plea agreements to make certain that prosecutors have not used plea bargaining to undermine the sentencing guidelines." S. Rep. 98-225, 98th Cong., 1st Sess. 63, 167 (1983). In pursuit of this goal, the Commission shall study plea agreement practice under the guidelines and ultimately develop standards for judges to use in determining whether to accept plea agreements. Because of the difficulty in anticipating problems in this area, and because the sentencing guidelines are themselves to some degree experimental, substantive restrictions on judicial discretion would be premature at this stage of the Commission's work.

The present policy statements move in the desired direction in two ways. First, the policy statements make clear that sentencing is a judicial function and that the appropriate sentence in a guilty plea case is to be determined by the judge. This is a reaffirmation of current practice. Second, the policy statements ensure that the basis for any judicial decision to depart from the guidelines will be explained on the record. Explanations will be carefully analyzed by the Commission and will pave the way for more detailed policy statements presenting substantive criteria to achieve consistency in this aspect of the sentencing process.

§ 6B1.1. Plea Agreement Procedure (Policy Statement)

(a) If the parties have reached a plea agreement, the court shall, on the record, require disclosure of the agreement in open court or, on a showing of good cause, in camera. Rule 11(e)(2), Fed.R.Crim.P.

(b) If the plea agreement includes a nonbinding recommendation pursuant to Rule 11(e)(1)(B), the court shall advise the defendant that the court is not bound by the sentencing recommendation, and that the defendant has no right to withdraw the defendant's guilty plea if the court decides not to accept the sentencing recommendation set forth in the plea agreement.

(c) The court shall defer its decision to accept or reject any nonbinding recommendation pursuant to Rule 11(e)(1)(B), and the court's decision to accept or reject any plea agreement pursuant to Rules 11(e)(1)(A) and 11(e)(1)(C) until there has been an

opportunity to consider the presentence report, unless a report is not required under § 6A1.1.

Commentary

This provision parallels the procedural requirements of Rule 11(e), Fed.R.Crim.P. Plea agreements must be fully disclosed and a defendant whose plea agreement includes a nonbinding recommendation must be advised that the court's refusal to accept the sentencing recommendation will not entitle the defendant to withdraw the plea.

Section 6B1.1(c) deals with the timing of the court's decision whether to accept the plea agreement. Rule 11(e)(2) gives the court discretion to accept the plea agreement immediately or defer acceptance pending consideration of the presentence report. Prior to the guidelines, an immediate decision was permissible because, under Rule 32(c), Fed.R.Crim.P., the defendant could waive preparation of the presentence report. Section 6B1.1(c) reflects the changes in practice required by § 6A1.1 and amended Rule 32(c)(1). Since a presentence report normally will be prepared, the court must defer acceptance of the plea agreement until the court has had an opportunity to consider the presentence report.

§ 6B1.2. Standards for Acceptance of Plea Agreements (Policy Statement)

(a) In the case of a plea agreement that includes the dismissal of any charges or an agreement not to pursue potential charges [Rule 11(e)(1)(A)], the court may accept the agreement if the court determines, for reasons stated on the record, that the remaining charges adequately reflect the seriousness of the actual offense behavior and that accepting the agreement will not undermine the statutory purposes of sentencing.

(b) In the case of a plea agreement that includes a nonbinding recommendation [Rule 11(e)(1)(B)], the court may accept the recommendation if the court is satisfied either that:

(1) The recommended sentence is within the applicable guideline range; or

(2) The recommended sentence departs from the applicable guideline range for justifiable reasons.

(c) In the case of a plea agreement that includes a specific sentence [Rule 11(e)(1)(C)], the court may accept the agreement if the court is satisfied either that:

(1) The agreed sentence is within the applicable guideline range; or

(2) The agreed sentence departs from the applicable guideline range for justifiable reasons.

Commentary

This section makes clear that a court may accept a plea agreement provided that the judge complies with the obligations imposed by Rule 11(e), Fed.R.Crim.P. A judge may accept an agreement calling for dismissal of charges or an agreement not to pursue potential charges if the remaining charges reflect the seriousness of the actual offense behavior. This requirement does not authorize judges to intrude upon the charging discretion of the prosecutor. If the government's motion to dismiss charges or statement that potential charges will not be pursued is not contingent on the disposition of the remaining charges, the judge should defer to the government's position except under extraordinary circumstances. Rule 48(a), Fed.R.Crim.P. However, when the dismissal of charges or agreement not to pursue potential charges is contingent on acceptance of a plea agreement, the court's authority to adjudicate guilt and impose sentence is implicated, and the court is to determine whether or not dismissal of charges will undermine the sentencing guidelines.

Similarly, the court will accept a recommended sentence or a plea agreement requiring imposition of a specific sentence only if the court is satisfied either that the contemplated sentence is within the guidelines or, if not, that the recommended sentence or agreement departs from the applicable guideline range for justifiable reasons and does not undermine the basic purposes of sentencing.

§ 6B1.3. Procedure Upon Rejection of a Plea Agreement (Policy Statement)

If a plea agreement pursuant to Rule 11(e)(1)(A) or Rule 11(e)(1)(C) is rejected, the court shall afford the defendant an opportunity to withdraw the defendant's guilty plea. Rule 11(e)(4), Fed.R.Crim.P.

Commentary

This provision implements the requirements of Rule 11(e)(4). It assures the defendant an opportunity to withdraw his plea when the court has rejected a plea agreement that would require dismissal of charges or imposition of a specific sentence.

§ 6B1.4. Stipulations (Policy Statement)

(a) A plea agreement may be accompanied by a written stipulation of facts relevant to sentencing. Except to the extent that a party may be privileged not to disclose certain information, stipulations shall:

(1) Set forth the relevant facts and circumstances of the actual offense conduct and offender characteristics;

(2) Not contain misleading facts; and

(3) Set forth with meaningful specificity the reasons why the sentencing range resulting from the proposed agreement is appropriate.

(b) To the extent that the parties disagree about any facts relevant to sentencing, the stipulation shall identify the facts that are in dispute.

(c) A district court may, by local rule, identify categories of cases for which the parties are authorized to make the required stipulation orally, on the record, at the time the plea agreement is offered.

(d) The court is not bound by the stipulation, but may with the aid of the presentence report, determine the facts relevant to sentencing.

Commentary

This provision requires that when a plea agreement includes a stipulation of fact, the stipulation must fully and accurately disclose all factors relevant to the determination of sentence. This provision does not obligate the parties to reach agreement on issues that remain in dispute or to present the court with an appearance of agreement in areas where agreement does not exist. Rather, the overriding principle is full disclosure of the circumstances of the actual offense and the agreement of the parties. The stipulation should identify all areas of agreement, disagreement and uncertainty that may be relevant to the determination of sentence. Similarly, it is not appropriate for the parties to stipulate to misleading or non-existent facts, even when both parties are willing to assume the existence of such "facts" for purposes of the litigation. Rather, the parties should fully disclose the actual facts and then explain to the court the reasons why the disposition of the case should differ from that which such facts ordinarily would require under the guidelines.

Because of the importance of the stipulations and the potential complexity of the factors that can affect the determination of sentences, stipulations ordinarily should be in writing. However, exceptions to this practice may be allowed by local rule. The Commission intends to pay particular attention to this aspect of the plea agreement procedure as experience under the guidelines develops. See Commentary to § 6A1.2.

Section 6B1.4(d) makes clear that the court is not obliged to accept the stipulation of the parties. Even though stipulations are expected to be accurate and complete, the court cannot rely exclusively upon stipulations in ascertaining the factors relevant to the determination of sentence. Rather, in determining the factual basis for the sentence, the court will consider the stipulation, together with the results of the presentence investigation, and any other relevant information.

CHAPTER SEVEN—VIOLATIONS OF PROBATION AND SUPERVISED RELEASE

§ 7A1.1. Reporting of Violations of Probation and Supervised Release (Policy Statement)

(a) The Probation Officer shall promptly report to the court any alleged violation of a condition of probation or supervised release that constitutes new criminal conduct, other than conduct that would constitute a petty offense.

(b) The Probation Officer shall promptly report to the court any other alleged violation of a condition of probation or supervised release; unless

the officer determines: (1) that such violation is minor, not part of a continuing pattern of violation, and not indicative of a serious adjustment problem; and (2) that non-reporting will not present an undue risk to the public or be inconsistent with any directive of the court relative to the reporting of violations.

Commentary

This policy statement addresses the reporting of violations of probation and supervised release. It is the Commission's intent that significant violations be promptly reported to the court. At the same time, the Commission realizes that it would neither be practical nor desirable to require such reporting for every minor violation.

§ 7A1.2. Revocation of Probation (Policy Statement)

(a) Upon a finding of a violation of probation involving new criminal conduct, other than criminal conduct constituting a petty offense, the court shall revoke probation.

(b) Upon a finding of a violation of probation involving conduct other than conduct under subsection (a), the court may: (1) Revoke probation; or (2) extend the term of probation and/or modify the conditions of probation.

Commentary

This policy statement expresses a presumption that probation is to be revoked in the case of new criminal conduct other than a petty offense. For lesser violations, the policy statements provide that the court may revoke probation, extend the term of supervision, or modify the conditions of supervision.

§ 7A1.3. Revocation of Supervised Release (Policy Statement)

(a) Upon a finding of a violation of supervised release involving new criminal conduct, other than criminal conduct constituting a petty offense, the court shall revoke supervised release.

(b) Upon a finding of a violation of supervised release involving conduct other than conduct under subsection (a), the court may: (1) Revoke supervised release; or (2) extend the term of supervised release and/or modify the conditions of supervised release.

Commentary

This policy statement expresses a presumption that supervised release is to be revoked in the case of new criminal conduct other than a petty offense. For lesser violations, the policy statements provide that the court may revoke supervised release, extend the term of supervision, or modify the conditions of supervision.

§ 7A1.4. No Credit for Time Under Supervision (Policy Statement)

(a) Upon revocation of probation, no credit shall be given (toward any sentence of imprisonment imposed) for any portion of the term of probation served prior to revocation.

(b) Upon revocation of supervised release, no credit shall be given (toward any term of imprisonment ordered) for time previously served on post-release supervision.

Commentary

This policy statement provides that time served on probation or supervised release is not to be credited in the determination of any term of imprisonment imposed upon revocation.

Appendix A—Statutory Index

Introduction

This index specifies the guideline section or sections ordinarily applicable to the statute of conviction. If more than one guideline section is referenced for the particular statute, select the guideline most appropriate for the conduct of which the defendant was convicted. If, in an atypical case, the guideline section indicated for the statute of conviction is inappropriate because of the particular conduct involved, the court is to apply the guideline section which is most applicable to the conduct for which the defendant was convicted. (See § 1B1.2.)

If the offense involved a conspiracy or an attempt, refer to § 2X1.1 as well as the guideline for the substantive offense.

For those offenses not listed in this index, the most analogous guideline is to be applied. (See § 2X5.1.)

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Part III

Office of Personnel Management

Proposed Demonstration Project; Pacer Share: A Federal Productivity Enhancement Program; Notice of Final Approval

OFFICE OF PERSONNEL MANAGEMENT

Proposed Demonstration Project; Pacer Share: A Federal Productivity Enhancement Program

AGENCY: Office of Personnel Management.

ACTION: Notice of approval of a final demonstration project.

SUMMARY: Title VI of the Civil Service Reform Act authorizes the Office of Personnel Management (OPM) to conduct demonstration projects which experiment with new and innovative personnel management concepts to determine whether a specified change in personnel management policies or procedures would result in improved Federal personnel management. The proposed demonstration project was published in the **Federal Register** on July 17, 1987. This is the final demonstration project plan approved by the Office of Personnel Management.

DATES: *Approval Date:* The demonstration project was approved by the Office of Personnel Management on November 16, 1987.

Implementation Date: The demonstration project may be implemented after the expiration of the 90-day congressional review period.

FOR FURTHER INFORMATION CONTACT: (1) In Sacramento, California, Ms. Colene Krum, (916) 643–1298; (2) in Washington, DC, Dr. Brigitte W. Schay, (202) 632–6164.

SUPPLEMENTARY INFORMATION: On proposed demonstration project: The Department of the Air Force submitted a proposal for consideration as a demonstration project under chapter 47 of title 5, U.S. Code entitled, "PACER SHARE: A Federal Productivity Enhancement Program."

The purpose of the project is to demonstrate that the productivity of a Federal installation can be improved significantly through the implementation of a more flexible personnel system and the establishment of a productivity gainsharing system. By removing some of the constraints and disincentives inherent in the current personnel system, it is expected that Federal employees will be able to improve both mission accomplishment and their quality of worklife.

To accomplish these purposes, this demonstration project proposes the following changes to current personnel management policies and procedures:

1. A simplified classification system that consolidates both job series and grades into broader categories and also applies revised criteria for grading supervisory positions;

2. A simplified compensation system with three new pay schedules for salaried, hourly, and supervisory/managerial employees and pay bands combining up to five grades in one band;

3. A productivity gainsharing system based on total organization performance, where 50 percent of the savings are returned to the Air Force and the remaining 50 percent are distributed on an equal dollar amount basis among all employees;

4. Elimination of annual employee performance ratings, to be replaced by Dr. W. Edwards Deming's procedures for statistical quality control; and

5. A modified version of the on-call employment program for most new hires, designed to permit managers to adjust the workforce quickly in response to workload and budgetary changes, intended to avoid costly reductions in force (RIFs) of the career workforce.

The demonstration project will cover all employees (approximately 1,900) in the Directorate of Distribution of the Sacramento Air Logistics Center at McClellan Air Force Base in Sacramento, California. These employees include supervisory General Schedule (GS) and Performance Management and Recognition System (PMRS) employees, non-supervisory GS and Federal Wage System (FWS) employees, and Wage Supervisors.

A proposed demonstration project plan was published on July 17, 1987, in the **Federal Register** (52 FR 27132). On the same date copies of the proposed plan were transmitted to both Houses of the Congress as required by 5 U.S.C. 4703(b)(4). The public comment period began on July 17, 1987.

A public hearing was held on the proposed demonstration project plan on September 10, 1987, at McClellan Air Force Base, Sacramento, California.

Summary of Comments

A. *Analysis of Comments.* Comments received during the comment period are categorized as follows:

	Letters	Phone contact	Hearing witnesses
Expression of overall project support and positive comments on specific project features	1		5
Expression of comments, questions, or suggestions without indication of support or opposition	7	6	5
Expression of concern and critical comments on specific project features	[1] 9	2	3
Total	17	8	13

[1] This includes a letter signed by two employees and 284 additional signatures from employees supporting its contents.

B. Comments in support of the project generally cited the advantages of:

(1) Changing the grading criteria for supervisors which will lessen the rigidity of the traditional hierarchy.

(2) Paybanding as a method of simplifying the compensation system.

(3) Gainsharing which will encourage productivity and team work.

(4) Flexibility of the system under the project which will facilitate policy formulation.

(5) Increased employee input into the project.

(6) Improved labor-management relations due to employee/union input.

C. Some of the questions raised during the public hearing indicated a lack of understanding as well as misunderstandings about specific project features. Given the length and complexity of the project plan, this is to be expected, but it clearly demonstrates the need for a thorough employee orientation program. Several employees requested and received written responses from OPM to specific questions.

D. Comments expressing concerns or criticism about the project are summarized below by topic:

(1) Employee Participation and Involvement

Concern was expressed by employees, and union stewards in particular, that they had not received as much information about the project and as many opportunities to make suggestions as they would have liked. A common concern was also expressed about the mandatory nature of participation in the project.

Suggestions were made that employees be involved in the selection of their co-workers and supervisors and

have the right to vote annually on project continuation or termination. It was also recommended that employees meet semi-annually to discuss issues surrounding the project.

(2) Job Series Consolidation

Arguments were made that supervisors may have too much latitude in reassigning employees under job series consolidation and that employees should have the right to choose their own positions. Several employees expressed concern that work assignments may be influenced by favoritism.

(3) Performance Appraisals and Promotions

Since employees will not be rated on their individual performance under the project, concern was expressed regarding promotional potential and crediting of skills gained during the project. Objections were voiced that performance would no longer play a role in pay progression. Concerns were also raised about increased supervisory discretion in giving promotions or demotions since time-in grade requirements are being waived. Although performance appraisals may be requested by the employee seeking a promotion, concern was voiced about the quality of these appraisals and the likelihood that most would result in Fully Successful ratings.

(4) Paybanding and Pay Increases

Many employees were concerned about the loss of guaranteed step increases because project implementation would disrupt that normal progression and the first annual increase would not be granted until 6 months after implementation. Suggestions were made that employees be given automatic step increases if they had completed 50% or more of the required time-in-step.

Several comments were made concerning possible adverse effects on employees transferring to an area using the current GS system or competing for promotions after being classified under paybanding. Concern focused on receiving appropriate grade-level credit. There were also several questions about pay-progression under bands and an expressed need for pay schedules.

Further concern was expressed that employees performing new, and perhaps more difficult, tasks usually performed by higher grade levels will not be duly compensated. Some employees were worried about possible adverse effects on retirement benefits as a result of paybanding.

(5) On-Call Employment

Concern was expressed about reinstatement rights because the Demonstration On-Call (DOC) program might eliminate the need to reinstate career employees. Suggestions were made that full-time career employees be given the option of part-time positions. Some employees commented that on-call status would not be desirable and would result in recruitment difficulties because of lack of job security.

(6) Gainsharing

Concern was expressed about limited promotional opportunities due to the fact that the filling of job vacancies would be discouraged under productivity gainsharing. Suggestions were made that time-off and leave without pay be offered in lieu of cash payments to permanent employees. Concern was raised that under the gainsharing philosophy, peer pressure to perform would cause undue competition among employees because of varying work effort.

(7) Training

Some employees expressed the desire to receive the same team-building training provided to supervisors and were concerned that the project might be implemented without adequate preparation.

E. *Responses to Comments.* A number of steps have been taken by the Directorate of Distribution (DS) in order to provide more information about the project to employees and to increase employee involvement. In addition to the general employee orientation provided by division chiefs prior to the hearing, briefings have been scheduled by representatives of the American Federation of Government Employees (AFGE), the exclusive bargaining representative of most of the affected workforce. Meetings will also be held by the Deputy Director with all DS employees, in groups of 25 to 40. DS has developed a Question and Answer booklet about the demonstration which addresses issues of frequent concern to employees, and a briefing video will be developed as well. Implementation task force committees have been formed with union representatives on each of the committees to ensure employee participation in the implementation phase.

Some of the employees who commented on PACER SHARE objected to the mandatory nature of the demonstration project and suggested that employees be allowed to vote on it. However, since employees have been represented on the project by their union and since the project was developed jointly by the union and management, the interests of employees were considered when the various project interventions were designed. Since the Congress has authorized personnel management experiments under Title VI of the Civil Service Reform Act, participation in these projects cannot be left up to individual employees because these experiments involve major personnel system changes that have to be applied to all employees at an experimental site. It is not cost-effective to run a dual personnel system to accommodate employees who object to experimental personnel system changes.

F. *Demonstration Project Changes.* Several minor editorial and other revisions have been made to the project plan and one major change has been developed affecting the way the first annual salary increase will be granted. This change was made at the request of Air Force and union officials in response to concerns expressed by employees who would have lost step increases during the period preceding the first pay increase, originally scheduled to occur six months after implementation. The following is a summary of all substantive changes. Page references are to the preliminary **Federal Register** plan published July 17, 1987.

(1) On page 27145, the paragraph headed "The Timing of Annual Pay Adjustments" has been replaced by the description of a new transition adjustment procedure for employees converted to the demonstration. During the first year following project implementation, all employees who are due another step increase within the next three years will receive an equivalent to an annual pay adjustment, either on schedule or 6 to 24 months in advance, depending on the waiting periods. PMRS employees will receive their first annual pay increase in October 1988 and those employees who are at the highest step of their current grade, but not at the maximum rate for their pay-band, will receive their first pay increase one year after project implementation. All future pay increases will be granted annually on the anniversary date of the last increase.

(2) On page 27143 in the section on training, seniority has been redefined as being based on service computation date and not date of initial appointment into the Directorate of Distribution.

(3) On page 27148, the provision for making Productivity Gainsharing payments to employees has been revised to state that PGS payments will generally be processed within two pay periods following the end of the quarter.

This replaces specific wording that payments will be processed no later than two pay periods.

(4) A number of minor revisions have been made in the evaluation model on pages 27153 and 27154 because one of the data collection instruments, the Personnel Office Productivity Assessment (POPA) has been simplified, separating the collection of input and output data. A provision for measuring the effectiveness of statistical process control (SPC) procedures in improving productivity has also been added.

U.S. Office of Personnel Management.

James E. Colvard,

Deputy Director.

The demonstration project plan as approved by the Office of Personnel Management reads as follows:

Pacer Share: A Federal Productivity Enhancement Program

A Proposal for an Office of Personnel Management Demonstration Project

Submitted by: Sacramento Air Logistics Center, McClellan Air Force Base, California, Air Force Logistics Command, Department of the Air Force, Department of Defense.

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I. Executive Summary

Purpose

This demonstration project is designed to involve Federal employees more directly in improving their organization's productivity and quality of worklife through the implementation of a more flexible and responsive personnel system and by making financial incentives available to all employees.

The following interventions will be tested:

(1) A simplified classification system that consolidates both job series and grades into broader categories and also applies revised criteria for grading supervisory positions;

(2) A simplified compensation system with three new pay schedules for salaried (DW), hourly (DH) and supervisory/managerial (DX) employees and pay bands combining up to five grades in one band;

(3) A productivity gainsharing system based on total organizational performance where 50 percent of the savings are returned to the Air Force and the remaining 50 percent are distributed on an equal dollar amount basis among all employees;

(4) Elimination of annual performance ratings to be replaced by Dr. W. Edwards Deming's procedures for statistical quality control; and

(5) A modified version of the on-call employment program for most new hires designed to permit managers to adjust the workforce quickly in response to workload and budgetary changes, intended to avoid costly reductions in-force (RIFs) of the career workforce.

The combined changes are expected to increase organizational flexibility in order to improve organizational productivity and enhance both peacetime and wartime readiness.

Participation Organizations

The demonstration project will be conducted in the Directorate of Distribution (DS) of the Sacramento Air Logistics Center (SM-ALC), located at McClellan Air Force Base, California. DS is one of six directorates in the SM-ALC and has a workforce of about 1,900 employees.

The RAND Corporation, Santa Monica, California, will serve as an independent project evaluator. RAND has worked with the Directorate of Distribution and the Office of Personnel Management (OPM) in developing an evaluation plan. OPM has provided technical assistance in the development of this proposal and will continue to be involved in the planning and conduct of the evaluation as necessary to meet the agency's statutory oversight responsibilities.

Types and Numbers of Participating Employees

The demonstration will cover all employees in the Directorate of Distribution, which (as of March 1987) includes 854 non-supervisory General Schedule (GS) employees, 104 supervisory GS and Performance Management and Recognition System (PMRS) employees, 855 non-supervisory Federal Wage System (FWS) employees and 84 Wage Supervisors, for a total of 1,897 eligible employees.

Labor Participation

Employees in DS are represented by three unions: the American Federation of Government Employees (AFGE) representing 87 percent of the workforce, and two smaller unions, the Technical Skills Association and the Engineer and Scientist Association. AFGE represents the interests of all three to the demonstration task force, and the chief union steward is a full-time member of the project staff. AFGE has been involved in the development of the project since its inception and the president of AFGE Local 1857 is a member of the project steering committee.

Methodology

The five interventions, or personnel system changes, in the areas of classification, compensation, staffing, performance appraisal, and incentives, are described in detail in the proposal. These changes form an interrelated system and require the adoption of new, more participative management concepts, based in part on the philosophy of productivity expert Dr. W. Edwards Deming.

Training

The key to smooth transition management is training. A separate personnel office will be established for the Directorate of Distribution and all new staff will be trained in the administration of the demonstration personnel system but will not be part of the demonstration itself.

Managers and supervisors will be trained in participative management concepts and statistical process control (SPC) procedures. Training in SPC will also be extended to nonsupervisory employees who will be involved in the measurement processes. Project orientation for all employees will include:

(1) a general description of the project and project philosophy, (2) conversion procedures into the new system, (3) explanation of the new process approach to classification, (4) pay-banding and pay adjustment processes, (5) new hiring program, (6) explanation of productivity gainsharing program, (7) project administration and evaluation, and (8) procedures for converting out of the project. Training for new supervisors and employees will be given throughout the 5 years of the project.

Evaluation Plan

A methodologically rigorous evaluation plan has been designed to assess project outcomes and to evaluate their generalizability to other Federal organizations. There are four other Air Logistics Centers in the country that will serve as non-equivalent control groups. The design is "quasi-experimental" and includes pre- and post-demonstration comparisons as well as experimental vs. control group comparisons.

The evaluation model postulates both specific effects of each individual intervention and effects of the combined interventions. Attempts will be made, to the extent possible, to establish cause-and-effect relationships. In order to assure a thorough assessment of the demonstration, the evaluation will cover three distinct phases: (1) An evaluation of the implementation phase to determine that the project is implemented as designed and that the stated processes are stable and operational; (2) periodic assessments of the 5-year experimental phase; and (3) a summative evaluation of the project's overall impact upon completion of the project.

The collection of baseline data from the demonstration and control sites will begin prior to the implementation of the project and will cover measures relating to productivity and quality, a variety of personnel functions, and a diagnostic attitude survey which will be repeated annually to track the progress of the demonstration.

Waivers of Law and Regulation Required

Waivers of existing title 5, U.S. Code, laws and Title 5, CFR, regulations are required to conduct the demonstration project. Waivers are needed to change position classification, compensation, performance appraisal, and staffing procedures. The productivity gainsharing program can be undertaken within existing authorities.

Costs

The project will be funded by the Air Force and the participating Directorate of Distribution out of normal administrative overhead and training funds. Total project cost, including development and evaluation for the 5-year period, will be $5,095,488 (in FY 1987 dollars). It is projected that these costs will be recovered in the first 1 to 2 years of the project through savings returned to the Government.

Benefits of Proposed Project

The project is expected to demonstrate that a more flexible personnel system and financial incentives can lead to significantly increased productivity in a Federal installation, without any resultant deterioration in quality of products and service. By removing some of the constraints and disincentives inherent in the current systems, both managers and employees will be able to work more effectively and efficiently and at the same time improve their quality of worklife. This demonstration project is also the first involving labor unions and hopes to set an example in labor-management relations.

II. Introduction

A. Purpose

This demonstration project is designed to involve Federal employees more directly in improving their organization's productivity and quality of worklife. The existing Federal personnel management system offers few incentives to managerial or non-managerial employees to improve organizational operations and reduce costs. The present system does not reward risk-taking and encourages a narrow focus and preoccupation with rule enforcement rather than organizational effectiveness. The purpose of this demonstration project is to implement and test new ways of motivating employees to improve organizational productivity. In order to do this, some existing impediments in the personnel management system will have to be removed and a more responsive and flexible system be installed. The project will demonstrate that significant productivity increases can be attained through the implementation of more flexible personnel management procedures and incentives and the elimination of negative incentives that tend to drive up costs.

Since the proposed demonstration site is within the Department of Defense, the enhanced capability to support not only peacetime but wartime performance, readiness and sustainability is a critical goal of the project. It is expected that mission accomplishment can be enhanced with the proposed system changes, and that by increasing employees' control over their work and work products, the general quality of worklife and employee job satisfaction can be improved as well. The project also intends to demonstrate that work quality will not deteriorate at the expense of increased productivity. Quality of work will be carefully monitored throughout the project.

This demonstration project is the first to be conducted in a unionized environment and hopes to set an example in labor-management relations. Union representatives have been directly involved in the project since its inception and have contributed to the development of the ideas presented here. In this era of resource scarcity, labor-management cooperation is critical if new methods are to be developed for "doing more with less." It is believed that most employees want to work effectively, and that by giving them direct incentives and encouraging more participation, employees will come up with better and more productive ways of doing their work.

B. Problems With the Present System

Federal managers are responsible for accomplishing their assigned workload as economically as possible. However, there are many elements of the Federal personnel system that do not support this requirement. The current personnel system causes many frustrations for managers and employees. This demonstration project addresses problems in a number of specific areas.

Classification and Compensation

The Federal job classification system is a complex system which divides the universe of work into a large number of small pieces. The General Schedule (GS) system defines about 440 different white collar occupations and is divided into 18 grades or levels of difficulty. The Federal Wage System (FWS) covers 330 blue collar occupations in 15 grades. Both systems classify jobs based on the rank-in-the-job method. This approach encourages rigid specialization and inefficient division of labor.

When a manager has to fill a new position, either the manager or personnel specialist writes a description

of the job duties, and the classifier then compares the job to a set of published job classification standards to determine the correct grade and occupational series. In order to avoid salary compression, supervisory jobs are usually evaluated as more responsible and complex.

Any job that changes substantially over the years also has to be redescribed and possibly reclassified. If the position is reclassified, a personnel action must be processed to record the action in the employee's personnel file. As a result, managers and personnel specialists devote much time and energy to the writing of frequently lengthy position descriptions required to justify narrow grade and series distinctions. The current system thus contributes to overhead costs that could be reduced under a simplified system.

Narrow job classification and the resulting over-specialization force managers to employ more personnel than are actually required to assure that all tasks are covered. Current supervisory grading criteria further encourage "empire-building" and the creation of additional layers of supervision.

Actually, neither the GS nor the FWS job classification and grading systems require managers to design narrow jobs that fit specific grades and series, but the emphasis placed on classification accuracy encourages the design of such narrow jobs. Managers who try to establish broader generalist jobs are likely to have trouble getting them classified and may also face recruitment difficulties because the system is built around narrow job distinctions. Additional problems are created by the narrow and restrictive qualification requirements that interfere with a supervisor's ability to assign work to employees as needed.

Another and even more critical problem with the present system is that white collar pay is rigidly tied to narrow grade levels without regard for local market conditions. Managers have little control over the pay rates of their employees. This makes it extremely difficult for a supervisor to reward an outstanding employee. Therefore, when market or other conditions call for a change in pay, managers have little choice but to attempt to use the complex classification system to change grade levels to make short-term pay adjustments. In order to justify higher pay and a higher grade, jobs have to be made more complex, which is often achieved by manipulating the two major classification factors, difficulty and responsibility. The process of reclassifying a job tends to be time-consuming and is not always successful, because the job classification system is being used in ways not intended, i.e., to solve pay problems.

The narrowness of the grades in the 18-grade structure of the current GS system is a source of frustration for supervisors and non-supervisors alike. Deserving employees often cannot be promoted or, conversely, they may seek merit promotions elsewhere and will be lost to the organization. This problem is compounded by the pay inversion between the General Schedule and the Federal Wage System that has occurred at McClellan Air Force Base. White-collar employees in the lower grade levels sometimes reluctantly switch to blue-collar jobs offering higher pay potential.

Consolidated job series and broader pay ranges combining several grades in one band would simplify the classification system, reduce the need for more frequent promotions and other personnel actions, and encourage managers to better utilize the talents of employees in the organization.

Staffing

Similar problems exist in the area of staffing. Paperwork is required every time an employee is assigned to different duties or given another level of work. It is required whether the action is permanent or temporary. Excessive paperwork and documentation consume time and personnel resources and interfere with getting vacancies filled quickly. Every fill action requires an analysis of job requirements, assessment of qualifications, the ranking of candidates and interviews. Regardless of individual capability, work assignments and training opportunities must be denied to workers who are capable but do not meet the narrow qualification standards.

Other problems are created by the reduction in force (RIF) procedures for adjusting the size of the workforce to meet changes in workload. Large-scale RIFs can be time-consuming, disruptive to the existing workforce and costly in terms of processing the releases. It is expensive to train new workers during periods of expansion and also difficult to restructure work and train the remaining workers during contractions. There is also the inevitable impact on morale.

Incentives

The current incentive awards system provides inadequate tools for motivating the entire workforce. Awards generally go to only a small number of employees and are not perceived as widely available. In order to motivate every employee to work harder toward the goal of increasing organizational productivity, a bonus system is needed that potentially can reward every employee.

The idea of paying bonuses to employees based on productivity improvements is an old one. Productivity gainsharing programs are common throughout the private sector and are beginning to be adopted by the Federal Government as well. Recent successful Department of Defense (DoD) efforts were high-lighted in a GAO report (66D-86-143BR) entitled "Gainsharing—DoD Efforts Highlight an Effective Tool for Enhancing Federal Productivity (September 1986)." Quality circles (QCs) are often a good basis from which to build such a gainsharing program. The Directorate of Distribution has been actively involved in a QC program since 1980 and now includes 50 percent of the workforce in QCs. QCs are primarily designed to promote employee participation in identifying and solving organizational problems in order to improve work quality and productivity. By offering to share the cost savings achieved through increased productivity, employees are provided with a stronger incentive to increase their participation in QCs and to work toward the goal of increased productivity and efficiency.

Performance Appraisal

The present performance appraisal system requires the development of performance plans with elements and standards for every employee, whose performance then has to be evaluated using five rating levels. The current Civilian Personnel and Promotion Appraisal form (AF 860) is six pages long and comes with two pages of instructions. While it is generally difficult, but possible, to develop appropriate objective measures of performance, the requirement to set and measure performance standards at five levels for every job, regardless of complexity, appears to be excessive. For many, especially low-skill jobs, it is unnecessary to make such fine distinctions. In many cases, in fact, a dichotomous distinction would be sufficient, e.g., boxes were loaded on time or not. It is difficult to see a payoff for the time invested in elaborately developed performance plans with individual ratings for each employee. Theoretically, each plan is supposed to be linked to the overall mission of the entire organization, but individual performance ratings may not be the only way to accomplish this goal. Performance measurement is important,

but in an organization such as the Directorate of Distribution, measurements at aggregate levels are more meaningful than individual performance measures, which impose an unnecessary burden.

C. Changes Required

An interrelated system of changes is required to address the problems identified here and to accomplish the dual and complementary objectives of increased productivity and quality of worklife. This requires the adoption of a new management philosophy that encourages greater involvement of all employees in the problems and challenges faced by their organization. Part of this new philosophy will be to build a sense of "corporate" identity in every directorate member that will be reinforced by. the productivity gainsharing program and the changes to the personnel management system.

The existence of quality circles represents a good starting point for the project, and the proposed introduction of statistical quality control procedures is expected to enhance efforts to achieve greater productivity through improved quality. The proposition that improved quality decreases costs and increases productivity is based on the work and successes of productivity expert Dr. W. Edwards Deming, whose statistical quality control procedures were eagerly adopted by the Japanese in the early 1950's and subsequently revolutionized Japanese quality and productivity. Many American corporations, including Ford, General Motors, and Hughes Aircraft are now among Dr. Deming's clients. The Deming philosophy is quite comprehensive and would require total change in an organization, including its procurement methods. Changes in authority for this demonstration project are necessarily limited to personnel management issues. However, it has to be acknowledged that the development of the project was influenced in part by the Deming philosophy.

The following changes are required to accomplish the purpose of the demonstration project:

1. A simplified classification system that combines current job series and groups jobs into broad categories to permit more flexible job assignments;
2. A revised pay system, with broader pay ranges, that supports the new classification system;
3. An organization-wide incentive system that motivates and rewards organizational productivity increases through productivity gainsharing;
4. The elimination of annual individual performance ratings for employees, to be replaced by performance measurement procedures that focus on unit measures and the total organization;
5. A new on-call employment program that will permit greater flexibility to adjust the workforce in response to workload and budgetary changes.

D. Participating Organization and its Mission

The demonstration project, called PACER SHARE, will be conducted in the Directorate of Distribution (DS) of the Sacramento Air Logistics Center (SM-ALC), located at McClellan Air Force Base, California. The Sacramento ALC is one of five Air Logistics Centers within the Air Force Logistics .Command, whose mission it is to provide total logistics support to all Air Force operational commands and bases worldwide. The Sacramento ALC has a workforce of over 14,000 civilians. There are six major directorates: Distribution, Maintenance, Materiel Management, Contracting and Manufacturing, Communications and Computer Systems, and Competition Advocacy. The Directorate of Distribution has a workforce of about 1,900 employees who are about equally divided between white-collar and blue-collar jobs. DS is funded through the annual Federal appropriations process and receives its budget allocation from Operations and Maintenance (O&M) funds. DS does not have the flexibility of industrial funding.

DS is charged with management of the physical distribution function for the ALC, which includes receipt, storage, issue, and shipment of materiel, as well as quality control, packaging, inventory, and transportation functions. Given the strategic importance of the DS mission, the following critical productivity strategies have to be maintained during the demonstration: readiness, mobility, and surge capability.

Since DS is one of six directorates within the Sacramento ALC, the demonstration project and its new personnel system have to be designed to interface with the other five directorates. Approximately 4 percent of DS employees move into other directorates each year through the center-wide merit promotion system.

E. Participating Employees

Table 1 provides a list of all General Schedule employees currently eligible to participate in the demonstration project. Table 2 shows the distribution of Federal Wage System employees covered by the project. Table 3 summarizes the number of participating employees by pay category.

TABLE 1.—GS EMPLOYEES ELIGIBLE TO PARTICIPATE IN DEMONSTRATION PROJECT

Series No.	Series title	Supervisory	Nonsupervisory	All
GS-0260	Equal Employment Opportunity Specialist	0	1	1
GS-0301	Miscellaneous Administration and Program	2	22	24
GS-0303	Miscellaneous Clerk/Assistant	0	2	2
GS-0305	Mail and Files	0	2	2
GS-0318	Secretary	0	57	57
GS-0322	Clerk-Typist	0	8	8
GS-0332	Computer Operation	0	5	5
GS-0334	Computer Specialist	0	9	9
GS-0335	Computer Clerk and Assistant	0	22	22
GS-0343	Management Analysis	2	20	22
GS-0344	Management Clerical/Assistant	0	22	22
GS-0345	Program Analysis	0	4	4
GS-0356	Data Transcriber	2	16	18
GS-0392	General Communications	1	1	2
GS-0560	Budget Administration	0	1	1
GS-0801	General Engineering	0	1	1
GS-0802	Engineering Technician	0	1	1

TABLE 1.—GS EMPLOYEES ELIGIBLE TO PARTICIPATE IN DEMONSTRATION PROJECT—Continued

Series No.	Series title	Supervisory	Nonsupervisory	All
GS-0818	Engineering Drafting	0	1	1
GS-0895	Industrial Engineering Technician	0	5	5
GS-0896	Industrial Engineering	3	14	17
GS-1020	Illustrating	0	2	2
GS-1152	Production Control	0	1	1
GS-1531	Statistical Assistant	0	2	2
GS-1910	Quality Assurance	7	33	40
GS-2001	General Supply	11	44	55
GS-2003	Supply Program Management	12	67	79
GS-2005	Supply Clerical/Technician	15	220	235
GS-2010	Inventory Management	15	100	115
GS-2030	Distribution Facilities and Storage Management	6	13	19
GS-2032	Packaging	4	21	25
GS-2101	General Transportation	8	4	12
GS-2102	Transportation Clerk/Assistant	1	2	3
GS-2130	Traffic Management	4	20	24
GS-2131	Freight Rate	3	36	39
GS-2132	Travel	1	6	7
GS-2134	Shipment Clerical	5	56	61
GS-2135	Transportation Loss and Damaage Claims Examining	0	8	8
GS-2144	Cargo Scheduling	0	20	20
GS-2150	Transportation Operations	2	5	7
GS-2151	Dispatching	0	1	1
	Total General Schedule	104	854	958
	Mean Grade	10.42	6.68	7.11

SOURCE: Directorate of Distribution, March 1987.

TABLE 2.—FWS EMPLOYEES ELIGIBLE TO PARTICIPATE IN DEMONSTRATION PROJECT

Series No.	Series title	Supervisory	Nonsupervisory	All
WG-2606	Electronic Industrial Control Mechanic	1	3	4
WG-2610	Electronic Integrated Systems Mechanic	0	6	6
WG-2805	Electrician	1	7	8
WG-3502	Laboring	1	12	13
WG-4102	Painting	1	6	7
WG-4104	Sign Painting	0	1	1
WG-4602	Blocking and Bracing	1	6	7
WG-4604	Wood Working	12	70	82
WG-4605	Wood Crafting	0	1	1
WG-4607	Carpentry	0	10	10
WG-5352	Industrial Equipment Mechanic	4	23	27
WG-5413	Fuel Distribution Systems Operation	4	40	44
WG-5701	Misc. Transportation/Mobile Equipment Operating	1	0	1
WG-5703	Motor Vehicle Operating	8	69	77
WG-5704	Fork Lifting Operating	0	6	6
WG-5706	Road Sweeper Operating	0	2	2
WG-5725	Crane Operating	0	4	4
WG-5803	Heavy Mobile Equipment Mechanic	0	2	2
WG-5806	Mobile Equipment Servicing	0	2	2
WG-6901	Misc Warehousing and Stock Handling	34	178	212
WG-6904	Tools and Parts Attending	0	2	2
WG-6907	Warehouse Working	6	291	297
WG-6910	Materials Expediting	0	5	5
WG-6968	Aircraft Freight Loading	3	20	23
WG-7002	Packing	3	47	50
WG-7004	Preservation Packaging	4	42	46
	Total Federal Wage System	84	855	939
	Mean Grade	7.56	6.09	6.32

SOURCE: Directorate of Distribution, March 1987.

TABLE 3.—PARTICIPATING EMPLOYEES BY PAY SYSTEM

Category	Number
Nonsupervisory GS	854
Supervisory GS and GM	104
Nonsupervisory WG	855
Supervisory WS	84
Total	1,897

F. Labor Participation

Union representatives have been involved in the project since its inception. Employees in the Directorate of Distribution are represented by three unions: the American Federation of Government Employees (AFGE) representing 87 percent of the unionized DS workforce, and two smaller unions, the Technical Skills Association and the Engineer and Scientist Association. AFGE represents the interests of all three to the demonstration task force, and the chief union steward is a full-time member of the project staff. The project steering committee also operates with union input and includes the president of AFGE Local 1857.

III. Methodology

A. Project Design

The purpose of a demonstration project is to test changes under controlled conditions before making commitments to put them into effect system-wide. Since this experiment will be conducted in a natural environment and not under controlled laboratory conditions, the project is considered to be "quasi-experimental" in nature but will employ one or more control groups. Four other Air Logistics Centers are available to serve as control sites, i.e., they will not participate in the experiment, but will provide the same types of data collected at the experimental site. Although the four other ALC's perform similar missions, they do not constitute "matched" control groups because they are in different geographic locations: Hill Air Force Base, Ogden, Utah; Kelly Air Force Base, San Antonio, Texas; Robins Air Force Base, Warner-Robins, Georgia; and Tinker Air Force Base, Oklahoma City, Oklahoma. However, even a design with a non-matched control group is superior to a simple pre/post design without a control. If the difference on any measure for the experimental group between pre-test and post-test is greater than that for the control group, the case for postulating an effect of the demonstration project will be significantly strengthened.

B. Personnel System Changes

This section outlines in detail the system changes that are proposed under the demonstration project.

Classification System

Purpose. The PACER SHARE classification system is designed to replace the traditional General Schedule (GS) and Federal Wage System (FWS) classification systems with a simpler, more flexible system. Under this system, traditional, narrowly defined grades and occupational series are consolidated into fewer, broadly defined categories. The resulting classification structures are intended to promote greater flexibility in assigning work to employees while expanding employees' career and training opportunities. Specifically, the PACER SHARE classification system is intended to:

(1) Remove administrative restrictions and barriers to reassigning/moving employees to improve responsiveness to fluctuations in workload;

(2) Increase employees' access to training and job opportunities through job expansion and relaxed criteria for job changes; and

(3) Streamline and simplify the classification process by reducing the number and complexity of distinctions required to classify positions.

Characteristics of the Classification System. Grade Consolidation. Under both the PACER SHARE system and traditional GS and FWS classification systems, work is classified at different grades or classification levels to reflect differences in the level of difficulty and responsibility. The PACER SHARE system differs from the traditional system, however, in that substantially fewer grades or classification levels are required. Under the PACER SHARE system, the number of grades has been consolidated according to three separate classification structures, each corresponding to a new pay schedule:

(1) Demonstration Hourly (DH), covering all non-supervisory positions formerly designated as Wage Grade (WG) and Wage-Leader (WL);

(2) Demonstration Salaried (DW), covering all non-supervisory positions formerly designated as GS;

(3) Demonstration Supervisory (DX), covering all supervisory and managerial positions formerly designated as GM, GS, or WS.

In developing these classification structures, the Directorate of Distribution opted to link new classification levels to existing FWS and GS grades. In determining the number of levels to be established and the distinctions to be made among them, the Directorate considered current patterns of assigning work and typical career progressions, and identified major similarities and differences in levels as defined in traditional classification standards. The points at which grade distinctions were judged to be most meaningful are reflected in the new classification levels. There are four classification levels for each of the three classification structures. Each classification level corresponds to a range of GS or FWS grades; see Table 4:

TABLE 4.—NEW CLASSIFICATION LEVELS

DH	WG [1]	DW	GS	DX	GS/GM
1	1-3	1	1-4	1	5-8
2	4-8	2	5-8	2	9-12
3	9-11	3	9-12	3	13-14
4	12-15	4	13-14	4	15

[1] WL positions will be assigned to DH bands consistent with demonstration grading criteria. WS positions will similarly be assigned to appropriate DX pay bands.

Within each classification level, employees may be required to perform work of varied difficulty and responsibility corresponding to the range of traditional grades. For example, an employee occupying a DW-2 position may perform work that previously would have been classified at a GS-5 through GS-8 level. By broadening the ranges of difficulty and responsibility for a single classification level, managers are given much greater

freedom in assigning work to employees to best meet the organization's needs.

Series Consolidation. Under both the GS and FWS classification systems, work is allocated to occupational categories or series on the basis of similarities in the tasks performed and in the knowledges, skills, and abilities required. Under the PACER SHARE classification system, the allocation of work to specific categories is based on contribution to a common outcome, i.e., product or service. In this system, each category represents a process, defined as the progressive and interdependent arrangement of events, machines, methods, and/or resources that produce a good or service. All work contributing to a common goal is allocated to the same process, even though the actual tasks performed or the knowledges, skills, and abilities required may vary.

