

(1) The beginning point is the point at which the Santa Cruz-Monterey County line meets the Pacific Ocean. (Monterey map)

(2) The boundary follows the Santa Cruz-Monterey County line easterly to the Santa Cruz-San Benito County line. (Monterey map)

(3) The boundary follows the Santa Cruz-San Benito County line easterly to the San Benito-Santa Clara County line. (Monterey map)

(4) The boundary follows the San Benito-Santa Clara County line easterly to the point at which California Highway 156 crosses it. (Monterey map)

(5) The boundary follows California Highway 156 northerly to California Highway 152. (Monterey map)

(6) The boundary follows California Highway 152 northerly to the 37° North latitude parallel. (Monterey map)

(7) The boundary follows the