Using this process approach, the Directorate of Distribution has identified six distinct processes critical to achieving its mission:

(1) Material Handling (DH–9400)—encompasses all work involved in physically receiving, examining, packing, moving, storing and issuing items;

(2) Facilities and Equipment Maintenance (DH–9401)—includes all work involved in physically maintaining and repairing the material processing equipment and facilities;

(3) Distribution (DW–9200)—includes all work involved in custody and transportation transactions;

(4) Management Operations (DW–9201)—includes all administrative work in providing clerical and general management support;

(5) Engineering (DW–9202)—includes all work involved in providing engineering services; and

(6) Supervisory (DX–9300)—includes all work involved in providing supervision.

Each process may encompass several kinds of work, and within each process, employees may be required to perform any or all of a wide variety of tasks. Exceptions are made for work that requires highly specialized qualifications, such as work requiring formal training or apprenticeship periods, or professional work requiring college preparation. Work of this type is allocated to subprocesses within the broad process categories. A total of nine subprocesses is recognized in the new classification structures, two under Engineering and seven under Facility and Equipment Maintenance:

Engineering Process (DW–9202). 1. Professional Engineering Subprocess.

2. Engineering Technical Support Subprocess.

Facilities and Equipment Maintenance Process (DH–9401). 1. Electronic Subprocess

2. Electrical Subprocess

3. Metal Working Subprocess

4. Painting Subprocess

5. Carpentry Subprocess

6. Industrial Equipment Repair Subprocess

7. Mobile Equipment Repair Subprocess.

Under the PACER SHARE system, work previously allocated to 66 different occupational series (27 FWS and 39 GS series) will be allocated to processes and subprocesses as shown in Table 5.

Table 5.—Demonstration Project Processes and Subprocesses

Distribution Process (DW–9200)

GS–301 Contractor Monitor
GS–1152 Production Control
GS–1910 Quality Assurance
GS–2001 General Supply Specialist.
GS–2003 Supply Management
GS–2005 Supply Clerk/Technician
GS–2010 Inventory Management
GS–2030 Storage/Distribution Facilities Specialist
GS–2032 Packaging Specialist
GS–2101 Transportation Specialist
GS–2102 Transportation Clerk and Assistant
GS–2130 Traffic Management Specialist
GS–2131 Freight Rate Specialist/Assistant
GS–2132 Travel Assistant/Clerk
GS–2134 Shipment Clerk
GS–2135 Transportation Loss/Damage Claims Examiner
GS–2144 Cargo Scheduler
GS–2150 Terminal Management/Transportation Services
GS–2151 Dispatcher

Management Operations Process (DW–9201)

GS–260 EEO Specialist [1]
GS–301 Administrative Specialist/Quality Circle Facilitator
GS–301 Human Resources Analyst
GS–301 Industrial Management Relations Specialist
GS–301 Reserve Affairs Coordinator
GS–303 Clerk/Assistant/Technician
GS–305 File Clerk/Assistant
GS–318 Secretary
GS–322 Clerk-Typist
GS–332 Computer Operator
GS–334 Computer Programmer/Analyst
GS–343 Management Analyst
GS–344 Management Clerk/Assistant
GS–345 Program Analyst
GS–356 Data Transcriber
GS–392 Communications Operator
GS–560 Budget Analyst
GS–1001 Graphic Arts
GS–1020 Illustrator
GS–1531 Statistical Clerk/Assistant

[1] The GS–260, 332, 334, 560, 1001, and 1020 series are included for project administration only. If a center-wide project were to be conducted, these series would be included in other processes, such as Personnel and Financial Management.

Engineering Process (DW–9202)

Professional Engineering Subprocess

GS–801 General Engineer
GS–896 Industrial Engineer
GS–899 Engineering Student Trainee

Engineering Technical Support Subprocess

GS–818 Engineering Draftsman
GS–895 Industrial Engineering Technician

Material Handling Process (DH–9400)

WG–3502 Laboring
WG–4602 Blocking and Bracing
WG–4604 Wood Working
WG–5413 Fuel Distribution Systems Operating
WG–5703 Motor Vehicle Operating
WG–5704 Fork Lift Operating
WG–5706 Road Sweeper Operating
WG–5725 Crane Operating
WG–6901 General Equipment Examining
WG–6904 Tool and Parts Attending
WG–6907 Warehouse Working
WG–6910 Material Expediting
WG–6968 Aircraft Freight Loading
WG–7002 Packing
WG–7004 Preservation Packaging

Facilities and Equipment Maintenance Process (DH–9401)

Electronic Subprocess

WG–2606 Electronic Industrial Controls Mechanic
WG–2610 Electronic Integrated Systems Mechanic

Electrical Subprocess

WG–2805 Electrician

Metal Working Subprocess

WG–3414 Machinist
WG–3806 Sheet Metal Mechanic

Painting Subprocess

WG–4102 Painting
WG–4104 Sign Painting

Carpentry Subprocess

WG–4605 Woodcraftsman
WG–4607 Carpentry

Industrial Equipment Repair Subprocess

WG–5352 Industrial Equipment Mechanic

Mobile Equipment Repair Subprocess

WG–5803 Heavy Mobile Equipment Mechanic
WG–5806 Mobile Equipment Servicing

Supervisory Process (DX–9300)

All GS supervisory positions
All FWS supervisory positions (WS)
All PMRS supervisory positions (GM)

The decision to allocate all supervisory and managerial positions to a single process and pay schedule separate from DH and DW reflects a different philosophy than that traditionally recognized under the GS and FWS systems. Under PACER SHARE, a distinction is made between traditional first-line supervisory functions, such as "coaching" employees on day-to-day tasks, and what are seen as true supervisory and managerial

functions: long-range planning, resource acquisition, goal integration, organizational simplification, and quality consciousness. According to the PACER SHARE philosophy, the "coaching" function is best performed by knowledgeable "super journeymen" within each process, while true supervisory and managerial functions, such as planning, are the same regardless of organization, people or mission involved, and are therefore best encompassed in a single, distinct process.

The consolidation of all supervisory and managerial positions into a single process will serve not only to maximize the organization's flexibility in assigning supervisors and managers where needed, but will establish a framework for employees to move into supervision and management as a distinct career field. In addition, by establishing a parallel pay schedule for supervisory and managerial positions, the PACER SHARE system will eliminate much of the pressure on senior level technicians, professionals, and trades personnel to move into supervision as the only avenue of salary advancement.

As a result of series consolidation, nonsupervisory jobs are also greatly expanded and managers are given considerable flexibility in assigning different kinds of work. Coupled with grade consolidation, this aspect of the classification system provides the necessary latitude for the Directorate to respond quickly and effectively to fluctuations in workload.

It should be noted that the actual six processes and nine subprocesses reflected in the PACER SHARE classification structures are based on an existing organization and the current technology available to the Directorate of Distribution to carry out its assigned mission. Should the mission, organizational structure, and/or technology change substantially during the project, a modification of the process and subprocess categories might be warranted, and some of the subprocesses may be eliminated.

Classification Under the PACER SHARE System. Classification Responsibilities. Under the PACER SHARE system, as under the traditional GS and FWS systems, personnel specialists will be responsible for classifying most covered positions. However, a central Compensation Committee consisting of the Deputy Director of Distribution, all Division Chiefs, the Comptroller Project Officer, and a union representative, will be responsible for approving the establishment of positions and actions to fill positions, and for classifying supervisory positions.

Classification Standards. The PACER SHARE system, like traditional GS and FWS systems, requires the application of standards to classify work. However, as the processes and classification levels under the PACER SHARE system are broadly defined, the allocation of work is greatly simplified. Six classification standards (one for each process) incorporating three sets of grading criteria (one for each pay schedule) cover all of the positions under the demonstration project. Each standard contains a summary of the various types of work associated with each process, and all but one (the standard for supervisory and managerial positions) contain descriptions of the responsibilities and duties associated with each classification level. These level descriptions are adapted from existing GS grade definitions (5 U.S.C. 5104) and from FWS classification standards. The grading criteria for each pay schedule are outlined below.

DH Grading Criteria. DH LEVEL 1—(Equates to WG–1 through WG–3 in FWS) Primarily performs manual work following specific and easily understood oral instructions. Manual tasks include those requiring very heavy physical effort. Instructions concern what to do; methods, material, and equipment to use; and when the work is to be completed. Continually handles objects weighing 10–40 pounds. May lead a work crew in accomplishing assigned tasks. Frequently handles objects weighing over 50 pounds. Operates relatively simple power equipment. Works inside in hot, humid, noisy, dusty or dirty areas or outside in all kinds of weather. Is subject to possibility of cuts, bruises, scrapes and burns.

DH LEVEL 2—(Equates to WG–4 through WG–8 in FWS) Uses independent judgment to make decisions within a framework of oral and written instructions and accepted, standardized methods, techniques, and procedures to accomplish work of limited complexity. May lead a work crew in accomplishing assigned tasks. Occasionally handles objects weighing over 50 pounds. Works inside in hot, humid, noisy, dusty, or dirty areas or outside in all weather conditions. Subject to possibility of cuts, bruises, scrapes, and burns.

DH LEVEL 3—(Equates to WG–9 through WG–11 in FWS) Exercises independent judgment in the accepted practices, processes, and procedures to perform moderately complex to complex work assignments. Frequently handles objects weighing up to 50 pounds and occasionally handles objects weighing over 50 pounds. Frequently works in awkward or cramped positions. May lead a work crew in accomplishing assigned tasks. Works inside in areas that are unusually dirty and noisy and outside, sometimes in bad weather. Is exposed to the possibility of cuts, bruises, scrapes and burns. Experiences considerable discomfort while wearing safety equipment.

DH LEVEL 4—(Equates to WG–12 through WG–15 in FWS) Masters the skills and knowledges of a single trade to perform a wide variety of tasks. Work may include responsibility for all of a planning or manufacturing process. Utilizes broad experience, originality, and ingenuity. Plans, lays out, modifies and fabricates work ranging from complex to unusually complex. Works to precise tolerances. Assignments include the application of advanced theories of physical science and frequent technological changes. May lead a work crew in accomplishing assigned tasks.

DW Grading Criteria. DW LEVEL 1—(Equates to GS–1 through GS–4 in GS) Learns and applies standardized, well-established, directly applicable practices and procedures. Learns the organization and structure, operations and programs. Follows oral or written instructions or established procedures in processing routine, repetitive actions for relatively simple to standard, prescribed formats. Understands what is being done and how it must be accomplished. Applies regulations, policies, and procedures for routine actions. May lead other personnel in accomplishing assigned responsibilities.

DW LEVEL 2—(Equates to GS–5 through GS–8 in GS) Applies regulations, policies, and procedures to accomplish a range of duties concerned with the substance or content of the action. Assignments involve the application of standard, general or specific instructions. Difficulty may range from the requirement to work out specific methods, procedures, steps, and sequences of operation, to the requirement to resolve nonrecurrent problems or to complete projects of limited scope. May lead other personnel in accomplishing assigned responsibilities.

DW LEVEL 3—(Equates to GS–9 through GS–12 in GS) Applies regulations, policies, and procedures to accomplish extremely complex duties.

Or: Carries out complete projects. Projects range in difficulty from those requiring the adaptation or application of established methods and procedures, precedents, or instructions to those requiring the development and

recommendation of policies, procedures, and guidance documents that will achieve the objectives of a major Directorate program.

DW LEVEL 4—(Equates to GS–13 through GS–14 in GS) Serves as a highly knowledgeable specialist in complex subject matter areas. Solves unique or highly controversial problems involving a high level of public criticism or official concern. Assigned programs may range from agencywide to Government-wide and involve unusually difficult or controversial matters requiring innovation and originality. They may be concerned with single or multiple disciplines. Exercises interpersonal and administrative skills sufficient to organize and coordinate thorough, systematic, and professional efforts to meet established or anticipated needs of decision makers.

DX Grading Criteria. The classification of supervisory and managerial positions under the demonstration project is based on a modified version of the OPM Executive, Managerial, and Supervisory Grade Evaluation Guide (EMSGEG). This modified version reflects a shift from the traditional practice of basing supervisors' grades in part on the number and grades of employees supervised, and instead emphasizes those factors that characterize the supervisors' worth and importance in the overall organization. The guide thus removes perceived disincentives for supervisors and managers to streamline their organizations through personnel and grade reductions.

In classifying positions according to the guide, points are awarded for each of six classification factors, and a classification level is assigned according to a point-to-level conversion table. The six proposed factors are:

1. Workload of the Organizational Unit—encompasses program, administrative, and/or organizational responsibilities, including the size and/or scope of the program, organizational unit, and/or functions directed;

2. Position Criticality—measures the critical nature of duties as related to the accomplishment of the agency's overall mission;

3. Degree and Scope of Responsibility Delegated—covers the degree and scope of delegated executive, managerial, and/or supervisory authorities and responsibilities that are exercised on a regular and recurring basis;

4. Level and Purpose of Contacts—covers the nature, setting, and purpose of contacts, including advisory, representational, and negotiating responsibilities associated with executive, managerial, and supervisory work;

5. Kind, Degree, and Character of Supervision Exercised—measures the extent to which contingencies affect the complexity and difficulty of carrying out executive, managerial, and supervisory duties and authorities; and

6. Planning Horizon—credits the kinds, difficulty, complexity, and level of abstraction needed to adequately plan for the assigned organizational element and/or portion of the mission/workforce to the extent that it affects the complexity and difficulty of managing the work of the organizational unit.

These factors could be modified or expanded. Based on the total number of points awarded, positions are allocated to one of four DX classification levels. To encourage internal equity in classification and pay decisions, the first three of these levels were constructed to correspond to the top three DW classification levels. A fourth level covers the single GS–15 position of Deputy Director of Distribution.

Employee Mobility Under the PACER SHARE Classification System. Position of Record. Each employee covered under the PACER SHARE project will be assigned to a position description, similar in format to those currently in use, containing the following: general position information (title; pay plan, process and level; and organizational assignment); a duties and responsibilities section; a personnel system data section; and a section for supervisor and classifier certifications. However, due to the consolidation of grades and series under the PACER SHARE classification system, these descriptions will be much broader in nature than the traditional position descriptions and will provide a range of tasks that might be performed, rather than specifying a limited few. As a result, managers will be able to assign new tasks to employees without revising position descriptions, except when the new assignment requires allocation to a different process or classification level. If a manager wants to assign an employee to a different organization performing work in the same process and at the same level, the manager can simply amend the organizational assignment section of the position description, without actually processing a position change.

Position Changes. Position changes, requiring assignment to new position descriptions, take place whenever an employee is assigned work in a new process or classification level. Three types of position changes are recognized under the PACER SHARE project:

(1) Promotions—defined as movement from one classification level to a classification level offering a greater basic salary potential—may occur within a single process or across processes.

(2) Reassignments—defined as movement from a classification level in one process to a classification level in another process with no greater basic salary potential.

(3) Changes to Lower Levels—defined as movement from one classification level to a classification level offering a lesser basic salary potential—may occur within a single process or across processes.

Competition Requirements. All promotions will require competition under the merit promotion procedures, except in the following cases:

1. Employees who occupied positions in career ladders leading to higher target grades at the time of conversion to the PACER SHARE system will receive equivalent career ladder promotions and/or pay adjustments at the time they would have been due under the traditional system.

2. Employees occupying positions in career ladders leading to higher target classification levels established under the PACER SHARE system may be promoted noncompetitively. It is expected that relatively few career ladders of this type will be established under the PACER SHARE system.

Reassignments and changes to lower levels will not require competition under merit promotion procedures, unless there is movement from a position with no career ladder potential or limited potential to a position with higher career ladder potential.

Qualification Requirements. Under the PACER SHARE system, traditional Handbook X–118, Qualification Standards for Positions Under the General Schedule, and Handbook X–118C, Job Qualification System for Trades and Labor Occupations, qualification standards will be replaced by position-specific qualification requirements developed locally by subject-matter experts and personnel specialists. The specific knowledges, skills, and abilities required; length, kind and quality of experience required; allowable training and education substitutions; and physical requirements will be determined on the basis of the Air Force's detailed job analysis method as applied to the positions to be filled. These qualification requirements will emphasize mission-related proficiency instead of artificial time or level requirements.

To be promoted under the PACER SHARE system, employees will be required to meet all job-specific qualification requirements. For reassignments and changes to lower level, employees will not be required to meet qualification requirements (other than physical qualifications), except when moving to positions in recognized subprocesses with special training and/or education requirements. This practice parallels the military's approach to retraining based on individual aptitudes and provides management additional flexibility to assign work where and when needed.

Multiple Skills Training/Crediting. While the PACER SHARE classification system is specifically designed to enhance management's flexibility to assign work, this will be largely a function of how much multiple-skills training is provided. The development of a cadre of multi-skilled individuals will benefit both management and the employees. Multi-skilled employees represent a valuable asset in terms of mission accomplishment and productivity potential. Additionally, multiple-skills training makes employees more competitive for promotions. Training may be given formally or as on-the-job training (OJT), and will be distributed fairly and equitably among project employees with requisite skills. Where opportunities for training are limited, employees will be given consideration for training on the basis of seniority, using service computation date. Ties will be broken by seniority within DS, or if still tied, by a management decision.

Standardized training guides will be developed for each skill level. Successful completion of training (classroom and/or OJT) will be defined in terms of mission-related proficiency instead of time or content requirements. Supervisors will certify proficiency which will then be documented in the employee's personnel file.

Merit Promotion Process. Vacancies within the Directorate of Distribution may be filled with outside hires or with current Federal Government employees under the following internal ranking process. Based on qualification requirements developed through the Air Force job analysis procedure, personnel specialists will identify candidates possessing the basic knowledges, skills, and abilities required for each position. These candidates will be requested to submit additional information describing work behaviors that are required by the position, but are not easily identifiable or measurable from personnel records. Personnel staff and managers will develop crediting plans to address these behaviors, and then rate candidates against the plans on the basis of their responses. A list of candidates, ranked according to qualifications, will be provided to the manager of the position to be filled, so that a selection can be made. The list of candidates, or register, will be valid for up to 1 year, with periodic updates to allow for consideration of new employees.

Time-in-Grade Requirements. Time-in-Grade requirements will not apply to promotions under the PACER SHARE system. Candidates for promotion need only demonstrate that they meet position-specific qualification requirements and, when applicable, that they have successfully competed under merit promotion procedures.

Compensation System

Purpose. The proposed demonstration compensation system has been designed to achieve two basic goals: (1) To allow employees a broader range of salary growth without formal promotion procedures, and (2) to support the new classification system in allowing managers more flexibility in the assignment of work to employees. The replacement of narrow pay grades with broader pay bands is intended to provide greater salary potential to many employees, particularly in low level white collar positions where pay inversion has historically motivated migration to FWS positions. The uncertain prospect of promotion for many employees will be replaced by a predictable pay progression system, and the burden on managers and personnel staff of processing promotions will be reduced.

New Pay Schedules. The proposed system will consist of three new pay schedules that will cover all employees in DS. All have in common the banding together of current Federal pay system grades into broader ranges of pay. The new schedules retain from current Federal pay systems the concept of overlapping ranges of pay, such that a highly tenured employee in a lower band may have a greater rate of basic pay than a new employee in the next higher band.

The distinction between an hourly pay system for trades, crafts, or laboring positions and a salary system for professional, administrative, technical, or clerical positions will be retained for all nonsupervisory employees. The two pay schedules, DH and DW, will cover these two groups, respectively, and pay rates for all supervisory and managerial positions will fall under the DX pay schedule.

Demonstration Hourly (DH) Pay Schedule. The DH pay schedule will apply to all positions classified as Demonstration Hourly. As shown in Table 6, the DH pay schedule consists of four pay levels, encompassing the pay of grades WG–1 through WG–15 of the FWS system. Pay bands vary in range from 29 percent (DH–1) to 42 percent (DH–2), with an average range of 32 percent. Under the proposed system, the DH schedule will be adjusted in accordance with annual Sacramento area wage survey results.

TABLE 6.—DEMONSTRATION HOURLY (DH) PAY SCHEDULE

Pay level	Corresponding FWS grades	Min pay ($/hr)	Max pay ($/hr)	Range percent
DH–1	WG–1 to WG–3	7.78	10.07	29
DH–2	WG–4 to WG–8	9.07	12.86	42
DH–3	WG–9 to WG–11	11.49	14.57	27
DH–4	WG–12 to WG–15	12.95	16.82	30

Source: Sacramento area Federal Wage System schedule, April 1986.

Demonstration Salaried (DW) Pay Schedule. The DW pay schedule will apply to all positions classified as Demonstration Salaried. As shown in Table 7, the DW pay schedule consists of four levels, encompassing grades GS–1 through GS–14 of the General Schedule. The proposed pay bands vary in range from 54 percent to 89 percent,

with an average range of 75 percent. Under the new system, the DW schedule will be adjusted whenever a comparability increase changes the General Schedule.

TABLE 7.—DEMONSTRATION SALARIED (DW) PAY SCHEDULE

Pay level	Corresponding GS grades	Min pay ($/year)	Max pay ($/year)	Range percent
DW-1	GS-1 to GS-4	9,619	17,226	79
DW-2	GS-5 to GS-8	14,822	26,435	78
DW-3	GS-9 to GS-12	22,458	42,341	89
DW-4	GS-13 to GS-14	38,727	59,488	54

Source: General Schedule, January 1987.

Demonstration Supervisory Level (DX) Pay Schedule. The DX pay schedule, which overlaps with the DW pay schedule, will apply to all positions that have been classified as supervisory. As shown in Table 8, the DX pay schedule consists of three levels, corresponding to levels DW-2, DW-3, and DW-4 in the DW pay schedule plus a fourth level covering the single GS-15 position in the Directorate of Distribution. The DX-1 level is equivalent to the DW-2 level, and so on. Like the DW schedule, the DX schedule will be adjusted whenever a comparability increase changes the General Schedule.

TABLE 8.—DEMONSTRATION SUPERVISORY (DX) PAY SCHEDULE

Pay level	Corresponding GS grades	Min pay ($/year)	Max pay ($/year)	Range percent
DX-1	GS-5 to GS-8	14,822	26,435	78
DX-2	GS-9 to GS-12	22,458	42,341	89
DX-3	GS-13 to GS-14	38,727	59,488	54
DX-4	GS-15	53,830	69,976	30

Source: General Schedule, January 1987.

Pay Progression. Within-grade increases, quality step increases, merit increases under the Performance Management and Recognition System (PMRS), and promotions to those grades subsumed by the pay bands will be replaced by annual pay adjustments. Each employee under the project whose rate of pay falls below the top of the pay band will receive an annual increase to base pay under the system described below.

Mechanics of the Demonstration Pay Progress System. Under the proposed pay progression system, annual pay adjustments will allow employees under the same pay schedule to progress from the bottom of a pay band to the top of the band in the same number of years. For the DH pay schedule, progression through a pay band will take 12 years (twice as long as it now takes to progress through a single grade in the WG system). For the lower levels of the DW and DX pay schedules (GS-1 to GS-12), an employee will move through a pay band in 25 years (approximately 40 percent longer than it now takes to move through a single grade in the General Schedule). Employees in the DW-4/DX-3 pay band (GS-13/14) will move through the band in 16 years. Progression through the DX-4 pay band will take 11 years. These progression times were chosen to approximate average progression through the grade levels of the current pay systems, with promotions taken into account.

There will be two different rates of progression within each pay band of the proposed system, except for the DW-4/DX-3 and DX-4 bands, which will have only one rate of progression. For those bands divided by a transition point, progression through the band will be more rapid for the lower range of the band, and slower for the upper range of the band. This system is intended to retain, in a much simpler form, the concept found in all current Federal pay systems of faster pay progression for employees new to a level of work. The dividing point in each pay band between the faster rate of progression and the slower rate is called the "transition point." This point is approximately equal to the arithmetic mean of the band. The computation of the transition point is based on a hypothetical salary distribution plotting the pay progression employees would have experienced under current pay systems in each of the grades that make up a pay band. (The details of the computations are explained in Appendix A.)

Table 9 shows the transition points for each pay band of the DH pay schedule. DH employees will progress from the bottom of the band to the transition point in 6 years, and from the transition point to the top of the band in 6 years.

TABLE 9.—TRANSITION POINTS FOR THE DH PAY BANDS

Pay band	Min pay ($/hr)	Transition point	Max pay ($/hr)
DH-1	7.78	9.23	10.07
DH-2	9.07	11.28	12.86
DH-3	11.49	13.47	14.57
DH-4	12.95	15.37	16.82

Source: Sacramento area Federal Wage System Schedule, April 1986.

Table 10 shows the transition points for the DW-1 through DW-3 and corresponding DX pay bands. DW and DX employees in these bands will progress from the bottom of the band to the transition point in 12 years, and from the transition point to the top of the band in 13 years.

TABLE 10.—TRANSITION POINTS FOR THE DW & DX PAY BANDS

Pay band	Min. pay ($/year)	Transition point	Max. pay ($/year)
DW-1	9,619	13,542	17,226
DX-1 & DW-2	14,822	21,081	26,435
DX-2 & DW-3	22,458	32,186	42,341

Source: General Schedule, January 1987.

Progression through all the pay bands will be accomplished through annual pay adjustments. Each employee under the demonstration will receive, on an annual basis, a percent increase to base pay that will be based on: (1) Which pay band the employee is in, and (2) for those bands that have a transition point, whether the employee's current pay is above or below the transition point for the band.

The annual pay adjustment factor for the lower range of each pay band is the annual rate of increase to base pay that, compounded over N years (where N=6 for DH and N=12 for DW/DX), will raise an employee's salary from the minimum pay rate for the band to the transition point.

The annual pay adjustment factor for the upper range of each pay band is the annual rate of increase to base pay that, compounded over N years (where N=6 for DH and N=13 for DW/DX), will raise an employee's salary from the transition point to the maximum pay rate for the band.

Table 11 shows the annual pay adjustment rates for the lower and upper ranges of the DH pay bands. Table 12 shows the annual salary adjustment rates for the DW & DX pay schedules. (The computation of the annual pay adjustment factors is explained in Appendix B.)

TABLE 11.—ANNUAL PAY ADJUSTMENT RATES FOR DH PAY SCHEDULE

Pay band	Lower range (years 1 through 6) (percent)	Upper range (years 7 through 12) (percent)
DH-1	2.50	1.46
DH-2	3.34	2.21
DH-3	2.33	1.32
DH-4	2.54	1.51

TABLE 12.—ANNUAL PAY ADJUSTMENT RATES FOR DW & DX PAY SCHEDULES

Pay band	Lower range (years 1 through 12) (percent)	Upper range (years 13 through 25) (percent)
DW-1	2.89	1.87
DX-1 & DW-2	2.98	1.76
DX-2 & DW-3	3.04	2.13
DX-3 & DW-4	2.72	(1)
DX-4	2.50	(2)

[1] Single rate—16-year progression.
[2] Single rate—11-year progression.

The Timing of Annual Pay Adjustments. In order to ensure equitable treatment of all DS employees, annual pay adjustments will be given during the first year following implementation of the demonstration project to all employees who are not at the highest step of their current grade and whose pay at the time of conversion is less than the maximum rate of their new band.

If step increases are due within the first year, annual pay adjustments will occur on the normally scheduled dates. Those employees who are in waiting periods of more than one year (18 months, 2 years or 3 years) will receive annual pay adjustments during the first year, based on a recomputed step increase date. As a result, all employees scheduled for step increases will receive a pay adjustment during the first year following implementation of the demonstration project.

Employees who are at the highest step of their current grade (step 5 of the Federal Wage Schedule or step 10 of the General Schedule), but not at the maximum rate of their new pay band, will receive their first demonstration pay adjustment one year following project implementation.

PMRS employees will receive their first demonstration pay adjustment on October 1, 1988, the normally scheduled date of their pay increase.

All subsequent annual pay adjustments will follow demonstration project rules and will be granted in the first pay period following anniversary dates of the first-year adjustment, as long as employees remain in the same pay band. Employees who enter into the project after the implementation date will receive annual pay adjustments the first pay period following anniversary dates of their entry into the project. Employees who receive promotions within the project will receive subsequent annual pay adjustments the first pay period following anniversary dates of their promotions.

Comparability Increases and Prevailing Rate Adjustments. Under the demonstration project, all DW and DX employees will be eligible for full comparability increases. All DH employees will be eligible for the full amount of any increases to local prevailing rate wage schedules.

Promotions. Under the proposed system, employees promoted within the project will receive a 10 percent increase to their current pay or the minimum basic pay of the level to which they are promoted, whichever is greater. Employees promoted into the demonstration project will have their pay established by GS and FWS pay-setting practices (i.e., two-step increase for GS employees and 4 percent of representative pay for FWS employees).

Changes to Lower Level. Under the proposed system, employees who voluntarily accept a change to a lower level within any pay schedule of the project will retain their current pay or receive the maximum rate for the level, whichever is less. The same will be true for employees who voluntarily accept a change to a lower level upon entry into the demonstration system. Those employees who are assigned to a lower level due to reclassification of the positions they occupy at the time of project implementation will retain their current rate of pay, in accordance with 5 U.S.C. 5363 and 5 CFR Part 536.

Performance Awards, Incentive Awards and Suggestions. Under the proposed demonstration project, no provision will be made for granting monetary awards based on individual performance under 5 U.S.C. chapter 54 or 5 U.S.C. chapter 45. The primary incentive system under the demonstration will be the productivity gainsharing (PGS) system, described in the next section.

However, management will retain the flexibility to grant special awards to individuals or groups. The Compensation Committee will have the power to approve such awards. The Compensation Committee will also be responsible for setting in-hire rates, approving changes to labor standards, approving all supervisory-level classification actions, and developing recommendations to address compensation or gainsharing system issues that arise during the project.

Any money used for awards approved by the Compensation Committee will reduce the pool available for productivity gainsharing bonuses. Conversely, any cost savings accrued by the elimination of current award programs will be shared equally by all DS employees through the PGS system.

Suggestions submitted by individual employees that directly affect productivity within DS will no longer be rewarded by cash payments to the individual. Instead, the savings from the suggestion will be distributed Directorate-wide through the PGS program.

Special Rates. The special rate schedule for engineers will be applied to a limited extent under the demonstration project. The range of the DW-2 and DW-3 pay bands will not be altered to conform with the special rate ranges. Retaining uniform pay bands for all processes in the DW pay schedule will facilitate noncompetitive reassignment of employees among those processes. However, DS will use the GS-5 and GS-7 rates of the current special rate schedule for engineers as a guide for establishing starting salaries for DW-2 engineers.

Hazard, Environmental, and Shift Pay Differentials. Provisions for granting hazard, environmental, and shift pay differentials, and the procedures for their payment, will remain unchanged under the Demonstration Project.

Productivity Gainsharing System

Purpose. Demonstration project authority under 5 U.S.C. chapter 47 is not required to implement a Productivity Gainsharing (PGS) system. What makes the proposed system unique is the integration of a PGS system with broad-based personnel system changes.

The proposed personnel system changes and the anticipated organizational climate/culture changes are designed to free management and employees from those elements in the current system that restrict advances in either quality of worklife or productivity. The changes are designed to create the opportunity for the people in the organization to build the teamwork and develop the knowledge and cooperation that will lead to improved quality and productivity. Once improved quality and increased productivity have occurred, productivity gainsharing is designed to equitably distribute the benefits earned by employees and the organization.

The PGS system is also intended to reinforce the current Quality Circle (QC) program in DS. By allowing project participants to share the cost savings achieved through increased productivity, employees will be provided with a stronger incentive to participate in the QC program. The PGS system will reinforce supervisors and managers for implementing improvements suggested by the QCs and experimenting with more flexible work assignments, statistical process control, and other new managerial approaches that increase productivity and quality.

General Characteristics of the PGS System. The PGS system will be based exclusively on labor costs. According to recent estimates, labor costs account for between 90 and 95 percent of total controllable costs for the Directorate of Distribution. The PGS system will monitor only these costs. Therefore, increases in productivity measured under the PGS system will be based on increases in the efficiency with which personnel dollars are used by the Directorate.

For PGS purposes, productivity will be defined as the ratio of work completed to labor hours expended. An increase in productivity under the PGS system will mean that the Directorate is using labor hours more efficiently to accomplish its workload.

The PGS system will reward DS employees for cost savings, which can only be realized through decreasing total labor costs.

Reducing the overall number of labor hours it takes to perform a workload will produce cost savings only to the extent that total labor costs are reduced. In this way, the PGS system will assure that increases in productivity are not achieved as the result of employing an overall more costly workforce, nor compromising quality which would generate rework in other areas of the Directorate.

PGS cost savings will be based on a comparison of labor costs during the project to what it "would have" cost to perform the same workload during a "baseline" period prior to project implementation. Based on the work performed by the Directorate each quarter, an estimate will be made of what it "would have" cost to perform the same work prior to the project. The difference between actual cost and "would have" cost, within budget constraints, will be the cost savings available for PGS.

Since cost savings will be shared equally between the Air Force Logistics Command and DS employees, 50 percent of the savings realized under the PGS system will be distributed among the employees of DS. The remaining 50 percent will be retained by the Air Force Logistics Command.

All PGS payments to DS employees will be distributed equally on a quarterly basis. The system is intended to reward organizational performance, and all members of the organization will receive equal shares of its benefits. All eligible project employees—hourly, salaried, and supervisory—will receive PGS bonuses of equal dollar amounts.

A major source of anticipated cost savings will be the attrition of employees. Cost savings under the PGS system will be realized only by performing the same work for fewer labor dollars or performing more work for the same labor cost. Unless the workload and funding for the Directorate are increased during the project, the major source of cost savings will be through the more efficient utilization of the existing workforce to absorb the workload of employees who leave through natural attrition processes.

Mechanics of the Productivity Gainsharing System. The model for the Productivity Gainsharing System is the set of formulas that will be used each quarter to determine what PGS cost savings have been realized. The SM-ALC Comptroller will be responsible for overall financial management of the PGS system, including auditing the accuracy of data input to the model and performing all the calculations necessary to determine the amount available for PGS bonus payouts. What follows is a description of the actual measurements and calculations necessary to compute PGS cost savings.

Since military personnel are precluded by law from receiving PGS bonuses, the labor inputs and estimated outputs of the military members assigned to DS will be excluded from all calculations.

Earned Hours, Actual Hours, and Total Cost. Earned hours are a measure of the output of the Directorate of Distribution, as collected by the Logistics Support Cost Accounting System (HO73). Earned hours are computed on the basis of work standards, which are established for all direct labor activities in DS. Each time a particular workload is completed, the Directorate is credited with a certain number of earned hours according to the standard(s) for that workload.

Actual hours are the number of labor hours that are expended in the completion of a task or transaction. Direct actual hours are the number of hours of direct labor required to complete the workload. Indirect actual hours are the number of hours of indirect (overhead) labor used to support the direct labor involved in the process. Since the PGS system is concerned with overall organizational productivity, all actual hours measurements will include both direct and indirect labor hours.

The total cost for a particular period of time is the actual total civilian labor cost for the period, as reported in the

General Ledger, including salary and benefits.

Baseline Measurements. At the end of each fiscal quarter, PGS savings will be calculated based on comparisons of data from the current quarter to corresponding data from a fixed baseline period, fiscal year 1987.

FY 1987 was chosen as the baseline period for two reasons. First, audit procedures to verify the accuracy of cost accounting data that will be used for calculating earned hours were put in place on 1 October 1986, assuring a high degree of validity to data accumulated during FY 1987. Historical data for previous fiscal years, although available, could not be validated. Second, DS was reorganized in 1986 to accommodate the standard Air Force Base Supply System, changing many of the procedures that had previously been used in producing earned hour outputs.

Two baseline measures will be calculated for the PGS model: The baseline productivity index and the baseline hourly rate. The baseline productivity index will be a measure of the efficiency with which labor hours, both direct and indirect, are used to produce earned hours. The baseline productivity index will be the ratio of earned hours to actual hours for the baseline period:

$$\text{Baseline Productivity Index} = \frac{\text{Earned hours}}{\text{Actual hours}}$$

The productivity index is always less than 1.0 because the actual hours include overhead cost.

The baseline hourly rate is the average cost per hour of actual labor during the baseline period. Hourly rate will be calculated by dividing the total cost by the total number of actual hours.

$$\text{Baseline hourly rate} = \frac{\text{Total cost}}{\text{Actual hours}}$$

Table 13 shows a hypothetical set of baseline measures and a productivity index of .60. The figures shown are for illustrative purposes, and have no relationship to actual DS data.

Table 13.—Hypothetical Baseline Measures

Earned Hours—480,000
Actual Hours—800,000
Actual Cost—$9,600,000
Productivity Index—0.600 (Earned Hours/Actual Hours)
Hourly Rate—$12.00 (Actual Cost/Actual Hours)

"Would-Have-Cost" Computations. The computation of PGS savings each quarter will begin with a "would-have-cost" calculation, an estimate of what it would have cost to produce the number of earned hours recorded for the current quarter, based on the baseline productivity index and the baseline hourly rate.

Three steps are necessary to compute the would-have-cost estimate. First, the current earned hours are divided by the baseline productivity index to obtain an estimate of how many hours it would have taken to produce the current number of earned hours at the baseline level of productivity. For example:

Earned Hours = 500,000
Baseline Productivity Index = 0.600

$$\text{Would-have hours} = \frac{500{,}000}{.600} = 833{,}333$$

The second step in computing the would-have-cost is adjusting the baseline hourly rate to account for any comparability increases that have gone into effect since the baseline calculation. Because of this adjustment, estimated PGS savings will not be affected by increased labor costs due to comparability increases. For example, suppose that a single comparability increase of 3 percent had gone into effect since the baseline period:

Baseline Hourly Rate = $12.00
Comparability Increase = 3.0%
Adjusted Baseline Hourly Rate = $12.00 × 1.03 = $12.36

The final step in computing the would-have-cost figure is multiplying the would-have hours by the adjusted baseline hourly rate. In the current example:

Would-Have Hours = 833,333
Adjusted Baseline Hourly Rate = $12.36
Would-Have-Cost = 833,333 × $12.36 = $10,299,996

Computation of PGS Savings. The PGS savings amount will be computed by subtracting the current actual cost from the would-have-cost. For example, if the current actual cost were $9,000,000:

Would-Have-Cost = $10,299,996
Current Actual Cost = $9,000,000
PGS Savings = $10,299,995 − $9,000,000 = $1,299,996

Half of the PGS savings amount will go into the PGS pool for distribution to employees, and half of the savings amount will be retained by the Air Force Logistics Command.

Performance-Related Losses. If no cost savings are realized during a quarter, no PGS bonuses will be paid. In the extreme case where actual cost exceeds would-have-cost or budget allocation, whichever is lower, PGS losses will be incurred instead of PGS savings. When such losses are incurred, the Compensation Committee will analyze the extent to which they are attributable to employee performance factors, and submit their findings to the PACER SHARE Steering Committee. Those losses that are attributed to employee performance by the Steering Committee will be deducted from cost savings realized in future quarters until the losses are offset (either in the current or following fiscal year).

If, for example, the following situation were to occur for a quarter, a loss rather than a PGS savings would be incurred:

Would-Have-Cost = $10,000,000
Actual Cost = $12,000,000
PGS Savings = $10,000,000 − $12,000,000 = $2,000,000

In such a situation, the Steering Committee would be responsible for determining how much of the $2,000,000 loss is attributable to employee performance factors. If, for example, the Steering Committee should decide that $1,200,000 of the loss is attributable to employee performance, this amount would be deducted from future PGS savings. Hypothetical data for the subsequent quarter may be used to illustrate this process:

Would-Have-Cost = $10,000,000
Actual Cost = $7,800,000
PGS Savings = $10,000,000 − $7,800,000 = $2,200,000

Because of the loss in the previous quarter which was attributed to

employee performance, the PGS savings for the current quarter will be adjusted in the following manner:

PGS Savings = $2,200,000
Performance-Related Loss from Previous Quarter = $1,200,000
Adjusted PGS Savings = $2,000,000 − $1,200,000 = $1,000,000

In this case, half the adjusted PGS savings, $500,000, will go into the PGS bonus pool for distribution to employees. The remaining $500,000 will be retained by the Air Force Logistics Command.

In order to allow for potential productivity losses during conversion to the demonstration project, any losses incurred during the first 6 months after project implementation will not result in deductions from future PGS savings.

Working Harder vs. Working Smarter. Cost savings and productivity gains can be achieved by one of two methods: working harder or working smarter. Working harder is defined as performing the same work, using the same methods, technology and equipment, with fewer labor hours and no deterioration in quality. This can only be achieved by exceeding the existing industrially engineered work standards, which by design reflect the capability of the average worker. Since the demonstration project promotes greater teamwork and more flexible work assignments, this will help employees to be more effective. At the same time the introduction of monetary incentives is expected to motivate employees to work harder to "beat" the standards.

Cost savings resulting from these efforts will not lead to changes in standards because it is accepted Industrial Engineering (IE) practice that the validity of the standards is not affected by motivational factors, i.e., workers whose efforts are either above or below the established norm. Therefore, cost savings that can be attributed to employees working harder will be rewarded by the PGS system for as long as productivity remains above baseline (fiscal year 1987) levels.

Working smarter is defined as using either improved technology and equipment, or new industrially engineered task methods and procedures to perform the same work with fewer labor hours, without lowering quality. Cost savings resulting from working smarter will be treated differently than savings derived from working harder and will be rewarded only for a limited period of time. At the end of that time period, work standards will be adjusted accordingly.

The length of time employees receive PGS benefits from working smarter is determined by the source of the technological innovation. If the suggestion comes from the demonstration project staff within DS, the benefits will be paid for 1 calendar year following the date of full implementation. If the improvement results from an externally mandated technology or method change, either wholly or in part, benefits for the appropriate portion will be limited to a 6-month period following the date of full implementation.

Quality Index. Quality is an important consideration in the PACER SHARE project, and it will have an impact upon the PGS system. Improvements in quality will reduce the amount of rework necessary, thereby contributing to increases in overall organizational productivity and PGS cost savings.

Increases in productivity will only be rewarded through the PGS system to the extent that they can be achieved without sacrificing quality. To assure this, a Quality Index will be computed on the basis of monthly input from Quality Programs in all areas of DS. As long as the Quality Index remains at or above a certain level determined by management, no adjustment in the PGS savings calculation will be made. If the Quality Index should fall below the predetermined level, a mathematical formula will be used to adjust the PGS savings estimate downward.

Because of the emphasis to be placed on quality under the demonstration project, it is unlikely that any adjustments in the PGS savings estimate will need to be made for degradation in the Quality Index.

Audit Adjustments. Given the volume of data involved in making PGS calculations each quarter, it will not always be possible to completely audit input to the model before payments can be made. Auditing of the PGS model inputs will be a continuous process. If discrepancies are found in the data that were used to make PGS payments for one quarter, adjustments will have to be made in PGS payments in subsequent quarters. These adjustments could have a positive or negative impact on the PGS savings estimate, depending on the nature of the discrepancies. If, for example, the number of earned hours for the first quarter was found to have been underestimated, the cost savings for that period would have been understated. The difference between the amount of PGS bonuses paid and the amount that should have been paid will be added to the next quarter's payment. If cost savings are overstated in one quarter, downward adjustments to subsequent payments will be made in the next quarter.

DS Budget Ceiling. The PGS model provides a method for determining the fund available for gainsharing bonuses. However, budget constraints may force adjustments to the PGS payout formula. The simplest constraint on PGS payouts is the DS budget, which is fixed on an annual basis and reestimated quarterly. The PGS model is based on the assumption that the would-have-cost estimate each quarter is no greater than the amount budgeted to DS for labor costs. As long as this assumption is true, no adjustment for budget will be necessary in the PGS model. It is anticipated that this will be the case for the duration of the project. If actual cost or would have-cost exceeds the budgeted amount, however, an adjustment to the PGS model will be made—the difference between actual cost and budgeted amount will place a ceiling on PGS savings. For example:

Would-Have Cost = $12,000,000
Actual Cost = $10,000,000
Budgeted Amount = $11,000,000
PGS Savings = $11,000,000 − $10,000,000 = $1,000,000

Under this scenario, the PGS model would indicate a savings estimate of $12,000,000 − $10,000,000 = $2,000,000. However, since the budgeted amount is less than the would-have-cost, the difference between actual cost and budgeted amount will place a ceiling on PGS savings. The PGS savings will be: $11,000,000 − $10,000,000 = $1,000,000. Ordinarily, half of this amount, $500,000, would go into the PGS pool for distribution to employees and half would be retained by the Air Force Logistics Command.

However, if the increased costs can be identified as an unfunded extra workload generated outside DS, the portion that would have been retained by the Logistics Command will be made available for PGS bonuses. If, in the present example, the extra costs were due to unfunded extra workloads, the entire $1,000,000 savings would go into the PGS pool.

Because DS operates on a fixed annual budget, budgets for each quarter are reestimated during the year based on expenses during previous quarters. If more is spent in the first quarter than was budgeted, budgets for the remaining quarters will be adjusted downward. This process will assure that the PGS system does not overspend in the event that actual cost for a particular quarter is greater than the budgeted amount.

If actual cost for a quarter exceeds the budgeted amount, no PGS bonuses will be paid out for that quarter. The budgeted amount for subsequent

quarters will be adjusted downward based on the amount left in the annual budget. Since the budgeted amount for each quarter will place an automatic ceiling on the PGS savings, high productivity in a subsequent quarter will be rewarded with a reduced PGS payout.

PGS Bonus Payouts. Eligibility. Employees newly assigned to the project will be required to work in DS for a period of 90 days before they are eligible to receive PGS bonuses. The period will allow for the initial learning period and the cost of other employees providing on-the-job training to the new employees.

An employee must be in a pay status for the entire quarter to receive a full PGS share. For those employees who do not meet this requirement, there will be a prorated reduction for every hour the employee is in a nonpay status. If an employee leaves the project through promotion, reassignment, retirement, death, etc., PGS payment will be prorated for the time actually spent on the job during the last quarter.

Computing Payouts. Due to the nature of the accounting process at DS, it is not expected that PGS calculations for the quarter being measured will be completed until at least 15 days after the end of the quarter. PGS payments generally will be processed for each eligible employee within two pay periods after the end of the quarter.

DS will furnish the Comptroller with a roster of the employees eligible for PGS and the number of eligible hours for each employee. The total number of eligible hours for the entire DS workforce will be divided into the PGS employee fund to determine a PGS bonus hourly rate. For example:

PGS Savings = $1,299,996

$$\text{PGS employee fund} = \frac{\$1,299,996}{2} = \$649,998$$

Total Eligible Hours = 1,020,000

$$\text{PGS bonus per hour} = \frac{\$649,998}{1,020,000} = \$0.637$$

J. Doe's Eligible Hours = 500
J. Doe's PGS Bonus = 500 × $0.637 = $318.50

Elimination of Individual Annual Performance Ratings

Organizational Productivity Measures. It is proposed that the goal of increasing organizational productivity can be achieved without having to go through the process of annually rating every employee's performance. Since the Directorate of Distribution works with industrially engineered standards, measures of overall organizational productivity are currently available. The availability of organizational productivity measures thus constitutes a "bottom line" and serves as a control over Directorate performance.

The Deming Philosophy. Performance appraisal traditionally serves the purpose of communicating work expectations to the employee and appraising progress toward set goals in order to use those results for personnel decisions such as pay, promotions, training, and remedial action. The same functions can be performed without going through the labor-intensive process of preparing individual performance plans with elements and standards. In fact, productivity expert Dr. W. Edwards Deming believes that individual annual performance appraisal is counterproductive because it "nourishes short-term performance, annihilates long-term planning, builds fear, diminishes teamwork; nourishes rivalry and politics" (Deming, 1984). According to Deming, everyone in the organization should share the same goal: a never-ending dedication to constant improvement, to excellence in every process. This requires teamwork and cooperation at every level, especially in an organization like DS where work units are interdependent. By setting up a pay for individual performance system, the opposite goal would be promoted, i.e., competition. Deming has several suggestions for replacing the annual performance rating:

1. More careful selection and placement of employees. (He observes that there is no sure way to predict ability. Anyone in the wrong job will have trouble and give trouble.)
2. Better training and education after selection.
3. Improved leadership that provides specific guidance, rather than reliance on empty slogans.
4. Counseling and leading employees on a day-to-day basis to promote the team effort for constant improvement of quality.

Statistical Process Control. Instead of individual appraisal methods, Deming proposes the use of statistical process control (SPC), which focuses on indicators of work quality. Quality is defined as the improvement of the average, or mean, value of an output (product or service) and a decrease in the variability of individual outputs. For example, if it is the function of an organization to make containers, increased quality would require both a general decrease in the average number of mistakes and less variation in the quality of each item produced. Statistical control is said to exist when all special causes, such as defective equipment and untrained operators, have been removed, leaving only the random variation of a stable process that will be predictable in the future. The major tenet of SPC is that productivity can only be attained through better quality. Once appropriate indicators are identified, information will be collected and process charts will be kept on which upper and lower control limits are calculated to specify a range within which predictable variations are expected to occur. Points outside of these ranges generally indicate a problem with the system that only management can solve.

The Directorate of Distribution proposes to use SPC throughout the organization and will use the results of the process not only to implement quality improvements but also to identify training needs and problem situations requiring reassignment of employees. Consistent with the Deming philosophy, management will take responsibility for the following:

1. Identify the organization's objectives.
2. Identify system outputs to meet those objectives.
3. Identify the specific system processes by which those outputs (services or products) will be produced.
4. Ensure that every person in the organization knows those objectives and outputs and how they relate to his/her job, and adopts the philosophy of constant improvement, of not accepting current levels of delays, mistakes, errors, defective products or defective workmanship in the processes they perform.
5. Identify and accept responsibility for performance problems/variances due to the system or individual efforts.
6. Focus attention on helping people do a better job at every level; eliminate the barriers to communication; ensure that immediate corrective action is taken on all reports regarding quality defects and problems in product, service, systems, operations, or tools.

DS will implement a training program to help accomplish these goals. Under the new system, management will be more directly responsible for performance problems. Every attempt will be made to match employees with the right jobs. If these attempts (training and reassignment) fail and employee performance does not improve, employees will be released. Personnel office records indicate that no performance-based (chapter 43) actions have been taken in DS for the past 5

years. Since actions based on performance (as well as conduct) may be taken under 5 U.S.C. chapter 75, the proposed waiver of 5 U.S.C. chapter 43 should not prevent removal of employees whose performance is unacceptable.

Performance Appraisal for Employees Leaving Project. Supervisors will provide employees who wish to be considered for jobs outside of the project with written ratings of record when required by the servicing personnel office. Any employees who leave the project following a transfer, reassignment, promotion, etc. will be provided written ratings of record. Section III of the Air Force's current Civilian Performance and Promotion Appraisal Form 860 will be used for this purpose.

Demonstration On-Call Employment Program

Purpose. The Demonstration On-Call (DOC) employment program is a modified version of the traditional on-call employment program, designed to permit management to adjust the size of its workforce quickly in response to workload and budgetary changes. By limiting workforce adjustments to employees in the DOC program, management can confine impact to a single segment of the workforce, while protecting the majority of the workforce (full-time permanent employees) from disruption. By simplifying the procedures for workforce reductions, management can make adjustments in a more timely and cost-effective manner.

Characteristics of DOC Employment Program. Career-Conditional Appointments. New employees hired under the DOC program will be given career-conditional appointments under delegated examining agreements or from OPM registers. Current career-conditional and career employees will be excluded from the DOC program, but may serve on on-call schedules consistent with traditional provisions for other-than-full-time career employment.

On-Call Work Schedules. All employees covered by the DOC program will be placed on on-call work schedules. DOC employees will work regularly scheduled tours of duty in a pay status as needed, but will be subject to release and recall with a minimum 3 days notice.

Conversion to Career Status. Although DOC employees will serve on career-conditional appointments, conversion to career appointments after 3 years will not be automatic. Instead, conversion of DOC employees from career-conditional to permanent career status will be dependent on: (1) The needs of the Directorate of Distribution and (2) employee seniority, but will not occur until after at least 1 year of DOC service. Seniority will be determined based on the date of the employee's initial appointment into the Directorate of Distribution (initial appointment date or IAD). Career-conditional employees not covered by the DOC program (e.g., employees already serving on full-time or part-time career-conditional appointments at the time of project implementation) will be converted to career status automatically after 3 years of continuous service, but may compete for earlier conversion to career status on the basis of their IAD's.

The DOC employment program will not preclude non-DOC hires. Management will retain the option of making appointments outside of the DOC authority, e.g., for temporary or summer employees or Veterans Readjustment Appointees (VRAs). It is expected that the number of employees covered by the DOC program will not normally exceed 25 percent of the total Directorate of Distribution workforce. Based on historical rates of attrition, this should permit conversion of most DOC employees to career appointments in slightly less than 3 years. However, to accommodate short-term workload increases when long-term forecasts require workforce decreases, the DOC workforce may be temporarily expanded to meet the surge. Under these conditions, conversion to career status may be suspended until the full-time permanent workforce is brought into line with long-term projections. Conversion from on-call to full-time employment will normally occur simultaneously with conversion from career-conditional to career status; exceptions will be made for employees who prefer to maintain on-call work schedules.

Probationary Period. Employees covered by the DOC program will serve the 1-year probationary period required for initial appointment to a competitive position. During this period, management will be responsible for determining employees' conduct and performance and for terminating appointments of employees who fail to demonstrate their qualifications for continued employment. Actions to separate probationary employees for performance or conduct reasons, or for conditions arising before employment, will be taken according to the provisions for termination in 5 CFR 315, Subpart H.

Detail, Promotion, Reassignment, Reinstatement and Transfer Eligiblility. Employees covered by the DOC employment program will be eligible for detail, promotion, reassignment, transfer, and reinstatement like all other career-conditional employees.

Release and Recall of DOC Employees. When budgetary constraints, workload fluctuations, and/or skills imbalances necessitate workforce expansion or reduction, management will first try to confine the required adjustments to DOC employees. Depending on the nature and severity of adjustment required, management may release DOC employees from a pay status to a nonpay status or actually separate DOC employees, recalling and/or reemploying them as conditions warrant.

The process for releasing or separating DOC employees will consist of a simpler, less time-consuming alternative to the traditional reduction-in-force process. Under this alternative, the order of retention will be the same, whether the action taken is a temporary layoff or an actual separation.

For each workforce reduction, management will first determine the processes and levels to be affected. Within those processes and levels, DOC employees will be released or separated on the basis of veteran preference and seniority, i.e., nonpreference eligibles will be released and/or separated prior to preference eligibles, and employees with the least seniority in either category will be released and/or separated prior to those with greater seniority. Seniority will be determined on the basis of the employees' IADs, and will not consider years of service outside of the DOC employment program. Employees separated under DOC procedures may appeal to MSPB.

DOC employees released or separated will not be entitled to severance pay but will be entitled to priority placement over any new hires. The basic period of priority recall or reemployment consideration will be 1 year from the date of placement in a nonpay status or separation. This period may be extended, if the DOC employee applies for an extension, or terminated sooner if the employee declines an offer to return to duty. DOC employees will be recalled and/or re-employed in reverse order of release and/or separation. DOC employees separated due to workforce reductions are also eligible for the DoD Priority Placement Program, Air Force Reemployment Priority List Program, and the Displaced Employee Program, to receive priority consideration for positions in other parts of Air Force and in other Federal agencies.

Only when all DOC employees have been separated and additional

workforce reductions are still required, will non-DOC employees be subject to a RIF. These employees will be separated under existing (nondemonstration) RIF procedures, amended to reflect new processes and classification levels under the PACER SHARE classification structures.

Within pay plans, displacement will be based on the new pay band classification hierarchy. When crossing pay plans, the hierarchy will be determined by the basic salary potential of the affected band.

C. Entry Into and Exit From the Project

Prior to project implementation, all positions in the Directorate of Distribution will be reclassified using the newly developed broad-based standards. If application of the new classification standards results in an employee's assignment to a level lower than the one corresponding to his/her current grade, the employee will retain his/her current pay under 5 U.S.C. 5363 and 5 CFR Part 536, but will receive the new level designation. As discussed earlier, there will be three separate pay schedules: DW for demonstration salaried employees, DH for demonstration hourly employees and DX for supervisory level employees. Since work leader (WL) positions will be discontinued at project implementation, employees in the discontinued WL positions will be phased into the appropriate DH schedule with pay retention, as required.

Employees in career ladder positions who are entitled to non-competitive promotions will be converted to a level based on their current grade, not an intervening or target grade. If the intervening or target grade falls within the same level, pay will be adjusted at the time the promotion would have occurred. If the intervening or target grade falls into a higher level, the employee will receive a noncompetitive promotion when eligibility requirements under the old system are met. In both situations the employee must meet the criteria for the work described in the proficiency guide (a standardized training guide that will be developed for each skill level).

These conversion procedures will assure that all employees will be converted into the demonstration project without loss of pay.

New Hires

A majority of the salaried new hires will be recruited at the DW–1 Level (GS–1 to GS–4) and given training to qualify for the higher levels. In some situations the market rate may determine what salary should be offered to recruit new employees. The Compensation Committee will be responsible for approving all advanced in-hire rates. This flexibility of setting pay, within limits, will enable managers to hire the people they need. For example, if management wants to fill a DH–3 Material Handler position with an individual from the private sector earning more than the minimum DH–3 rate, pay at a higher than minimum level can be offered.

Project Termination

Should the project terminate at any time, either before the statutory 5-year period expires, or in case the demonstration provisions are not made permanent, the first decision that has to be made is whether to retain employees hired under the DOC employment program. Depending on the needs of the organization, some or all of these employees may be separated under DOC procedures, or retained as part of the post-demonstration workforce. If retained, DOC employees who have completed 3 years of service will be converted to career appointments, while those with less than 3 years of service will remain on career-conditional appointments. Designation as on-call or full-time will be determined by seniority within processes.

At project termination, all persons on detail from nonproject positions will be returned to their original organizations. All remaining positions will be reclassified in accordance with non-demonstration criteria to determine the traditional system series, pay plan and grade level. Employee placement rights will then be considered, as outlined below.

(1) An employee's new grade level will not be lower than his/her grade at project entry.

(2) If an employee is converted to a grade whose maximum rate falls below his or her current salary, the employee will retain his/her current pay under 5 U.S.C. 5363 and 5 CFR Part 536, but receive the lower grade designation.

(3) If an employee's salary falls between two steps, salary will be set at the higher rate, except for employees placed in a PMRS position (who will continue to receive their current rate of pay). The placement authority will be 5 CFR 335.102.

(4) Realignment placement, if necessary, will be based on RIF procedures.

D. Appeals and Grievance Procedures

This project does not waive any existing appeal or grievance procedures. Negotiated grievance procedures will apply for bargaining unit employees and the existing administrative grievance procedures will apply for employees not covered by negotiated procedures. No provisions of this project waive a right or remedy available to an employee under Equal Employment Opportunity (EEO) laws.

E. Project Implementation

Implementation Actions

During the transition period, and prior to project implementation, a number of preparatory actions will be taken, as summarized below:

1. Establish implementation task force including DS managers and union members.
2. Establish DS personnel office.
3. Establish Compensation Committee.
4. Work with control sites to collect baseline data.
5. Develop measurement criteria for statistical process control.
6. Establish new classification standards.
7. Test and validate new supervisory grading criteria.
8. Establish new position descriptions.
9. Complete conversion of all DS employees to pay bands and demonstration process designations.
10. Establish crediting plans for multiple-skills training.
11. Establish a formal suggestion system and review committees for productivity gainsharing program.
12. Conduct dry runs to prepare for conversion of computer support systems.
13. Conduct employee orientation.
14. Provide supervisory/staff training.

Task Force. The first step to be taken to prepare for implementation is the establishment of an implementation task force led by an organizational change expert. The task force, consisting of a representative group of DS managers and union members, will help set the agenda for implementation. The end product of the task force efforts will be operational procedures that specify how the various project interventions are to be applied in practice.

Standards. During the pre-demonstration period the new classification and qualification standards have to be finalized and the new classification standards and supervisory grading criteria have to be pilot-tested and validated. OPM will assist in the validation of the new supervisory grading criteria. Since all project positions will be reclassified, new position descriptions for the demonstration processes have to be developed. Also, procedures for crediting the acquisition of new skills

have to be established jointly by the personnel office staff and supervisors.

Project Personnel Office. Since the Directorate of Distribution is currently served by a base-wide Civilian Personnel Office, it will be necessary to establish a separate personnel office staff for the project and train new staff to administer the demonstration personnel system.

Compensation Committee. There will also be a Compensation Committee composed of the Deputy Director of Distribution, all DS division chiefs, the Comptroller Project Officer, and a union representative. The committee will be responsible for developing recommendations to address compensation and PGS issues and for approving all project positions and hiring actions, including advanced in-hire rates, as recommended by the DS personnel office.

Steering Committee. The PACER SHARE Steering Committee consists of the Civilian Personnel Officer of SM-ALC, the Deputy Director of Distribution, the ALC's Deputy Comptroller, the Executive Assistant to the ALC Commander, and the President of AFGE Local 1857. The Steering Committee is responsible for all final policy decisions affecting the DS workforce and issues crossing Directorate lines involving Distribution, Personnel, Accounting, and the unions. The Steering Committee will continue to provide project leadership after PACER SHARE is implemented.

Statistical Process Control. Since individual performance appraisal will be eliminated and replaced by statistical process control, appropriate measurement criteria have to be developed for all critical DS processes. Conversion to statistical process control will continue after project implementation.

PGS Program. The implementation of the productivity gainsharing plan will require extensive preparation for employee participation. The key to the participative system is a formal suggestion system with review committees to process and follow up on suggestions. Existing Quality Circles will be used to initiate the process.

Dry Run. Once all personnel and computer systems have been converted to the demonstration system there will be at least one dry run in order to make the necessary adjustments and fine-tune the system prior to formal startup.

Baseline Data. Another important activity during the transition period is the collection of baseline data for all future project evaluation measures and the selection and establishment of cooperative agreements with all control groups. It is recognized that without the establishment of rigorous baseline measures, no valid pre- and post-intervention comparisons can be carried out to evaluate the effectiveness of the various changes.

Training

The key to smooth transition management will be training. Merely introducing a change program to an organization will not automatically ensure its effectiveness. Without employee commitment to those changes there is no chance of success. Training will be designed to communicate the philosophy that guided the development of this project, i.e., increased employee participation in solving work-related organizational problems. Managers have to adjust to their new roles in a participative environment and focus on overall organizational goals, not just the missions of their own divisions. Employee training will emphasize the need for open participation and the role of "every person a manager."

Training and orientation at the beginning of implementation will include the following elements:

1. A general description of the demonstration project and project philosophy;
2. Conversion procedures into the new system;
3. Explanation of the process approach to job series consolidation and new classification procedures for supervisors and non-supervisors;
4. Pay-banding and pay adjustment processes;
5. New hiring procedures;
6. Explanation of the productivity gainsharing program;
7. Statistical process control methods and basic Deming approach to quality and productivity;
8. Administration and evaluation of the demonstration project;
9. Procedures for converting out of the project.

Special training in statistical process control methods will be made available to all supervisors and, ultimately, all employees who will be involved in the measurement processes. The general project orientation briefings should require a minimum of 4 hours (2 sessions of 2 hours each) for each employee. Supervisory training, which will be more intensive, should require at least 24 hours per supervisor and will include statistical process control and participative management concepts consistent with the Deming philosophy.

Post-implementation training will be provided for new DS employees and will also focus on additional job skills training for the broader work processes involving all DS employees.

F. Project Duration

This demonstration project will be conducted for a period of 5 years after the date of implementation. If OPM or the Air Force determines that the experiment is creating a substantial hardship, or is not in the best interest of the public, the Federal Government, employees, or eligibles, even though the experiment is being conducted properly, OPM or the Air Force may jointly or individually terminate the project.

IV. Evaluation Plan

A comprehensive and methodologically rigorous evaluation will be carried out by an external contractor to assess the merits of this experiment.

A. Evaluation Phases

Since the proposed demonstration project involves multiple changes in more than one area of personnel management, careful evaluation of all project phases will be necessary. These will include the following:

1. Implementation evaluation;
2. Experimental evaluation; and
3. Summative evaluation.

Implementation Evaluation

Once the control sites have been selected and the evaluation model has been finalized, the monitoring of the implementation phase begins. An evaluation of this phase is necessary to determine that the project is implemented as designed and that the stated processes are stable and operational. Following the project implementation phase, a report will be issued by the external evaluation team detailing all aspects of the implementation and offering suggestions on how to improve implementation. This report will also include an assessment of project training. Any changes made to the design during implementation will be carefully documented and the design revised. The report will be submitted to project officials and OPM.

Experimental Evaluation

The evaluation of the experimental phase will begin as soon as the project is determined to be operational and stable. Data collection initiated prior to implementation will continue on a periodic basis, as outlined in the evaluation model. Reports analyzing the effects of the various interventions will be issued by the external evaluator on at least an annual basis. These reports will be submitted to the Air Force.

including the demonstration project site, and OPM.

Summative Evaluation

Upon conclusion of the experimental phase of the project, an overall assessment of the combined effects of the demonstration project interventions will be undertaken. Impacts of specific system changes will be discussed separately and in combination.

Cause-and-effect relationships will be established to the extent possible, using pre- and post- as well as experimental/control group data. The effectiveness of each intervention and the project as a whole in meeting stated objectives will be assessed. Efforts will be made to include an assessment of unanticipated positive, as well as negative, effects. A final project report will be issued by the external evaluator and made available to the Air Force, including the demonstration project site, and OPM.

B. Evaluation Design

Overview and Rationale

The demonstration project is intended to improve productivity, organizational flexibility, and the quality of worklife. These improvements are expected to result from the synergistic effects of five interventions: job series consolidation; pay banding; changed criteria for establishing supervisory grades; productivity gainsharing; and new hiring procedures.

An external consultant has worked with the Directorates of Distribution, Personnel, and Accounting and Finance at the Sacramento Air Logistics Center and with the Office of Personnel Management to design an evaluation plan to measure the effects of the interventions. The evaluation will measure the extent to which productivity, organizational flexibility, and quality of worklife within the Directorate of Distribution are improved during the demonstration. In addition, the demonstration's effects on the quality and timeliness of work will be assessed, because productivity enhancement or cost reduction cannot be allowed to occur at the expense of degradations in quality. Moreover, to the extent that improvements in the quality of worklife increase the identification of the workforce with directorate goals, an impetus to increase quality may be provided.

Four other Air Logistics Centers throughout the country perform functions similar to those of the Sacramento Air Logistics Center and, collectively, will serve as a comparison group. For the measures used to assess the impact of the demonstration project, baseline (pre-demonstration) levels for Sacramento and for (the average of) the four other Air Logistics Centers will be established. During the demonstration, changes at Sacramento will be compared with the average change at the four other Air Logistics Centers. This demonstration-versus-baseline, Sacramento-versus-comparison group framework will help separate effects of the demonstration from changes not related to the demonstration project.

The combined interventions are expected to improve quality of worklife in many ways, for example, by increasing job satisfaction and pay satisfaction. Organizational flexibility should be improved by simplifying the personnel system, increasing the freedom to assign workers where they are needed to meet daily work demands, and allowing greater flexibility in establishing supervisory positions. Changes in quality of worklife and organizational flexibility will be measured using both survey and nonsurvey measures. Data on all measures will be collected before the demonstration and on a regular basis thereafter to assess changes. Changes from the baseline at Sacramento will be compared with the average change across the comparison Air Logistics Centers.

Evaluation Model

Because the interventions will be implemented as a set, the effects of any single intervention cannot be isolated as though it were implemented in the absence of the others. However, each intervention does have expected measurable effects, although they must be taken in context with the other interventions. These measures cover specific costs, outputs, worker and supervisor attitudes, factors such as absenteeism and grievance rates, turnover rates, and the quality of work within the Directorate of Distribution. The five interventions, their expected effects, the measures that will be used to assess those effects, and the data sources for those measures are summarized in the evaluation model presented in Table 14. This model is not considered to be exhaustive at this point and additions and adjustments may be made during the evaluation phase.

TABLE 14.—EVALUATION MODEL

Intervention	Expected effects	Measures	Data sources
I. Job series and grade consolidation.	A. Simplified job classification process	1. Number of classification actions	Personnel records, Personnel Office Productivity Analysis (POPA).
		2. Hours, cost per classification action	POPA.
		3. Classification error rate	Personnel records audits.
		4. Number of classification appeals	Personnel records.
		5. Number and grades of personnel staff serving Distribution	POPA.
		6. Employee perceptions of classification process	Attitude Survey.
	B. Improved responsiveness to work/mission requirements through increased flexibility in making assignments to meet workload	1. Perceived flexibility by supervisors	Attitude Survey.
		2. Skill base of workforce	WFDB.
	C. Expanded career and training opportunities/job enrichment	1. Incidence of multipleskills training	WFDB.
		2. Intrinsic work satisfaction	Attitude Survey.
		3. Satisfaction with career opportunities	Attitude Survey.
	D. Reduced need for promotions	1. Number of promotions	Personnel records.
		2. Satisfaction with promotions	Attitude Survey.
	E. Increased training cost (short term)	1. Formal training cost, hours	Personnel records, WFDB.
II. Pay-banding	A. Increased comparability of pay for GS and WG workers.	1. GS and WG salaries by experience level	WFDB.
		2. Crossovers from GS to WG and vice versa	WFDB
		3. Blue/white collar equity	Attitude Survey.
	B. Increased pay satisfaction	1. Salary increases by experience/classification	WFDB.
		2. Extrinsic reward satisfaction	Attitude Survey.
		3. Pay satisfaction	Attitude Survey.
		4. Perceived equity (internal, external)	Attitude Survey.
	C. Possible pay inversion	1. Supervisor vs. nonsupervisor salaries	WFDB.
		2. Salaries for current employees vs. new hires	WFDB.
III. Changed supervisory grading criteria.	A. Reduced disincentive for supervisors to reduce staff.	1. Supervisors' perceptions of grading criteria	Attitude Survey.
		2. Supervisors' willingness to recommend staff reductions	Attitude Survey.

Intervention	Expected effects	Measures	Data sources
	B. Increased dependence of pay level on job responsibilities	1. Pay level by responsibility level on new criteria	WFDB classification audits.
		2. Supervisors' perceptions of pay level determination	Attitude Survey.
	C. Streamlined organizational structure	1. Levels of supervision	WFDB.
		2. Supervisor/subordinate ratios	WFDB.
	D. Increased flexibility in assignment of supervisors.	1. Perceptions of management	Attitude Survey.
IV. Demonstration On-Call Program	A. Capability to vary size of workforce and retain key skills/personnel.	1. Variability in size of workforce by skill	WFDB.
		2. Staffing level; ratios of career to noncareer employees	WFDB.
	B. Differences in organizational commitment for career and non-career employees.	1. Organizational involvement	Attitude Survey.
		2. Turnover intention	Attitude Survey.
		3. Turnover by career category	WFDB.
		4. Internal migration to other directorates by career category	WFDB.
	C. Reduced cost of adjusting workforce	1. Cost of workforce reduction (if RIF)	WFDB, POPA.
V. Gainsharing	A. Link bonus pay with organizational performance	1. Cost savings and gainshares paid (dollar value)	External costs savings analysis, Accounting Directorate (AC) cost savings.
		2. Productivity index: Earned/actual hours	AC data.
		3. Perceived link between organizational performance and bonus pay.	Attitude Survey.
VI. Combination of all interventions	A. Improved productivity	1. Production levels and cost savings	External and AC analyses of cost and production.
		2. Effectiveness, validity of SPC measures	SPC data, Attitude Survey.
		3. Supervisors' perceptions of ability to meet workload changes	Attitude Survey.
		4. Performance during surge periods and exercises	Distribution records.
	B. Improved/maintained quality and timeliness	1. Quality and timeliness rates	External analysis of quality/timeliness data from Quality and Management.
		2. QC activities	QC records.
	C. Improved ability to fill vacancies	1. Number of authorizations vs. assignments	Personnel records.
		2. Cost per hire	Personnel records, POPA.
		3. Number of applications	Personnel records.
		4. Acceptance rate	Personnel records.
	D. Reduced turnover	1. Turnover by organization, skill, pay level, reason	WFDB.
		2. Applications for transfer to outside organizations	Personnel records.
		3. Turnover intention	Attitude Survey.
		3. Turnover intention	Attitude Survey.
		4. Exit interviews	Structured Interviews.
	E. Improved organizational climate	1. Organizational climate/involvement	Attitude Survey.
		2. Grievances/ULPs	Personnel records.
		3. Organizational influence	Attitude Survey.
		4. Union-management relations	Attitude Survey.
		5. Group functioning/teamwork	Attitude Survey.
		6. Absenteeism/leave rates by type	Personnel records.
		7. Adverse actions	Personnel records.
	F. Increased job satisfaction	1. Job satisfaction	Attitude Survey.
		2. Extrinsic reward satisfaction	Attitude Survey.
		3. Intrinsic reward satisfaction	Attitude Survey.
	G. Increased Personnel Office support	1. Employee perceptions	Attitude Survey.
		2. Personnel office productivity	POPA.
	H. Improved Supervision	1. Satisfaction with supervision	Attitude Survey.

Methods, Measures, and Data Sources

The following is an overview of the methods, measures, and data sources that will be used in the evaluation:

Cost Savings. The cost savings evaluation method will compare labor operating costs at the Sacramento Directorate of Distribution before and during the demonstration with the average costs for Directorates of Distribution at the other four Air Logistics Centers (combined). The chief method of analysis will be multivariate regression. This method will complement the average-cost calculations that will be undertaken by Sacramento to determine the gainsharing pool, and will also be based on production and cost data provided by the Directorates of Distribution and Accounting and Finance. In discussing the proposed cost evaluation analysis, it is useful to contrast the multivariate evaluation approach with the average-cost approach used to determine productivity gainsharing funds.

The average-cost approach provides a timely estimate of labor cost savings of the Directorate of Distribution. Specifically, it decomposes the change in cost from one period to the next into a change in efficiency (the number of actual hours required to accomplish a workload) and a change in wage rate per actual hour. Thus, the method offers a straight-forward means of tracking the trends in cost before and during the demonstration, and yields a readily understood estimate of overall savings in labor cost. The approach applies to Sacramento as well as the other Air Logistics Centers, facilitating overall cost comparisons. It will therefore be possible to determine whether, for instance, costs were falling (or rising) more rapidly at Sacramento than at the other Air Logistics Centers.

There are, however, several potential shortcomings of the average-cost method: no explicit control for the quality of work, no explicit statistical test of whether the estimate of cost savings is significant or merely a random deviation from past cost behavior, and no direct information on the chief sources of cost savings within the organization. The multivariate approach addresses the deficiencies listed above by employing data at the cost center level, i.e., for a branch or section of a branch within a division of the Directorate of Distribution. Such data can be aggregated to obtain a Directorate-wide estimate comparable to that provided by the average cost approach. Like the average cost approach, the multivariate approach relies on available data systems that offer monthly data. The multivariate analysis treats the cost center as the basic unit of observation and regresses its labor costs (cost of actual hours) on a set of explanatory variables. The latter include the cost center's own workload (as reflected by earned hours), the workload of related cost centers that interact with the cost center, and measures of the quality of work. Costs will be adjusted for nominal changes so

that the regression shows the relationships between real labor cost, workload, and quality. The adjustment is similar in nature to the part of the average-cost computation that adjusts for the change in the hourly wage rate.

The multivariate cost analysis will estimate cost equations by cost center during the baseline period and during the demonstration period. Statistical tests will show whether, as the demonstration progresses, the real cost of performing a given level of work at a given level of quality declines significantly.

The inclusion of measures of the quality of work is designed to control for the possibility that an observed decline in cost came at the expense of work quality or timeliness. The analysis prevents such declines from being erroneously attributed to increases in productivity. Further, given that the analysis will be conducted at the cost center level, the results should give direct insight into which cost centers account for most of the overall cost savings. The possibility of additional decomposition by work-load factors will be examined in the cost analysis, and may help pinpoint the sources of savings within cost centers. The cost savings analysis will be expanded periodically (at least annually) to examine changes in nonlabor costs, e.g., the cost of supplies, equipment, services, awards, travel, benefits, and facilities and related support. Finally, because the analysis will be done both for Sacramento cost centers and those of the other Air Logistics Centers, it will be possible to judge whether the other Air Logistics Centers experience a similar pattern of improvements in efficiency in handling their workloads.

Changes in Organizational Flexibility and the Quality of Worklife. The demonstration is designed to increase the flexibility of the Directorates of Distribution and Personnel in defining job duties, making personnel assignments, and providing expanded training that will allow Distribution and Personnel to be more effective in meeting workload requirements and reducing costs. Changes in operating costs at the Directorate of Distribution will be measured using the methods described above. Changes in workload and related costs among the personnel employees serving the Directorate of Distribution will be measured through audits of personnel records and a special assessment instrument currently being developed and tested by the Office of Personnel Management, the Personnel Office Productivity Analysis (POPA). Personnel records and results from the POPA will also be used to provide indicators of flexibility within the Directorate of Distribution, such as personnel details and loans.

In order to track the progress of all demonstration project interventions, a diagnostic attitude survey will be used. The survey will be administered prior to project implementation and annually thereafter to DS employees in Sacramento and at the comparison sites. In addition to items unique to PACER SHARE, the survey includes items used by OPM in other demonstration projects and covers a range of quality of worklife issues, such as job satisfaction, pay satisfaction, organizational involvement, motivation, and supervision. Most of the items consist of brief statements followed by a 5-point Likert-type scale indicating level of agreement with the items. Appendix C includes a sampling of the items to be included in the survey.

Changes in the quality of worklife will also be measured using non-survey, or unobtrusive measures derived from information contained in the records and computerized data base maintained by the Directorates of Personnel and Accounting and Finance. Such measures will include job applications to work in DS, applications for transfers from DS, grievances, turnover, absenteeism, and adverse actions, among others. The data base also includes demographics of the DS workforce, the skill base of the workforce, supervisor-subordinate ratios, and layoffs and recalls.

Quality and Timeliness of Work. The quality and timeliness of work will be measured using data provided by the Quality and Management Divisions of the Directorate of Distribution. The analysis will focus on Air Force Logistics Command-directed indicators. This procedure guarantees that comparable measures will be available for all five Air Logistics Centers. The measures cover depot supply functions, such as control of recoverable assets, effectiveness of bench stock operation accuracy of local purchase documents and compliance with quality control, inspection, and administration programs; material processing functions, such as counts of controlled items, effectiveness of processing receipts for storage or issue, accuracy of receiving in establishing tailgate dates, accuracy of central material locator records, accuracy of file maintenance, accuracy of stock selection for shipment, accuracy of stocklist change actions, and adequacy of material protection from damage or security compromise; transportation functions, such as effectiveness of packaging for preservation or shipment, compatibility of shipment records, and adequacy of in-checking of cargo and documents; reports of discrepancies by offbase activities; alerts to identify defective assets and movements into or out of suspended asset codes; compliance with monthly issue, shipment, and stock goals, such as processing for shipment within standards, depot supply stock rates, bench stock support, aircraft Non-Mission Capable-Supply (NMCS) rate, denial rate, and returns to maintenance; and inventory accuracy goals, such as percentage of Federal Stock Class reconciliation, inventory research effectiveness and timeliness, and the gross inventory dollar adjustment. The error rates on many of these individual indicators are very small. As a result, and to present a more coherent picture of changes, the types of individual indicators listed in this paragraph will be combined to form six to ten aggregate measures of quality and timeliness. The aggregate measures will provide the input for the assessment of quality and timeliness of work.

Data Collection and Analysis Plan

The data collection instruments/data bases, major areas covered by each instrument/data base, schedule for data collection and source for each instrument/data base are summarized in Table 15.

TABLE 15.—DATA COLLECTION AND ANALYSIS PLAN

Area of Analysis	Instrument/Method/Data Base	Data Collector	Collection Schedule	Sample/Source
Changes in productivity	Cost savings analysis	Directorate of Accounting and Finance, Directorate of Distribution.	Baseline: Monthly during demonstration.	Existing Accounting and Finance and Distribution automated data bases on costs and production/ Available for Sacramento Air Logistics Center and comparison sites.
Organizational flexibility and quality of worklife.	Diagnostic Attitude Survey	External evaluator, Directorate of Distribution, and union (AFGE) staff.	Baseline: Annually during demonstration.	Distribution employees/Sacramento: large subsample of nonsupervisors in Distribution, most or all supervisors Comparison sites: 25–33 percent of sample sizes at Sacramento.

TABLE 15.—DATA COLLECTION AND ANALYSIS PLAN—Continued

Area of Analysis	Instrument/Method/Data Base	Data Collector	Collection Schedule	Sample/Source
	Personnel Office Productivity Analysis (POPA).	Directorate of Personnel	Baseline: Quarterly during demonstration.	All Directorate of Personnel employees servicing Distribution/Sacramento Comparison: Ogden, other Air Logistics Center if it can be arranged.
	Personnel records	Directorate of Personnel	Baseline: Continuous during demonstration.	Existing automated and manual record systems pertaining to Distribution/Automated records available for Sacramento and comparison sites Manual record tabulation may be limited to Sacramento and Ogden.
	Workforce Data Base (WFDB)	Directorate of Personnel	Baseline: Quarterly during demonstration.	Existing automated Personnel records for civilian employees of Directorate of Distribution, with additional data/Available at Sacramento and comparison sites.
Quality and timeliness of work in Directorate of Distribution.	Quality/timeliness analysis	Quality Management Divisions in Directorate of Distribution.	Baseline: Monthly to quarterly during demonstration.	Existing automated Distribution data on work quality and timeliness and authorized audits undertaken by Distribution/Available at Sacramento and comparison sites.

Analyses

Each of the analyses described below will assess changes occurring at the Sacramento Air Logistics Center during the demonstration as compared to the baseline period (i.e., pre-demonstration period), and will compare the extent of such changes with those occurring at the comparison Air Logistics Centers (taken as a group) during the same time period. This analytical framework distinguishes changes that occur uniquely at Sacramento from other systemic changes occurring throughout the Air Force Logistics Command. Following is an overview of the analyses that will be conducted:

Cost Savings. The cost savings analysis will regress the labor cost (i.e., actual hours charged) for individual cost centers on indicators of the Center's workload, including earned hours (derived from production counts), quality/timeliness measures, and other factors. During the demonstration, the equations will be applied on a quarterly basis as a corroborative analysis to the Directorate of Accounting and Finance analysis for determination of gainsharing. The cost equations will be reestimated annually to help determine the source of cost savings and determine their statistical significance, by comparing the new regression coefficients with those derived in the baseline analysis and by comparing changes at Sacramento with those at the comparison Air Logistics Centers. Given the limited (i.e., monthly) data available and the time required for maturation of the interventions, trends in costs may require more than 1 year before they reach statistical significance. Further decomposition by workload factors (i.e., type of work) within cost centers will be attempted to help identify the sources of any changes in costs. In addition, changes in non-labor costs will be investigated annually.

Organizational Flexibility and Quality of Worklife. The analytical framework applied to the majority of results to assess changes in organizational flexibility and quality of worklife under the demonstration will consist of a multivariate analysis of covariance approach. This framework provides the means to determine the statistical significance of three types of effects: changes in organizational flexibility and quality of worklife within the Directorates of Distribution at the five Air Logistics Centers during the demonstration period; differences between Sacramento and the (collective) comparison sites; and the extent to which changes at Sacramento during the demonstration, as compared to the baseline period, differ from changes at the comparison sites during the demonstration. For nonsurvey measures, the analysis of covariance framework will be applied to the observed rate for most individual measures. For example, it would be applied to the number of job classification actions, number of grievances, monthly rate of absenteeism, rate of turnover, and so forth. Actions or behaviors that occur too infrequently or that cannot be measured routinely will not be evaluated in this framework. In such cases, tests of the difference in proportions between Sacramento and the comparison Air Logistics Centers or other similar techniques will be applied.

For survey measures, there will be a greater variety of analyses applied. Significance tests of changes in the mean response to key items will be performed using analyses of variance and covariance. In addition, many of the individual items in the attitude survey will be combined into more broadly defined scales, based both on prior analyses of similar items and on the results of factor analyses that will be performed. The broad scales will cover areas such as intrinsic work satisfaction, organizational climate, and adequacy of supervision. Finally, interrelationships among responses on the attitudinal scales will be investigated using multiple regression techniques. Changes over time in these relationships or differences in the relationships found at Sacramento and the comparison sites will be investigated.

Quality and Timeliness of Work. Most individual indicators of quality will be combined into broad indexes, based on information provided by the Quality Division at the Directorate of Distribution. The mean error rate or total number of errors will then be computed for the index. In some cases, this may involve weighting of the individual indicators comprising the index to reflect their importance. When possible, results for each index will be analyzed using the multivariate analysis of covariance framework described in the previous section. In instances where the number of observations is too small to permit such analysis, tests for differences in the proportion of errors at Sacramento versus the comparison sites or other similar techniques will be applied. Indicators of quality and timeliness in meeting monthly issue of shipment goals and inventory accuracy goals need not be combined into more broadly defined indexes. In these areas, rates for the individual indicators will be computed and changes in quality/timeliness will be evaluated using the analysis of covariance framework. Changes in quality and timeliness will be formally evaluated on an annual basis.

V. Waivers of Law and Regulation

Waivers of provisions of law and regulation will be required to conduct the demonstration project. Additional waivers may be required because of laws passed or rules and regulations established during the course of the project. Table 16 lists the necessary waivers.

TABLE 16.—WAIVERS OF LAW AND REGULATION [1]

Title 5, UNITED STATES CODE

Section 3502
Order of retention, [only as it applies to employees under demonstration on-call (DOC) program]
Chapter 43
Performance appraisal [less subchapter II]
Chapter 45
Incentive awards
Section 5101 (1)(B) and (2)
Classification
Section 5102(a) (4)&(5)
Definition of class or class of positions and grade
Section 5104
Basis for grading positions, [except for position classification appeals to OPM]
Section 5105(c)
Standards for classifying positions
Section 5106 (a)&(b)
Basis for classifying positions
Section 5107
Classification of positions
Section 5110
Review of classification of positions
Section 5111
Revocation and restoration of authority to classify positions
Section 5113
Classification records
Section 5331 thru 5338
GS pay rates and step increases
Section 5341(3)
Prevailing rates, policy
Section 5342
Prevailing rate definitions, application
Section 5343 (a)(4) & (e)
Prevailing rate determinations; wage schedules
Section 5346 (a) & (b)
Job grading system
Chapter 54
Performance Management and Recognition System
Section 5595
Severance pay, [only as it applies to DOC employees]

Title 5, CODE OF FEDERAL REGULATIONS

Section 2.2
Appointments [only as it applies to DOC employees]
Section 210.102
Definitions
Section 230.201
Standards and requirements for agency personnel actions
Section 300, subpart F
Time-in-grade restrictions
Section 315.201 (a) & (b)
Service requirement for career tenure
Part 335
Promotion and internal placement
Section 340.402
Appropriate use [of on-call employment]
Section 351.201
Use of Regulations [only as it applies to DOC employees]
Section 351.202
Coverage [only as it applies to DOC employees]
Section 351.203
Reduction in force (RIF) definitions
Section 351.401
Determining RIF retention standing
Section 351.402(b)
Competitive area (RIF)
Section 351.403
Competitive level (RIF)
Section 351.404
Retention register for RIF [only as it applies to DOC employees]
Section 351.501
Order of RIF retention [only as it applies to DOC employees]
Section 351.503
Length of service (in RIF) [only as it applies to DOC employees]
Section 351.504
Credit for performance (in RIF)
Section 351.603
Actions subsequent to release from competitive level (in RIF) [only as it applies to DOC employees]
Section 351, Subpart G
RIF assignment rights
Section 351, Subpart H
Notice to employees of RIF [only as it applies to DOC employees]
Section 351.1004
Duration of eligibility (RIF reemployment priority) [only as it applies to DOC employees]
Part 430
Performance Management
Part 432
Reduction in grade and removal based on unacceptable performance
Part 511, Subpart B
Classification Coverage of the General Schedule
Part 531
Pay under the General Schedule
Section 532.203
Structure of regular wage schedule (prevailing rate)
Section 532.401
Pay administration, definitions (prevailing rate)
Section 532.403
New appointment (prevailing rate)
Section 532.407
Promotion (prevailing rate)
Section 532.417
Within-grade increases (prevailing rate)
Section 532.601
Job grading system (prevailing rate)
Part 540
Performance Management and Recognition System
Part 550 Subpart G
Severance pay [only as it applies to DOC employees]

[1] Waiver required only to the extent that the project conflicts with pertinent provisions of law and regulation.

In addition, OPM position classification issuances and OPM Handbooks X-118 and X-118C will not be applied to project positions since new standards have been designed specifically for the project.

VI. Costs

The costs associated with the project will be borne by the Air Force and the participating Directorate of Distribution, with funding provided out of normal administrative overhead and training funds. Major costs to date have been for project development, and future costs will be for training, implementation and evaluation. The total cost of the project for the 5-year period is estimated to be $2,987,627 (in fiscal year 1987 dollars). Table 17 summarizes development costs to date and includes estimates of future project costs. Government savings are projected to amortize total project costs in the first 1 to 2 years of the project.

Table 17.—Summary of Demonstration Project Costs

Project development (Jan. 1983—Oct. 1987)	$2,107,861
Implementation [1]	1,358,627
Training [1]	54,000
External evaluation [1] (FY 1988–FY 1993)	1,575,000
Total project cost	5,095,488

[1] Beginning with FY 1988.

APPENDICES

Appendix A—Pay Band Transition Point Computations

Within all of the DH pay bands and within the DW-1 through DW-3/DX-2 pay bands, there will be two rates of pay progression. Progression through these bands will be more rapid for the lower range of the band and slower for the upper range of the band. The point in the band at which the slower rate of progression will be applicable is called the "transition point." This appendix describes the computation of the transition point for each pay band.

Computation of the transition points for DW and DX pay bands is based on the average rate of pay employees "would have" received under the GS system, in each grade covered by the band, had they remained in the same grade for 25 years. Computation of the transition points for DH pay bands is based on the average rate of pay employees "would have" received under the WG system, in each grade covered by the band, had they remained in the same grade for 12 years.

Under the GS system, an individual takes 18 years to progress from the bottom of a grade (step 1) to the top of the grade (step 10). If an individual were to stay in the same grade for 25 years

(the time it will take for a DS employee to progress from the bottom of a pay band to the top of the pay band), that individual would follow the pay progression pattern illustrated in Table A–1.

Table A–1.—*Twenty-Five Year Pay Progression for an Employee Under the GS System*

Year:	Pay rate
0	Step 1
1	Step 2
2	Step 3
3	Step 4
4	Step 4
5	Step 5
6	Step 5
7	Step 6
8	Step 6
9	Step 7
10	Step 7
11	Step 7
12	Step 8
13	Step 8
14	Step 8
15	Step 9
16	Step 9
17	Step 9
18	Step 10
19	Step 10
20	Step 10
21	Step 10
22	Step 10
23	Step 10
24	Step 10
25	Step 10

The first step in computing the transition point for a DW pay band is to compute the 25-year pay progression of an employee in each grade in the band under the current system. For example, the DW–2 pay band consists of the GS grades 5, 6, 7, and 8. To compute the transition point for the DW–2 band, the first step is to compute the pay progression that an employee in each grade covered by the band would experience over 25 years, exclusive of comparability increases. Table A–2 shows the 25-year GS pay progressions for grades 5 through 8, based on General Schedule rates effective January 1987.

TABLE A–2.—25-YEAR PAY PROGRESSION FOR GS GRADES 5 THROUGH 8

Year	Grade 5	Grade 6	Grade 7	Grade 8
0	14,822	16,521	18,358	20,333
1	15,316	17,072	18,970	21,011
2	15,810	17,623	19,582	21,689
3	16,304	18,174	20,194	22,367
4	16,304	18,174	20,194	22,367
5	16,798	18,725	20,806	23,045
6	16,798	18,725	20,806	23,045
7	17,292	19,276	21,418	23,723
8	17,292	19,276	21,418	23,723
9	17,786	19,827	22,030	24,401
10	17,786	19,827	22,030	24,401
11	17,786	19,827	22,030	24,401
12	18,280	20,378	22,642	25,079
13	18,280	20,378	22,642	25,079
14	18,280	20,378	22,642	25,079
15	18,774	20,929	23,254	25,757
16	18,774	20,929	23,254	25,757
17	18,774	20,929	23,254	25,757
18	19,268	21,480	23,866	26,435
19	19,268	21,480	23,866	26,435
20	19,268	21,480	23,866	26,435
21	19,268	21,480	23,866	26,435
22	19,268	21,480	23,866	26,435
23	19,268	21,480	23,866	26,435
24	19,268	21,480	23,866	26,435
25	19,268	21,480	23,866	26,435

The second step in computing the transition point for the band is to calculate the mean of the 25-year progression for each grade in the band. The 25-year pay progression mean is the average salary an employee would receive over 25 years in the same GS pay band. Table A–3 shows the means for the 25-year progressions of the four grades in the DW–2 pay band.

TABLE A–3.—25-YEAR GS PAY PROGRESSION MEANS FOR GRADES 5 THROUGH 8

Grade 5	Grade 6	Grade 7	Grade 8
17,845	19,893	22,103	24,482

The final step in computing the transition point is to take the average of the 25-year pay progression means for all the grades in the band. The result of this computation is the transition point for the band. In the current example, the transition point is:

$$\text{Transition point:} = \frac{17{,}845 + 19{,}893 + 2{,}210\ 3 + 2{,}4482}{4}$$

$$= \frac{84{,}323}{4} = 21{,}081$$

Similar calculations are used to compute the transition points for the DW–1 through DW–3/DX–2 pay bands. The DW–4/DX–3 and DX–4 pay bands do not have transition points.

To calculate the transition points for the DH pay bands, the first step is to

compute the pay progression for an employee in each WG grade within the pay band over 12 years, the time it will take a DH employee to progress through a pay band. The means of the 12-year progressions, averaged over all of the WG grades in a band, yield the transition point.

Appendix B—Computing Annual Pay Adjustment Factors

There will be two different annual pay adjustment factors within each DH pay band and within the DW-1 to DW-3/DX-2 pay bands of the proposed system. Within these pay bands, the annual pay adjustment factor for the lower range of each band will be greater than the factor for the upper range. This appendix describes the steps that were used to compute the annual pay adjustment factors.

Definitions

Three terms are essential to understanding the annual pay adjustment factor computations: t, P_t, and r.

- t = time (measured in years)
- P_t = Pay at time t, where t = 0, 1, 2, 3, 4, . . .

Examples:

P_0 = pay at year 0 (beginning of pay progression)

P_1 = pay at year 1 (after the year 1 increase)

P_{12} = pay at the end of 12 years (after the year 12 increase)

- r:
  - = annual pay adjustment factor
  - = each year's pay increase as a proportion of prior year's pay
  - $= (P_{t+1} - P_t)/P_t$

Computations

The formula for r, the annual pay adjustment factor, is based on the ratio of the pay rate at the top of the range to the pay rate at the bottom of the range. For the lower range of the DW-1 through DW-3/DX-2 pay bands, r is based on the ratio of the pay rate after the year 12 increase (P_{12}) to the minimum pay for the band (P_0).

The ratio P_{12}/P_0 provides a measure of the total progression of pay over the 12-year period during which the same annual pay adjustment factor is in effect. The annual rate of progression, r, is a function of the total progression over the 12-year period. Because of the compounding effect of increasing pay by the same rate each year, r is a logarithmic function of the ratio P_{12}/P_0.

After 12 years of service, a DW employee's pay is at the top of the lower range of the pay band. The employee's P_{12} pay rate may be represented in terms of the starting pay rate, plus 12 compounded increases:

$$P_{12} = P_0(1+r)^{12}$$

Therefore, the ratio of P_{12} to P_0 may be represented as:

$$\frac{P_{12}}{P_0} = \frac{P_0\ (1 + r)^{12}}{P_0}$$

which simplifies to:

$$\frac{P_{12}}{P_0} = (1 + r)^{12}$$

In order to solve for r, it is necessary to take the natural logarithm (1n) of both sides of the equation:

$$\ln\left(\frac{P_{12}}{P_0}\right) = \ln\left[\ (1 + r)^{12}\ \right]$$

The logarithmic transformation makes it possible to remove the exponent (^{12}). Because of the mathematical rule:

$\ln(x^y) = y \ln(x)$

the preceding equation is equivalent to:

$$\ln\left(\frac{P_{12}}{P_0}\right) = 12 \ln\ (1 + r)$$

Both sides of this equation may be divided by 12 to obtain:

$$\frac{\ln\left(\frac{P_{12}}{P_0}\right)}{12} = \ln\ (1 + r)$$

The definition of a natural logarithm may be used to remove the 1n() from the right side of the equation. The definition is:

if $\ln(x) = y$, then $e^y = x$

where e = the constant 2.71828

Therefore:

$$e^{\left(\frac{\ln\left(\frac{P_{12}}{P_0}\right)}{12}\right)} = 1 + r$$

The final computational formula for r is obtained by subtracting 1 from both sides of the equation:

$$r = e^{\left(\frac{\ln\left(\frac{P_{12}}{P_0}\right)}{12}\right)} - 1$$

The preceding explanation is based on the computation of annual pay adjustment factors for the lower range of the DW-1 through DW-3/DX-2 pay bands. The same logic has been applied to the other pay adjustment factors, resulting in the following computational formulas:

For the upper range of the DW-1 through DW-3/DX-2 bands:

$$r = e^{\left(\frac{\ln\left(\frac{P_{25}}{P_{12}}\right)}{13}\right)} - 1$$

For the lower range of the DH bands:

$$r = e^{\left(\frac{\ln\left(\frac{P_6}{P_0}\right)}{6}\right)} - 1$$

For the upper range of the DH bands:

$$r = e^{\left(\frac{\ln\left(\frac{P_{12}}{P_6}\right)}{6}\right)} - 1$$

A Computational Example

For the lower range of the DW—1 pay band, the following values are plugged into the annual pay adjustment factor formula:

$P_0 = \$9{,}619$
$P_{12} = \$13{,}542$

To compute r, first compute the ratio:

$$\frac{P_{12}}{P_0} = \frac{13{,}542}{9{,}619} = 1.4079$$

Next, take the natural log of that figure:

$$\ln\left(\frac{P_{12}}{P_0}\right) = \ln(1.4079) = .3421$$

Divide the result by 12:

$$\frac{\ln\left(\frac{P_{12}}{P_0}\right)}{12} = \frac{.3421}{12} = .0285$$

Now take the exponent of e raised to the power of the result:

$$e^{\left(\frac{\ln\left(\frac{P_{12}}{P_0}\right)}{12}\right)} = e^{.0285}$$

$$= 2.7818^{.0285} = 1.0289$$

Finally, subtract 1 from the result to obtain r:

$$e^{\left(\frac{\ln\left(\frac{P_{12}}{P_0}\right)}{12}\right)} - 1 = 1.0289 - 1$$

$$= .0289 = r$$

The annual pay adjustment factor for the lower range of the DW-1 pay band is .0289, or 2.89%.

Appendix C—Sample of Items in Diagnostic Attitude Survey

1. In general I am satisfied with my job.
2. My co-workers encourage each other to give their best effort.
3. What happens to this organization is really important to me.
4. My pay is fair considering what other employers in this area pay.
5. During the next year I will probably look for a new job outside this organization.
6. Management is flexible enough to make changes when necessary.
7. Coordination among work groups is good in this organization.
8. My supervisor encourages subordinates to participate in important decisions.
9. I have to depend on work performed by co-workers in order to get the materials or information I need to do my job.
10. Supervisors here feel their ability to manage is restricted by unnecessary personnel rules and regulations.

Note.—All items have the following response scale: (1) strongly disagree (2) disagree (3) undecided (4) agree (5) strongly agree.

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Federal Register

Friday
November 20, 1987

Part IV

Department of Justice

Immigration and Naturalization Service

Legalization and Special Agricultural Worker Applicants Assistance; Qualified Designated Entity Listing of Outreach Program; Notice

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS Number: 1056-87]

Legalization and Special Agricultural Worker Applicants Assistance; Qualified Designated Entity Listing of Outreach Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: The Immigration and Naturalization Service has certified 977 qualified designated entities (QDEs) to assist legalization and special agricultural worker applicants seeking temporary residence according to the provisions of the Immigration Reform and Control Act of 1986, Pub. L. 99-603, published in the **Federal Register** on May 1, 1987, at 52 FR 16190.

The QDEs will function under cooperative agreements with the Service in fiscal years 1987, 1988, and 1989. The cooperative agreements are administered through the authority of Title II, section 201 of the Act.

QDEs are defined as voluntary organizations and other qualified state, local, community, farm labor organizations, associations of agricultural employers and certain qualified persons. The QDEs provide information and counseling in a risk-free environment to aliens applying for temporary residence. This effort is designed to encourage mass participation by eligible applicants.

The Service is publishing a list of the QDEs certified as of October 16, 1987, to inform the general public of the availability of the entities. The QDEs are separated by areas conforming to the four INS regions. Note that the addresses and phone numbers of some entities are subject to change, and additional organizations are expected to be added to the list throughout the continued duration of the legalization program.

FOR FURTHER INFORMATION CONTACT: E.B. Duarte, Jr., Director, Outreach Program, 425 Eye Street, NW., Washington, DC 20536. Telephone: (202) 633-4123.

Dated: November 4, 1987.

Richard E. Norton,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

Qualified Designated Entities—Southern Region

November 3, 1987.

Alabama

National Council for the Church and Social Action, 701 Church Street, Anniston, AL 36201, 205/831-2652

Catholic Social Services, 211 South Catherine St., #2, Mobile, AL 36604, 205/471-1305

Arkansas

Catholic Charities, 2500 N. Tyler St., Little Rock, AR 72207, 501/664-0340

Florida

Farm Labor Organizing Committee, P.O. Box 1855, 119 E. Bridgers Ave., Auburndale, FL 33823, 813/967-9583

Martin Luther King Jr., Farm Workers Fund, 1000 C West Main Street, Avon Park, FL 33825, 813/452-0170

Catholic Community, Inc., 1300 South Andrews Ave., Fort Lauderdale, FL 33316, 305/522-2513

Lutheran Ministries of Florida, Legalization Services, 3565 Davie Blvd., Ft. Lauderdale, FL 33312, 305/792-6618

Lutheran Immigration and Refugee Services, 3049 Cleveland Avenue, Ste. 270, Ft. Myers, FL 33901, 813/337-5757

Agricultural and Labor Program, Inc., 1814 N. 13th Street, Ft. Pierce, FL 33450, 305/464-5485

Martin Luther King Jr., Farm Workers Fund, 515 S. U.S. Hwy. 1, P.O. Box 1267, Ft. Pierce, FL 34954, 305/466-2889

Florida Fruit & Vegetable Assn, 12175 NW. 98th Ave., P.O. Box 5245, Hialeah, FL 33014, 305/823-1146

Miami Dade County Community College, North Campus, 1780 W. 46th Street, Hialeah, FL 33012, 305/362-7860

World Relief, 510 E. 41st Street, Hialeah, FL 33113, 305/836-6722

Congress of Racial Equality, 4042 Pembroke Road, Hollywood, FL 33023, 305/441-1811

Coalition of Florida Farmworker Organizations, Inc., 20 South Krome Ave., Homestead, FL 33030, 305/246-0357

Coalition of Florida Farmworker Organizations, Inc., 105 E. Main St., Immokalee, FL 33934, 813/657-6107

Catholic Center, Diocese of St. Augustine/Jacksonville, 11625 Old St. Augustine Rd., P.O. Box 24000, Jacksonville, FL 32241-4000, 904/354-3416; 262-3200

Lutheran Social Service of Florida, Legalization Program, 134 East Church Street, Jacksonville, FL 32202, 904/632-0022

Travelers Aid Society of Jacksonville, 217 W. Church St., Jacksonville, FL 32202, 904/356-0249

Ayuda USA, Inc., 1111 SW. 8th Street, Suite 203, Miami, FL 33130, 305/854-6160

Catholic Community Services, 1603 SW. 8th St., Miami, FL 33135, 305/642-5022

Loyola Foundation, Inc., 10375 Coral Way, Miami, FL 33165, 305/223-3475

Miami Dade County Community College, South Campus, 11011 SW. 104th Street, Miami, FL 33176-3393, 305/347-2345

National Council of Jewish Women (Greater Miami Section), Rescue and Migration Service, 4200 Biscayne Boulevard, Suite 3E, Miami, FL 33139, 305/576-4747

National Leadership Council of Haitian-Americans, Inc., P.O. Box 470887, 9455 NW. 36th Ave., Miami, FL 33147-0887, 305/754-1696

Nicaraguan American Foundation, Inc., 961 NW. 2nd Street, Miami, FL 33128, 305/326-7700

Presiding Bishop's Fund, 701 SW. 27th Avenue, Room 710, Miami, FL 33135, 305/541-8327

Private Immigration Agency, 7880-B Biscayne Blvd., Miami, FL 33138, 305/751-8212/8217; 854-4950

Private Immigration Service, 819 SW. 12th Ave., Miami, FL 33130, 305/751-8212; 854-4950

Royal Caribbean International Service, Georges T. Daniel, 187 NW. 54th St., Miami, FL 33127, 305/754-4620

SER-JOBS For Progress, 42 NW. 27th Avenue, Suite 421, Miami, FL 33125, 305/649-7500

Southwest Social Service Program, Inc., 25 Tamiami Blvd., Miami, FL 33144, 305/201-6202

World Relief, 701 SW. 27th Avenue, Suite 710, Miami, FL 33135, 305/541-8320

Catholic Charities, 3190 Davis Blvd., Naples, FL 33942, 813/774-6483

Callahan Communities Center, 648 W. Washington St., P.O. Box 5219, Orlando, FL 32801, 305/423-7928

Catholic Social Services, Inc., 1771 N. Semoran Blvd., Orlando, FL 32807, 305/658-0110

Florida Fruit & Vegetable Assn., 4401 E. Colonial Drive, P.O. Box 140155, Orlando, FL 32814-0155, 305/894-1351

Reformation Lutheran Church, 800 E. Michigan Ave., Orlando, FL 33911, 813/337-5656

Diocese of Pensacola/Tallahassee, Catholic Social Services, Inc., 218 East Government Street, P.O. Box 285, Pensacola, FL 32592, 904/432-4940

Lutheran Immigration and Refugee Services, Beth-El Mission, 14th St. and Shell Point Road, P.O. Box 1706, Ruskin, FL 33570, 813/645-1254

Florida Fruit & Vegetable Assn., 790 NW. 1st Street, South Bay, FL 33493, 305/996-8835

Robert J. Dobbs, Certified Social Worker, 5107 Central Avenue, St. Petersburg, FL 33710, 813/327-7329

Catholic Social Services, Diocese of St. Petersburg, 6533 9th Avenue North, St. Petersburg, FL 33710, 813/345-0953

Lutheran Ministries of Florida, 4015 S. Westshore Blvd., Tampa, FL 33611, 813/831-4449

Catholic Diocese Palm Beach, Migration and Refugee Services, 534 Evernia St., West Palm Beach, FL 33401, 305/833-6533

Agricultural and Labor Program, Inc., 7301 Lynchburg Road, P.O. Box 3126, Winter Haven, FL 33881-3126, 1-800/282-4198, TONE 9563; 813/956-3491

Georgia

Catholic Social Services, 680 W. Peachtree Street, Atlanta, GA 30308, 404/888-7842
Latin American Association, Inc., 2581 Piedmont Rd. NE., Suite 111, Atlanta, GA 30324, 404/231-0940
World Relief (administrative office only), P.O. Box 95271, Atlanta, GA 30347, 1924 Clairmont Road, Suite 210, Decatur, GA 30033, 404/321-6992
Iglesias De Dios Hispana De Atlanta, 6179 Buford Hwy., Doraville, GA 30340, 404/441-1911; 1763
Telamon Corporation, 615-B Oak Street, Gainesville, GA 30501, 404/536-9941
Telamon Corporation, 211 East Liberty Street, Lyons, GA 30436, 912/526-3094
Catholic Diocese of Savannah, Office of Social Ministry, St. John's Center, Grimball Point Road, Savannah, GA 31406, 912/238-2351
Telamon Corporation, 407 S. Zetterower Street, Statesboro, GA 30458, 912/764-6169
Telamon Corporation, 1012 William Street, Valdosta, GA 31601, 912/244-4920

Kentucky

Catholic Charities of Louisville, 2911 S. 4th Street, Louisville, KY 40208, 502/636-9263

Louisiana

Catholic Community Services, 1800 S. Arcadian Thruway, P.O. Box 65688, Baton Rouge, LA 70896, 504/346-0660
Catholic Social Services, Migration and Refugee Services, 1408 Carmel Ave., Lafayette, LA 70501, 318/261-5535
Associated Catholic Charities, 6019 Fig Street, New Orleans, LA 70125, 504/866-2537
Latin American Apostolate, 821 General Pershing St., New Orleans, LA 70115, 504/895-0395
Travelers Aid Society of Greater New Orleans, 930 St. Charles Avenue, Suite 200, New Orleans, LA 70130, 504/525-8726
Resettlement Center of Central Louisiana, Dioceses of Alexandria and Shreveport, 525 Main St., Apt. A, Pineville, LA 71360, 318/487-0234

Mississippi

Diocese of Biloxi, Catholic Social Services, 198 Reynoir Street, Biloxi, MS 39533, 601/374-8316

North Carolina

Yadkin Valley Economic Development District, 309 River Road, P.O. Box 309, Boonville, NC 27011, 919/367-7251
Catholic Social Services, 1524 E. Morehead St., Charlotte, NC 28207, 704/331-1720
Episcopal Migrant Ministry, P.O. Box 1514, Rt. 6 State Road 1636, Dunn, NC 28334, 919/567-6917
Lutheran Family Services, 131 Manley Avenue, Greensboro, NC 27407, 919/855-0390
Telamon Corporation, 928 Greenville Hwy, P.O. Box 2530, Hendersonville, NC 28793, 704/692-0593
Telamon Corporation, 411 W. Front Street, Lillington, NC 27546, 919/893-2054
Catholic Social Services, Our Lady of Guadalupe, Church Street, P.O. Box 181, Newton Grove, NC 28366, 919/821-0350; 594-0659
Telamon Corporation, P.O. Box 988, Railroad Street, Roseboro, NC 28382, 919/525-4021
Telamon Corporation, P.O. Box 1404, 612 Raleigh Road, Smithfield, NC 27577, 919/934-5295
Telamon Corporation, 205 Broad Street, Wilson, NC 27893, 919/291-1203

New Mexico

Catholic Social Services, Archdiocese of Santa Fe, 801 Mountain Road, NE., P.O. Box 25405, Albuquerque, NM 87125, 505/247-9521
Southwestern Union Conference of Seventh Day Adventists, 5200 N. Iliff Rd., NW., Albuquerque, NM 87105, 505/836-6192
Casa Reina/Catholic Charities, 217 E. Wilson, P.O. Box 807, Gallup, NM 87301, 505/722-5511; 863-4368
Catholic Diocese of Las Cruces, 105 Alameda, Las Cruces, NM 88004, 505/523-3937
N.M. Farm and Livestock Bureau, 421 N. Water Street, Las Cruces, NM 88001, 505/526-5521
SER-JOBS For Progress, 575 Alameda, Las Cruces, NM 88004, 505/524-1946
Roswell Immigration Service Center, 213 E. Albuquer., P.O. Box 2663, Roswell, NM 88201, 505/622-1774
SER-JOBS For Progress, 1588 San Mateo Lane, P.O. Box 2471, Santa Fe, NM 87504, 505/984-1454

Oklahoma

ORO Development Corporation, P.O. Box 52, Altus, OK 73521, 405/482-0125
ORO Development Corporation, 609 SW B. Ave., Suite 3, Lawton, OK 73501, 405/482-0125
Language Company, 1666 Cross Center Drive, Norman, OK 73072, 405/364-7170
Associated Catholic Charities, Immigration Services, 425 NW 7th Street, P.O. Box 1516, Oklahoma City, OK 73101, 405/232-9801
Hispanic American Mission Inc., 1836 NW. 3rd St., Oklahoma City, OK 73106, 405/272-0890
Oklahoma Hispanic Cultural Center, 308 SW. 25th Street, Oklahoma City, OK 73109, 405/632-8844
ORO Development Corporation, 1104 N. Classen Drive, Oklahoma City, OK 73103, 405/272-0396
Catholic Diocese of Tulsa, Migration and Refugee Services, 739 North Denver, Tulsa, OK 74106, 918/585-8167
Intercultural Service Center-YWCA, 5155 E. 51st Street, Suite 200, Tulsa, OK 74135-7401, 918/664-6606
ORO Development Corporation, 6540 East 21st, Suite D, P.O. Box 4164, Tulsa, OK 74129, 918/835-7997

South Carolina

Telamon Corporation, 705 Bladen Street, Beaufort, SC 29901, 803/524-1688
Telamon Corporation, 1804 C Savannah Hwy., Charleston, SC 29407, 803/766-1545
Telamon Corporation, 1413 Calhoon Street, Columbia, SC 29211, 803/256-7411
Telamon Corporation, 253 E. Main St., P.O. Box 5291, Spartanburg, SC 29304, 803/573-8783

Tennessee

Catholic Charities, 69 N. Cleveland Street, Memphis, TN 38104, 901/722-4700; 4773
Templo Bautista, 1000 South Cooper St., Memphis, TN 38104, 901/274-1366
Catholic Charities, Refugee Resettlement, 30 White Bridge Rd., Nashville, TN 37205, 615/352-3052

Texas

Catholic Family Services, 1422 S. Tyler, Suite 200, P.O. Box 15127, Amarillo, TX 79105-5127, 806/376-4571
Austin Travis County Refugee Services, 1607 W. 6th Street, Austin, TX 78703, 512/478-5535
Cristo Vive for Immigrants, 7524 N. Lamar, Suite 106-10, Austin, TX 78752, 512/453-8483
Cross Cultural Enrichment Center, 1602 B Harvey Street, Austin, TX 78712, 512/258-2880
Cross Cultural Enrichment Center, 5903 Sierra Leone, Austin, TX 78759, 512/478-7589
Episcopal Amnesty Center, 1001 W. Mary St., Austin, TX 78704, 512/441-2223
Refugee Rights, 500 San Marcus, Austin, TX 78702, 512/478-9100
SER-JOBS For Progress, 55 North I-H 35, Suite 102, Austin, TX 78702, 512/460-8651
Christian Koinonia, Inc., Assembly of God, 3601 Hickey Tree Rd., Balch Springs, TX 75180, 214/557-3620
Partnership For Human Development, Catholic Diocese of Beaumont, 2625 S. 4th Street, P.O. Box 6610, Beaumont, TX 77705, 409/832-7994
Region V Education Center, 2295 Delaware Street, Beaumont, TX 77703, 409/835-5212
Friendship of Women, Inc., 1215 Lincoln St., Brownsville, TX 78520, 512/544-7412
Grace Chapel, 1114 Richard, Bryan, TX 77803, 409/823-0119
Julia Grimaldo Herrera, 701 N. Main, P.O. Box 1476, Bryan, TX 77803, 409/775-8980; 8981
Southwestern Union Conference of Seventh Day Adventist, 77 Burleson Blvd., Burleson, TX 76028, 817/295-0476
Catholic Diocese Of Austin, Immigration Legalization Service, 500 Buchanan, Suite B, P.O. Box 763, Burnet, TX 78611, 512/756-7760
SER-JOBS For Progress, Inc., Family Learning Center, HS Equivalency Program, 709 N. 3rd Street, Carrizo Springs, TX 78834, 512/876-2473
Catholic Social Services, 1322 Comanche, Corpus Christi, TX 78401, 518/884-3956; 6913
SER-JOBS For Progress, 1201 South Pont Avenue, Corpus Christi, TX 78405, 512/883-4333
St. Thomas Episcopal Church, 4100 Up River Road, Corpus Christi, TX 78408, 512/882-4185
SER-Family Learning Center, 203 NE. Lane, Cotulla, TX 78014, 512/879-3877
Community Agency for Self Help, 722 E. Crockett Street, Crystal City, TX 78839, 512/374-2300
SER-Family Learning Center, 400 W. Nueces Street, P.O. Box 448, Crystal City, TX 78839, 512/373-3247
Catholic Counseling Services, Migration and Refugee Services, 3845 Oak Lawn Avenue, Dallas, TX 75219, 214/528-8120

Centro De Amistad, 606 N. Bishop, Dallas, TX 75208, 214/946-8661
Christian Koinonia, Inc., Centro de Fe, 4320 Texas Drive, Dallas, TX 75211, 214/339-6711
Christian Koinonia, Inc., Templo Calvario, 1737 Montclaire Ave., Dallas, TX 75208, 214/946-9305
Christian Koinonia, Inc., Templo Betania, 201 E. 10th Street, Dallas, TX 75203, 214/942-2015
Northcutt Immigration Assistance, 5111 Capitol, Dallas, TX 75206, 214/824-6724
Northcutt Immigration Assistance Center, Mary King Memorial UMC, 2602 Kings Road, Dallas, TX 75219, 214/528-5827
SER-JOBS For Progress, 2514 Harry Hines Boulevard, Dallas, TX 75201, 214/871-7575
SER-JOBS for Progress, 1355 River Bend Drive, Dallas, TX 75247, 214/631-3999
St. Matthew's Episcopal Church, 5100 Ross Avenue, Dallas, TX 75206, 214/824-2942
Jim Haynes, 470 N. Monroe Street, Eagle Pass, TX 78852-4525, 512/773-6360
Maria G. Limon, 1105 Carthage Ave., Eagle Pass, TX 78852, 512/773-0732
SER-Family Learning Center, 1950 Taft Street, Eagle Pass, TX 78852, 512/773-6392
Catholic Diocese of El Paso, Migration and Refugee Services, 1200 North Mesa, El Paso, TX 79902, 915/532-3975
SER-JOBS For Progress, Inc., 4838 Montana Avenue, El Paso, TX 79903, 915/565-4888
Southwestern Union Conference of Seventh Day Adventist, 1801 McRae, El Paso, TX 79925, 505/598-7730
St. Christopher's Episcopal Church, 300 Riverside Drive, El Paso, TX 79915, 915/859-9329
United States Catholic Conference, Migration and Refugee Services, 1200 North Mesa, Suite 201, El Paso, TX 79902, 915/533-3971
Catholic Charities, Diocese of Ft. Worth, 120 NW. 24th Street, Fort Worth, TX 76106, 817/625-9480
Christian Koinonia, Inc., Templo Juan: 316, 3100 Willing, Fort Worth, TX 76110, 817/927-0379
Our Savior Lutheran Church, 4301 E. Lancaster, Fort Worth, TX 76103, 817/535-8170
San Juan Episcopal Church, 3725 S. Adams, Fort Worth, TX 76110, 817/927-5135
Templo Getsemani, 2224 Ross and 23rd Street, Fort Worth, TX 76106, 817/625-4840
United Community Centers Inc., 1903 West Bowie Street, Fort Worth, TX 76110, 817/332-7332
World Relief, 4567 James Avenue, Suite B, Fort Worth, TX 76115, 817/924-0748
Christian Koinonia, Inc., P.O. Box 51150, Ft. Worth, TX 76104; 817/489-3701; 444-3062
Gethsemane Presbyterian Church, 1512 Denver Ave., Ft. Worth, TX 76106, 817/624-7685; 626-1808
Temple Bethel Assemblies of God Church, 201 E. Bewick St., Ft. Worth, TX 76110, 817/923-6718; 921-4254
Templo Getsemani, 2224 Ross Ave., P.O. Box 4559, Ft. Worth, TX 76106, 817/625-9532
SER-JOBS For Progress, 3901 Avenue M 1/2, Galveston, TX 77550, 409/765-9313
Christian Koinonia, Inc., Asemblea De Dios, 1001 Cuero Street, Garland, TX 75046, 214/276-6383
Agape Missions, 809 E. Jackson St., P.O. Box 3093, Harlingen, TX 78550, 512/428-2854
Denman F. Stanfield, 217 W. Beck Avenue, Harlingen, TX 78550, 512/425-7731
Iglesia Nueva Vida, 114½ N. Marshall, P.O. Box 2156, Henderson, TX 75652, 214/657-1101
Migrant Advocacy Services, Inc., 101 Domingo St., P.O. Box 374, Hereford, TX 79045, 806/364-3570
Migrant Advocacy Services, Inc., 100 Bridge Street, Hidalgo, TX 78557, 512/843-8756
Association For The Advancement of Mexican Americans, Inc., 204 Clifton, Houston, TX 77001, 713/926-9491
Braes Interfaith Ministries, 4300 W. Belfort, Houston, TX 77035, 713/723-2870
Catholic Charities Legalization Center Number 1, Galveston-Houston Diocese, 1305 Quitman, Houston, TX 77009, 713/228-5200
Episcopal Church of the Epiphany, 9600 S. Gessner Street, Houston, TX 77071, 713/772-8801
Episcopal Church of the Redeema, 4411 Dallas Ave., Houston, TX 77023, 713/928-8125
Houston Community College System, Austin/Milby Campus, 1700 Dumble, Houston, TX 77023, 713/923-7933
Houston Community College System, Carnegie-Marshall-Davis Community Education Center, 1050 Quitman, Houston, TX 77009, 713/236-1410
Houston Community College System, 22 Waugh Drive, Houston, TX 77270, 713/868-0704
Houston Community College System, Welch Community Education Center, 11544 S. Gessner, Houston, TX 77071, 713/995-6133
Immigration Counseling Center, 945 Lathrop, Houston, TX 77020, 713/924-6045
International Community Services, 1112 Kipling Street, Houston, TX 77006, 713/521-9083
Lutheran Social Services of Texas, 3131 West Alabama, Suite 124, Houston, TX 77098, 713/521-0110
Private Immigration Agency, Inc., 7038 Harrisburg St., Houston, TX 77011, 713/928-7038
Refugee Service Alliance, 2808 Caroline Street, Houston, TX 77004, 713/655-1720
SER-JOBS For Progress, 2150 West 18th Street, Suite 300, Houston, TX 77008, 713/868-1144
Soldier of the Cross, 10526 Dodson St., Houston, TX 77093, 713/694-3336
Southwestern Union Conference of Seventh Day Adventists, 7318 East Freeway, Houston, TX 77020, 713/681-5651
St. Matthew's Episcopal Church, 6635 Alder St., Houston, TX 77081, 713/667-0775
St. Timothy's Episcopal Church, 13307 Granada St., Houston, TX 77015, 713/451-3193
Temple Poder Y Gozo, Inc., 15620 Sellers Road, Houston, TX 77060, 713/591-6716
Texas Triangle Organizing Committee, AFL-CIO, Carpenters Local 213, 2600 Hamilton, Houston, TX 77004, 713/659-7851
World Relief, Gethsemane Baptist Church, 1221 Dewey Street, Houston, TX 77015, 713/759-6827
World Relief, Broadway Baptist Church, 7300 Lawndale, Houston, TX 77012, 713/923-6621
World Relief, 2800 San Jacinto, Suite 301, Houston, TX 77002, 713/759-6827
World Relief, Westview Baptist Mission Center, 6711 Long Point Rd., Houston, TX 77055, 713/680-0525
Lampasas County Ministerial Alliance, P.O. Box 611, Lampasas, TX 76550, 512/556-6131
Catholic Social Services, 402 Corpus Christi Street, Laredo, TX 78040, 512/724-3604
SER-Family Learning Center, 3420 Sanders & Montgomery, Laredo, TX 78040, 512/724-9277
Catholic Family Services, 123 North Avenue N., Lubbock, TX 79401, 806/765-5475
Spanish Mission of First Baptist Church of Lufkin, TX, 106 Bremond Street, Lufkin, TX 75901, 409/634-3386
Immigration Services Consultant, 1206 Ash St., McAllen, TX 78501, 512/631-9807
Holy Family Episcopal Church, 410 Lincoln Street, McKinney, TX 75069, 214/542-7774
Catholic Diocese of San Angelo, 1203 N. Big Spring, P.O. Box 3338, Midland, TX 79702, 915/683-0051
Permian Basin, Lulac Council #4434, 1301 Keith, P.O. Box 1421, Midland, TX 79702, 915/683-6152
Iglesias Bautista Christiana of Fredonia, Hill Baptist Church, 1917 South Fredonia, Nacogdoches, TX 75961, 409/569-8336
Nacogdoches Adult Learning Center, Inc., P.O. Box 1840, 2424 North Pecan Street, Suite 103, Nacogdoches, TX 75963, 409/564-8789
Odessa Basin Lions Club, 1013 Cooper Street, Odessa, TX 79761, 915/332-7581
Organizacion De Servicios Comuntarios, 1300 South Lee, Odessa, TX 79761, 915/332-4152
First Hispanic Baptist Church, P.O. Box 1636, 303 Hufsmith, Palestine, TX 75801, 214/723-3853
Pasadena Apostolic Church, 1037 Joseph Street, Pasadena, TX 77506, 713/472-4900; 473-4647; 477-1179
St. Peter's Episcopal Church, 705 Williams St., Pasadena, TX 77506, 713/473-8090
Partnership For Human Development, 1924-26 Procter, Port Arthur, TX 77640, 409/983-4586
Julia Grimaldo Herrera, 1640 S. Chadbourne, San Angelo, TX 76903, 915/655-5495
Catholic Services For Immigrants, 2903 W. Salinas, San Antonio, TX 78207, 512/432-6091
Diana Q. Montoya, Rt. 12 Box 352-A, 11895 Donop Road, San Antonio, TX 78223, 512/633-2651
LULAC State Amnesty Center, Pan American League Homes, 143 N.W. 36th Street, San Antonio, TX 78237, 512/435-0172
San Antonio Literacy Council, 1101 W. Woodlawn, San Antonio, TX, 512/732-9711
Santa Fe Episcopal Church, 1108 Brunswick, San Antonio, TX 78211, 512/923-0822
SER-JOBS For Progress, 525 Cupples Road, San Antonio, TX 78237, 512/434-9491
Diocese of Brownsville, Catholic Social Service, 400 Nebraska Street, P.O. Box 1490, San Juan, TX 78589, 512/787-1434
First Baptist Church Spanish Mission, 301 West Locust, P.O. Box 277, Tyler, TX 75710, 214/592-0252
Iglesia Nueva Vida, 719 W. Bow, Tyler, TX 75702, 214/592-3905
SER-Family Learning Center, 525 Geraldine, Uvalde, TX 78801, 512/278-2940

Office of Hispanic Ministry, Catholic Diocese of Victoria, 1505 E. Mesquite Lane, P.O. Box 4708, Victoria, TX 77903, 512/573-0828
Grace Episcopal Church, 701 S. Missouri St., Weslaco, TX 78596, 512/968-7014
Immigration Services Consultant, 602 E. Sixth Street, Suite 1, Weslaco, TX 78596, 512/968-8484
Southwestern Union Conference of Seventh Day Adventists, 1015 S. Bridge Avenue, Weslaco, TX 78596, 512/969-3131
First Baptist Church Wichita Falls, 1200 9th St., Wichita Falls, TX 76301, 817/723-2764
Christian Koinonia, Inc., Assembly of God, 108 Sharon Lane, P.O. Box 2473, Wichita Falls, TX 76304, 817/723-0199

Qualified Designated Entities Eastern Region

November 3, 1987.

Connecticut

International Institute of Connecticut, 670 Clinton Avenue, Bridgeport, CT 06605, 203/336-0141
Catholic Charities, Migration and Refugee Services, 125 Market Street, Hartford, CT 06103, 203/548-0059
International Institute, 274 Broad Street, New Britain, CT 06053, 203/225-6906
International Institute, St. John's Episcopal Church, Main and Grove St., Stamford, CT 06901, 203/559-0125

District of Columbia

Association of Farmworker Opportunity Programs, 408 Seventh Street, SE., Washington, DC 20003, 202/543-3443
Ayuda, Inc., 1736 Columbia Road, NW., Washington, DC 20009, 202/387-4848
Catholic Charities, Archdiocese of Washington, DC, 1618 Monroe St., NW., Washington, DC 20010, 202/332-8666
Catholic Charities Outreach, Spanish Catholic Center, 2700 27th St., NW., Washington, DC 20008, 202/483-1520
Chinatown Service Center of the Chinese Community Church, 1007 L Street, NW., Washington, DC 20001, 202/289-3611
Congress of Racial Equality, National Press Building, 529 14th St. NW., Suite 1020, Washington, DC 20036, 202/737-5030
Episcopal Mission San Juan, 5711 16th Street, NW., Washington, DC 20011, 202/723-7555; 5588
Ethiopian Community Center, Inc., 2607 24th Street, NW., Suite 3, Washington, DC 20008, 202/328-3102, 3103, 3150
Georgetown University Center for CIPRA, Loyola Hall, 2nd Floor, P.O. Box 2298, Hoya Station, 1242 35th Street, NW., Washington, DC 20057, 202/625-6627
Indochina Resource Action Center, 1118 Twenty Second Street, NW., Suite 300, Washington, DC 20037, 202/223-8866
Indochinese Community Center, 1628 16th Street, NW., Washington, DC 20009, 202/462-4330
Korean Community Service Center, 7720 Alaska Avenue, Washington, DC 20012, 202/882-8270
Legalization Assistance Center for Undocumented Aliens, 1118 22nd Street, NW., Suite 300, Washington, DC 20037, 202/223-0283, 1811
Lutheran Social Service, 2635 16th Street, NW., Washington, DC 20009, 202/265-0110, 0111
Lutheran Social Services, 5121 Colorado Avenue NW., Washington, DC 20011, 202/829-7640
Mary Margaret Cowan, 2439 18th Street, NW., 2nd Floor, Washington, DC 20009, 202/234-9085
National Council for the Church and Social Action, Inc. (ADMINISTRATIVE OFFICE ONLY), 4891 MacArthur Blvd., NW., Washington, DC 20007, 202/333-8761
Organization of Chinese American Women, 1525 "O" Street, NW., Washington, DC 20005, 202/328-3185
SER-JOBS For Progress (MCIP), Irving and 16th Streets, NW., Washington, DC 20001, 202/673-3551
St. Margaret's Episcopal Church, 1820 Connecticut Ave. NW., Washington, DC 20008, 202/232-2995
Travelers Aid Society of Washington, DC, 1015 12th Street, NW., Washington, DC 20005, 202/347-0101
United States Catholic Conference (ADMINISTRATIVE OFFICE ONLY), 1312 Massachusetts Ave., NW., Washington, DC 20005, 202/659-3175; 6625; 6636
United States Catholic Conference (ADMINISTRATIVE OFFICE ONLY), 1221 Massachusetts Avenue, NW., Washington, DC 20005, 202/659-6625

Delaware

Delmarva Rural Ministries, 25 Wyoming Avenue, Dover, DE 19901, 302/678-2000
Service for Foreign Born, Dover Air Force Base, Personnel Building, Room 120, Dover, DE 19901, 302/678-6389, 7011
Catholic Social Services, 1714 W. 9th St., 2nd Floor, Wilmington, DE 19805, 302/654-6460
Service for Foreign Born, Delaware Department of Justice, State Office Building, 820 N. French Street, 7th Floor, Wilmington, DE 19801, 302/571-3047

Massachusetts

Catholic Archdiocese of Boston (ADMINISTRATIVE OFFICE ONLY), Catholic Charities, 150 Causeway St., Room 809, Boston, MA 02114, 617/723-9078; 24 HOUR HOTLINE 617/720-3440
Chinese American Civic Association, 90 Tyler Street, Boston, MA 02111, 617/426-9492
Ethiopian Family Center, Inc., 140 Clarendon St., Suite 601, Boston, MA 02116, 617/424-9305
International Institute of Boston, 287 Commonwealth Avenue, Boston, MA 02115, 617/536-1081
World Relief, Emmanuel Gospel Center, 2 San Juan Street, P.O. Box 18245, Boston, MA 02118, 617/262-2265
Cambridge Haitian American Association (CHAMA), 105 Windsor St., Cambridge, MA 02139, 617/492-6622
SER-JOBS For Progress, 164 Bedford, Fall River, MA 02720, 617/676-1916
America's Grateful Immigrants, Inc., 268-70 Lawrence St., Lawrence, MA 01942, 617/686-4377
International Institute of Greater Lawrence, 454 Canal Street, Lawrence, MA 01840, 617/687-0981
International Institute of Lowell, 79 High Street, Lowell, MA 01852, 617/459-9031
World Relief, 5 Pleasant St., Malden, MA 02148, 617/322-9276
Sommerville Portuguese American League, 12 Union Square, Sommerville, MA 02143, 617/628-6065
Catholic Diocese of Springfield, Refugee Resettlement Program, 11 Pearl Street, Springfield, MA 01103, 413/732-6365
Catholic Charities, Diocese of Worcester, Inc., 15 Ripley Street, Worcester, MA 01610, 617/798-0191

Maryland

Carribbean Cultural Assn. of Baltimore, Inc., 2520 N. Charles St., Suite 200, Baltimore, MD 21218, 301/467-3252
Catholic Archdiocese of Baltimore Hispanic Center, 10 South Wolfe Street, Baltimore, MD 21231, 301/522-2668
Episcopal Social Ministries, 105 W. Monument Street, Baltimore, MD 21201, 301/837-0300
Delmarva Rural Ministries, 204 S. Main Street, Federalsburgh, MD 21632, 301/754-5748
Catholic Charities, Spanish Catholic Center, 1015 University Blvd., Silver Spring, MD 20903, 301/431-3773
Catholic Charities Outreach, Archdiocese of Washington, DC, 1504 St. Camillus Dr., Silver Spring, MD 20903, 301/434-5980; 5983
Korean American Community Services, Inc., 969 Thayer Avenue, Suite 3, P.O. Box 7014, Silver Spring, MD 20907, 301/589-6470; 01
Maryland Vietnamese Mutual Associations, Inc., 8513 Piney Branch Road, Silver Spring, MD 20901, 301/565-7675
Soldier of the Cross of Christ, Evangelical International Church, 724 Silver Spring Avenue, Silver Spring, MD 20910, 301/588-8738
The Spanish Speaking Community of Maryland, 8519 Piney Branch Rd., Silver Spring, MD 20901, 301/587-7217,18

Maine

Catholic Charities, 107 Elm Street, Portland, ME 04101, 207/871-7437

New Hampshire,

Episcopal Legalization Center, 60 Walnut Ave, North Hampton, NH 03862, 603/964-6671

New Jersey

Catholic Social Services, Migration and Refugee Services, 3098 Pleasant, Camden, NJ 08105, 609/541-1145,1148
Catholic Family and Community Service, 44 Lincoln Ave., Dover, NJ 07801, 201/361-3352
Morris County Organization For Hispanic Affairs, 95-97 Bassett Highway, Dover, NJ 07801, 201/366-4770,1131
Caribbean Haitian Council, 410 Central Avenue, East Orange, NJ 07018, 201/678-5059
Catholic Community Service, 715 Elizabeth Ave., Elizabeth, NJ 07201, 201/352-9700
Haitian Advancement Association, 64 W. Grand St., Elizabeth, NJ 07202, 201/352-8477
Red Cross of Eastern Union County, 203 W. Jersey Street, Elizabeth, NJ 07202, 201/353-2500
Church of the Good Shepherd, 1578 Palisade Avenue, Fort Lee, NJ 07024, 201/842-1381

World Relief, Latin American Association, 304 North 4th Street, Harrison, NJ 07029, 201/483–5469
Catholic Community Service, 380 Monmouth St., Jersey City, NJ 07302, 201/653–6515
International Institute of New Jersey, 880 Bergen Avenue, Jersey City, NJ 07306, 201/653–3888
Catholic Community Services, One Summer Avenue, Newark, NJ 07104, 201/482–0100; (HOTLINE) 484–8763
National Council for the Church and Social Action, Inc., 124 North 7th Street, Newark, NJ 07102, 201/434–5301
Catholic Community Service, 70 Main St., Orange, NJ 07050, 201/673–6911
Hispanic Promotion Center, Inc., 439 Main Street, Orange, NJ 07050, 201/672–9583
Hispanic Institute for Research and Development, 368 Paramus Road, Paramus, NJ 07652, 201/447–9477
Catholic Family and Community Services, Italian Catholic Center, 71 Cianci, St., Paterson, NJ 07501, 201/278–4955
Catholic Family and Community Services, 10 Jackson Street, Paterson, NJ 07501, 201/279–7100
National Council for the Church and Social Action, Inc., 2–4 Auburn Street, Paterson, NJ 07501, 201/523–8551
Trinity Episcopal Church, 86 Marion Street, Patterson, NJ 07522, 201/956–9718
Catholic Diocese of Metuchen, 103 Center St., Perth Amboy, NJ 08861, 201/826–6616
Lutheran Social Services, Roman Catholic Immigration Program, 189 S. Broad St., P.O. Box 30, Trenton, NJ 08601–0036, 609/393–3440.2
Catholic Community Service, 512 Palisades Ave., Union City, NJ 07087, 201/861–1684
Catholic Community Service, 530 35th St., Union City, NJ 07087, 201/866–3208
North Hudson Community Action Agency, 507 26th Street, Union City, NJ 07087, 201/866–2255
New Jersey Farmworker Opportunities Division of Rural Opportunities, Inc., 535–537 Landis Ave., Vineland, NJ 08360, 609/696–1000

New York

International Center of the Capital Region, West Mall Office Plaza, 875 Central Avenue, Albany, NY 12206, 518/459–8812
Rural Opportunities, Inc., 151 Platt St., P.O. Box 24, Albion, NY 14411, 716/589–7027
Catholic Charities, Diocese of Rockville Center, 143 Schliegel Blvd., Amityville, NY 11701, 516/789–5235
Congress of Racial Equality, 12–06 36th Ave., Astoria, Queens, NY 11106, 718/361–7437
Federation of Italian American Societies of Queens, 29–21 21st Avenue, Astoria, NY 11105, 718/204–2444
Hellenic American Neighborhood Action Committee, Inc., 31–14 30th Avenue, Astoria, NY 11102, 718/728–3518
American Civic Association, 131 Front Street, Binghamton, NY 13905, 607/723–9419
Christ Episcopal Church, 155 Third Avenue, Brentwood, NY 11717, 516/273–9504
America's Grateful Immigrants, Inc., 1582 Jerome Avenue, Bronx, NY 10457, 212/901–0059
Hunts Point Presbyterian Church, 710 Coster Street, Bronx, NY 10474, 212/589–0059
Soldier of the Cross, 1451 Edward L. Grant Hwy., Bronx, NY 10452, 212/293–2765
World Relief, Joy Fellowship Church, 66 East Mt. Eden Avenue, Bronx, NY 10452, 212/583–9300
African-American Business Unlimited, 100 Broadway, P.O. Box 11–0805, Williamsburg Station, Brooklyn, NY 11211, 718/384–8846
America's Grateful Immigrants, Inc., 156 Hall Street, Brooklyn, NY 11205, 718/230–4514
Caribbean Immigrant Service Center, (ADMINISTRATIVE OFFICE ONLY), 94 S. Oxford Street, Brooklyn, NY 11217, 718/774–9806
Caribbean Women's Health Association, Inc., 244 Utica Avenue, Brooklyn, NY 11213, 718/625–0874
Caribbean/American Media Studios, Inc., 968 East 49th Street, Brooklyn, NY 11203, 718/778–8258
Catholic Migration Services, Inc., 75 Greene Avenue, P.O. Box "C", Brooklyn, NY 11202, 718/638–5500
Congress of Racial Equality, 1484 Flatbush Avenue, Brooklyn, NY 11210, 718/434–CORE
Congress of Racial Equality, 304–A Utica Avenue, Brooklyn, NY 11213, 718/773–3009
National Council for the Church and Social Action, Inc., 644–A Halsey Street, Brooklyn, NY 11233, 718/453–2466
Polish and Slavic Center, Inc., 176 Java Street, Brooklyn, New York 11222, 718/389–4937
Polish and Slavic Center, Inc., 119 Greenpoint Avenue, Brooklyn, NY 11222, 718/383–2360
South Side Community Mission, 280 Marcy Avenue, Brooklyn, NY 11211, 718/387–3803
St. Bartholomew's Episcopal Church, 1227 Pacific Street, Brooklyn, NY 11216, 718/467–8750
United Refugee Council, 285 Marcy Avenue, Brooklyn, NY 11211, 718/384–0429
World Relief, Clarendon Road Church/Haitian Penial Church, 3312 Clarendon Road, Brooklyn, NY 11203, 718/462–9670
Catholic Charities of Buffalo, 531 Virginia Street, Buffalo, NY 14202, 716/856–8189
International Institute of Buffalo, 864 Delaware Avenue, Buffalo, NY 14209, 716/883–1900
Concerned Citizens of Queens, 40–03 National St., Corona, NY 11368, 718/478–1600
World Relief, First Baptist Church, 42–15 Union Street, Flushing, NY 11355, 718/539–1863
National Council of Women of Ecuador, Inc., 98–08 Queen Blvd., Forest Hills, NY 11375, 718/784–1212
Congress of Racial Equality, 412 Old Country Road, Garden City, L.I., NY 11530, 516/741–5959
St. George's Episcopal Church, 319 Front Street, Hempstead, NY 11550, 516/483–2771; 489–0920
Rural Opportunities, Inc., 74 Vineyard Ave., Highland, NY 12528, 914/691–6100
Travelers Aid Society, 74–09 37th Ave., Jackson Heights, Queens, NY 11368, 212/577–7700
St. Stephen's Episcopal Church, 89–26 168th Street, Jamaica, NY 11432, 718/523–1917
Community Missions, Inc., Camaraderie Social Club, 160 Niagara Street, Lockport, NY 14094, 716/433–1086
Niagara County Migrant and Rural Ministry, Inc., 5465 Upper Mountain Road, Lockport, NY 14094, 716/433–4070
Rural Opportunities, Inc., Rd. #2 Box 522, New Hampton, NY 10958, 914/374–3000
American Council for Nationalities Services, 95 Madison Avenue, New York, NY 10016, 212/532–5858
Asociaciones Dominicanas, Inc., 147 W. 42nd St., Room 1108, Mail Box #20, New York, NY 10032, 212/302–4500
Association for the Preservation and Development of the American Negro Spiritual (APDANS), 219 West 137th Street, New York, NY 10030, 212/283–6588
Catholic Archdiocese of New York, Office For Legalization Services, 185 Avenue D, New York, NY 10009, 212/460–8377
Chinatown Planning Council, 13 Elizabeth Street, New York, NY 10013, 212/431–7800
Congress of Racial Equality, 2309 7th Avenue, New York, NY 10030, 212/690–4076
Congress of Racial Equality, 4128 White Plains Rd., New York, NY 10466, 212/652–0949
Congress of Racial Equality, 211 Sherman Ave., New York, NY 10033, 212/567–0033
Episcopal Mission Society, 14 E. 109th Street, New York, NY 10029, 212/348–5261
Ethiopian Community Mutual Assistance Association, 225 Park Avenue South, New York, NY 10003, 212/475–2238
Indochina Resource Action Center, The Vietnamese American Cultural Org., Inc., 213 W. 30th St., 3rd Floor, New York, NY 10001, 212/947–2757; 58
International Immigrants Foundation, 130 West 42nd Street, 17th Floor, New York, NY 10036, 212/221–7255
International Ladies Garment Workers Union, Immigration Project, 275 7th Avenue, 8th Floor, New York, NY 10001, 212/627–0600
Japanese American Social Service, Inc., 275 7th Avenue, 12th Floor, New York, NY 10001, 212/255–1881
Lutheran Immigration and Refugee Services, 360 Park Avenue South, New York, NY 10010, 212/532–6350
Movimiento De Orientation Al Emigrante, Inc., 557 W. 156th St., P.O. Box 430, Inwood Station, New York, NY 10034, 212/283–1166; 1179
Multi-Cultural Immigration Center, Inc., 689 Columbus Avenue, Suite 8–C, New York, NY 10025 , 718/492–2459; 212/663–0753
National Council for the Church and Social Action, Inc., 2297 2nd Avenue, New York, NY 10035, 212/860–2075
National Council for the Church and Social Action, Inc., 137 West 116th Street, New York, NY 10026, 212/662–2900
Polish and Slavic Center, Inc., 119 East 15th Street, New York, New York 10013, 212/260–2606
Polonia Organizations League, Inc., 139 Fulton Street, Room 803, New York, NY 10038, 212/267–0802, 0803, 1718 or 788–1533
Presiding Bishop's Fund, The Episcopal Church Center, 815 Second Avenue, New York, NY 10017, 212/867–8400
St. Luke Lutheran Church, 308 W. 46th St., New York, NY 10036, 212/307–1388

United Haitian Association, Inc., 2700 Broadway, New York, NY 10025, 212/749-6985
United States Catholic Conference (Administrative Office only), Migration and Refugee Services, 902 Broadway, 8th Floor, New York, NY 10010, 212/614-1226
White Cross Rescue Mission, Inc., 401 Broadway, Room 1206A, New York, NY 10013, 212/226-3332
World Relief, Chinese Christian Herald Crusade, 22 Catherine Street, New York, NY 10038, 212/227-9711
World Relief, P.O. Box 7420, Grand Central Station, New York, NY 10163-6029, 212/764-6158
Lydia Parmeter, 82 West Street, Newburgh, NY 12550, 914/561-1614
Rural Opportunities, Inc., 346 Broadway, Newburgh, NY 12550, 914/562-7350
Community Missions, Inc., 1570 Buffalo Avenue, Niagara Falls, NY 14302, 716/285-3403
Catholic Charities, 716 Caroline Street, P.O. Box 296, Ogdensburgh, NY 13669, 315/393-2660
Rural Opportunities, Inc., 201 West First Street, Oswego, NY 13126, 315/342-4112
Catholic Charities, 151 S. Catherine St., Plattsburgh, NY 12901, 518/561-0470
Catholic Family Center, 50 Chestnut Street, 5th Floor, Rochester, NY 14604, 716/546-7220
First Spanish Baptist Church, 1100 English Road, Room 735, Rochester, NY 14615, 716/229-4124; 647-9943
Rural Opportunities, Inc., 339 East Avenue, Suite 305, Rochester, NY 14604, 716/546-7180
Rural Opportunities, Inc., 32 W. Main St., Sodus, NY 13551, 315/483-9151
Caribbean Women's Health Association, Caribbean Immigrant Service Center, 200-08 Murdock Avenue, St. Albans, NY 11421, 718/217-7700
George Papadopoulos, 42-18 43rd Ave., Sunnyside, NY 11104, 718/361-0700
Americanization League of Syracuse and Onondaga County, 725 Harrison Street, Room 209, Syracuse, NY 13210, 315/425-4120
Catholic Charities, 1654 W. Onondaga Street, Syracuse, NY 13204, 315/424-1810
Episcopal Church, 1507 James Street, Syracuse, NY 13203, 315/474-1261
Community Missions, Inc., Canal View, 416 Sweeney Street, Tonawanda, NY 14120, 716/695-0700
Westchester Hispanic Coalition, Inc., 200 Mamaroneck Avenue, White Plains, NY 10601, 914/948-8466
Spanish Community Progress Foundation, Inc., 201 Palisade Avenue, Yonkers, NY 10703, 914/423-2400
United Slavonian American League, Inc., United Service Center, 240 McLean Avenue, Yonkers, NY 10705, 914/237-5927

Pennsylvania

Catholic Social Agency, 928 Union Blvd., Allentown, PA 18103, 215/435-1541
John J. Gaffney and the Ryan Agency, Inc., Immigration Information Services, 2701 West Chester Pike, Broomall, PA 19008, 215/359-1350
Pennsylvania Farmworker Opportunities, Division of Rural Opportunities, Inc., 310 Lortz Avenue, Chambersburg, PA 17201, 717/264-2839
International Institute, 330 Holland Street, P.O. Box 496, Erie, PA 16512, 814/452-3935
International Institute, 201 German Street, Erie, PA 16507, 814/454-3936
Minority Health Education Delivery System, MHEDS, 325 West 26th St., Erie, PA 16508, 814/453-6229; 4728
Pennsylvania Farmworker Opportunities, Division of Rural Opportunities, Inc., 104 No. Stratton St., Gettysburg, PA 17325, 717/334-2718
Catholic Charities, Diocese of Harrisburg, 1500 Herr Street, Harrisburg, PA 17103, 717/232-0568
Pennsylvania Farmworker Opportunities (Administrative office only), Division of Rural Opportunities, Inc., 107 North Front Street, Harrisburg, PA 17101, 717/232-1931
American Mushroom Institute, 907 E. Baltimore Pike, Kennett Square, PA 19348, 215/388-7806
La Comunidad Hispana, 219 Birch Street, Kennett Square, PA 19348, 215/444-4545, 1339
Nationalities Service Center, 10 S. Prince Street, Lancaster, PA 17603, 717/291-4454
Catholic Social Services, 222 N. 17th Street, Philadelphia, PA 19103, 215/587-3909
Lutheran Child and Family Services, 2900 Queen Lane, Philadelphia, PA 19129, 215/951-6850
National Council for the Church and Social Action, Inc., 318 West Johnson Street, Philadelphia, PA 19144, 215/844-4207; 842-9513
Nationalities Service Center, 1300 Spruce Street, Philadelphia, PA 19107, 215/893-8400
Philadelphia Refugee Service Center, 4047-49 Sansom Street, Philadelphia, PA 19104, 215/386-1298
George Papadopoulos, 2005 Garrick Dr., Pittsburgh, PA 15235, 412/243-8787; 391-6444
Catholic Social Service Agency, 138 N. 9th St., Reading, PA 19601, 215/374-4891
Pennsylvania Farmworker Opportunities, Division of Rural Opportunities, Inc., 130 N. 5th St., Reading, PA 19601, 215/376-6319
St. Mark's Lutheran Church, 10th and Windsor Sts., Reading, PA 19604, 215/373-1252
Pennsylvania Farmworker Opportunities, Division of Rural Opportunities, Inc., 10 S. Wayne Street, Westchester, PA 19348, 215/692-3374

Puerto Rico

Catholic Social Services, Archdiocese of San Juan, 201 San Jorge St., P.O. Box 8812, Santurce, P.R. 00910, 809/727-7373
Movimiento de Orientacion al Emigrante, Inc., Ave Ponce de Leon 1612, Portada 23, Idif Avianca 7th Piso, Santurce, PR 00907, 809/724-5240; 41

Rhode Island

SER-Jobs For Progress, Inc., 137 Washington St., Central Falls, RI 02863, 401/724-1820
Catholic Social Services, 433 Elmwood Avenue, Providence, RI 02907, 401/467-7200
International Institute of Rhode Island, Inc., 421 Elmwood Avenue, Providence, RI 02907, 401/461-5940

Virginia

Bahuddin Khan Khattak, 4105 N. Fairfax Dr., #104, Arlington, VA 22203, 703/243-4433
Casa San Miguel, St. George's Episcopal Church, 915 N. Oakland Street, Arlington, VA 22203, 703/525-8288
Catholic Diocese of Arlington, Hogar Hispano, 915 S. Wakefield Street, Arlington, VA 22204, 703/979-2640, 1705
Ethiopian Community Development Council, Inc., 3213 Columbia Pike, Suite 101, Arlington, VA 22204, 703/685-0510
Mutual Assistance Associations Consortium, Inc., 915 S. Wakefield Street, Arlington, VA 22204, 703/979-4254
Spanish Speaking Committee of Virginia, 2049 N. 15th Street, Suite 209, Arlington, VA 22201, 703/558-2128
Telamon Corporation, 609 Keen St., Suite F, Danville, VA 24540, 804/799-8107
Hispanos Unidos of Virginia, 6400 B Seven Corners Place, Falls Church, VA 22044, 703/533-9300
Korean Association of Greater Washington, DC, 3536 Carlin Springs Road, #11, Falls Church, VA 22041, 703/578-4525
Telamon Corporation, 3608 Campbell Ave., Lynchburg, VA 24501, 804/846-4100
Delmarva Rural Ministries, 7681 Hospital Road, Nassawodox, VA 23413, 804/442-5717
Catholic Diocese of Richmond, 811 Cathedral Place, Richmond, VA 23220, 804/355-4559 800/552-3952
Telamon Corporation, 3018 W. Clay St., Ste. 204, Richmond, VA 23230, 804/358-9109
Telamon Corporation, 500 Wilborn Ave. South Boston, VA 24592, 804/572-8993
Telamon Corporation, 234 W. Virginia Ave., South Hill, VA 23970, 804/447-7627
Frederick County Fruit Growers, Inc., 801 Fairmont Ave., P.O. Box 2735, Winchester, VA 22601, 703/667-1396
Frederick Episcopal Parish Legalization Center, 134-West Boscawen St., Winchester, VA 22601, 703/662-5843

Virgin Islands

Congress of Racial Equality, 60 Queen St., P.O. Box 821, Kingshill, Christiansted, St. Croix, V.I. 00850, 809/772-1031

Vermont

Vermont Refugee Resettlement Program, 59-63 Pearl Street, Burlington, VT 05401, 802/658-1120

West Virginia

Catholic Diocese of Wheeling-Charleston, Migration and Refugee Services, 1033 Quarrier St., Suite 105, Charleston, WV 25301, 304/343-1036

Qualified Designated Entities Western Region

November 3, 1987.

Arizona

Portable Practical Educational Preparation, Inc., 218 E. Florence Blvd, Casa Grande, AZ 85222, 602/622-3553
Portable Practical Educational Preparation, Inc., 1100 White House Canyon Rd., P.O. Box 469, Sahuarita, AZ 85629, Continental, AZ 85622, 602/791-2072

Portable Practical Educational Preparation, Inc., 1107 G. Ave., Douglas, AZ 85607, 602/364-4405
Lutheran Social Ministry, 14010 North El Mirage Road, El Mirage, AZ 85335, 602/937-0500
Portable Practical Educational Preparation, Inc., 100 E. 7th Street, Eloy, AZ 85231, 602/466-7376
SER-JOBS for Progress, 6010 West Northern Avenue, Glendale, AZ 85301, 602/934-3231
Indian Trails Mission Inc., 137 S. McDonald, #17, Meza, AZ 85202, 602/964-8721
Joe V. Dupuy, 131-A Terrace Ave., Nogales, AZ 85621, 602/287-2962
Alfred F. Quinones, 1012 8th St., P.O. Box 1396, Parker, AZ 85344, 602/669-2446
Catholic Social Services of Phoenix, 1825 West Northern Avenue, Phoenix, AZ 85021, 602/997-6105
Central American Refugee Project, 6802 S. 24th St., Phoenix, AZ 85040, 602/253-3657
Central American Refugee Project, 1407 N. 2nd Street, Phoenix, AZ 85004, 602/253-3657
Chicanos Por La Causa, Inc. (Administrative Office Only), 1112 East Buckeye Road, Phoenix, AZ 85034, 602/627-2042
Friendly House, 802 S First Avenue, Phoenix, AZ 85003, 602/257-1870
Wesley Community Center, 1300 South Tenth Street, Phoenix, AZ 85034, 602/252-5609
Martin Luther King Jr, Farm Workers Fund, P.O. Box 256, United Farm Workers Fund, San Luis, AZ, 602/627-8208
Portable Practical Educational Preparation, Inc., 10455 W. B Street, San Luis, AZ 85349
Chicanos Por La Causa, Inc., 336 W. Main Street, P.O. Box 517, Somerton, AZ 85350, 602/627-2042
Phoenix ALFA, C/O Central Citrus Association, 1224 W. Fairmont, P.O. Box 27508, Tempe, AZ 85282, 602/967-8693; 966-1770
Portable Practical Educational Preparation, Inc., 9310 W. Taylor, Unit II, Room 21, Tolleson, AZ 85353
Catholic Social Services, 21 East Speedway, P.O. Box 5746, Tucson, AZ 85703-0746, 602/623-0344
Center For Employment Training, Inc., Tucson, 2750 South Fourth Ave., Tucson, AZ 85725, 602/884-9143
Lutheran Social Ministries, 1222 N. Campbell, Tucson, AZ 85719, 602/622-6700
National Business Management, 698 West Irvington Rd., Suite 7, Tucson, AZ 85714, 602/889-5300
Portable Practical Educational Preparation, Inc., 806 E. 46th Street, Tucson, AZ 85713, 602/622-3553
Portable Practical Educational Preparation, Inc., 707 N. Fremont, Willcox, AZ 85643, 602/622-3553
Catholic Social Service, 1700 First Ave., Yuma, AZ 85364, 602/783-6226
Center For Employment Training, Inc., Yuma, 301 South Main, Yuma, AZ 85364, 602/782-4787
George R. Lujan, 442 W. 24th St., Ste. 13, Yuma, AZ 85364, 602/782-1643
Projecto Son Pueblo, Faith Lutheran Church, 2215 South 8th Ave., Yuma, AZ 85364, 602/783-5794
SER-JOBS for Progress, 285 Main Street, P.O. Box 352, Yuma, AZ 85364, 602/783-4414

California

Center For Employment Training, Inc., 1800 W. Ball Rd., Anaheim, CA 92804, 714/991-1691
Martin Luther King Jr., Farm Workers Fund, 224 Madera Street, Avenal, CA 93204, 209/386-9592
Diocese of Fresno/Bakersfield, Refugee Migration and Hispanic Services, 310 Baker St., Bakersfield, CA 93305, 805/325-7751
Kern ALFA, 2724 L Street, P.O. Box 2425, Bakersfield, CA 93303, 805/323-1492
Metropolitan Analysis and Retrieval Systems, Inc., 40 Bernard St., Bakersfield, CA 93305, 805/325-8116
Mexican American Opportunity Foundation, 1101 East Belle Terrace, Bakersfield, CA 93307, 805/398-3071
Organization for the Legal Advancement of Raza, Inc., 331 Truxton Ave., Bakersfield, CA 93301, 805/324-1667
World Relief, Primera Iglesia Bautista, 2657 Niles, Bakersfield, CA 93306, 805/324-4020
United Council of Spanish Speaking Organizations, 120 Oak Street, Brentwood, CA 94513, 415/634-6144
Metropolitan Immigration Centers of America, 1919 Manolia Blvd., Burbank, CA 91506, 818/841-1090
Martin Luther King Jr., Farm Workers Fund, 221 W. 2nd Street, Calexico, CA 92231, 619/357-6270
Portable Practical Educational Preparation, Inc., 506 4th Street, Calexico, CA 92231, 619/357-6875
SER-Jobs for Progress, Inc., 524 2nd Street, Calexico, CA 92231
International Assistance, 21054 Sherman Way, Suite 265, Canoga Park, CA 91303, 818/716-0188
Martin Luther King Jr., Farm Workers Fund, 1639 Sixth Street, Coachella, CA 92236, 619/398-6881
CHDC-Migrant, 2505 Esplanda, Suite 7 and 8, Chico, CA 95926, 916/342-7089
SER-JOBS For Progress, 815 Third Avenue, Suite 321, Chula Vista, CA 92011, 619/352-8514
Catholic Charities, Diocese of San Bernardino, 1427 N. La Cadena, Colton, CA 92324, 714/370-1488; 1489
Patricia M. Vasquez, 1815 McKinley Avenue, Corning, CA 96021, 916/824-1043
Southern ALFA, C/O Orangeheights Citrus Assn., 213 Pearl Street, Corona, CA 91719, 714/737-4840
World Relief, Templo Nueva Vida, 1717 Via Del Rio, Corona, CA 91720, 714/735-2581
National Council for the Church and Social Action, Inc., 243 Miriam Street, Daly City, CA 94014, 415/282-7988
Martin Luther King Jr., Farm Workers Fund, Garces and Metler Streets, Delano, CA 93215, 805/725-9707
South Central Farmers Committee, 1224 Jefferson Street, Suite 24, P.O. Box 669, Delano, CA 93216, 805/725-9492
Central California Farmers Association, P.O. Box 627, 338 West El Monte Way, Dinuba, CA 93618-0627, 209/591-4860
International Assistance, 4065 E. Whittier Blvd., Suite 204, East Los Angeles, CA 90023, 213/264-7001
Immigrant Legal Resource Center, 1359 Bay Road, East Palo Alto, CA 94303, 415/853-1600
Catholic Community Services, Diocese of San Diego, 492 Main St., El Centro, CA 92243, 619/352-5371
Center For Employment Training, Inc., 380 South Third St., El Centro, CA 92243, 619/353-5450
Economic Opportunity Committee of Imperial County, 645 Main Street, El Centro, CA 92243, 619/352-8521
SER—JOBS For Progress, 155 West Main Street, El Centro, CA 92243, 619/352-8514
U.S. Consultation Services, 2112 Hwy 86, Suites 4 & 5, El Centro, CA 92243, 619/353-3941
Los Angeles County, Federation of Labor, AFL-CIO, IBEW Local 1710, 3552 Lexington Ave., El Monte, CA 91731, 818/401-0111
Asistencia de Inmigracion Del Condado Norte, 935 Mission Ave., Escondido, CA 92025, 619/489-8172
Catholic Community Services, Diocese of San Diego, 1953 East Valley Parkway, Escondido, CA 92025, 619/743-2023
North County Centro, Inc., 111 North Ivy Street, Escondido, CA 92025, 619/746-3920
San Diego County ALFA, 1670 East Valley Parkway, Escondido, CA 92027, 619/489-0347
CHDC-Migrant, 843 Jefferson St., Fairfield, CA 94533, 707/426-5636
Central Valley Opportunity Center, 1572 10th St., Suite F, Firebaugh, CA 93622, 209/659-1454
Episcopal Church, 3323 E. Belmont St., Fresno, CA 93702, 209/485-3308
Fresno County ALFA, 1274 West Hedges, Fresno, CA 93728, 209/268-2532
Lao Ethnic Association, 3233 Mayfair Blvd., Fresno, CA 93703, 209/233-6528
Metropolitan Analysis and Retrieval Systems, Inc., 103 West Olive, Fresno, CA 93701, 209/266-0658
SER-Jobs For Progress, 2125 Merced Street, Fresno, CA 93721, 209/237-5555
World Relief, First Hispanic Church, 1304 Mariposa St., Fresno, CA 93706, 209/268-4833
St. Anselm's Amnesty Center, 13091 Galway St., Garden Grove, CA 92644, 714/530-0832; 0833
World Relief, 13071 Brookhurst, Suite 140, Garden Grove, CA 92643, 714/530-0930
Loving Shepherd Lutheran Church, 14517 Crenshaw Boulevard, Gardena, CA 90249, 213/676-8804
World Relief, Bethesda Presbyterian Church, 14404 S. Crenshaw Blvd., Gardena, CA 90249, 213/217-0034; 0035
Center for Employment Training, Inc., 8111 "B" Swanston Ln, Gilroy, CA 95020, 408/842-6484
Catholic Charities, 400 East Lomita Ave., Glendale, CA 91205, 818/247-4052
Community Action Commission of Santa Barbara County, Inc., 5681 Hollister Avenue, Goleta, CA 93117, 805/964-8857
Martin Luther King Jr., Farm Workers Fund, 244 El Camino, Greenfield, CA 93927, 408/674-2090; 2922
Grower-Shipper Vegetable Assn. of Santa Barbara and San Luis Obispo Counties, 245 Obispo Street, P.O. Box 10, Guadalupe, CA 93434, 805/343-2215

San Mateo County Farm Bureau, 765 Main Street, Half Moon Bay, CA 94019, 415/726-4485
Metropolitan Analysis and Retrieval Systems, Inc., 718 N. 11th Ave., Suite D, Hanford, CA 93230, 209/584-2616
SER-Jobs For Progress, Inc., 3800 W. El Segundo Blvd., Ste. 203, Hawthorne, CA 90250, 213/970-0826
Center for Employment Training, Inc., 597 C St., Hayward, CA 91541, 415/537-8400
Martin Luther King Jr., Farm Workers Fund, 840 East Street, Hollister, CA 95023, 408/674-2090; 637-2727
International Assistance, Imperial Savings Building, 2650 Zoe Ave., 3rd Floor, Huntington Park, CA 90255, 213/585-0764
Los Angeles County Bar Assn., Amnesty Legal Assistence Center, 5600 Pacific Blvd., Suite 207, Huntington Park, CA 90255, 213/587-7153; 7155
Metropolitan Analysis and Retrieval Systems, Inc., 2671 Flower St., Huntington Park, CA 90255, 213/583-5279
Private Immigration Service, 2407 Randolph St., Huntington Park, CA 90255, 213/582-9871
St. Clement's Episcopal Church, 6909 Rugby Avenue, Huntington Park, CA 90255, 213/585-7113
Center for Employment Training, Inc., 44-105F Jackson Ave., Indio, CA 92201, 619/342-3929
SER-Jobs for Progress, Inc., 82365 Highway 111, Suite 112, Indio, CA 92201, 619/342-7712
Metropolitan Immigration Centers of America, 3120 W. 108th St., Inglewood, CA 90303, 213/671-6345
Martin Luther King Jr., Farm Workers Fund, P.O. Box 123, Keene, CA 93531, 805/822-5571
Lake County ALFA, 65 Soda Bay Road, Lakeport, CA 95453, 707/263-8219
San Juan Macias Orientation Immigration Center, 11920½ Foot Hill Blvd., Lakeview Terrace, CA 91342, 818/896-1156
Martin Luther King Jr., Farm Workers Fund, 10913 Main Street, Lamont, CA 93241, 805/845-2245
Martin Luther King Jr., Farm Workers Fund, 705 Eight Street, Livingston, CA 95334, 209/394-8212
Angelica Lutheran Church, 1345 S. Burlington Avenue, Los Angeles, CA 90006, 213/382 6183
Armenian Evangelical Social Service Center, 5250 Santa Monica Blvd., Suite 204, Los Angeles, CA 90029, 213/664-1137
Catholic Charities, Holy Cross, 4705 S. Main St., Los Angeles, CA 90304, 213/235-3515
Catholic Charities, Cathedral of St. Vibiana, 114 E. Second St., Los Angeles, CA 90012, 213/620-5705
Catholic Charities, 3772 E. Third St., Los Angeles, CA 90063, 213/268-9502
Catholic Charities, Archdioces of Los Angeles, 1400 9th Street, Los Angeles, CA 90015-0095, 213/251-3465; 620-8507
Center for Employment Training, Inc., 2947 East 44th St., Los Angeles, CA 90058, 213/582-9789
Congress of Racial Equality, 3919 West Jefferson Blvd., Los Angeles, CA 90016, 213/298-8777
Congress of Racial Equality, 1528 Martin Luther King Blvd., Los Angeles, CA 90062, 213/298-8777
Economic and Employment Development Center, 1908 Beverly Boulevard, Suite 200, Los Angeles, CA 90057, 213/413-4859
Immigration Amnesty Service, Inc., 132 West First Street, #224, Los Angeles, CA 90012, 213/613-1250; 1295
International Assistance, 2113 Sunset Blvd., Suite 3, Los Angeles, CA 90026, 213/484-1881
International Ladies Garment Workers Union, Immigration Project, 675 S. Park View, Los Angeles, CA 90057-3306, 213/380-5498
Korean Federation of Los Angeles, Inc., 3069 W. 6th Street, Los Angeles, CA 90005, 213/389-3464
La Iglesia Evangelica, Inc., 3303 W. Sunset Blvd., Los Angeles, CA 90026, 213/661-5738
Los Angeles County, Federation of Labor, AFL-CIO, ACTWU Joint Board, 2501 S. Hill Street, Los Angeles, CA 90007, 213/738-8359
Los Angeles County, Federation of Labor, AFL-CIO, UFCW Local 770, 6801 E. Washington Blvd., Los Angeles, CA 90040, 213/725-6032
Los Angeles County (Administrative office only), Federation of Labor, AFL-CIO, 2130 W. 9th Street, Los Angeles, CA 90006, 213/381-5611
Los Angeles County Bar Association, Immigration Legal Assistance Project, 300 N. Los Angeles Street, Room 4349, Los Angeles, CA 90012, 213/485-1872
Luis A. Delgado, 3250 Wilshire Blvd., 1110, Los Angeles, CA 90010, 213/385-2909
Metropolitan Analysis and Retrieval Systems, Inc., 833 South San Pedro St., Los Angeles, CA 90014, 213/488-0101
Mexican American National Organization, MANO, 5252 Beverly Bl., Los Angeles, CA 90022, 213/728-2455
National Council for the Church and Social Action, Inc., 4156 S. Central Avenue, Los Angeles, CA 90011, 213/233-1927
SER-JOBS For Progress, 5331 East Olympic Boulevard, Suite 17, Los Angeles, CA 90022, 213/722-1218
SER-JOBS For Progress, 548 South Spring Street, Suite 330, Los Angeles, CA 90013, 213/622-6444
Trinity Episcopal Church, 650 N. Berendo Ave., Los Angeles, CA 90004, 213/662-7699
World Relief, Templo Victoria, 3729 E. Brooklyn Ave., Los Angeles, CA 90063, 213/269-8879; 8953
World Relief, Highland Park Church of God, 6209 Rubie Street, Los Angeles, CA 90012, 213/257-7561; 7595
World Relief, Eglesia Cristiana Antioquia, 3517 W. Adams Blvd., Los Angeles, CA 90018, 213/732-0908
Catholic Charities, St. Emydius, 10900 California Ave., Lynwood, CA 90262, 213/637-7095
Central Valley Opportunity Center, 502 North E Street, Madera, CA 93638, 209/674-0971
United Council of Spanish Speaking Organizations, 518 Main Street, Martinez, CA 94553, 415/229-2210
Paula S. Reynosa, 1332-D Street, Marysville, CA 95901, 916/742-6038
Lillian Uriaz, 335 Perkins, Mcfarland, CA 93250, 805/792-3913
Central Valley Opportunity Center, 1743 N. Ashby Rd., Merced, CA 95340, 209/383-2415
Merced County ALFA, 646 South Highway 59, P.O. Box 1232, Merced, CA 95341, 209/722-8088
Los Angeles County, Federation of Labor, AFL-CIO, 14800 Devonshire, Mission Hills, CA 91340, 818/891-1702
Central Valley Opportunity Center, 701 H Street, Modesto, CA 95354, 209/674-0971
Stanislaus ALFA, 1201 L Street, P.O. Box 3070, Modesto, CA 95354, 209/522-1754
Mexican American Opportunity Foundation, 670 Monterrey Pass Road, Monterey Park, CA 91754, 818/289-2000
World Relief, Grace Community Church, 13139 Saticoy Street, N. Hollywood, CA 91605, 818/982-5836; 5845
Martin Luther King Jr, Farm Workers Fund, 1606 Main Street, Napa, CA 94559, 707/253-0173.
Napa County Interfaith Ministry, 625 Randolph St., Napa, CA 94559, 707/253-7579
Tala de Wynter, Immigration Consultant, 811 Jefferson St., Suite 9, Napa, CA 94559, 707/255-8666
Metropolitan Immigration Centers of America, 24353 San Fernando Rd., Newhall, CA 91321, 805/259-2136
Western Grower's Association, P.O. Box 2130, Newport Beach, CA 92658, 714/863-1000
Center For Employment Training, Inc., 5725 East 14th St., Oakland, CA 94621, 415/261-0950
World Relief, Iglesias de Dios (Church of God), 2109 47th Ave., Oakland, CA 94601, 415/261-9672; 536-9776
SER-JOBS For Progress, Inc, North San Diego County, 101 Copperwood Way, Suite C, Oceanside, CA 92054, 619/967-1987
Glenn ALFA, 902 Sixth Street, P.O. Box 575, Orland, CA 95963, 916/865-5668
Catholic Charities Center, 535 Cooper Road, Oxnard, CA 93030, 805/487-5567
Center For Employment Training, Inc., Oxnard, 730 South "A" St., Oxnard, CA 93030, 805/487-9821
Immigration Counseling Services of the Tri-Counties, 1500 Colonia Road, Room 19, Oxnard, CA 93030, 805/486-3831; 3832
Martin Luther King Jr. Farm Workers Fund, 2035 Saviers Road, Suite 4, Oxnard, Ca 93033, 805/487-1323
Mexican American Opportunity Foundation, 141 S. "A" Street, Suite 207, Oxnard, CA 93030, 805/487-3937
Oxnard Community Service Organization, 428 North Grant Ave., Oxnard, CA 93030, 805/486-7576
Martin Luther King Jr., Farm Workers Fund, 13129 Parlier Avenue, Parlier, CA 93648, 209/646-3353
United Council of Spanish Speaking Organizations, 426 E 10th Street, Pittsburg, CA 94565, 415/439-7515.
Catholic Charities, 1215 S. Hamilton Blvd., Pomona, CA 91766, 714/622-4553
Martin Luther King Jr., Farm Workers Fund, 1243-A Sucess Dr., Porterville, CA 93257, 209/781-5015

United Council of Spanish Speaking Organizations, 252 Marina Way, Richmond, CA 94801, 415/232-6050
Metropolitan Analysis and Retrieval Systems, Inc., 6261 Chief Tucker Rd., Riverbank, CA 95367, 209/869-4249
Center For Employment Training Inc., Riverside, 9237 Narnia Dr., Riverside, CA 92503, 714/785-0876
Alien Legalization for Agriculture (ALFA), 1601 Exposition Blvd., FB-8, Sacramento, CA 95815-5195, 916/924-4019
Catholic Community Services, Diocese of Sacramento, 2529 K Street, Sacramento, CA 95816, 916/444-8269
CHDC-Migrant, 5681 Franklin Blvd., Suite L, Sacramento, CA 95824, 916/424-1083
Filipino Community of Sacramento Vicinity, Inc., 7320 Florin Mall Drive, Sacramento, CA 95823, 916/395-3933
Lutheran Social Service, 2001 19th St., Sacramento, CA 95818, 916/442-8200
Sandigan California, Inc., 7300 Franklin Blvd., Room 104, Sacramento, CA 95823, 916/429-0565
CHDC-Migrant, 627 Saint Helena Hwy, Saint Helena, CA 95474, 707/944-2122; 963-9344
AG HELP, 1077 Tervin Avenue, Salinas, CA 93902, 408/758-1211
Catholic Social Services, 1705 2nd Ave., Salinas, CA 93905, 408/422-0602
Center For Employment Training, Inc., 117 Abbott St., Salinas, CA 93901, 408/424-0665
Good Shepherd Lutheran Church, 817 Beech St., Salinas, CA 93905, 408/424-5463
Martin Luther King Jr., Farm Workers Fund, 14 South Wood Street, Salinas, CA 93905, 408/424-1581
Metropolitan Analysis and Retrieval Systems, Inc., 221 E. Market St., Ste. 1, Salinas, CA 93908, 408/424-0197; 0618; 1198
Center For Employment Training, Inc., 1524 W. 7th Street, Room 11, San Bernardino, CA 92411, 714/885-2181
Access, Inc., 6970 Linda Vista Road, San Diego, CA 92111, 619/560-0871
Border View YMCA, 750 Beyer Way, Suite E, San Diego, CA 92154, 619/423-9622
Catholic Community Services, Diocese of San Diego, 2277 National Avenue, San Diego, CA 92113, 619/231-2828
Catholic Community Services, Refugee and Immigration Office, 4643 Mission Gorge Place, San Diego, CA 92120, 619/287-9454
Center for Employment Training, Inc., 2961 "B" Street, San Diego, CA 92102, 619/233-6829
College Prep English Language Institute, Silva Jurich, 4175 Fairmont Ave., San Diego, CA 92105, 619/281-3673; 280-1105
Indochina Resource Action Center, Indochinese Mutual Assistance Association, Inc., 5511 El Cajon Boulevard, San Diego, CA 92115, 619/583-9811
World Relief, Lutheran Church, 2525 Beyer Blvd., San Diego, CA 92154, 619/427-9244; 0756
Catholic Charities, Santa Rosa, 666 South Workman, San Fernando, CA 91340, 818/365-9500
Center for Employment Training, 1242 San Fernando Rd., San Fernando, CA 91340
Immigration Services of Santa Rosa, P.O. Box 4377, 606 Chatsworth Dr., San Fernando, CA 91340, 818/361-4341
St. Simon Episcopal Church, 623 Hagar St., San Fernando, CA 91340, 818/365-0925
California Street Foundation, 2111 Mission Street, Suite 401, San Francisco, CA 94110, 415/621-1929
Charity Cultural Services Center, 827 Stockton Street, San Francisco, CA 94108, 415/989-8224
Lutheran Social Service, 1101 O'Farrell St., San Francisco, CA 94109, 415/474-8400
National Council for the Church and Social Action, Inc., 4201 Mission Street, San Francisco, CA 94124, 415/585-6862
United States Catholic Conference (Administrative Office Only), Northwest Regional Office, 582 Market St., Rm. 318, San Francisco, CA 94104, 415/362-1778
World Relief, 220 Golden Gate, 2nd Floor, San Francisco, CA 94102, 415/775-5329
World Relief, First Spanish Baptist Church, 976 S. Van Ness, San Francisco, CA 94110, 415/647-1001
Catholic Charities of San Jose, Legalization Office, 1456 Monterey Highway, San Jose, CA 95110, 408/293 3103; 243-3001
Center for Employment Training, Inc., 701 Vine Street, San Jose, CA 95110, 408/287-7924
Indochinese Resettlement and Cultural Center (IRCC), 422 Park Ave., San Jose, CA 95110, 408/971-7851
Lutheran Social Service, 121 So. White Road, San Jose, CA 95127, 408/729-7563
Lupita G. Fernandez and Associates, 325 E. San Ysidro Blvd., San Ysidro, CA 92073, 619/428-3874
Martin Luther King Jr., Farm Workers Fund, 2325 Via Tercero, Ste. 1106, San Ysidro, CA 92073, 619/428-4387
Trabajadores De La Raza, Inc., Casa Familiar, 119 West Hall Avenue, San Ysidro, CA 92073, 619/428-1115
Central Valley Opportunity Center, 1307 5th Street, Sanger, CA 93657, 209/875-3958
Rural Center for Human Development, 730 Recreation Place, Sanger, CA 93657, 209/875-8557
Episcopal Church of the Messiah, 614 North Bush St., Santa Ana, CA 92701, 714/543-9389
SER-Jobs For Progress, Inc., 1928 W. 17th Street, Santa Ana, CA 92706, 714/835-9204
United Agricultural Association, 1570 Brookhollow Dr., Ste. 206, Santa Ana, CA 92705, 714/751-8530
United Samoan Organization, 1225 W. 17th Street, Suite 4, Santa Ana, CA 92706, 714/543-9682; 1081
World Relief, Templo Sinai, 2030 S. Flower, Santa Ana, CA 92707, 714/641-5046
World Relief, Templo Calvario, 2617 W. 5th Street, Santa Ana, CA 92703, 714/541-5541
Your Ag Employers Care, 1621 East 17th Street, Suite S, Santa Ana, CA 92701, 714/550-0660
Catholic Charities Center, 609 East Haley St., Santa Barbara, CA 93103, 805/965-7045
Center For Employment Training, Inc., 1265 W. McCoy Lane, Suite F, Santa Maria, CA 934554, 805/928-1737
Centro de Immigracion y Asistencia Pro-Comunidad (CINAC), 715 West Church, Santa Maria, CA 93454, 805/925-1324; 964-1224
Martin Luther King Jr., Farm Workers Fund, 617 W. Main Street, Santa Maria, CA 93454, 805/922-0202
California Human Development Corporation, 2462 Mendocino Avenue, Santa Rosa, CA 95401, 707/523-1155
Catholic Immigration and Resettlement Office, 709 Davis St., #210, P.O. Box 4900, Santa Rosa, CA 95402, 707/578-6000
Sonoma County ALFA, 970 Piner Road, P.O. Box 6674, Santa Rosa, CA 95401, 707/523-3137
South Coast ALFA, 955 Center Road, P.O. Box 786, Somis, CA 93066, 805/485-5535
Community Education and Counseling Service, Inc., 10924 Weaver St., South El Monte, CA 91733, 818/442-8328
World Relief, Maranatha Evangelistic Center, 8500 Long Beach Blvd., South Gate, CA 90211, 213/587-1898; 1899
A & S Commercial Services, Augustin DeSoto, 242 N. El Dorado Street, Stockton, CA 95202, 209/464-5222
Catholic Council For the Spanish Speaking, 511 E. Magnolia, 4th Floor, P.O. Box 839, Stockton, CA 95201-0839, 209/464-2582; 465-0218
Catholic Diocese of Stockton, 1125 N. Lincoln St., Stockton, CA 95201-1019, 209/464-1976; 464-0218
CHDC-Migrant, 425 N. California St., Suite 3, Stockton, CA 95202, 209/466-3053
Holy Cross Episcopal Church, 110 E. Miner, Stockton, CA 95202, 209/473-3260
San Joaquin ALFA, 3290 North Ad Art Way, P.O. Box 8444, Stockton, CA 95208, 209/931-4931
Center For Employment Training, Inc., 42066 Avenida Alvarado, Unit A, Temecula, CA 92390, 714/676-7514
CHDC-Migrant, 185 Seminary Ave., Ukiah, CA 95482, 707/462-8791
Mendocino County ALFA, 303-C Talmage Road, Ukiah, CA 95482, 707/462-6664
CHDC-Admin, 761 A and B Eubanks Drive, Vacaville, CA 95688, 1-800/624-0814; 707/449-8860
National Council for the Church and Social Action, Inc., 1959 Carolina Drive, Vallejo, CA 94590, 707/648-0858
International Assistance, 6410 Van Nuys Blvd., Suite H, Van Nuys, CA 91401, 818/787-7878
Metropolitan Immigration Centers of America, 6523 Hazeltine Ave., Van Nuys, CA 91401, 801/902-9713; 988-8672
SER-Jobs For Progress, Inc., 14907 Van Owen, Van Nuys, CA 91405, 818/782-2112
Catholic Charities, St. Clements, 204 Hampton Drive, Venice, CA 90291, 213/399-2225
Metropolitan Analysis and Retrieval System, P.O. Box 207, 933 7th St., Wasco, CA 93280, 805/758-5200
Center For Employment Training, Inc., 24 Menker Ave., Watsonville, CA 95076, 408/728-4551
Food & Nutrition Services, Inc., Servicios Populares De Inmigracion, 406 Main Street, Room 217, Watsonville, CA 95076, 408/724-5667
Lutheran Community Church, 95 Alta Vista, Watsonville, CA 95076, 408/724-3460
Martin Luther King Jr., Farm Workers Fund, 406 Main Street, Suite 301, Watsonville, CA 95076, 408/724-8345

Veterans and Community Services, 8644 Norwalk Blvd., Whittier, CA 90606-3402, 213/695-6706
Catholic Charities, 1220 N Sanford Ave., P.O. Box 416, Wilmington, CA 90744, 213/835-0414
CHDC-Migrant, 9257 Windsor Road, P.O. Box 690, Windsor, CA 95492, 707/838-4351
CHDC-Migrant, 19 Court St., Woodland, CA 95695, 916/662-9601
Mexican-American Concilio of Yolo County, 810 Main St., Woodland, CA 95695, 916/666-1088; 4646
Yolo County ALFA, 69 West Kentucky Avenue, P.O. Box 331, Woodland, CA 95695, 916/666-4546
CHDC-Migrant, 440 Palora Ave., Suite D, Yuba City, CA 95991, 916/673-4120

Guam

Catholic Social Service, P.O. Box EJ, Agana, GU 96910, 671/646-6136,1924
Luis A. DeVera, INS Consultants, Suite 10 Paul's Plaza Bldg., Marine Drive, P.O. Box 9482, Dededo, GU 96912, 671/646-8092; 8235; 8949

Hawaii

Hawaii Human Development, P.O. Box 149, Captain Cook, HI 96704, 808/329-3200
HHD-Migrant, 70 Rainbow Drive, Hilo, HI 96720, 808/961-4900
Catholic Immigration Center, 712 N. School Street, Honolulu, HI 96817, 808/528-5233
Hawaii Human Development-Admin, 1150 S. King St., Suite 904, Honolulu, HI 96814, 808/523-8628
Kalihi Palama Immigrant Service Center, 720 N. King Street, Honolulu, HI 96817, 808/845-3918
Kalolaine Mataele Soukop, 1745 Kumakani Loop, Honolulu, HI 96821, 809/922-8515; 926-2293

Nevada

Nevada Business Services, 100 Depot St., Office 8, P.O. Box 26, Caliente, NV 89008, 702/726-3154
Catholic Social Services, 1501 Las Vegas Blvd., North, Las Vegas, NV 89101, 702/383-8387
Mexican Patriotic Committee, 15 N. Mojave, Las Vegas, NV 89109, 702/386-0120; 457-1125
Nevada Business Services, 922 West Owens, Las Vegas, NV 89106, 702/385-6100
Nevada Business Services, 235 North Eastern, Suite 109, Las Vegas, NV. 89101
Catholic Community Services, Migration/Refugee Assistance & Legalization Svcs., 190 Mill St., Suite 3, Reno, NV 89501, 702/323-9005
Center For Employment Training, Inc., 1931 Sutro St., Ste. 103, Reno, NV 89512
Metropolitan Analysis and Retrieval Systems, Inc. INS Division, 1755 E. Plumb Lane, Suite 108, Reno, NV 89502, 702/329-6467
Nevada ALFA, C/O Nevada Farm Bureau Federation, 1300 Marietta Way, Sparks, NV 89431, 702/358-7737
Nevada Business Services, P.O. Box 3288, Highway 93, Station House Shopping Center, Tonopah, NV 89049, 702/482-6038

Qualified Designated Entities—Northern Region

November 3, 1987.

Colorado

First Baptist Church, 1111 West 9th Street, P.O. Box 754, Craig, CO 81625, 303/824-5926
Catholic Community Services, 3417 W. 38th Avenue, Denver, CO 80211, 303/458-0222
Justice Information Center, 1129 Cherokee Street, Denver, CO 80204, 303/623-5750
Lutheran Social Service of Colorado, Legalization Program, 3245 West 31st Avenue, Denver, CO 80211, 303/433-3301
SER-JOBS For Progress, 2915 West 7th Avenue, Denver, CO 80204, 303/629-0662
SER-JOBS For Progress, Rocky Mountain, 4100 W. 38th Ave., Suite 200, P.O. Box 11148, Denver, CO 80211, 303/480-9394
Catholic Immigration Service, Diocese of Pueblo, 119 W. 6th Street, Pueblo, CO 81003, 303/543-7837

Iowa

Catholic Diocese of Davenport, Immigration Counseling and Resettlement Office, 2706 Gaines Street, Davenport, IA 52804, 319/324-1911
Proteus Employment Opportunities, Inc., 175 N.W. 57th Place, P.O. Box 10385, Des Moines, IA 50306, 515/244-5694
Proteus Employment Opportunities, 1109 Grandview Ave., Muscatine, IA 52761, 319/264-0880
Proteus Employment Opportunities, 1406 Nebraska St., Sioux City, IA 51105, 712/258-0094

Idaho

Potato Growers of Idaho, P.O. Box 949, 1010 West Bridge, Blackfoot, ID 83221, 208/785-1110
Ecumenical Ministries, 4900 N. Five-Mile Road, Boise, ID 83704, 208/376-4529
National Council for the Church and Social Action, Inc., 124 Broadway, Boise, ID 83702, 208/336-5878; 1257
Catholic Social Services, St. Therese's Church Hall, 125 W. 16th St., P.O. Box 1223, Burley, ID 83318, 208/678-5453
Catholic Social Services, 616 Dearborn St., Caldwell, ID 83605, 208/459-3653
Metropolitan Analysis and Retrieval Systems, Inc., 317 Happy Day Blvd., Ste. 245, Caldwell, ID 83606, 208/454-2253
Catholic Social Services (Administrative Office only), Diocese of Boise, 512 Monroe Street, Emmett, ID 83617, 208/365-5834; 342-1311
Catholic Social Services, Christ King, 1690 East 17th St., Idaho Falls, ID 83401, 208/529-8170; 523-0338
Idaho Falls Regional Information and Referral Service, AYUDA Network, 545 Shoup Street, Room 233, P.O. Box 2246, Idaho Falls, ID 83402-2246, 208/524-2433
Center For Employment Training, Inc., Nampa, 116 14th Ave. South, Nampa, ID 83651, 208/465-0421
Snake River Farm Association, P.O. Box 297, 723 3rd St. South, Rupert, ID 83350, 208/436-9737

Illinois

Catholic Family Center, 315 N. Root St., Aurora, IL 60505, 312/851-1890
Trinity Episcopal Church, 218 E. Benton, Aurora, IL 60505, 312/897-7283
American Filipino Professionals Civic Alliance, 2245 N. Southport Avenue, Chicago, IL 60614, 312/549-0909
Asian Human Service of Chicago, Inc., 4753 N. Broadway Ave., Suite 818, Chicago, IL 60640, 312/728-2235
Assyrian National Council of Illinois, P.O. Box 59608, 6400 N. California Ave., Chicago, IL 60645, 312/262-5589
Assyrian Universal Alliance, 7055 N. Clark, Chicago, IL 60626, 312/274-9262
Catholic Archdiocese of Chicago, Legalization Outreach Services, 2380 South Halsted Street, Chicago, IL 60608, 312/263-4299; Hotline 312/263-4298 (Eng.), 4299 (Span.), 4665 (Poli.)
Chinese American Service League, 310 West 24th Place, Chicago, IL 60616, 312/791-0418
Filipino American Council of Chicago, Inc., 1322 West Irving Park Road, Chicago, IL 60613, 312/281-1210
Iglesia Episcopal De San Pedro, 621 W. Belmont Avenue, Chicago, IL 60657, 312/525-0844
International Ladies Garment Workers Union, Immigration Project, 323 S. Ashland Avenue, Chicago, IL 60609, 312/738-6060
Korean American Community Service, 4300 North California Avenue, Chicago, IL 60618, 312/583-5501
Korean Association of Chicago, 5941 North Lincoln Avenue, Chicago, IL 60659, 312/878-1900
Lutheran Child and Family Services, 6127 S. University Ave., Chicago, IL 60637, 312/753-0600
Lutheran Child and Family Services, 3859 W. 26th Street, Chicago, IL 60623, 312/277-7330
Lutheran Immigration Services-LCFS, First Lutheran Church, 3500 West Fullerton, Chicago, IL 60647, 312/342-1434
Nuestra Sra. De Las Americas Episcopal Church, 2610 N. Francisco St., Chicago, IL 60647, 312/772-2620
Polish American Congress, Illinois Division, 5844 N. Milwaukee Ave., Chicago, IL 60646, 312/631-3300
Polish Welfare Association, 3834 N. Cicero Avenue, Chicago, IL 60641, 312/282-8206
Private Immigration Agency, 4142 W. 26th Street, Chicago, IL 60623, 312/277-4142
Santa Teresa Episcopal Church, 2834 W. 21st St., Chicago, IL 60623, 312/247-1704
SER-JOBS For Progress, 1814 Leawitte, Chicago, IL 60608, 312/421-7432
SER-Jobs For Progress, 4106 S. Archer, Chicago, IL 60643, 312/254-7911
Soldier of the Cross, 3429 W. North Ave., Chicago, IL 60647, 312/227-7277
St. James Episcopal Church, Filipino Congregation, 5875 N. Lincoln Ave., Suite 248, Chicago, IL 60659, 312/334-1211
St. Mary's Episcopal Church (Korean), 3533 N. Albany Ave., Chicago, IL 60618, 312/588-4820
St. Matthew's Lutheran Church, 2108 W. 21st Street, Chicago, IL 60608, 312/847-6458
The Salvation Army, 2459 S. Christiana, Chicago, IL 60623, 312/521-6718
The Salvation Army, 5040 N. Pulaski Road, Chicago, IL 60630, 312/725-1100
The Salvation Army, 1021 W. 19th Street, Chicago, IL 60608, 312/243-2104

Travelers and Immigrants Aid of Chicago, 327 S. La Salle Street, Chicago, IL 60604, 312/435-4500
Travelers and Immigrants Aid of Chicago, 1950 N. Milwaukee, Chicago, IL 60640, 312/489-7303
Travelers and Immigrants Aid of Chicago, 4750 N. Sheridan Avenue, Suite 200, Chicago, IL 60640, 312/271-1073
World Relief, Lawndale Mennonite Church, 2520 S. Lawndale, Chicago, IL 60623, 312/542-5500
World Relief, 3507 W. Lawrence, Ste. 206, Chicago, IL 60625, 312/583-9191
World Relief, Hispanic Bible School, 3301 W. Fullerton, Chicago, IL 60647, 312/227-1188; 3349
World Relief, Friendship Center, 1103 West Bryn Mawr, Chicago, IL 60660, 312/334-7703
World Relief, Lincoln Methodist Church, 2242 S. Damen, Chicago, IL 60608, 312/254-0662
Travelers and Immigrants Aid of Chicago, 1817 S. Loomis, Chicago, IL 60640; 312/435-4550
Centro De Informacion Y Progreso, 62 Fountain Square Plaza, Elgin, IL 60120, 312/583-5501
Elgin Community College, Fountain Square Campus, 1700 Spartan Drive, Elgin, IL 60123, 312/888-6904
Catholic Social Services, 100 South Monroe, Marion, IL 62959-2559, 618/997-9381
Project Now, 207 5th Avenue, Moline, IL 61265, 309/764-8092
Project Now, 418 19th Street, Rock Island, IL 61201, 309/793-6350
Catholic Diocese of Rockford, 921 W. State Street, Rockford, IL 61102, 815/964-8142
Illinois Conference of Churches, 615 S. 5th Avenue, Springfield, IL 62703, 217/544-3423
Episcopal Legalization Center, Chaplaincy Use Book Store, 808 Glenflora Avenue, Waukegan, IL 60085, 312/244-7676
SER-JOBS For Progress, 117 North Genesee Street, Waukegan, IL 60085, 312/336-1004
World Relief (Administrative Office Only), P.O. Box WRC, 450 Gonderson Drive, Wheaton, IL 60187, 312/665-0235
World Relief Dupage County Office, 1028 College Avenue, Wheaton, IL 60187, 312/462-7566

Indiana

SER-JOBS For Progress, 1000 East Chicago Avenue, East Chicago, IN 46312, 219/397-1550
Catholic Charities, Diocese of Gary, 973 W. 6th Avenue, Gary, IN 46402, 219/882-2720
International Institute of Northwest Indiana, 4433 Broadway, Gary, IN 46409, 219/980-4636
Episcopal Legalization Center, Catholic Center, 1400 N. Meridian St., #218, P.O. Box 1410, Indianapolis, IN 46202, 317/236-1556
Legal Services Organization of Indiana, 107 North Pennsylvania Street, Suite 1008, Indianapolis, IN 46204, 317/631-1395

Kansas

United Methodist, Western Kansas Mexican-American Ministries, Inc., 708 Avenue H, Dodge City, KS 67801, 316/225-0625
Catholic Diocese of Dodge City, Office for Migration Services, P.O. Box 546, 510 Kansas St., Elkhart, KS 67950, 316/697-4639
Harvest America Corporation, 118 Grant Avenue, Garden City, KS 67846, 316/275-1619
SER Corporation of Kansas, 118½ Grant, Garden City, KS 67848, 316/275-2874
United Methodist Western Kansas, Mexican-American Ministries, P.O. Box 766, Garden City, KS 67846, 316/275-1766
Harvest America Corporation, 1015 E. Highway 24, P.O. Box 752, Goodland, KS 67735, 913/899-3878
Catholic Archdiocese of Kansas City, Legalization Office (El Centro, Inc.), 736 Shawnee Avenue, Kansas City, KS 66105, 913/621-4500
Harvest America Corporation, 14th and Metropolitan, Kansas City, KS 66103, 913/342-2121
SER Corporation of Kansas, 1629 B. Southwest Blvd., Kansas City, KS 66103, 913/236-6010
Harvest America Corporation, 409 N. Main, P.O. Box 770, Leoti, KS 67861, 316/375-2548
United Methodist, Western Kansas Mexican-American Ministries, Inc., 311 North Grant, Box 916, Liberal, KS 67901, 316/624-6865
Diocese of Salina, Catholic Charities, 137 North 9th St., Salina, KS 67401, 913/825-0208
El Centro De Servicios Para Hispanos, 1109 Seward, Topeka, KS 66616, 913/232-8207
SER Corporation of Kansas, 1195 Buchanan, Topeka, KS 66604, 913/232-8195
United Methodist, Western Kansas Mexican-American Ministries, Inc., 321 W. Grant, Ulysses, KS 67860, 316/356-4079
Catholic Social Services, Office of Hispanic Affairs, 940 S. St. Francis, Wichita, KS 67211, 316/269-4587
Lutheran Social Services of Kansas and Oklahoma, 1855 N. Hillside, Wichita, KS 67214, 316/686-6645
SER Corporation of Kansas, 709 E. 21st, Wichita, KS 67214, 316/264-5372

Michigan

SER-JOBS For Progress, 610 South French Street, Adrian, MI 49221, 517/263-2042
Our Lady of Albanians, 20855 W. Thirteen Mile Road, Birmington, MI 48010, 313/642-0816
International Institute, 2651 Saulino Court, Dearborn, MI 48120, 313/841-1677
All Saints Episcopal Church, 3837 W. 7 Mile Rd., Detroit, MI 48221, 313/341-5320
Catholic Archdiocese of Detroit, Department of Christian Service, 305 Michigan Avenue, Detroit, MI 48226, 313/237-5900
Holy Redeemer, 1721 Junction, Detroit, MI 48209, 313/842-6045
International Institute, 4138 West Vernon Ave., Detroit, MI 48209, 313/554-1445
International Institute, 111 East Kirby, Detroit, MI 48202, 313/871-8600
Lutheran Social Services, 8131 E. Jefferson, Detroit, MI 48214, 313/823-7700
SER-JOBS For Progress, 9301 Michigan Avenue, Detroit, MI 48209, 313/846-2240
Ste. Anne, 1000 St. Anne St., Detroit, MI 48221, 313/496-1701; 862-5400
St. Gabriel's Episcopal Church, 15717 Stephens Drive, East Detroit, MI 48021, 313/775-4450
International Institute, 515 Stevens Street, Flint, MI 48502, 313/767-0720
Spanish Speaking Information Center, 2523 Clio Rd., Ste. 101, Flint, MI 48504, 313/239-4417
Catholic Human Development Office, 117 Maple SE, Grand Rapids, MI 49503, 616/459-8223
International Institute, 11333 Joseph Campau, Hamtramck, MI 48212, 313/365-1084,1092
St. Ladislaus, 2713 Caniff, Hamtramck, MI 48212, 313/872-0709; 883-2100
Michigan Economics for Human Development, 176 Walnut, Holland, MI 49423, 616/396-2913
Sacred Heart Church, 700 Maple Vista, Imlay City, MI 48444, 313/724-6213
Catholic Family Services, Diocese of Kalamazoo, 1819 Gull Road, Kalamazoo, MI 49001, 616/381-9800
Michigan Economic Human Development, 355 E. Kalamazoo, Kalamazoo, MI 49007, 616/343-7126
Catholic Diocese of Lansing, Migration and Refugee Services, 233 North Walnut St., Lansing, MI 48933, 517/484-1010
St. Joseph, 924 E. Second, Monroe, MI 48161, 313/241-9590
St. Vincent De Paul's, 150 E. Wide Track Drive, Pontiac, MI 48058, 313/332-0283
St. Paul's Episcopal Church, 3201 Gratiot, Port Huron, MI 48060, 313/982-3660
International Institute, 1234 Inglewood, Rochester, MI 48063, 313/651-5836
Latin American Affairs Dept., Catholic Diocese of Saginaw, 716 N. Michigan Avenue, Saginaw, MI 48602, 517/755-4477
SER-JOBS For Progress, 1535 South Warren Avenue, Saginaw, MI 48605, 517/753-3412
Our Lady of Czestochawa Mission, 3000 Eighteen Mile Road, Sterling Heights, MI 48078, 313/977-7267; 268-8205

Minnesota

Lutheran Social Services of Minnesota, Refugee Center, 1730 E. Superior St., Duluth, MN 55812, 218/728-6839
Lutheran Social Services of Minnesota, 2414 Park Avenue, Minneapolis, MN 55404, 612/871-0221
Lutheran Social Services of Minnesota, 631 Center Avenue, Suite 1, Moorhead, MN 56560, 218/233-4593
Catholic Charities, Archdiocese St. Paul/Minneapolis, 436 Main Street, St. Paul, MN 55102, 612/227-8738
International Institute of Minnesota, 1694 Como Avenue, St. Paul, MN 55108, 612/647-0191

Missouri

Don Bosco Community Center, 529 Campbell, Kansas City, MO 64106, 816/421-0546
Guadalupe Center, Inc., 2641 Belleview, Kansas City, MO 64108, 816/561-6885
Lutheran Mission of the Good Shepherd, 1742 Jefferson, Kansas City, MO 64108, 816/474-9049
International Institute of St. Louis, 3800 Park Avenue, St. Louis, MO 63110, 314/773-9090

Montana

Rural Employment Opportunities, Inc., 1143 First Ave. North, Suite 217, Billings, MT 59101, 406/248-8280; 256-1140
Rural Employment Opportunities, Inc., 25 South Ewing, P.O. Box 831, Helena, MT 59624-0831, 406/442-7850; 449-7880

Rural Employment Opportunities, Inc., 433 Main Street, Kalispell, MT 59903
Metropolitan Analysis and Retrieval Systems, Inc., 2701 N. Reserve Street, P.O. Box 3958, Missoula, MT 59806, 406/721-6277

Nebraska

Nebraska Association of Farmworkers, Inc., 200 S. Silber, P.O. Box 1459, North Platte, NE 69103-1459, 308/534-2630
Chicanos Awareness Center, 4825 S. 24th St., Omaha, NE 68107, 402/733-2720
Nebraska Association of Farmworkers, 4939 S. 24th St., Omaha, NE 68107, 402/733-2720
SER-Jobs for Progress, Inc., 5002 S. 33rd Street, Omaha, NE 68107-2594, 402/734-1321

Ohio

International Institute, 207 E. Talmadge Avenue, Akron, OH 44310, 216/376-5106
Ohio Farmworker Opportunities, Division of Rural Opportunities, Inc., 215 E. Market Street, Alliance, OH 44601, 216/821-4740
Ohio Farmworker Opportunities, Division of Rural Opportunities, Inc., 1616 East Wooster, Suite 9, P.O. Box 186, Bowling Green, OH 43402, 419/354-3548
Catholic Social Service of Southwest Ohio, 100 E. 8th Street, Cincinnati, OH 45202, 513/241-7745
Travelers Aid/International Institute, 632 Vine Street, Suite 505, Cincinnati, OH 45202, 513/721-7660
Catholic Social Services of Cuyahoga County, 3409 Woodland Avenue, Cleveland, OH 44115, 216/881-1600
Nationalities Services Center, 1715 Euclid Avenue, Cleveland, OH 44115, 216/781-4560
Catholic Social Service, 1012 Ralston Ave., Defiance, OH 43512, 419/782-4933
Rural Opportunity, Inc., 2201 Commerce Dr., Suite D, P.O. Box 955, Fremont, OH 43420, 419/334-2689
Catholic Social Services, 1933 Spielbusch Avenue, P.O. Box 985, Toledo, OH 43696-0985, 419/244-6711
International Institute, 2040 Scottwood Ave., Toledo, OH 43620, 419/241-9178
AJ & Associates, Inc., 6590 Mcvey Boulevard, Worthington, OH 43085, 614/766-0233

Oregon

Linn-Benton Community College, 6500 Pacific Blvd., Albany, OR 97321, 503/928-2361
Southwestern Community College, 1988 Newmark, Coos Bay, OR 97402, 503/888-2525
Catholic Social Services, P.O. Box 945, 565 West Hermiston Ave., Hermiston, OR 97838, 503/567-5812
OHDC-Migrant, Sunnyside Mall; Hwy 395, Hermiston, OR 97838, 503/567-5800
Immigrants Project, All Saint's Church, 372 N.E. Lincoln St., Hillsboro, OR 97124, 503/648-4518
Oregon Human Development Corporation-Migrant, 862 S.E. Oak Street, Suite lB, Hillsboro, OR 97123, 503/640-5496
Hood River County Farm Bureau, 100 Third Street, Hood River, OR 97013, 503/386-3334
Hood River Grower-Shipper Association, P.O. Box 830, 455 Frankton Rd., Hood River, OR 97031, 503/386-3433
La Clinica Del Carino, 2690 May Street, Hood River, OR 97031, 503/386-6380
OHDC-Migrant, 1014-B Main Street, Klamath Falls, OR 97601, 503/883-7186
Community Action Agency of Yamhill County, Inc., 625 N. Hwy 99W, P.O. Box 621, McMinnville, OR 97128, 503/472-0457
OHDC-Migrant, 1227 Clark Avenue, Ontario, OR 97714, 503/881-1491
Treasure Valley Community College, 650 College Blvd., Ontario, OR 97914, 503/889-6493
Treasure Valley Immigration Counseling Service, 772 N. Oregon, Ontario, OR 97914, 503/889-3121
Catholic Resettlement Services, 319 SW. Washington, #818, Portland, OR 97204, 503/228-6531
Ecumenical Ministries of Oregon, SOAR/CWS, 5404 NE. Alameda St., Portland, OR 97213, 503/284-3002
Lutheran Family Services, 605 SE. 39th Street, Portland, OR 97214, 503/233-0042
Oregon Human Development Corporation-Hispanic Access, 1623 NW. 19th, Portland, OR 97209, 503/274-1395
San Salvador Vicarriate, Immigration Counseling Service, 621 SW. Morrison, Suite 205, Portland, OR 97205, 503/221-1689
Consortium of Oregon Community Colleges, C/O Chemeketa Community College, P.O. Box 14007, Salem, OR 97309, 503/399-5100
OHDC-Admin., P.O. Box. 23937, 11654 SW. Pacific Hwy., Ste.12, Tigard, OR 97223, 503/620-9317
Tillamook Bay Community College, 2510 First Street, Tillamook, OR 97141, 503/842-2503
OHDC-Migrant, 949-A Young Street, Woodburn, OR 97071, 503/982-5100

South Dakota

Lutheran Social Services, 601 W. llth St., Sioux Falls, SD 57104, 605/336-9136

Utah

Utah Rural Development Corporation, 12 E. Center Street, Midvale, UT 84047, 801/566-1638
Catholic Community Services, 514 24th St., Ogden, UT 84404, 801/399-8160
Weber Council of Spanish Speaking Organizations, 369 Healy Street, Ogden, UT 84401, 801/621-1991
Catholic Community Services, Utah Immigration Project-Outreach Program, 210 N. Carbon Avenue, Price, UT 84501, 801/637-1740
Catholic Community Services, Utah Immigration Project-Outreach Program, 172 N. 5th West, Provo, UT 84601, 801/374-5001
Catholic Community Services, Utah Immigration Project-Outreach Program, 840 Sunset Dr., Richfield, UT 84701, 801/896-8567
Catholic Community Services of Utah, 333 E. So. Temple, # 701, Salt Lake City, UT 84111, 801/328-9100
Catholic Community Services, Utah Immigration Project-Outreach Program, P.O. Box 1212, Wendover, UT 84083, 801/665-2339
Utah State Farm Bureau, 5300 S. 360 West, West Salt Lake City, UT 84123, 801/261-3991

Washington

First Congregational Church, 2401 Cornwall, Bellingham, WA 98225, 206/734-3720
Metropolitan Analysis and Retrieval Systems, Inc., 2505 Cedarwood Ave., Ste. B, Bellingham, WA 98225
Ralph O. Black, P.O. Bx.440, Custer, WA 98240, 340 Alder Street, Blaine, WA 98230, 206/332-5310
Enterprise for Progress in the Community, Early Childhood Education Center, 206 Emerson, P.O. Box 252, Chelan, WA 98816, 509/682-5136
Enterprise for Progress in the Community, Early Childhood Education Center, 1901 Rock Island Road, East Wenatchee, WA 98801, 509/884-2435
First United Methodist Church, 3530 Colby Ave., Everett, WA 98201, 206/259-7233
WHD-Migrant, 2713 10th St., Everett, WA 98201, 206/259-7033
Enterprise for Progress in the Community, Immigration Project, 225 Division, Grandview, WA 98930, 509/882-4122
Washington State Migrant Council, Grandview MHS, 712 Wolfe Lane, P.O. Box 337, Grandview, WA 98930, 509/882-3783
Washington State Migrant Council, Grandview EXT, 111 Birch Avenue, P.O. Box 187, Grandview, WA 98930, 509/882-4549
Centro Campesino Immigrant Project, P.O. Box 800, 120 Sunnyside Avenue, Granger, WA 98932, 509/854-2222
Washington State Migrant Council, Granger CDC, 201 East 1st St., P.O. Box 677, Granger, WA 98932, 509/854-1630
Washington State Migrant Council, Lynden MHS, 8686 Vineup Road, Lynden, WA 98264, 206/354-2667
Washington State Migrant Council, Mabton MHS, N. 1st & B St., P.O. Box 128, Mabton, WA 98935, 509/894-4322
Washington State Migrant Council, Mabton MHS EXT. II, 5th and "B" Street, Mabton, WA 98935, 509/894-4322
Columbia Basin Christian Ministry, 202 W. 5th Avenue, #7, Moses Lake, WA 98837, 509/766-0347
Moses Lake Community Health Center, 1017 W. Broadway, Moses Lake, WA 98837, 509/765-0674
Washington State Migrant Council, Moses Lake MHS, 5th and Chestnut St., Moses Lake, WA 98837, 509/765-6724
WHD-Migrant, 1020B West Ivy, Moses Lake, WA 98837
Riverside Presbyterian Church, 100 Desert Aire Drive, Mottawa, WA 99344, 509/932-4651
WHD-Migrant, 1615 South Second St., Mount Vernon, WA 98273, 206/336-6507
Washington State Migrant Council, Mt. Vernon MHS, 2010 N. LaVenture, Mt. Vernon, WA 98273, 206/428-3993
Okanogan Farmworkers Clinic, 716 S. 1st, P.O. Box 832, Okanogan, WA 98840, 509/422-5700
St. John's Episcopal Church, 114 E. 20th Avenue, Olympia WA 98051, 206/322-8527
Okanogan County Alien Legalization for Agriculture, 1124 5th Ave., Omak, WA 98841, 509/826-0481
Columbia Basin Health Association, P.O. Box 546, Othello, WA 99344, 509/488-5256

Washington State Migrant Council, Othello MHS, 550 N. 7th Ave., Othello, WA 99344, 509/488–3502
Sponeros Translation Network, 112 S. 4th Avenue, Suite 1, Pasco, WA 99301, 509/547–7962
Washington State Migrant Council, Pasco MHS, 315 W. Court St., Pasco, WA 99301, 509/547–7882
WHD-Migrant, 527 West Court, Pasco, WA 98301, 509/545–4350
Washington State Migrant Council, Whitstran MHS, Foissey Road, Rt. 2 Box 2201, Prosser, WA 99350, 509/973–2545
Washington State Migrant Council, Quincy MHS, 310 "H" St., SW., P.O. Box 3982, Quincy, WA 98848, 509/787–2511
Cuban Refugee Resettlement of Washington, 11740 Aurora Avenue North, Seattle, WA 98133, 206/364–4888
Filipino Youth Act, 810 18th Avenue, Seattle, WA 98122, 206/323–6545
Hispanic Immigration Program, Catholic Archdiocese of Seattle, 3600 South Graham, Seattle, WA 98118, 206/721–4752
Presiding Bishop's Fund, 1610 S. King, Seattle, WA 98144, 206/323–3152
Washington Association of Churches, 3902 S. Ferdinand, Seattle, WA 98118, 206/721–5288
Washington Human Development Corporation–Admin, 4636 East Marginal Way S, Seattle, WA 98134, 206/762–5192
Catholic Family Services, W. 1104 Heroy, Spokane, WA 99205, 509/456–7153
Washington Association of Churches, N. 2319 Monroe, Suite 102, Spokane, WA 99205, 509/325–2591
Immigration Assistance Association, Jerome A. Durbin & R.W. Beaver, 1001 Powell, P.O. Box 639, Steilacoom, WA 98388, 206/582–6620; 582–6620
Catholic Charities, Diocese of Yakima, 2201 E. Edison, P.O. Box 298, Sunnyside, WA 98944, 509/837–5548
People for People, 2201 Edison, Sunnyside, WA 98944, 509/837–7610
Washington State Migrant Council, 1115 South 9th Street, Sunnyside, WA 98944, 509/837–8909
Washington State Migrant Council, Sunnyside CDC, 320 N. 6th St., Sunnyside, WA 98944, 509/837–5902
WHD-Migrant, 1614 Eastway, Sunnyside, WA 98944, 509/837–8363
Yakima County Alien Legalization for Agriculture, 230 W. Edison, Sunnyside, WA 98944, 509/839–0770
Associated Ministries, 2520 Sixth Avenue, Tacoma, WA 98406, 206/386–3056
Enterprise for Progress in the Community, Early Childhood Education Center, 106 Goldendale Ave., Toppenish, WA 98948, 509/865–5711; 3938
People for People, 425 S. Elm, P.O. Box 2, Toppenish, WA 98948, 509/865–5221
Washington State Migrant Council, Toppenish CDC, Magnolia & Ward St., P.O. Box 347, Toppenish, WA 98948, 509/865–2865
WHD-Migrant, 516 West 1st Ave., Toppenish, WA 98948, 509/865–3962
WHD-Migrant, 526 West 1st Ave., Toppenish, WA 98948, 509/865–3962
Yakima Valley Farm Workers Clinic, 518 W. First St., Toppenish, WA 98948, 509/865–5600
Community Health Clinic, 208 N 2nd Ave., PO. Box 177, Walla Walla, WA 99362, 509/525–6650
Washington State Migrant Council, Walla Walla MHS, 2nd and Cherry St., P.O. Box 293, Walla Walla, WA 99362, 509/529–1668
Washington State Migrant Council, Wapato CDC, Naches and 3rd St., P.O. Box 382, Wapato, WA 98951, 509/877–3092
Chelan County Alien Legalization for Agriculture, 1501 Miller Street, Wenatchee, WA 98801, 509/662–8232
Guadalupe Immigration Counseling Center, 520 Valley Mall Parkway, P.O. Box 7160, Wenatchee, WA 98801, 206/884–2066
Wenatchee Community Health Center, 1630 N. Wenatchee Avenue, Wenatchee, WA 98801, 509/662–5163
WHD-Migrant, 103 South Mission, Wenatchee, WA 98801, 509/662–6211
Klichtat-Skamania Development Council Food Bank, 1003 E. Jewett Blvd., White Salmon, WA 98672, 509/493–3954
Elizabeth Marie Baez, 707 North 1st St., Suite B, Yakima, WA 98901, 509/457–7692
Enterprise for Progress in the Community, 1910 Englewood Avenue, Yakima, WA 98902, 509/248–3950
Enterprise for Progress in the Community, Early Childhood Education Center, 5502 W. Chestnut, Yakima, WA 98908, 509/966–7406
People for People, 1214 W. Lincoln Avenue, Yakima, WA 98907, 509/248–6726
Washington State Migrant Council, Yakima CDC, 1211 S. 7th Street, Yakima, WA 98902, 509/453–8334
WHD-Migrant, 504 North Naches, #1, Yakima, WA 98901, 509/453–6771

Wisconsin

Spanish Centers of Racine, Kenosha and Walroth, Inc., 1212 57th Street, Kenosha, WI 53403, 414/552–7830
Catholic Social Services, Archdiocese of Milwaukee, 6033 W. Lloyd St., Milwaukee, WI 53213, 414/475–5900
International Institute of Wisconsin, 2801 W. Highland Blvd., Milwaukee, WI 53208, 414/933–0521
SER-JOBS For Progress, 1711 South 11th Street, Milwaukee, WI 53204, 414/649–2640
The Council for the Spanish Speaking, 614 West National Avenue, Milwaukee, WI 53204, 414/384–3700
Spanish Centers of Racine, Kenosha and Walroth, Inc., 720 17th Street, Racine, WI 53403, 414/637–7931
La Casa De Esperanza, 410 Arcadian Avenue, Waukesha, WI 53186, 414/547–0887

Wyoming

St. Stephen's Episcopal Church, 4700 S. Poplar Street, Casper, WY 82601, 307/265–4105
Maui Economic Opportunity, Inc., Immaculate Conception, 900 Hitching Post, Green River, WY 82935
Metropolitan Analysis and Retrieval Systems, Inc., Warland Municipal Airport, Terminal Building Airport Road, Warland, WY 82401, 307/347–2483

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Friday
November 20, 1987

Part V

Environmental Protection Agency

40 CFR Parts 712 and 716
Preliminary Assessment Information and Health and Safety Data Reporting; Addition of Chemicals; Final Rule

Twenty-First Report of the Interagency Testing Committee to the Administrator; Notice

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PARTS 712 and 716

[OPTS-84027; FRL-3292-4]

Preliminary Assessment Information and Health and Safety Data Reporting; Addition of Chemicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Interagency Testing Committee (ITC) in its Twenty-first Report to EPA recommended that EPA give priority consideration to six chemical substances in proposing chemical test rules. To assist EPA in its determination of which, if any, tests are needed for these substances, EPA is adding the six substances to two model information-gathering rules: the Toxic Substances Control Act (TSCA) section 8(a) Preliminary Assessment Information rule (PAIR), and the TSCA section 8(d) Health and Safety Data Reporting Rule. The substances being given priority consideration are: 2,6-Anthracenedisulfonic acid, 4,8-diamino-9,10-dihydro-1,5-dihydroxy-9,10-dioxo-, CAS. No. 128-86-9; 2,6-Anthracenedisulfonic acid, 4,8-diamino-9,10-dihydro-1,5-dihydroxy-9,10-dioxo-, disodium salt, CAS No. 2861-02-1; 2-Anthracenesulfonic acid, 4[(4-(acetylamino)phenyl)amino]-1-amino-9,10-dihydro-9,10-dioxo-, CAS No. 6247-34-3; 2-Anthracenesulfonic acid, 4-[(4-(acetylamino)phenyl)amino]-1-amino-9,10-dihydro-9,10-dioxo-, monosodium salt, CAS No. 6424-85-7 9,10-Anthracenedione, 1,5-diaminochloro-4,8-dihydroxy-, CAS. No. 12217-79-7; 9,10-Anthracenedione, 1-amino-4-hydroxy-2-phenoxy-, CAS No. 17418-58-5. EPA is also making a technical amendment to the TSCA section 8(d) submission requirements to clarify how studies should be submitted.

DATE: This rule shall become effective on December 21, 1987.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, DC 20460, Telephone: (202-554-1404).

SUPPLEMENTARY INFORMATION: This rule adds six chemical substances to the PAIR and section 8(d) Health and Safety Data Reporting Rule. Manufacturers, processors, and importers of these chemicals will be required to report end use, exposure, volume, and unpublished health and safety data to the Agency. Elsewhere in today's issue of the **Federal Register**, EPA is announcing the receipt of the Twenty-first Report of the ITC, which was transmitted to EPA on October 30, 1987.

I. Background

Section 4(e) of TSCA established the ITC and authorized it to recommend to EPA chemical substances and mixtures (chemicals) to be given priority consideration in proposing chemical test rules. For some of these chemicals the ITC may designate that EPA must respond to its recommendations within 12 months. In this time, EPA must either initiate a rulemaking to test the chemical or publish in the **Federal Register** its reasons for not doing so. Elsewhere in today's issue of the **Federal Register**, EPA is announcing the receipt of the Twenty-first Report of the ITC, which was transmitted to EPA on October 30, 1987. The Twenty-first Report revises and updates the Committee's priority list of chemicals and adds six substances to the section 4(e) priority list. This rule adds these substances to the PAIR and section 8(d) Health and Safety Data Reporting Rule which will require manufacturers, importers, and processors to report volume, end use, exposure, and unpublished health and safety data to EPA. This rule also makes a nonsubstantive technical amendment to the section 8(d) submission requirements to clarify how studies should be submitted.

To assist EPA in responding to the ITC recommendations, EPA has developed two model information-gathering rules which provide for the automatic addition of ITC priority list substances. Whenever EPA announces the receipt of an ITC report, EPA may, at the same time without notice and comment, amend the two model information-gathering rules by adding the recommended substances. The amendment adding these substances to the PAIR and the Health and Safety Data Reporting Rule becomes effective 30 days after publication.

EPA issued PAIR under section 8(a) of TSCA (15 U.S.C. 2607(a)), and it is codified at 40 CFR Part 712. This model section 8(a) rule established standard reporting requirements for manufacturers and importers of the chemicals listed in the rule. These manufacturers and importers are required to submit a one-time report on geneal volume, end use, and exposure information using the Preliminary Assessment Information Manufacturer's Report (EPA Form 7710-35). EPA uses this model section 8(a) rule to gather current information on substances of concern quickly.

EPA issued the model Health and Safety Data Reporting Rule under section 8(d) of TSCA (15 U.S.C. 2607(d)), and it is codified at 40 CFR Part 716. EPA revised the section 8(d) model rule on September 15, 1986 (51 FR 32720). The section 8(d) model rule requires past, current, and prospective manufacturers, importers, and processors of listed chemical substances and mixtures to submit to EPA copies and lists of unpublished health and safety studies on the listed chemicals that they manufacture, import, or process. These studies provide EPA with useful information and have provided significant support for EPA's decisionmaking under TSCA sections 4, 5, 6, 8, and 9.

The Agency is also in this rule making a technical amendment to the section 8(d) model rule submission requirements to clarify how studies should be submitted. EPA is issuing this clarification because people have been submitting section 8(d) studies without clearly identifying which chemical they apply to. Under this amendment, section 8(d) submissions must be identified either on the face of the study or otherwise by the applicable chemical name and Chemical Abstracts Service Registry Number (CAS Number), if any, identified in § 716.120(a) (1) and (2). This indexing or identification could be done in three ways. First, the cover letter which is required under §§ 716.30(b) and 716.35(b) could index each study by CAS Number and chemical name. Second, a separate attachment could be included in the submission which identifies each of the studies by chemical name and CAS Number. Finally, each individual study could include the CAS Number and chemical name on its first page or on a cover page. While other means of compliance may be available, the Agency is most concerned that the chemical name and CAS Number associated with each study be easily ascertainable from the study, the cover letter, or an attachment.

II. Chemicals To Be Added

The following ITC priority list substances for which reporting is required under 40 CFR Parts 712 and 716 are listed in ascending CAS Number order:

CAS No.	Name
128-86-9	2,6-Anthracenedisulfonic acid, 4,8-diamino-9,10-dihydro-1,5-dihydroxy-9,10-dioxo-
2861-02-1	2,6-Anthracenedisulfonic acid, 4,8-diamino-9,10-dihydro-1,5-dihydroxy-9,10-dioxo-, disodium salt
6247-34-3	2-Anthracenesulfonic acid, 4-[(4-(acetylamino)phenyl)amino]-1-amino-9,10-dihydro-9,10-dioxo-

CAS No.	Name
6424-85-7	2-Anthracenesulfonic acid, 4-[(4-(acetylamino)phenyl)amino]-1-amino-9,10-dihydro-9,10-dioxo-, monosodium salt
12217-79-7	9,10-Anthracenedione, 1,5-diaminochloro-4,8-dihydroxy-
17418-58-5	9,10-Anthracenedione, 1-amino-4-hydroxy-2-phenoxy-

III. Reporting Requirements

A. Preliminary Assessment Information Rule

All persons who manufactured or imported the substances named in this rule during their latest complete corporate fiscal year must submit a Preliminary Assessment Information Manufacturer's Report (EPA Form No. 7710–35) for each manufacturing or importing site at which they manufactured or imported a named substance. A separate form must be completed for each substance and submitted to the Agency no later than February 18, 1988. Persons who have previously and voluntarily submitted a Manufacturer's Report to the ITC or EPA should read § 712.30(a)(3). This section allows these persons to submit a copy of the original Report to EPA or to notify EPA by letter of their desire to have this submission accepted in lieu of a current data submission.

Complete details of the reporting requirements, including exemptions and a facsimile of the reporting form, are fully described in 40 CFR Part 712. Copies of the form are available from the TSCA Assistance Office at the address which precedes Unit I.

B. Health and Safety Data Reporting Rule

Listed below are the general reporting requirements of the section 8(d) model rule.

1. Persons who, in the 10 years preceding the date a substance is listed, either have proposed to manufacture, import, or process, or have manufactured, imported, or processed, the listed substance must submit to EPA:

A copy of each health and safety study which is in their possession at the time the substance is listed.

2. Persons who, at the time the substance is listed, propose to manufacture, import, or process; or are manufacturing, importing, or processing the listed substance must submit to EPA:

a. A copy of each health and safety study which is in their possession at the time the substance is listed.

b. A list of health and safety studies known to them but not in their possession at the time the substance is listed.

c. A list of health and safety studies that are ongoing at the time the substance is listed and are being conducted by or for them.

d. A list of each health and safety study that is initiated after the date the substance is listed and is conducted by or for them.

e. A copy of each health and safety study that was previously listed as ongoing or subsequently initiated and is now complete—regardless of completion date.

3. Persons who, after the time the substance is listed, propose to manufacture, import, or process the listed substance must submit to EPA:

a. A copy of each health and safety study which is in their possession at the time they propose to manufacture, import, or process the listed substance.

b. A list of health and safety studies known to them but not in their possession at the time they propose to manufacture, import, or process the listed substance.

c. A list of health and safety studies that are ongoing at the time they propose to manufacture, import, or process the listed substance, and are being conducted by or for them.

d. A list of each health and safety study that is initiated after the time they propose to manufacture, import, or process the listed substance, and is conducted by or for them.

e. A copy of each health and safety study that was previously listed as ongoing or subsequently initiated and is now complete—regardless of the completion date.

Detailed guidance for reporting unpublished health and safety data is provided in the section 8(d) Health and Safety Data Reporting Rule published in the **Federal Register** of September 15, 1986 (51 FR 32720). Also found there are the reporting exemptions.

C. Submission of Pair Reports and Section 8(d) Studies

PAIR reports and section 8(d) health and safety studies must be sent to: Document Processing Center (TS–790), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Attn: (insert either PAIR or 8(d) Reporting)

D. Removal of Chemicals from the Rules

Any person who believes that section 8(a) or (d) reporting required by this rule is unwarranted, should promptly submit to the Agency in detail the reasons for that belief. EPA may then remove the substance from this rule. When withdrawing a substance from the rule, EPA will issue a rule amendment for publication in the **Federal Register.**

IV. Release of Aggregate Data

The Agency will follow procedures for the release of aggregate statistics as prescribed in a rule related notice published in the **Federal Register** of June 13, 1983 (48 FR 27041). Included in the notice are procedures for requesting exemptions from the release of aggregate data. Exemption requests concerning the release of aggregate data on any chemical substance must be received by EPA no later than February 18, 1988.

V. Economic Analysis

A. Preliminary Assessment Information Rule

EPA estimates the PAIR reporting cost of this rule is $73,059. To calculate this figure EPA used the TSCA Inventory to generate a list of manufacturers and importers of these substances. Since two companies qualify as small businesses as defined in 40 CFR 712.25(c), EPA expects 49 firms to report a total of 49 reports.

Reporting Cost (dollars)	
(a) 49 reports expected at $813/report	$39,837
(b) 49 familiarization cases at $678/case	33,222
Total	73,059
Average cost per site	$1,491
Average cost per firm	$1,491
Reporting Burden (hours)	
(a) familiarization: 18 hours per site × 49 sites	882
(b) reporting: 16 hours per report × 49 reports	784
Total (hours)	1,666
EPA Cost	
Processing Cost=49 reports × $91/report	$4,459

B. Health and Safety Data Reporting Rule

EPA estimates the total reporting costs for establishing section 8(d) reporting requirements for these substances is $40,088. This cost estimate is relatively high, because the Agency is uncertain about the likely number of respondents to the rule. Although EPA has used the best available data to make its economic projections, much of the data is not current. Therefore, EPA intends to overestimate rather than underestimate the reporting burden.

Nevertheless, the cost of this rule is low in comparison with its potential benefits. Health and safety studies

concerning these substances would improve EPA's ability to identify potential public health and environmental problems with regard to these chemicals. The Agency therefore would be better able to determine whether further regulatory action would be necessary.

The estimated reporting costs are broken down as follows:

Initial corporate review	$19,110
Site identification	3,510
File searches at affected sites	7,290
Title listing	378
Photocopying	1,220
Managerial review	7,020
Reporting on newly-initiated studies	172
Submissions after initial reporting period	4,273
Total	42,973

VI. Rulemaking Record

The following documents constitute the record for this rule (docket control number OPTS-84026). All of these documents are available to the public in the OTS Reading Room from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The OTS Reading Room is located at EPA Headquarters, Rm. NE-G004, 401 M St., SW., Washington, DC.

1. This final rule.
2. The economic analyses for this rule.
3. The Twenty-first Report of the Interagency Testing Committee.

VII. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. This rule is not major because it will not result in an effect on the economy of $100 million or more, an increase in costs of prices, or any of the adverse effects described in the Executive Order.

This amendment was not submitted to the Office of Management and Budget (OMB) for review, because the automatic listing of designated substances is provided for in 40 CFR 712.30(c) and 716.18(b)—final rules which have been previously reviewed by OMB under the terms of the Executive Order.

B. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by OMB under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. and have been assigned OMB control numbers 2070-0054 and 2070-0004.

List of Subjects in 40 CFR Parts 712 and 716

Chemicals, Environmental protection, Hazardous substances, Health and safety data, Recordkeeping and reporting requirements.

Dated: November 12, 1987.

Joseph Merenda,

Director, Existing Chemical Assessment Division, Office of Toxic Substances.

Therefore, 40 CFR Chapter I is amended as follows:

PART 712—[AMENDED]

1. In Part 712:

a. The authority citation for Part 712 continues to read as follows:

Authority: 15 U.S.C. 2607(a).

b. Section 712.30 is amended by adding paragraph (v) to read as follows:

§ 712.30 Chemical lists and reporting periods.

* * * * *

(v) A Preliminary Assessment Information Manufacturer's Report must be submitted by February 18, 1988, for each substance listed below.

CAS No.	Substance
128-86-9	2,6-Anthracenedisulfonic acid, 4,8-diamino-9,10-dihydro-1,5-dihydroxy-9,10-dioxo-.
2861-02-1	2,6-Anthracenedisulfonic acid, 4,8-diamino-9,10-dihydro-1,5-dihydroxy-9,10-dioxo-, disodium salt.
6247-34-3	2-Anthracenesulfonic acid, 4-[(4-(acetylamino) phenyl)amino]-1-amino-9,10-dihydro-9,10-dioxo-.
6424-85-7	2-Anthracenesulfonic acid, 4-[(4-(acetylamino) phenyl)amino]-1-amino-9,10-dihydro-9,10-dioxo-, monosodium salt.
12217-79-7	9,10-Anthracenedione, 1,5-diaminochloro-4,8-dihydroxy-.
17418-58-5	9,10-Anthracenedione, 1-amino-4-hydroxy-2-phenoxy-.

PART 716—[AMENDED]

2. In Part 716:

a. The authority citation for Part 716 continues to read as follows:

Authority: 15 U.S.C. 2607(d).

b. By revising paragraph (b) of § 716.30 to read as follows:

§ 716.30 Submission of copies of studies.

* * * * *

(b) Submissions under paragraph (a) of this section must be identified either on the face of the study or otherwise by the applicable chemical name and CAS number (if any) listed in § 716.120(a) (1) and (2), and must be accompanied by a cover letter containing the name, job title, address and telephone number of the submitting official, and the name and address of the manufacturing or processing establishment on whose behalf the submission is made. In the cover letter, submitters must identify any impurity or additive known to have been present in the substance or listed mixtures as studied unless its presence is specifically noted in the study itself. The cover letter accompanying a study submitted by a trade association must also state that the submission is to satisfy reporting requirements under this part.

* * * * *

c. By revising paragraph (b) of § 716.35 to read as follows:

§ 716.35 Submission of copies of studies.

* * * * *

(b) Submission under paragraph (a) of this section must be identified either on the face of the study or otherwise by the applicable chemical name and CAS number (if any) listed in § 716.120(a) (1) and (2), and must be accompanied by a cover letter containing the name, job title, address and telephone numbers of the submitting official, and the name and address of the manufacturing or processing establishment on whose behalf the submission is made.

* * * * *

d. By adding substances to paragraph (a)(1) numerically by CAS Number and alphabetically to paragraph (a)(2) of § 716.120 to read as follows:

§716.120 Substances and listed mixtures to which this subpart applies.

(a) * * *

(1) * * *

CAS No.	Substance	Special exemptions	Effective date	Sunset date
128-86-9	2,6-Anthracenedisulfonic acid, 4, 8-diamino-9, 10-dihydro-1,5-dihydroxy-9, 10-dioxo		12/21/87	12/21/97
2861-02-1	2,6-Anthracenedisulfonic acid, 4,8-diamino-9, 10-dihydro-1,5-dihydroxy-9, 10-dioxo-, disodium salt		12/21/87	12/21/97
6247-34-3	2-Anthracenesulfonic acid, 4-[(4-acetylamino) phenyl)amino]-1-amino-9,10-dihydro-9,10-dioxo		12/21/87	12/21/97

CAS No.	Substance	Special exemptions	Effective date	Sunset date
6424-85-7	2-Anthracenesulfonic acid, 4-](4-(acetylamino) phenyl)amino]-1-amino-9,10-dihydro-9, 10-dioxo-, monosodium salt		12/21/87	12/21/97
12217-79-7	9,10-Anthracenedione, 1,5-diaminochloro-4,8-dihydroxy-		12/21/87	12/21/97
17418-58-5	9,10-Anthracenedione, 1-amino-4-hydroxy-2 phenoxy-		12/21/87	12/21/97

(2) * * *

Substance	CAS NO.	Special exemptions	Effective date	Sunset date
9,10-Anthracenedione, 1-amino-4-hydroxy-2-phenoxy-	17418-58-5		12/21/87	12/21/97
9,10-Anthracenedione, 1,5-diaminochloro-4,8-dihydroxy-	12217-79-7		12/21/87	12/21/97
2-Anthracenesulfonic acid, 4-[(4-(acetylamino)phenyl)amino]-1-amino-9,10-dihydro-9,10-dioxo-	6247-34-3		12/21/87	12/21/97
2-Anthracenesulfonic acid,4-[(4-(acetylamino)phenyl)amino]-1-amino-9,10-dihydro-9,10-dioxo-, monosodium salt	6424-85-7		12/21/87	12/21/97
2,6-Anthracenedisulfonic acid, 4,8-diamino-9,10-dihydro-1,5-dihydroxy-9,10-dioxo-	128-86-9		12/21/87	12/21/97
2,6-Anthracenedisulfonic acid, 4,8-diamino-9,10-dihydro-1,5-dihydroxy-9,10-dioxo-, disodium salt	2861-02-1		12/21/87	12/21/97

[FR Doc. 87-26555 Filed 11-19-87; 8:45 am]
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ENVIRONMENTAL PROTECTION AGENCY

[OPTS-41028; FRL-3292-3]

Twenty-First Report of the Interagency Testing Committee to the Administrator; Receipt of Report and Request for Comments Regarding Priority List of Chemicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Interagency Testing Committee (ITC), established under section 4(e) of the Toxic Substances Control Act (TSCA), transmitted its Twenty-First Report to the Administrator of EPA on October 30, 1987. This report, which revises and updates the Committee's priority list of chemicals, adds six chemicals to the list for priority consideration by EPA in the promulgation of test rules under section 4(a) of the Act. The new chemicals are Acid Blue 40, Acid form of Acid Blue 40, Acid Blue 45, Acid form of Acid Blue 45, Disperse Blue 56 and Disperse Red 60. These chemicals are not designated for response within 12 months. The Twenty-First Report is included in this notice. The Agency invites interested persons to submit written comments on the Report, and to attend a Focus meeting to help narrow and focus the issues raised by the ITC's recommendations. Members of the public are also invited to inform EPA if they wish to be notified of subsequent public meetings on these chemicals. ITC also notes the removal of three chemicals from the priority list because EPA has responded to the ITC's previous recommendations for testing of the chemicals.

DATES: Written comments should be submitted by December 21, 1987. A Focus Meeting on the six new chemicals will be held on December 15, 1987.

ADDRESS: Send written submissions to: TSCA Public Information Office (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. NE G-004, 401 M St., SW., Washington, DC 20460.

Submissions should bear the document control number (OPTS-41028).

The public record supporting this action, including comments, is available for public inspection in Rm. NE G-004 at the address noted above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. The Focus Meeting will be held at EPA Headquarters, Rm. 103 NE Mall, 401 M St., SW., Washington, DC. Persons planning to attend the Focus Meeting and/or seeking to be informed of subsequent public meetings on these chemicals, should notify the TSCA Assistance Office at the address listed below. To ensure seating accommodations at the Focus Meeting, persons interested in attending are asked to notify EPA at least one week ahead of the scheduled date.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (202-554-1404).

SUPPLEMENTARY INFORMATION: EPA has received the Report of the TSCA Interagency Testing Committee to the Administrator.

I. Background

TSCA (Pub. L. 94-469, 90 Stat. 2003 *et seq.*; 15 U.S.C. 2601 *et seq.*) authorizes the Administrator of EPA to promulgate regulations under section 4(a) requiring testing of chemical substances and mixtures in order to develop data relevant to determining the risks that such chemical substances and mixtures may present to health and the environment.

Section 4(e) of TSCA established an Interagency Testing Committee to make recommendations to the Administrator of EPA on chemical substances and mixtures to be given priority consideration in proposing test rules under section 4(a). Section 4(e) directs the Committee to revise its list of recommendations at least every 6 months as necessary. The ITC may "designate" up to 50 substances and mixtures at any one time for priority consideration by the Agency. For such designations, the Agency must within 12 months either initiate rulemaking or issue in the **Federal Register** its reasons for not doing so. The ITC's Twenty-First Report was received by the Administrator on October 30, 1987, and follows this Notice. The Report adds six substances to the TSCA section 4(e) priority list.

II. Written and Oral Comments and Public Meetings

EPA invites interested persons to submit detailed comments on the ITC's new recommendations. The Agency is interested in receiving information concerning additional or ongoing health and safety studies on the subject chemicals as well as information relating to the human and environmental exposure to these chemicals. A notice is published elsewhere in today's **Federal Register** adding the substances recommended in the ITC's Twenty-First Report to the TSCA section 8(d) Health and Safety Data Reporting Rule (40 CFR Part 716). The section 8(d) rule requires the reporting of unpublished health and safety studies on the listed chemicals. These chemicals will also be added to the TSCA section 8(a) Preliminary Assessment Information Rule (40 CFR Part 712) published elsewhere in this issue. The section 8(a) rule requires the reporting of production volume, use, exposure, and release information on the listed chemicals.

A Focus Meeting will be held to discuss relevant issues pertaining to these chemicals and to narrow the range of issues/effects which will be the focus of the Agency's subsequent activities in responding to the ITC recommendations. The Focus Meeting will be held on December 15, 1987 at 1 p.m. at EPA Headquarters, Rm. 103 NE Mall, 401 M St., SW., Washington, DC. This meeting is intended to supplement and expand upon written comments submitted in response to this notice.

Persons wishing to attend this meeting or subsequent meetings on these chemicals should call the TSCA Assistance Office at the telephone number listed above at least one week in advance.

All written submissions should bear the identifying docket number (OPTS-41028).

III. Status of List

In addition to adding the six recommendations to the priority list, the ITC's Twenty-First Report notes the removal of three chemicals from the list since the last ITC report because EPA has responded to the Committee's prior recommendations for testing of the chemicals. Subsequent to ITC's preparation of its Twentieth Report, EPA responded to the ITC's recommendations for three additional chemicals. The three chemicals removed and the dates of publication in the **Federal Register** of EPA's responses to the ITC for these chemicals are: Cyclohexane, May 20, 1987 (52 FR 19096); 2,6-di-*tert*-butylphenol, June 25, 1987 (52 FR 23862); and 3,4-dichlorobenzotrifluoride, June 23, 1987 (52 FR 23547).

The current list contains three designated substances, one chemical recommended with intent-to-designate, and 12 recommended substances.

Authority: 15 U.S.C. 2603.

Dated: November 12, 1987.

J. Merenda,

Director, Existing Chemical Assessment Division, Office of Toxic Substances.

Summary

Section 4 of the Toxic Substances Control Act of 1976 (TSCA, Pub. L. 94–469) provides for the testing of chemicals in commerce that may present an unreasonable risk of injury to health or the environment. It also provides for the establishment of a Committee (ITC), composed of representatives from eight designated Federal agencies, to recommend chemical substances and mixtures (chemicals) to which the Administrator of the U.S. Environmental Protection Agency (EPA) should give priority consideration for the promulgation of testing rules.

Section 4(e)(1)(A) of TSCA directs the Committee to recommend to the EPA Administrator chemicals to which the Administrator should give priority consideration for the promulgation of testing rules pursuant to section 4(a). The Committee is required to designate those chemicals, from among its recommendations, to which the Administrator should respond within 12 months by either initiating a rulemaking proceeding under section 4(a) or publishing the Administrator's reason for not initiating such a proceeding. At least every 6 months, the Committee makes those revisions in the TSCA section 4(e) Priority List that it determines to be necessary and transmits them to the EPA Administrator.

As a result of its deliberations, the Committee is revising the TSCA section 4(e) Priority List by the addition of six chemicals.

The Priority List is divided into three parts: Part A contains those recommended chemicals and groups designated for priority consideration and response by the EPA Administrator within 12 months. Part B contains chemicals and groups of chemicals recommended with intent-to-designate. This category was established by the Committee in its seventeenth report (50 FR 47603; November 19, 1985) to take advantage of rules promulgating automatic reporting requirements for non-designated ITC recommendations under the section 8(a) Preliminary Assessment rule and the TSCA section 8(d) Health and Safety Data Reporting rule. Information received following recommendation with intent-to-designate may influence the Committee to either designate or not designate the chemicals or groups of chemicals in a subsequent report to the Administrator. Part C contains chemicals and groups of chemicals that have been recommended for priority consideration by EPA without being designated for response within 12 months. The changes to the Priority List are presented, together with the types of testing recommended, in the following Table 1:

TABLE 1.—ADDITIONS TO THE SECTION (e) PRIORITY LIST, NOVEMBER 1987

Chemical/Group	Recommended studies
A. *Designated for response within 12 months:* None.	
B. *Recommended with Intent-to-Designate:* None.	
C. *Recommended Without Being Designated for Response Within 12 Months:*	
Acid Blue 40[1] (CAS No. 6424-85-7).	Health Effects: Genotoxicity for each of the six dyes. Chemical Fate: None. Ecological Effects: None.
Acid form of Acid Blue 40[2] (CAS No. 6247-34-3).	
Acid Blue 45[3] (CAS No. 2861-02-1).	
Acid form of Acid Blue 45[4] (CAS No. 128-86-9).	
Disperse Blue 56[5] (CAS No. 12217-79-7).	
Disperse Red 60[6] (CAS No. 17418-58-5).	

CA Index Names (9CI).

[1] 2-Anthracenesulfonic acid, 4-[(4-(acetylamino)phenyl)amino]-1-amino-9,10-dihydro-9,10-dioxo-, monosodium salt.

[2] 2-Anthracenesulfonic acid, 4-[(4-(acetylamino)phenyl)amino]-1-amino-9,10-dihydro-9,10-dioxo-

[3] 2,6-Anthracenedisulfonic acid, 4,8-diamino-9,10-dihydro-1,5-dihydroxy-9,10-dioxo-, disodium salt.

[4] 2,6-Anthracenedisulfonic acid, 4,8-diamino-9,10-dihydro-1,5-dihydroxy-9,10-dioxo-

[5] 9,10-Anthracenedione, 1,5-diaminochloro-4,8-dihydroxy-

[6] 9,10-Anthracenedione, 1-amino-4-hydroxy-2-phenoxy-

TSCA Interagency Testing Committee

Statutory Member Agencies and Their Representatives

Council on Environmental Quality
Carroll Curtis, Member
Department of Commerce
Patrick D. Cosslett, Member
Raimundo Prat, Alternate
Environmental Protection Agency
John D. Walker, Member and Vice Chairperson
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Jarvis L. Moyers, Alternate
Occupational Safety and Health Administration
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Notes

The Committee acknowledges and is grateful for the assistance and support given the ITC by the staff of Dynamac Corporation (technical support contractor) and personnel of the EPA Office of Toxic Substances.

Chapter 1—Introduction

1.1 *Background.* The TSCA Interagency Testing Committee (Committee) was established under section 4(e) of the Toxic Substances Control Act of 1976 (TSCA, Pub. L. 94–469). The specific mandate of the Committee is to recommend to the Administrator of the U.S. Environmental Protection Agency (EPA) chemical substances and mixtures in commerce that should be given priority consideration for the promulgation of testing rules to determine their potential hazard to human health and/or the environment. TSCA specifies that the Committee's recommendations shall be in the form of the Priority List, which is to be published in the **Federal Register**. The Committee is directed by section

[1] Appointed on June 10, 1987.

4(e)(1)(A) of the TSCA to designate those chemicals on the Priority List to which the EPA Administrator should respond within 12 months by either initiating a rulemaking proceeding under section 4(a) or publishing the Administrator's reason for not initiating such a proceeding. There is no statutory time limit for EPA response regarding chemicals that ITC has recommended but not designated for response within 12 months.

At least every 6 months, the Committee makes those revisions in the section 4(e) Priority List that it determines to be necessary and transmits them to the EPA Administrator.

The Committee is composed of representatives from eight statutory member agencies and seven liaison agencies. The specific representatives and their affiliations are named in the front of this report. The Committee's chemical review procedures and priority recommendations are described in previous reports (Refs. 1 through 5).

1.2 *Committee's previous reports.* Twenty previous reports to the EPA Administrator have been issued by the Committee and published in the **Federal Register** (Refs. 1 through 5). Ninety-six entries (chemicals and groups of chemicals) were recommended for priority consideration by the EPA Administrator and designated for response within 12 months. In addition, eight chemicals and one group of chemicals were recommended without being so designated.

1.3 *Committee's activities during this reporting period.* Between April 18, 1987 and October 15, 1987, the Committee continued to review chemicals from its fourth and fifth scoring exercises, and from nominations by Member Agencies, Liaison Agencies and State Agencies. The Committee also began reviewing chemicals from its sixth scoring exercise, which was completed in January 1987.

The Committee contacted chemical manufacturers and trade associations to request information that would be of value in its deliberations. Most of those contacted provided unpublished information on current production, exposure, uses, and effects of chemicals under study by the Committee.

During this reporting period, the Committee reviewed available information on 56 chemicals. Six were selected for addition to the section 4(e) Priority List, and thirty-one were deferred indefinitely. The remaining chemicals are still under study.

In its twentieth report to the EPA Administrator (Ref. 5, ITC, 1987), the Committee placed ethylbenzene (CAS No. 100–41–4) on the Priority List in the "Recommended with Intent-to-Designate" category. The Committee recommended that ethylbenzene be tested for acute toxicity to freshwater algae and invertebrates and to saltwater algae, invertebrates and fish. Subsequently, the Committee learned that acute toxicity testing of ethylbenzene with freshwater invertebrates has recently been completed at the University of Wisconsin. The Committee also has been informed (Ref. 6, SOCMA, 1987) that a consortium of ethylbenzene producers, the Styrene and Ethylbenzene Association, voluntarily has sponsored studies on the other acute toxicity tests recommended by the Committee. The Committee has deferred a decision on whether or not to designate ethylbenzene pending a review of the data developed during the above studies.

1.4 *The TSCA section 4(e) Priority List.* Section 4(e)(1)(B) of TSCA directs the Committee to: "* * * make such revisions in the [priority] list as it determines to be necessary and * * * transmit them to the Administrator together with the Committee's reasons for the revisions." Under this authority, the Committee is revising the Priority List by adding six chemicals: Acid Blue 40 and its related acid form, Acid Blue 45 and its related acid form, Disperse Blue 56 and Disperse Red 60. Three chemicals are being removed from the Priority List at this time. Cyclohexane (CAS No. 110–28–7) and 2,6-di-*tert*-butylphenol (CAS No. 128–39–2) were subjects of Notices of Proposed Rulemaking (52 FR 19096; May 20, 1987 and 52 FR 23862; June 25, 1987, respectively) and 3,4-dichlorobenzotrifluoride (CAS No. 328–84–7) which was the subject of a Testing Consent Order (52 FR 23547; June 23, 1987).

With the six new recommendations and three removals noted in this report, sixteen entries now appear on the section 4(e) Priority List. The Priority List is divided in the following Table 2 into three parts; namely, A. Chemicals and Groups of Chemicals Designated for Response Within 12 Months, B. Chemicals and Groups of Chemicals Recommended with Intent-to-Designate, and C. Chemicals and Groups of Chemicals Recommended Without Being Designated for Response Within 12 Months. Table 2 follows:

TABLE 2—THE TSCA SECTION 4(e) PRIORITY LIST

[November 1987]

Entry	Date of designation
A. Chemicals and Groups of Chemicals Recommended and Designated for Response Within 12 Months:	
1. Tributyl phosphate	Nov. 1986.
2. Isopropanol	May 1987.
3. Methyl *tert*-butyl ether	May 1987.

Entry	Date of recommendation
B. Chemicals and Groups of Chemicals Recommended with Intent-to-Designate:	
1. Ethylbenzene	May 1987.
C. Chemicals and Groups of Chemicals Recommended Without Being Designated for Response Within 12 Months:	
1. Diisodecyl phenyl phosphite	Nov. 1985.
2. C.I. Disperse Blue 79	Nov. 1986.
3. Methyl ethyl ketoxime	Nov. 1986.
4. *N*-[5-[bis[2-(acetyloxy)ethyl]amino]-2-[(2-bromo-4,6-dinitrophenyl)azo]-4-methoxy phenyl]-acetamide.	May 1987.
5. *N*-[5-[bis[2-(acetyloxy)ethyl]amino]-2-[2-chloro-4,6-(dinitrophenyl)azo]-4-methoxy phenyl]-acetamide.	May 1987.
6. *N*-[5-[bis[2-(acetyloxy)ethyl]amino]-2-[(2-chloro-4,6-dinitrophenyl)azo]-4-ethoxy phenyl]-acetamide.	May 1987.
7. Acid Blue 40	Nov. 1987.
8. 2-Anthracenesulfonic acid, 4-[(4-(acetylamino)phenyl)amino]-1-amino-9,10-dihydro-9,10-dioxo-.	Nov. 1987.
9. Acid Blue 45	Nov. 1987.
10. 2,6-Anthracenedisulfonic acid, 4,8-diamino-9,10-dihydro-1,5-dihydroxy-9,10-dioxo-.	Nov. 1987.
11. Disperse Blue 56	Nov. 1987.
12. Disperse Red 60	Nov. 1987.

References

(1) Sixteenth Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, May 21, 1985, 50 FR 20930–20939. Includes references to Reports 1 through 15 and an annotative list of removals.

(2) Seventeenth Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection

Agency. TSCA Interagency Testing Committee, November 19, 1985, 50 FR 47603–47612.

(3) Eighteenth Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, May 19, 1986, 51 FR 18368–18375.

(4) Nineteenth Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, November 14, 1986, 51 FR 41417–41432.

(5) Twentieth Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, May 20, 1987, 52 FR 19020–19026.

(6) SOCMA. Letter of October 14, 1987, from Eric A. Clarke, Executive Director of the Styrene and Ethylbenzene Association, Synthetic Organic Chemical Manufacturers Association, Inc., to R. Brink, Executive Secretary, Interagency Testing Committee.

Chapter 2—Recommendations of the Committee

2.1 *Chemicals recommended for priority consideration by the EPA Administrator.* As provided by section 4(e)(1)(B) of TSCA, the Committee is adding the following chemical substances to the section 4(e) Priority List: Acid Blue 40 and its related acid form, Acid Blue 45 and its related acid form, Disperse Blue 56 and Disperse Red 60. The recommendation of these chemicals is being made after considering the factors identified in section 4(e)(1)(A) and other relevant information, as well as the professional judgment of Committee members.

2.2 *Chemicals designated for response within 12 months.* None.

2.3 *Chemicals recommended with intent-to-designate.* None.

2.4 *Chemicals recommended without being designated for response within 12 months—Summary of recommended studies.* It is recommended that selected aminoanthraquinone dyes be tested for the following:

1. *Chemical fate:* None.

2. *Health effects:* Acid Blue 40 and its related acid for genotoxicity.

Acid Blue 45 and its related acid for genotoxicity.

Disperse Blue 56 for genotoxicity.

Disperse Red 60 for genotoxicity.

3. *Ecological effects:* None.

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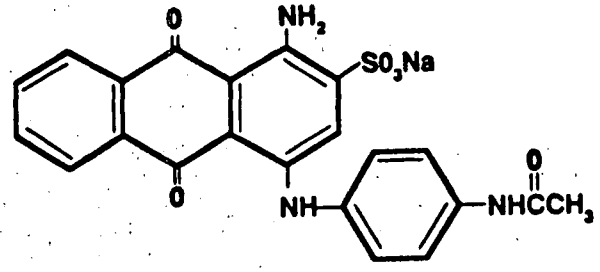
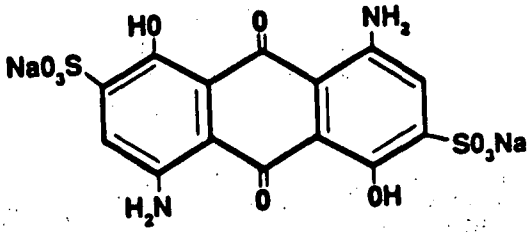
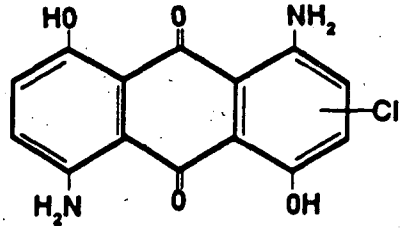
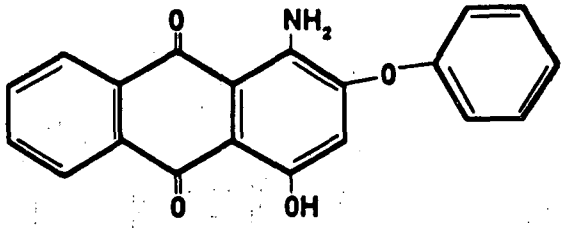
Physical and Chemical Information

	Acid Blue 40 C.I. 62125	Acid Blue 45 C.I. 63010
CAS No.	6424-85-7	2861-02-1
Synonyms	2-Anthracenesulfonic acid, 4-[(4-(acetylamino) phenyl)amino]-1-amino-9,10-dihydro-9,10-dioxo-, monosodium salt (9CI)	2,6-Anthracenedisulfonic acid, 4,8-diamino-9,10-dihydro-1,5-dihydroxy-9,10-dioxo-, disodium salt (9CI)
Structural Formula		
Empirical Formula	$C_{22}H_{16}N_3O_6S \cdot Na$	$C_{14}H_8N_2O_{10}S_2 \cdot 2Na$
Molecular Weight	473	474
Description of Chemical	Greenish blue	Blue

Physical and Chemical Information[1,2]

	Disperse Blue 56 C.I. 63285	Disperse Red 60 C.I. 60756
CAS No.	12217-79-7	17418-58-5
Synonyms	9,10-Anthracenedione 1,5-diaminochloro-4,8-dihydroxy- (9CI)	9,10-Anthracenedione, 1-amino-4-hydroxy-2-phenoxy- (9CI)
Structural Formula		
Empirical Formula	$C_{14}H_9ClN_2O_4$	$C_{20}H_{13}NO_4$
Molecular Weight	305	331
Description of Chemical	--	Deep red powder[3]

[a] Colour Index (1971, Ref. 6), unless specified otherwise.

[b] No quantitative information was found for melting point, boiling vapor pressure, solubility in water and log octanol/water partition coefficient values. In general, acid dyes are water soluble and disperse dyes are only slightly soluble in water (Ref. 6, Colour Index, 1971).

[c] Palanil Red BF, a proprietary mixture containing C.I. Disperse Red 60 composition unspecified (Ref. 1, BASF, 1986).

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Rationale for Recommendations

I. Introduction

The Committee has systematically reviewed the entire category of aminoanthraquinone dyes, which includes 338 compounds identified in the Colour Index (1971, Ref. 6). At least ninety percent of the 338 compounds are not produced or imported in commercially significant amounts in the United States. Of thirty to forty commercially important aminoanthraquinone dyes, human health effects concerns focused primarily on the aminoanthraquinone dyes with a primary amino group ($-NH_2$). Ecological fate and effects concerns were directed toward the non-symmetrical aminoanthraquinone dyes with (1) an ethanolamino group, or (2) cationic nitrogen, or (3) an electron-releasing group (e.g., $-NH_2$, $-NHR$, $-OH$) in the 1,4 positions. As a result of these reviews, the Committee has concluded that Acid Blue 40, Acid Blue 45, Disperse Blue 56 and Disperse Red 60 should be tested for genotoxicity. Acid Blue 40 and Acid Blue 45, which are monosodium and disodium salts, respectively, may be used interchangeably with their acid forms. Therefore, the Committee is including the related acid forms in its recommendation. These dyes (and/or the acid forms of Acid Blue 40 and Acid Blue 45) are believed to be among the commercially more important of the primary aminoanthraquinone dyes. Although testing is being recommmended for only four of the aminoanthraquinones (and/or the analogous acid forms of Acid Blue 40 and Acid Blue 45), the Committee believes it is appropriate to consider these four dyes as representative of other aminoanthraquinone dyes that, in aggregate, are commercially important and used in appreciable amounts annually.

II. Exposure Information

A. Production/Use

Annual production and importation volumes, from 1979 through 1982, for the recommended dyes exceeded 3 million pounds (Ref. 20, Sigman et al., 1985).

The main uses of the aminoanthraquinone dyes are to color both natural and synthetic fibers (Ref. 6, Colour Index, 1971). Some of the dyes also have non-textile applications. For example, Acid Blue 40 is also used to color leather and paper (Ref. 6, Colour Index, 1971.) Acid Blue 45 is used as a colorant in inks, paper, anodized aluminum, plastics, soap, cosmetics, and leather (Ref. 6, Colour Index, 1971).

B. Evidence for Human Exposure

As many as 1,450 workers may be exposed to the individual dyes (Ref. 13, NIOSH, 1984). OSHA has not set exposure limits for these dyes, but BASF (1986, Ref. 1) established an internal exposure limit of 5 mg/m^3 for Disperse Red 60, and Ciba-Geigy (1985, Ref. 5) recommends a short-term limit of 10 mg/m^3 for the petroleum hydrocarbons used in a mixture containing this dye.

C. Environmental Release

It has been estimated that about 10 percent of textile dyes are released to the environment (Ref. 16, Porter, 1973) in waste streams, with the potential for entering rivers or other water courses.

III. Chemical Fate Information

The Committee has evaluated available chemical fate information on aminoanthraquinone dyes. The limited data available indicate that aminoanthraquinone dyes are relatively persistent in the environment but are unlikely to be found at concentrations that will cause adverse ecological effects. Therefore, no chemical fate studies are being recommended at this time.

IV. Biological Effects of Concern to Human Health

A. Metabolism and Toxicokinetics

Absorption of Disperse Red 60 occurred in rats following oral dosing (Ref. 12, Leist, 1982). Aminoanthraquinones are acylated to acetyl or formyl derivatives or hydroxylated on one of the aromatic rings (Ref. 19, Sigman et al., 1983).

Acid Blue 45 had no effect on ADP uptake (Ref. 2, Boos and Schlimme, 1981). The parent compound 2-aminoanthraquinone, when fed to female F-344 rats, increased liver cytochrome P-450, NADPA-cytochrome-c-reductase, BP hydroxylase, epoxide hydrolase, and 1-naphthol-O-glucuronyl transferase as well as N-demethylases, aniline hydroxylase, and azo dye reductase enzymes (Ref. 17, Ramanathan et al., 1981).

B. Acute and Subchronic (Short-Term) Effects

The acute oral toxicity (LD_{50}) of both Acid Blue 40 and Disperse Red 60 in rats is reported to be greater than 5,000 mg/kg (Ref. 7, American Hoechst, undated, as cited in ETAD, 1987; Ref. 12, Leist, 1982). In rats, the acute oral LD_{50} of Palanil Red BF, a proprietary mixture containing an unspecified amount of Disperse Red 60, was reported to be greater than 6,400 mg/kg (Ref. 1, BASF, 1986).

Disperse Red 60 had a very low cumulative toxicity in rats (Ref. 12, Leist, 1982).

C. Genotoxicity

No information was found regarding the genotoxicity of the selected dyes. However, genotoxicity data are available for other aminoanthraquinone dyes. For example, Disperse Blue 1 was positive in two separate studies in *Salmonella typhimurium* (Ref. 4, Brown and Brown, 1976; Ref. 15, NTP, 1986b) but negative in CHO cells (Ref. 15, NTP, 1986b). Disperse Violet 1 was positive in *S. typhimurium* in three of five experiments (Ref. 4, Brown and Brown, 1976; Ref. 22, Tamaro et al., 1975; Ref. 23, Yoshikawa et al., 1976; Ref. 8, Henry, 1983; Ref. 18, Shahin and Von Borstel, 1978). This dye tested positively in a DNA repair test (Ref. 4, Brown and Brown, 1976) and in *E. coli* (Ref. 11, Kvelland, 1983) but was negative in *S. cerevisiae* (Ref. 18, Shahin and Von Borstel, 1978). Disperse Violet 8 was positive in *S. typhimurium* but negative in a DNA repair test in the same strain (Ref. 4, Brown and Brown, 1976). Reactive Blue 19 was negative in *S. typhimurium* (Ref. 4, Brown and Brown, 1976). Genotoxicity tests have been done on Disperse Red 4 and 15 and on Solvent Red 1, using the Ames *Salmonella* assay. Disperse Red 4 was nonmutagenic in all five test strains used (Ref. 3, Brown, 1980). Disperse Red 15 was mutagenic only in strain TA1537, with and without metabolic activation (Ref. 4, Brown and Brown, 1976). A mutagenic response was observed in one of two studies conducted with Solvent Red 1, although a dose response relationship was not apparent (Ref. 8, Henry, 1983).

D. Oncogenicity

No information was found regarding the oncogenicity of the selected dyes. However, limited data are available on other aminoanthraquinone dyes. Feeding Disperse Blue 1 led to development of bladder neoplasms and other tumors in male and female rats, but mice were affected only marginally (Ref. 14, NTP, 1986a). Prolonged skin application of Disperse Violet 8 led to tumor formation in rats (Ref. 10, Kuz'menko and Petrovskaya, 1981). A test of Reactive Blue 19 was not adequate (Ref. 19, Pliss, 1967, as cited in Sigman et al., 1983).

E. Reproductive and Developmental Effects

No information was found.

F. Chronic (Long-Term) Effects

No information was found.

G. Observations in Humans

No information was found regarding the selected dyes. However, Disperse Blue 1 and Disperse Violet 8 were noted to cause positive sensitization in humans (Ref. 21, Sim-Davies, 1972; Ref. 9, Kuz'menko, 1983).

H. Rationale For Health Effects Recommendations

The aminoanthraquinone dyes are used mostly to dye fibers. The volume of each dye and the number of workers exposed vary each year, depending on the colors in style. In order to obtain some measure of their biological effects, genotoxicity studies should be done on the recommended dyes.

Further genotoxicity studies on the aminoanthraquinone dyes reported to be mutagenic in Section IV.C are not being recommended at this time because of the presumed low human exposure potentials of these compounds.

V. Ecological Effects of Concern

The Committee has evaluated available ecological effects information on aminoanthraquinone dyes. The available evidence indicates that these dyes are unlikely to be present in the environment at concentrations that cause adverse effects. Therefore, no ecological effects studies are being recommended at this time.

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Federal Register

Friday
November 20, 1987

Part VI

Department of Health and Human Services

Office of Human Development Services

45 CFR Parts 1385, 1386, 1387, and 1388
Developmental Disabilities Program; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

45 CFR Parts 1385, 1386, 1387, and 1388

Developmental Disabilities Program

AGENCY: Office of Human Development Services, HHS.

ACTION: Final rule.

SUMMARY: The Department is issuing final rules for the Developmental Disabilities program. This final regulation implements the Developmental Disabilities Assistance and Bill of Rights Act of 1984 as amended, (Pub. L. 98–527). The regulations reflect statutory changes in reporting and paperwork requirements and include new program criteria for the University Affiliated Facilities program in 45 CFR Part 1388.

EFFECTIVE DATE: November 20, 1987.

FOR FURTHER INFORMATION CONTACT: James J. Colarusso, Director, Management Services Staff, Administration on Developmental Disabilities Hubert H. Humphrey Building, Room 351–D, 200 Independence Avenue, SW., Washington, DC 20201, Telephone: (202) 245–2904.

SUPPLEMENTARY INFORMATION:

Description of Program

The Developmental Disabilities Assistance and Bill of Rights Act (the Act), 42 U.S.C. 6000, has traditionally served a target population who, by virtue of their severe handicapping conditions, have been underserved or inappropriately served through existing programs.

Legislation originally enacted in 1963 as the Mental Retardation Facilities and Construction Act (Pub. L. 88–164) authorized planning activities and construction of facilities in which services were to be provided to the mentally retarded. This legislation was subsequently amended by the Developmental Disabilities and Facilities Construction Act of 1970 (Pub. L. 91–517) which further expanded the target population to include individuals with cerebral palsy epilepsy and other neurological disorders. It also created State Planning Councils to advocate for, plan, monitor and evaluate services for the developmentally disabled and it authorized grants for constructing, administering and operating university affiliated facilities.

Public Law 91–517 and successive amendments to the Act emphasized that the purpose of the Developmental Disabilities Program was to strengthen, rather than supplant, existing services, and to fill gaps in the human service delivery system. Section 101(a)(5) of the Findings and Purpose section of the Act (42 U.S.C. 6000(a)(5)) explicitly states that "it is in the national interest to strengthen specific programs, espeically programs that reduce or eliminate the need for institutional care * * *".

Public Law 94–103, the 1975 Amendments, deleted the construction authority, authorized studies of the feasibility of having university affiliated facilities establish satellite centers, emphasized advocacy, and added a new requirement that States establish a Protection and Advocate system (42 U.S.C. 6012). It also added section 111, "Rights of the Developmentally Disabled" which stated Congress' findings with respect to the rights of persons with developmental disabilities.

The 1978 amendments (Pub. L. 95–602) required the provision of priority services to assist States in focusing their energies on specific areas needing remediation (42 U.S.C. 6001(8)). In addition, these amendments added a new definition of developmental disabilities (42 U.S.C. 6001(7)). The term "developmental disability" was defined in the 1978 amendments as "* * * a severe chronic disability of a person which:

A. Is attributable to a mental or physical impairment or combination of mental and physical impairments;

B. Is manifested before the person attains age twenty-two;

C. Is likely to continue indefinitely;

D. Results in substantial functional limitations in three or more of the following areas of major life activity: (i) Self-care, (ii) receptive and expressive language, (iii) learning, (iv) mobility, (v) self-direction, (vi) capacity for independent living, and (vii) economic self-sufficiency; and

E. reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated."

The definitional change was arrived at following an extensive study and emphasizes functional deficits rather than clinical conditions. It is estimated that over two million people in the United States now meet the functional definition of developmental disability.

The Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35) extended the Developmental Disabilities Program through September 30, 1984. It authorized appropriations for the four major programs in the Act: (1) The basic State grant program (42 U.S.C. 6061–6068); (2) a system for protection and advocacy of individual rights (42 U.S.C. 6012) (3) the university affiliated facilities programs for administration and operation of interdisciplinary training, research and service programs (42 U.S.C. 6031–6033); and (4) special project grants for projects of national significance (42 U.S.C. 6081).

In addition, section 912 of Pub. L. 97–35 repealed the requirement formerly contained in section 110 of the Act (42 U.S.C. 6009) for a specific evaluation system for services furnished to persons assisted under the Developmental Disabilities Program.

The 1984 Amendments (Pub. L. 98–527) revised and extended the Act through September 30, 1987. Section 101(b)(1) of the Findings and Purposes section of Pub. L. 98–527, (42 U.S.C. 6000(b)(1)) added a new emphasis to assist States to assure that persons with developmental disabilities receive the care, treatment and other services necessary to enable them to achieve their maximum potential through increased independence, productivity, and integration into the community.

In addition, the 1984 Amendments required increased accountability of State program and fiscal management which included the introduction of new and revised reporting requirements in section 107 (a) and (b) (42 U.S.C. 6006).

The regulations for the Developmental Disabilities Program are found at 45 CFR parts 1385, 1386, 1387 and 1388. The most recent revision applicable to the Basic State Grant program, the Protection and Advocacy System and Special Projects, was published on March 27, 1984 (49 FR 11779). Rules for the University Affiliated Facilities program were last published on August 6, 1979 (44 FR 45949). These programs are administered at the Federal level by the Administration on Developmental Disabilities (ADD).

The Department published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on July 17, 1986, (51 FR 25904–25914). Interested persons were given sixty days in which to send written comments, suggestions or objections regarding the proposed regulations. During the sixty (60) day comment period eleven (11) letters containing approximatley sixty-five (65) comments were received.

All written comments, including requests for editorial changes, were analyzed and form the basis for changes which the Department has made in these final rules.

Part 1385 contains provisions which apply to all of the Developmental Disabilities programs. Part 1386

regulates the two formula grant programs: the Basic State Grant program authorized by Part B of the Act, and the Protection Advocacy (P&A) program authorized by Part C of the Act. Part 1387 applies to Special Projects—Projects of National Significance; Part 1388 applies to the University Affiliated Facilities program authorized by Part D of the Act.

Summary of Comments and the Departmental Response

The discussion which follows includes a summary of major comments, our responses to those comments, and a description of all changes that we have made in the NPRM.

PART 1385—REQUIREMENTS APPLICABLE TO THE DEVELOPMENTAL DISABILITIES PROGRAM

Section 1385.5 Recovery of Federal funds used for construction of facilities

Section 1385.5 of the NPRM proposed requirements which reaffirmed the Department's commitment to recover funds spent for the construction of facilities pursuant to section 105 of the Act. The NPRM required the State Councils and the University-Affiliated Facilities to report to the Commissioner if such facilities will be sold or transferred to a non-public entity or if it will cease to serve persons with developmental disabilities.

Comment: One commenter recommended that regulations should be promulgated under this section which would release the owner from the obligation to repay construction funds for food cause.

Response: The Department believes that the waiver authority in § 1385.7 already establishes the authority to release an owner from the obligation to repay construction funds for good cause. Therefore, no change to § 1385.5 is necessary.

Section 1385.7 Waivers

The only change proposed in § 1385.7 of the NPRM regarding a waiver request on construction recovery was a correction of the statutory citation. The regulatory language of the March 27, 1987, final rule was unchanged. Generally, if comments addressed a section of the regulations we had not proposed to revise, we do not discuss them here. However, as there appears to be considerable confusion over the relationship between § 1385.5 and § 1385.7, we are taking this opportunity to respond to the comments on construction recovery and the waiver provision.

Comment: A commenter addressed the requirement of § 1385.5(b) regarding submission of documentation by State Councils and University Affiliated Facilities regarding facilities built with funds furnished under the Act. The commenter was concerned that the regulation did not describe in detail how the Commissioner would release an owner from obligation for good cause and recommended that the language in § 1385.7 be revised to reference a policy issuance which details the process of recovery of Federal funds used for construction of such facilities. The commenter indicated that information on this process was mandated by the statute to be included in regulation.

Another commenter recommended that State Councils and University Affiliated Facilities eligible for a waiver be absolved of the documentation requirements in § 1385.5(b).

Response: The Department believes that §§ 1385.5 and 1385.7 as currently written cover all statutory requirements with respect to providing information through regulations, and it is not necessary to include references to specific policy issuances in regulations. The current policy issuance, ADD-PI-85-1, provides the administrative procedures for construction recovery.

We do not concur that State Councils and University Affiliated Facilities eligible for a waiver be absolved of the documentation requirements as outlined in § 1385.5(b). The Commissioner must have such information to base the decision on whether to accept a waiver request with respect to alternative use of facilities constructed with funds under the Act. Therefore, no changes have been made in the final rule.

PART 1386—FORMULA GRANT PROGRAMS

Subpart B—State System for Protection and Advocacy of Individual Rights

Section 1386.20 Designated State Protection and Advocacy Office

Paragraph (d) of § 1386.20 proposed new requirements a State must follow in order to redesignate the Protection and Advocacy Agency.

Comment: Two commenters supported the proposed language in § 1386.20(d) regarding the requirement for public notice of the intent to redesignate and the provisions regarding public comment.

One commenter expressed the view that the regulation should be revised to require that any intention of a redesignation may be made by notice which can include but not be limited to a public notice.

Three commenters requested that the regulation be modified to require an opportunity for a public hearing and comment to ensure that there is meaningful public input on redesignation.

In addition, three commenters provided suggestions for additional information to be required through the public notice provision.

Response: We agree with several of the comments regarding additional informational requirements for the public notice and amended the final rule to include information on the name of the currently designated agency and the effective date of the proposed redesignation. Also, the regulation does not preclude a public hearing or use of additional notice requirements if a State deems such action appropriate. In addition, the language of the final rule regarding the designating official or entity for the Protection and Advocacy Program has been included to conform with the changes made in § 1386.23(a).

Paragraph (e) of § 1386.20 sets forth the information requirements that must be submitted to the Commissioner.

Comment: Three commenters suggested that § 1386.20(e)(1) be revised to provide a definition or standard of what constitutes good cause in relation to redesignating the Protection and Advocacy agency and recommended definitions.

Response: We do not concur and have not provided a definition of good cause because it is up to each individual State to ascertain, document and provide assurance that good cause exists within that State to warrant a Protection and Advocacy redesignation.

However, we have amended § 1386.20 (e)(1) to make clear that justification for the redesignation of a Protection and Advocacy agency can not be based on the fact that the agency was carrying out the requirements of the statute.

Comment: One commenter wanted the language revised to include a requirement that ADD provide notice to the previously designated Protection and Advocacy agency of its approval of another agency as the Protection and Advocacy agency and the availability of the Department's Grant Appeals Board for appealing the redesignation determination.

Response: There is no authority for an appeal to the Department's Grant Appeals Board in this instance. (See 45 CFR Part 16.) However, if there is evidence that the redesignation by the State was not done for good cause, or the State did not follow the process required in these regulations, or both,

such evidence should be submitted to the Commissioner for review.

Section 1386.23 Periodic Reports: Protection and Advocacy System

Paragraph (a) of § 1386.23(a) sets forth the establishment of a new requirement that States submit, on a one time basis, written assurances of compliance with section 142 of the Act. This provision was established because the triennial report which previously included these assurances was deleted in the statute.

Comment: One commenter stated that the current regulations did not adequately specify who must sign written assurances for the Protection and Advocacy program.

Also, one commenter suggested that the Governor or appropriate State official sign the assurances in some instances and the Director of the Protection and Advocacy agency be authorized by the Governor to provide assurance with compliance with section 142 of the Act will occur.

In addition, one commenter wanted Section 1386.23 (a) deleted as assurances to comply with the Act had already been obtained through a program instruction and that such a requirement did not need to be included in the regulation.

Response: We agree with the first two comments and have amended the final rule to allow the Governor or a state official empowered by the Governor or State legislature to provide assurance of compliance with section 142 of the Act. This designation will be a matter for each State to determine. We wish to make clear that whoever signs the required assurances, the State, as the recipient of the funds, is legally obligated to abide by them.

Finally, the Department believes that State submission requirements must be included in regulation. We often provide policy issuances to States to clarify, interpret or reaffirm regulatory language.

Paragraph (b) of § 1386.23 establishes a requirement for an annual report by each Protection and Advocacy agency in support of section 107(b) of the Act. This report was approved by OMB control number 0980–0160.

Comment: One commenter supported without any reservations the proposed language in § 1386.23(b) regarding the annual report from Protection and Advocacy agencies.

Another commenter expressed the opinion that the regulation should be revised to include language on expenditures.

Response: Expenditure data will be obtained through the State submission of the required quarterly financial status reports (§ 1386.23(c)).

Paragraph (c) of § 1386.23 proposed to establish requirements for submitting financial reports to comport with the two-year liquidation period on obligations as required in § 1386.3. This report was approved by OMB control number 0980–0180.

Comment: One commenter expressed the view that § 1386.23(c) should be revised to eliminate the requirement that a final financial report be submitted two (2) years and ninety (90) days after the end of the Federal fiscal year as such financial information will be included in the annual report.

Response: The submission of financial reports is a fiscal requirement for any State receiving funds. (See 45 CFR Part 74, Subpart I—Financial Reporting Requirements; ADD–PI–87–1, Revisions and Clarification of Instructions for Preparation and Submission of Financial Status Reports for Formula Grants under the Developmental Disabilities Program—Basic Support and Protection and Advocacy.) In addition, the fiscal information required is different from the information required for the Annual Report to Congress. Therefore, the language of the final rule will remain as proposed in the NPRM.

Subpart C—State Plan for Provision of Services for Persons With Developmental Disabilities

Section 1386.30 State Plan Requirements

This section of the NPRM regarding State plan requirements proposed only technical change to comport with the new statutory citations. Therefore, we will not address any comments received which recommended other changes in § 1386.30.

Section 1386.32 Periodic reports: Basic State grants

Paragraph (a) of § 1386.32 of the NPRM provided clarifying language in regard to the submission of financial reports which included the submission of quarterly reports as well as a final report for each fiscal year. This report has been approved by Office of Management and Budget (OMB) under control number 0980–0180.

Comment: Two commenters expressed the view that the regulations should require timely Council review of quarterly and final financial reports prior to gubernatorial or administering agency submission to the Commissioner.

Response: Section 122(b)(1)(C) of the Act states: "The plan must provide that each State agency designated under subparagraph (B) will keep such records and afford such access thereto as the Secretary or the State Planning Council finds necessary." The State Councils have the authority to review financial reports. If the Council wants to review financial plans prior to submission to ADD, it has the authority under section 122(b)(1)(C) to do so. This is a matter for State Council decision. It is incumbent upon the State Administering Agency to include the Council in its process for review of such forms prior to submission to the Administration on Developmental Disabilities if the Council so desires and assure that these reports are submitted on a timely basis.

Paragraph (b) of § 1386.32 proposed a new requirement for the submission of an annual report on Basic State activities pursuant to section 107(a) of the Act. This report was approved by OMB control number 0980–0172.

Comment: Two commenters recommended that the Secretary, by regulation, should develop a proposed format for the annual report on the Basic State Grant activities.

Response: We have developed a reporting format whose use is required of all State Planning Councils. The report format was transmitted to the States in Program Instruction ADD–PI–86–2 (revising previously issued ADD–PI–85–4) on October 30, 1986.

Section 1386.33 Protection of Employee's interests

Section 1386.33 of the NPRM regarding protection of employee's interests was amended by adding a new statutory citation. There was no proposal to change substantively the current regulation. Therefore, the comment received regarding employee protection provisions and phase-down or closure of State institutions will not be addressed and no changes will be made.

Section 1386.34 Provision of Priority Services

This section of the NPRM proposed to delete and reserve § 1386.34 concerning the provision of priority services.

Comment: Three commenters expressed the opinion that the current regulation contained clarifying language defining the use of 65% of the Basic State Grant program funds for priority services and therefore this section should be retained.

Response: Section 1386.34 will not be retained as it merely reiterated the language of the statute.

PART 1387—SPECIAL PROJECTS—PROJECTS OF NATIONAL SIGNIFICANCE

The NPRM proposed to delete and reserve Part 1387—Special Projects—Projects—of National Significance.

Comment: One commenter agreed that the regulations need not duplicate statutory language and Part 1387 could be deleted and reserved under these circumstance. Three commenters strongly opposed deletion of Part 1387 based on the language contained in section 162(b) of the Act which indicates that a grant application shall by in such form, submitted in such manner, and contain such information as the Secretary shall be regulation prescribe.

Response: The Department concurs with the comments opposing deletion of this part: therefore, Part 1387 is retained.

PART 1388—THE UNIVERSITY AFFILIATED FACILITIES PROGRAM

Part 1388 establishes program criteria for UAF programs pursuant to section 153(a) of the Act.

Section 1388.1 Definitions

This section of the NPRM proposed a definition of "program criteria."

Comment: One comment indicated that qualitative criteria, indicators for qualitative criteria, and quantitative criteria (described as measurements of program criteria) were blended together in a confusing manner.

Response: The Department concurs. We have defined qualitative criteria and measurements of program outcome in the final rule. This revision clarifies that both qualitative and quantitative criteria will be used for program evaluation.

Section 1388.3 Program Criteria—Administration

This section sets forth the program criteria to ensure that a UAF will adequately administer the program.

Comment: In § 1388.3(a), one commenter indicated that the phrase "state-of-the-art" be deleted.

Response: The Department concurs and revised the final rule accordingly.

Comment: In § 1388.3(b)(3), one commenter requested a change in the wording regarding the UAF providing support for the University.

Response: The Department concurs and revised the language in § 1388.3(b)(3).

Comment: In § 1388.3(d), one commenter suggested that since the Act uses the term "various ages", not "all ages", we change this language in § 1388.3(d)(2).

Response: We agree and have substituted the term 'various ages' for 'all ages' throughout the final rule in keeping with the wording in the Act. The Department believes that, regardless of the word choice, Congress and the regulations have made clear that UAFs and Satellite Centers have an important responsibility to extend their research, training and service efforts to serve adult and elderly developmentally disabled individuals as well as children.

Comment: Four comments were received relating to the UAF development of a plan § 1388.3(d)(3)) containing the goals, objectives and timelines for UAF mandated activities. One set of comments offered a number of minor editorial changes to clarify the focus or intent of the section. Two comments were received recommending that the UAF plan be written to fill gaps in the State DD plan and should be reviewed by and coordinated with the State DD Council. One comment was received asking that the UAF seek the advice of the State's mental retardation/developmental disabilities program agency in the development of its plan.

Response: We reviewed the recommended editorial changes and found that these changes did not significantly improve the language of the regulation. The Department agrees that the UAF plan should be developed and implemented with consideration for the needs and resources existing in the community and State. We have made no change in the final rule to require this; however, the Department urges the UAFs to coordinate the development of their plans and activities with the State Developmental Disabilities Councils as well as the State Protection and Advocacy agency.

Comment: In § 1388.3(f), one comment requested that the UAF specifically be required to have a cooperative relationship with the State's mental retardation-developmental disabilities program agency.

Response: The Department agrees that it is important that UAF's work in close collaboration with the State's MR/DD agency. However, in the absence of a statutory mandate that formal cooperative relationships be established, these working relationships are left to State and local determination.

Comment: In § 1388.3(g), one comment suggested that the UAF draw its consultants from the State's mental retardation/developmental disabilities program agency.

Response: The Department believes that it would be neither proper nor advantageous to specify by regulation where or from whom UAF's may seek consultant expertise. The interdisciplinary nature of UAF activities requires expertise from the full spectrum of professional discipline, training, and experience. In addition, UAF's differ widely in programs, services, and staff. The Department sees no benefit in limiting the UAF repertoire of consultants nor any advantage in prescribing consultation from any category of agency. Therefore, § 1388.3(f) will be retained as proposed in the NPRM.

Comment: In § 1388.3(h) one comment was received requesting that the statement pertaining to space constructed with Federal funds be a separate paragraph in the rule.

Response: The Department concurs and has revised the final rule to add a new paragraph (h)(3).

Section 1388.4 Program Criteria-Services

Comment: In § 1388.4(a), one commenter requested the addition of the phrase "university setting" specifically including it as part of the community. Also, it was requested that the requirement to include adult and elderly services should not be mandated for all UAFs.

Response: The Department agrees that a university in certainly part of the community and has revised the language of paragraph (a) to say "within the community including the university." The statute requires UAF's to provide exemplary services in community based settings. While many services are appropriately provided by the UAF within the university setting, many services are and should continue to be provided beyond the boundaries of the university.

We do not concur that UAF's should not be required to provide services for adult and elderly developmentally disabled persons and have made no change in the final rule. The Congress has made its intent clear with respect to the UAF's responsibility to serve adults and elderly person with developmental disabilities by emphasizing that UAFs and Satellite Centers have an important responsibility to extend their research, training and service efforts to include adult and elderly developmentally disabled persons whose numbers are increasing and whose needs are largely unmet today (H.R. Report No. 1074, 98th Congress, Page 35, 1984).

Comment: In § 1388.4(d), one commenter requested the substitution of the word 'should' for 'must' in § 1388.4(d)(1) thru (3). This change would have the effect of not requiring that the principles set forth in these paragraphs be implemented. One commenter requested that the word "evaluation" be substituted for the term "scientific investigation" as the latter suggests

control subjects and human investigation committee review. One commenter requested the substitution of 'evaluated' for 'tested.'

Response: A service quality criterion for a UAF is that UAF services are based on state-of-the-art and innovative practices. UAFs are situated in environments that provide unique resources and opportunities. They are expected to use those opportunities to demonstrate the best available techniques in their practices. In addition, a function of UAFs is to disseminate information that will increase and support the independence, productivity, and integration into the community of persons with developmental disabilities. The requested changes from 'must' to 'should' would dilute that expectation. Therefore, we have made no change in the language of the NPRM.

The Department agrees with the two editorial comments and has substituted the word 'evaluation' for scientific investigation in paragraph (d)(3) and substituted the word 'evaluate' for 'tested' in § 1388.4(d)(5).

Comment: In § 1388.4(e), one commenter requested deletion of the word 'must' and the term 'news articles' and indicated that news articles may not be appropriate vehicles for dissemination of information to State Councils and others.

Response: The Department concurs and has deleted the term "news article." The word "must" was not deleted because it would diminish the strength of this requirement.

Comment: Section 1388.4(f) proposed that measurements of program criteria include the total number of clients served in relation to a list of exemplary services. Two comments indicated that it would not be possible to comply with this section since the categories of exemplary services listed were not consistent with the database used by the UAFs.

Response: We have revised this section by deleting paragraph (1) that contained the restrictive reporting categories of services and inserted a new paragraph (f)(1) to read as follows: "(1) The total number of clients served by category of services." This change also will permit the measures of program outcome to reflect new initiatives.

Section 1388.5 Program Criteria-Training

Comment: In §§ 1388.5 (b)(6) and (b)(7) one commenter noted that the word "may" rather than must should be used as these paragraphs pertain to optimal training.

Response: The intent of paragraphs (b)(6) and (b)(7) dealing with the outcome of optional interdisciplinary training is to require that the UAFs offer such training as an opportunity for trainees. Trainees may elect, in keeping with their career goals, training in research, evaluation and leadership development. The optional nature of the training refers to trainee discretion, not that of the UAFs to offer such training. Therefore, paragraphs (b)(6) and (b)(7) will be retained in the final rule as proposed in the NPRM.

Comment: In § 1388.5(c), referring to the designation of long-term training as 300 or more hours during an academic year, one commenter recommended deletion of the phrase "during an academic year" as not necessarily relevant, e.g. intern, post-doctoral candidates, and residents.

Response: The Department has deleted "during an academic year" in response to the comment; however, to avoid misinterpretation that 300 hours is cumulative, the Department has added the phrase "in a one-year reporting period" to maintain consistency with the standard definition of long-term training.

Comment: In § 1388.5(c)(2), two commenters addressed didactic instruction and clinical practicum under long-term and intermediate training. The first stated that the focus should be on clinical experience not didactic instruction and that the term 'training activities' would cover both didactic instruction and clinical practicum while allowing the UAF to select the most appropriate training method. The second suggested that the focus should be on practical experience rather than didactic instruction especially for trainees in administration, health planning, research, and other areas.

Response: The Department agrees with the comments and has revised paragraph (c)(2) and other paragraphs accordingly.

Comment: In §§ 1388.5(c) (3) and (4), one commenter suggested substitution of "should" for 'must'.

Response: The Department does not concur. Future leaders in the field of developmental disabilities will serve clients in a variety of settings and exposure to more than one setting is an essential training experience; therefore, the final rule will contain 'must' as proposed in the NPRM.

Comment: In §§ 1388.5 (c)(6) and (c)(7), one commenter stated that interns and post doctoral students, among others, may not receive academic credit for all training. The request was made to add 'as appropriate' to the relevant sections. The point was made that training including 'practicum' as a team member and leader would more accurately be 'experiences as team member and leader.'

Response: The Department concurs with the comments concerning 'credit, as appropriate' and usage of 'experience as a team member and leader' and has revised the final rule accordingly in § 1388.5 (c)(6) and (c)(7).

Comment: In § 1388.5(d), one commenter corrected the designation of intermediate interdisciplinary training as up to 299 hours, not 300 hours.

Response: The Department concurs and has made the change in paragraph (d).

Comment: In § 1388.5(f), two commenters requested that training priorities be established "in cooperation with" rather than "with the assistance of" State Developmental Disabilities Planning Councils and other relevant agencies; one commenter requested clarification that "other relevant agencies" include national agencies that have particular priorities in relation to funding training, especially as it pertains to pre-service training. A third commenter expressed concern that the regulatory language does not call for the UAFs to develop relationships with the State's mental retardation/developmental disabilities program agency.

One commenter suggested the deletion of "with particular attention to those serving adult and elderly persons with developmental disabilities" explaining that "Priorities may change. Criteria should focus more generally on national manpower needs."

Response: We agree with the comments pertaining to community relevancy and have revised paragraph (f)(2) accordingly. However, we do not concur that UAF training priorities should be exempt from the requirement to focus on the needs of adult and elderly persons with developmental disabilities; therefore, we have made no change in (f)(3) of the final rule.

Paragraph (g) of § 1388.5 proposed that the interdisciplinary training program must be evaluated and research should be conducted to improve it.

Comment: One comment was received recommending the use of the term 'evaluation' rather than 'research' with respect to assessing interdisciplinary strategies and procedures.

Response: The Department concurs and has revised paragraph (g)(3) accordingly.

Comment: In § 1388.5(h), one commenter noted that the number of hours of special training is not collected by UAFs and that it would have limited meaning.

Response: The Department agrees with the comment and has deleted this proposed requirement.

Section 1388.6 Program Criteria—Technical Assistance

Comment: In § 1388.6(b)(3), one comment requested rewording of the item concerning personnel providing technical assistance, stating that as written the paragraph was too restrictive.

Response: The Department concurs and has revised paragraph (b) to define more broadly who may provide technical assistance.

Section 1388.7 Program Criteria—Information Dissemination

Comment: In § 1388.7, two comments were received requesting that primary consumers be included as potential target audiences.

Response: The Department believes that primary consumers were included in the term "target audience" but will substitute the phrase "persons with developmental disabilities, their families * * *" under paragraphs (a) and (c) to clarify this concept.

Impact Analysis

Executive Order 12291

Executive Order 12291 requires that a regulatory impact analysis be prepared for major rules—defined in the Order as any rule that has an annual effect on the national economy of $100 million or more, or certain other specified effects. These regulations primarily affect State agencies and University Affiliated Facilities. The basic requirements of the program are established by the statute, not these regulations. Therefore, the Department concludes that these regulations are not major rules within the meaning of the Executive Order, because they do not have an effect on the economy of $100 million or more or meet the other threshold criteria.

Regulatory Flexibility Act of 1980

Consistent with the Regulatory Flexibility Act (5 U.S.C. Ch. 6), we try to anticipate and reduce the impact of rules and paperwork requirements on small businesses. For each rule with a "significant economic impact on a substantial number of small entities", we prepare an analysis describing the rule's impact on small entities. The primary impact of these regulations is on the States, which are not "small entities" within the meaning of the Act. For these reasons, the Secretary certifies that these rules will not have a siginficant impact on a substantial number of small entities.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1980, Pub. L. 96–511, all Departments are required to submit to the Office of Management and Budget for review and approval any reporting or recordkeeping requirement contained in a proposed or final rule.

There will be no specified format for the submittal of the State plans and assurances required in §§ 1386.30–1386.31 and 1386.33. States may select any format they wish as long as they meet the requirements in the Act and in these regulations.

These regulations reflect the aims of Executive Order 12372 to allow for State Plan simplification.

Section 1388 proposes program criteria for the UAF progam. The program criteria were developed through consultation with the American Association of University Affiliated Programs. Although certain sections of part 1388 contain recordkeeping and reporting requirements, it should be understood that these criteria have been developed by the field to help define good professional standards and are not new practices. Most of the requirements will be satified with the submission of an acceptable grant application.

List of Subjects

45 CFR Part 1385

Grant programs/education, Grant programs/social programs, Handicapped, Reporting and recordkeeping requirements.

45 CFR Part 1386

Administrative practice and procedure, Grant programs/education, Handicapped, Reporting and recordkeeping requirements.

45 CFR Part 1388

Colleges and universities, Grant programs/education, Grant programs/social programs, university affiliated facility, satellite center.

(Catalog of Federal Domestic Assistance Program, Nos. 13.630 Developmental Disabilities Basic Support and 13.631 Developmental Disabilities—Special Projects)

Dated: August 21, 1987.

Phillip N. Hawkes,

Acting Assistant Secretary for Human Development Services.

Approved: September 18, 1987.

Otis R. Bowen,

Secretary.

For the reasons set forth in the preamble. Chapter XIII of title 45 of the Code of Federal Regulations is amended as follows:

SUBCHAPTER 1—THE ADMINISTRATION ON DEVELOPMENTAL DISABILITIES, DEVELOPMENTAL DISABILITIES PROGRAM

1. The heading for Part 1385 is revised to read as follows:

PART 1385—REQUIREMENTS APPLICABLE TO THE DEVELOPMENTAL DISABILITIES PROGRAM

2. The authority citation for Part 1385 is revised to read as follows:

Authority: Pub. L. 88–164, 77 Stat. 282, as amended by Pub. L. 90–170, 81 Stat. 527, Pub. L. 91–517, 84 Stat. 1316; Pub. L. 94–103, 89 Stat. 486; Pub. L. 95–602, 92 Stat. 2955; Pub. L. 97–35, 95 Stat. 563; Pub. L. 98–527 98 Stat. 2662 (42 U.S.C. 6000 et seq.).

3. Section 1385.1 is revised to read as follows:

§ 1385.1 General.

Except as specified in § 1385.4, the requirements in this Part are applicable to the following programs and projects:

(a) State Systems for Protection and Advocacy of Individual Rights of Persons with Developmental Disabilities;

(b) State Basic Program for Planning. Administration and Services on Behalf of Persons with Developmental Disabilities.

(c) Special Projects—Projects of National Significance; and

(d) University Affiliated Programs.

4. Section 1385.3 is amended by revising the definition of "Act" to read as follows. The introductory text is republished for the convenience of the reader.

§ 1385.3 Definitions.

In addition to the definitions in section 102 of the Act (42 U.S.C. 6001), the following definitions apply:

Act means the statutory authority for the developmental disabilities programs as enacted in Pub. L. 88–164 and amended by Pub. L. 90–170, Pub. L. 91–517, Pub. L. 94–103, Pub. L. 95–602, Pub. L. 97–35, and Pub. L. 98–527. It may be cited as the Developmental Disabilities Assistance and Bill of Rights Act.

* * * * *

5. Section 1385.4 is revised to read as follows:

§ 1385.4 Rights of persons with developmental disabilities.

(a) Section 110 of the Act, *Rights of the Developmentally Disabled* (42 U.S.C. 6009) is applicable to the programs authorized under the Act, except for the Protection and Advocacy system.

(b) In order to comply with section 122(b)(5)(C) of the Act (42 U.S.C. 6022

(b)(5)(C), regarding the rights of developmentally disabled persons, the State must meet the requirements of § 1386.30(e)(3) of these regulations.

(c) Applications from university affiliated facilities or for special project grants must also contain an assurance that the human rights of persons assisted by these programs will be protected consistent with section 110 (see section 153(b)(3) and section 162(b)).

6. A new § 1385.5 is added as follows:

§ 1385.5 Recovery of Federal funds used for construction of facilities.

(a) The State Council or the appropriate university affiliated facility official must notify the Commissioner in advance in writing if a facility described in section 105 of the act:

(1) Will be sold or transferred to any person, agency, or organization which is not a public or nonprofit private entity: or

(2) Will cease to be a public or other nonprofit facility for persons with developmental disabilities.

(b) The State Council or the appropriate UAF official must submit detailed documentation to the Commissioner of all transactions as specified in paragraph (a) of this section which occurred prior to this publication.

(c) Recovery of funds will include the charging of interest in accordance with HHS claims collection regulations in 45 CFR Part 30 and the Departmental Debt Collection Procedures (45 FR 61792, September 17, 1980) available from the Administration on Developmental Disabilities, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201

7. Section 1385.6 is revised to read as follows:

§ 1385.6 Employment of handicapped individuals

Each grantee who receives Federal funding under the Act must meet the requirements of section 109 of the Act (42 U.S.C. 6008) regarding affirmative action. Failure to comply with section 109 may result in loss of Federal funds under the Act. If a compliance action is taken, the State will be given reasonable notice and an opportunity for a hearing as provided in Subpart D of Part 1386.

8. Section 1385.7 is amended by revising the introductory text to read as follows:

§ 1385.7 Waivers.

Applications for a waiver of the provisions of sections 105 of the Act (42 U.S.C. 6004) with respect to alternative use of facilities constructed with funds under the Act may be granted by the Commissioner if the following criteria are met:

* * * * *

9. Section 1385.9 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 1385.9 Grants administration requirements.

(a) The following parts of Title 45 CFR apply to grants funded under Parts 1386 and 1388 of this chapter and to special project grants under section 162 of the Act (42 U.S.C. 6082).

* * * * *

PART 1386—FORMULA GRANT PROGRAMS

10. The authority citation for Part 1386 is revised to read as follows:

Authority: Pub. L. 88–164, 77 Stat. 282, as amended by Pub. L. 90–170, 81 Stat. 527; Pub. L. 91–517, 84 Stat. 1316; Pub. L. 94–103, 89 Stat. 486; Pub. L. 95–602, 92 Stat. 2955; Pub. L. 97–35, 95 Stat. 563; Pub. L. 98–527, 98 Stat. 2662 (42 U.S.C. 6000 et seq.).

11. New paragraphs (d), and (e) are added to § 1386.20 to read as follows:

Subpart B—State System for Protection and Advocacy of Individual Rights

§ 1386.20 Designated State Protection and Advocacy Office.

* * * * *

(d) Prior to any redesignation of the agency which administers the State Protection and Advocacy system, the Governor or a State official empowered by the Governor or State legislature must give public notice of the intent to redesignate and provide an opportunity for public comment on the proposed redesignation. The public notice must include:

(1) The Federal requirements for the Protection and Advocacy program (section 142 of the Act);

(2) The goals and function of the State's Protection and Advocacy program;

(3) Name of current designated agency;

(4) A description of the current Protection and advocacy agency and the system it administers;

(5) The reason(s) for proposing redesignation;

(6) Effective date of proposed redesignation;

(7) The name of the agency proposed to administer the State Protection and Advocacy program; and

(8) A description of the system which the new Protection and Advocacy agency would administer.

(e) Following receipt of comments from the public, the Governor or a State official empowered by the Governor or State legislature must submit the following information to the Commissioner:

(1) Documentation that the system was redesignated for good cause; Such documentation must clearly demonstrate that the existing Protection and Advocacy agency was not redesignated for any actions or activities undertaken which were consistent with section 142 of the Act, these regulations and the Protection and Advocacy for Mentally Ill Individuals Act of 1986, Pub. L. 99–319.

(2) Assurance that the designated Protection and Advocacy system meets the requirements of the statute and the regulations.

12. Section 1386.21 is amended by revising paragraphs (a) to read as follows:

(a) In order for a State to receive Federal financial participation for Protection and Advocacy activities under this subpart, as well as the Basic Support Program (subject C), the Protection and Advocacy system must meet the requirements of section 142 of the Act (42 U.S.C. 6042 and that system must be operational.

* * * * *

§ 1386.22 [Removed and Reserved]

13. Section 1386.22 is removed and reserved.

14. Section 1386.23 is revised to read as follows:

§ 1386.23 Periodic reports: Protection and Advocacy System.

The State Protection and Advocacy Agency must submit:

(a) Written assurance of compliance with section 142 of the Act will be required on a one time only basis. These assurances to the Commissioner must be signed by the Governor or a State official or entity empowered by the Governor or State legislature to provide such assurance. These assurances will remain in effect unless changes occur within the State which will affect the functioning of the Protection and Advocacy system in which case an amendment is required 30 days prior to the effective date of the change. All assurances and/or amendments may be provided in a format of the State's choice and will remain in effect as long as the State receives funds under the Act.

(b) An annual report to the Commissioner describing the activities and accomplishments carried out under the system during the previous year.

(c) Quarterly financial status reports from the Protection and Advocacy Agency are due thirty (30) days after the close of each quarter. The final financial report is due two (2) years and ninety (90) days after the last day of the Federal fiscal year. These quarterly reports must be submitted until the final report is submitted for each fiscal year.

(Information collection requirements contained in paragraph (b) under control number 0980–0160 and paragraph (c) under control number 0980–0180 are approved by the Office of Management and Budget.)

15. Section 1386.24 is revised to read as follows:

§ 1386.24 Non-allowable costs for the Protection and Advocacy System.

Federal financial participation is not allowable for:

(a) Costs incurred for activities on behalf of persons with developmental disabilities to solve problems not directly related to their disabilities and which are faced by the general populace; and

(b) Costs not allowed under other applicable statutes. Departmental regulations and issuances of the Office of Management and Budget.

Subpart C—State Plan for Provision of Services for Persons with Developmental Disabilities

16. Section 1386.30 is amended by revising paragraphs (a), (b), (e)(2), (e)(3) and the parenthetical containing the OMB control number to read as follows:

§ 1386.30 State plan requirements.

(a) In order to receive Federal financial assistance under this subpart, Councils and States must prepare, submit and have in effect a State plan which meets the requirements or sections 122 and 124(a) of the Act (42 U.S.C. 6022 and 6024(a)(b)) and these regulations.

(b) Failure to comply with State plan requirements may result in loss of Federal funds as described in section 127 of the Act (42 U.S.C. 6027).

* * * * *

(e) * * *

(2) The State meets the requirements regarding individual habilitation plans as set forth in section 123 of the Act (42 U.S.C. 6023) and

(3) The human rights of developmentally disabled persons will be protected consistent with section 110 of the Act (42 U.S.C. 6009).

* * * * *

(Information collection requirements contained in paragraph (c) under control number 0980–0162 and paragraph (e) under control number 0980–0139 are approved by the Office of Management and Budget.

17. Section 1386.32 is revised to read as follows:

§ 1386.32 Periodic reports: Basic State grants.

(a) The Governor or the appropriate State financial official must submit quarterly financial status reports on the programs funded under this part. These reports are due thirty (30) days after the close of each quarter. The final financial report is due two (2) years and ninety (90) days after the last day of the Federal fiscal year. The quarterly reports must be submitted until the final report is submitted for each fiscal year.

(b) By January 1 of each year an annual report shall be submitted pursuant to section 107(a) of the Act. The report may be in a format of the State's choice.

(Information collection requirements contained in paragraph (a) under control number 0980–0139 and paragraph (b) under control number 0980–0172 are approved by the Office of Management and Budget.)

18. Section 1386.33 is amended by revising paragraph (a) and adding an OMB control number to the end of the section to read as follows:

§ 1386.33 Protection of employee's interests.

(a) Based on section 122(6)(B) of the Act (42 U.S.C. 6022(6)(B)), the State plan must provide for fair and equitable arrangements to protect the interest of all institutional employees affected by actions under the plan to provide alternative community living arrangements. Specific arrangements for the protection of affected employees must be developed through negotiations between the appropriate State authorities and employees or their representatives. Fair and equitable arrangements must include procedures that provide for the impartial resolution of disputes between the State and an employee concerning the interpretation, application, and enforcement of protection arrangements. The State must inform employees of the State's decision to provide alternative community living arrangements.

* * * * *

(Approved by the Office of Management and Budget under control number 0980–0162)

§ 1386.34 [Removed and Reserved]

19. Section 1386.34 is removed and reserved.

20. Section 1386.35 is amended by revising paragraph (b)(1) to read as follows:

§ 1386.35 Allowable and non-allowable costs for basic State grants.

* * * * *

(b) * * *

(1) Cost incurred by institutions or other residential or non-residential programs which do not comply with the Congressional findings with respect to persons with developmental disabilities in section 110 of the Act (42 U.S.C. 6009).

* * * * *

21. Section 1386.81 is amended by revising paragraph (a) to read as follows:

§ 1386.81 Scope of rules.

(a) The rules of procedures in this subpart govern the practice for hearings afforded by the Department to States pursuant to sections 122, 127 and 142 of the Act. (42 U.S.C. 6022, 6027 and 6042).

* * * * *

22. Section 1386.111 is amended by revising paragraph (c)(1) to read as follows. The introductory text of (c) is republished for the convenience of the reader.

§ 1386.111 Decisions following hearing.

* * * * *

(c) If the Assistant Secretary concludes:

(1) In the case of a hearing under sections 122, 127 and 142 of the Act that a State plan or report on the State's protection and advocacy system does not comply with Federal requirements, he or she shall also specify whether the State's total allotment for the fiscal year will not be authorized for the State or whether, in the exercise of his or her discretion, the allotment will be limited to parts of the State plan or the report not affected by the noncompliance.

* * * * *

23. The heading for Part 1387 is revised to read as follows:

PART 1387—SPECIAL PROJECTS—PROJECTS OF NATIONAL SIGNIFICANCE

24. The authority citation for Part 1387 continues to read as follows:

Authority. Pub. L. 88–164, 77 Stat. 282, as amended by Pub. L. 91–517, 84 Stat. 1316, Pub. L. 94–103, 89 Stat. 486, Pub. L. 95–802; 92 Stat 9555, Pub. L. 97–35; 95 Stat. 583 (42 U.S.C. 8000 et seq.)

25. Part 1388 is revised to read as follows.

PART 1388—THE UNIVERSITY AFFILIATED FACILITIES PROGRAM

Sec.

1388.1 Definitions.
1388.2 Program criteria—purpose.

Sec.
1388.3 Program criteria—administration.
1388.4 Program criteria—services.
1388.5 Program criteria—training.
1388.6 Program criteria—technical assistance.
1388.7 Program criteria—Information dissemination.
1388.8 Use of program criteria for Satellite Centers.
Authority: 42 U.S.C. 6063 et. seq.

§ 1388.1 Definitions.

For purposes of this part:

Program criteria means a statement of the Department's expectation regarding the direction and desired outcome of the University Affiliated Facilities program operation. The program criteria will be used for qualitative evaluation, and also include measurements of program outcome.

Qualitative criteria means desired component and attributes which are UAF program requirements for prescribed areas.

Measurements of program outcome means a specific number of outcomes in a prescribed area. Measurements of program outcome can be aggregated and reported across all UAFs or used as management and evaluation tools in individual programs.

§ 1388.2 Program criteria—purpose.

The program criteria will be used to assess the quality of the University Affiliated Facilities (UAF) program. Compliance with the program criteria is a prerequisite for the minimum funding level of a UAF. However, compliance with the program criteria, does not, by itself, constitute an assurance of funding.

§ 1388.3 Program criteria—administration.

(a) *Governance.* A UAF must be an integral component of a university but maintain the autonomy required to carry out the UAF mission and provide for the mandated activities as set forth in section 102(13) and section 151 of the Act (exemplary services, interdisciplinary training, technical assistance and information dissemination). The UAF must use management practices that provide direction to professionals, and parents of persons with developmental disabilities, paraprofessionals and volunteers for the UAF. The UAF must also promote the visibility of the UAF, and the integration of the program components. Management practices must facilitate cooperative relationships both within and outside the university community that further the UAF mission, aid persons with developmental disabilities and improve the field of developmental disabilities.

(b) *University relationship.* (1) The UAF must have a written agreement or charter with the university that specifies the UAF designation as an official university component, the relationships between the UAF and other university components, the university commitment to the UAF, and the UAF commitment to the university. The written agreement or charter will be required on a one-time only basis and would remain in effect unless changes occur which affect the relationship of the UAF and the university.

(2) The UAF must be responsible to and report directly to a university administrator who will represent the interests of the UAF within the university. The administrator must support and represent the UAF in operation and planning and in the training of university students, professionals, parents and the community.

(3) The UAF must show evidence that it contributes to the university's mission in the form of public relations, university instruction, continuing education, and joint development of new programs and grants.

(c) *Administration.* (1) The UAF must be managed by a person who has adequate background in a discipline relevant to the goals of the UAF, evidence of commitment to the field of developmental disabilities, and functional competence to carry-out the mission of the UAF.

(2) Directors, administrators, and middle managers of the UAF must work with a variety of professionals and non-professionals within the university and across levels of the service system to carry-out the UAF mission.

(3) A UAF must maintain a mechanism to identify and successfully compete for funding opportunities other than those under the Act.

(d) *Organization.* (1) A UAF must be represented and fully participate in all meetings and activities of the State Planning Council that are prescribed by the Act.

(2) A UAF's mission must reflect legislative requirements, special needs of persons of various ages with developmental disabilities and the needs of those who work in the field and who are concerned about persons with developmental disabilities.

(3) A UAF must develop a plan which includes the goals, objectives and timelines for UAF services, special projects, training, technical assistance, information dissemination and research activities that includes a continuous, ongoing assessment of its program and activities.

(e) *Funding.* A UAF must maintain an annual operational budget and use accepted accounting procedures to administer funds.

(f) *Cooperative relationships.* (1) A UAF must maintain cooperative relationships with the State Developmental Disability Council and the Protection and Advocacy system.

(2) A UAF must maintain cooperative relationships with the UAF network and individuals, organizations, and universities to enhance quality of life for persons with developmental disabilities and to improve the field of developmental disabilities.

(g) *Personnel policies.* (1) In order to promote the interdisciplinary nature of the UAF mission, a UAF must have on staff, or have available, adjunct professors, consultants, or experts in a broad range of disciplines, including education, health, psychology and social work.

(2) A UAF must inform staff of and implement university policies.

(3) A UAF must supplement university policies that enhance professional growth and support research.

(4) A UAF must take affirmative action to employ and advance in employment qualified individuals with developmental disabilities.

(h) *Physical facility.* (1) A UAF must be fully accessible to the handicapped in accordance with section 504 of the Rehabilitation Act.

(2) A UAF must have adequate space to carry out the mandated activities.

(3) Space that was constructed with Federal funds must be used for its intended UAF purpose pursuant to 45 CFR 1385.5 and 1385.7.

(i) *Measurements of program outcome.* Measures of program outcome include:

(1) Number of UAF staff that operate the center identified by name, discipline, percentage of time working on UAF grant, and percentage of time working on other activities within the university.

(2) Amount of university financial and other resources that supplement the UAF.

(3) Total amount of UAF funds which include the amount of the ADD grant and funds from all other sources.

§ 1388.4 Program criteria—services.

(a) *Exemplary Services.* A UAF must integrate exemplary services and projects into community settings. Exemplary services are based on emerging or continuing needs and new, innovative concepts or practices. These services may be provided in a service delivery site or training setting within the community, including the university.

Exemplary service projects may involve interdisciplinary student trainees, professionals from various disciplines, service providers, families and/or administrators. Exemplary services must be extended, as appropriate, to include adult and elderly persons with developmental disabilities and also to support the independence, productivity, community integration and human rights of developmentally disabled individuals.

(b) *Community-integrated services.* The following are criteria for evaluating community-integrated services:

(1) Services and projects are scheduled at times and in places that are consistent with routine activities within the local community.

(2) Services or projects interact with and involve community members, agencies, and organizations.

(c) *Bases for services or project development.* The bases for the services or project development must be:

(1) A local or universal need that reflects critical problems in the field of developmental disabilities; or

(2) An emerging, critical problem that reflects current trends or anticipated developments in the field of developmental disabilities.

(d) *State-of-the-art and innovative practices.* (1) Service and project concepts and practices must facilitate and demonstrate independence for the individual, community integration, productivity and human rights.

(2) Practices that are economical, accepted by various disciplines, and highly beneficial to persons who are developmentally disabled, must be integrated within services and projects.

(3) The design of innovative cost-effective concepts and practices must be evaluated according to accepted practices of scientific evaluation.

(4) Research methods must be used to test hypotheses, validate procedures, and field test products.

(5) Exemplary service and project practices and models must be evaluated, packaged for replication and disseminated through the information dissemination component.

(e) *Demonstration and training.* (1) UAFs must disseminate information (brochures and professional articles) to State Developmental Disabilities Councils, the State Administering Agencies, the State Protection and Advocacy Agencies, other public and private agencies serving persons with developmental disabilities and private citizens. This information must describe exemplary services and projects and be made available for demonstration and training.

(2) A variety of individuals must be trained within exemplary services and projects. They include long-term and intermediate interdisciplinary trainees and inservice trainees. The latter group could include service providers, families, and administrators.

(f) *Measurements of program outcome.* Measures of program outcome include:

(1) The total number of clients served by category of service; and

(2) The amount of related research evaluation and dissemination conducted.

§ 1388.5 Program criteria—training.

(a) *Organization.* (1) To ensure quality comprehensive interdisciplinary training, professional staff representing the major disciplines of education, health, psychology and, social work, and holding appropriate university appointments, must direct the interdisciplinary training program.

(2) The focus of training must be interdisciplinary service and treatment of persons of various ages with developmental disabilities and their families.

(3) Training must be integrated with exemplary services provided by or affiliated with the UAF.

(b) *Outcome of interdisciplinary training.* (1) Training must develop competencies related to developmental characteristics and assessment of persons with developmental disabilities of various ages.

(2) Training must develop an understanding of various disciplines' roles, diagnostic and evaluation practices, and treatment procedures.

(3) Training must promote understanding and use of the values, knowledge, methods, and skills of the major professions of education, health, psychology and social work and other appropriate disciplines.

(4) Training must include training and practicum in the interdisciplinary team process.

(5) Training must address services and treatment for various groups.

(6) Optional training must address program evaluation and research methods applicable to developmental disability programs.

(7) Optional training must address leadership development issues such as policy analysis and management.

(c) *Long-term interdisciplinary training.* (1) To develop leaders in serving individuals with developmental disabilities, a UAF must recruit students of high achievement from major disciplines into a program that provides long-term training (300 or more hours) in a one-year reporting period.

(2) Each long-term trainee must have planned didactic instruction and clinical practical experiences to be undertaken in a one-year reporting period, including experience with an interdisciplinary team.

(3) Training activities must cover the nature and assessment of developmental disabilities and at least three of the following services: prevention and detection, individual program planning and case management, developmental services, and individual and family support services.

(4) Training activities must cover at least two of the following settings: natural home, supervised living arrangements, residential treatment centers, nonresidential treatment settings, educational and employment settings.

(5) Training activities must cover a range of disabilities and impairments.

(6) Trainees must receive credit, as appropriate, for training completed at the UAF that is performed as part of a program of course work administered by the university or any of its divisions.

(7) Training activities must include:

(i) Instruction in the interdisciplinary team process,

(ii) Experiences as a team member, and

(iii) Experiences as a team leader.

(d) *Intermediate interdisciplinary training.* (1) Students who receive intermediate interdisciplinary training (160 to 299 hours) must be recruited from various disciplines to provide services to persons with developmental disabilities as a part of generic or special services.

(2) Each trainee must have planned instruction and practical experiences, including experience with an interdisciplinary team.

(3) Training activities must cover the nature and assessment of developmental disabilities and at least three of the following services: Prevention and detection, individual program planning and case management, developmental services, and individual and family support services.

(4) Trainees must receive credit, as appropriate, for training completed at the UAF performed as part of a program of course work administered by university or any of its divisions.

(e) *Short-term special purpose interdisciplinary training.* A variety of training experiences designed to improve or expand services to persons with developmental disabilities and their families, including workships, courses, lectures, and other didactic experiences, must be provided to a variety of individuals who may or do serve individuals of various ages with developmental disabilities.

(f) *Training provided by the UAF shall be relevant to community needs.* (1) A UAF must determine and set priorities for training based on the needs of the community.

(2) Training priorities must be established in cooperation with State Developmental Disabilities councils, State manpower councils, the State Mental Retardation/Developmental Disability Agency and other relevant local, State and Federal agencies.

(3) Training priorities must consider national manpower needs, with particular attention to those serving adult and elderly persons with developmental disabilities.

(8) *The interdisciplinary training program must be evaluated to improve it.* (1) Student achievement of program goals must be evaluated.

(2) The degree to which the program is achieving its stated goals must be evaluated.

(3) Evaluation must be conducted to develop and assess effective interdisciplinary strategies and procedures.

(4) The extent to which training is satisfactorily addressing the needs of the community must be systematically evaluated.

(h) *Measurements of program outcome.* Measures of program outcome include:

(1) Number of long-term interdisciplinary trainees; number of intermediate interdisciplinary trainees; and number of special trainees completing training.

(2) Number of workshops or training sessions provided; and

(3) Number and type of disciplines of participants involved in each category of training.

§ 1388.6 Program criteria—technical assistance.

(a) *Technical assistance.* A UAF must provide technical assistance to individuals and organizations responsible for the independence, productivity, community integration, and human rights of individuals with developmental disabilities. Technical assistance must be based on state-of-the-art practices and new, innovative practices and models found within exemplary services. Technical assistance must also be based on special needs or emerging problems that are identified by the UAF, organizations or individuals concerned with persons with developmental disabilities.

(b) *Established and planned technical assistance.* (1) Technical assistance must be an integral part of a UAF.

(2) Adequate resources and personnel must be assigned.

(3) Personnel assigned must be specified and be either UAF staff who solely develop technical assistance products and provide technical assistance; or a roster of experts that could be used through consultation.

(4) The UAF must identify potential target audiences and needs.

(5) The UAF must have a system (electronic mail, mailing list) to inform target audiences about technical assistance availability.

(6) The UAF must evaluate and improve technical assistance on an ongoing basis.

(c) *Technical assistance training.* (1) Technical assistance activities must be used as a training opportunity for UAF trainees.

(2) The experience, observations, and testing of the technical assistance provision must be used to refine UAF training.

(d) *Measurements of program outcome.* Measures of program outcome include:

(1) Number of government agencies, service providers and professional organizations to whom the UAF provides technical assistance.

(2) Total hours of technical assistance provided by type (e.g., workshops, consultation, inservice training) and topic.

(3) Number of trainee hours involved in technical assistance activities.

§ 1388.7 Program criteria—information dissemination.

(a) *Information and dissemination.* A UAF must disseminate information products that enhance the quality of life of persons with developmental disabilities. The UAF must disseminate information that is based on exemplary services and projects, interdisciplinary training, UAF products and current developments related to the field of developmental disabilities. Information shall be disseminated to target audiences within the field of developmental disabilities, to persons with developmental disabilities and their families, and to other concerned persons within the general public.

(b) *Information and Dissemination Plan.* (1) An information component or activities must be an integral part of a UAF.

(2) Adequate resources and personnel must be assigned to information dissemination objectives.

(c) *Target audiences for information dissemination.* (1) Specific target audiences must be identified for information dissemination. Target audiences may include persons with developmental disabilities and their families, service providers, administrators, policymakers, peers, researchers, and the general public.

(2) UAFs must have a system (mailing lists, electronic mail, etc.) to disseminate information to target audiences.

(3) A UAF must use existing systems (the UAF network, professional journals, publishers) to disseminate information.

(d) *Information products.* (1) Information products must be developed and packaged (articles, procedures manuals newsletters) for specific target audiences.

(2) Information products must be based on innovative ideas and practices identified or developed within exemplary services, interdisciplinary training, research, evaluation and technical assistance activities.

(3) Information products must be based on current developments in the field of developmental disabilities and must facilitate independence, productivity and integration into the community for persons of various ages with developmental disabilities.

(e) *Measurements of program outcome.* Measures of program outcome include:

(1) Number of individuals or organizations receiving information about the UAF's exemplary services, demonstrations, training, technical assistance, product and information availability;

(2) Number of individuals or organizations receiving information on current research and new, innovative practices by other individuals and organizations;

(3) Number of researchers and government agencies to whom information was presented about current service, training, and research needs;

(4) Number of individuals and agencies receiving information related to the UAF mission; and

(5) Number of individuals (professionals, consumers, administrators, policymakers, the general public) presented information as part of symposia or special purpose presentations.

§ 1388.8 Use of program criteria for Satellite Centers.

A Satellite Center must specify which activities, as defined in section 102(12) of the Act, it chooses to perform. The satellite center must comply with the program criteria in § 1388.3 of this part and will be subject to the program criteria which correspond to the activities it has selected under section 102(12) of the Act.

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H.R. 3428/Pub. L. 100-167

To provide for the distribution within the United States of the film entitled "America The Way I See It." (Nov. 17, 1987; 101 Stat. 910; 1 page) Price: $1.00

S.J. Res. 174/Pub. L. 100-168

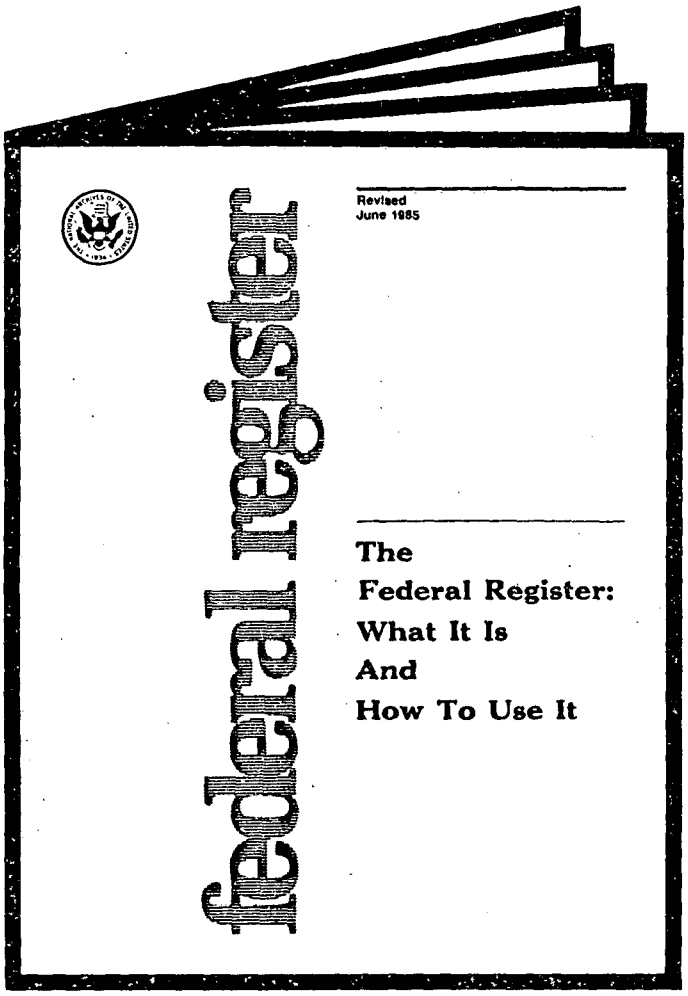
Designating the week beginning November 15, 1987, as "African American Education Week." (Nov. 17, 1987; 101 Stat. 911; 2 pages) Price: $1.00

S.J. Res. 205/Pub. L. 100-169

Expressing the sense of the Congress that United Nations General Assembly Resolution 3379 (XXX) should be overturned, and for other purposes. (Nov. 17, 1987; 101 Stat. 913; 1 page) Price: $1.00

S.J. Res. 220/Pub. L. 100-170

To provide for the extension of certain programs relating to housing and community development, and for other purposes. (Nov. 17, 1987; 101 Stat. 914; 1 page) Price: $1.00



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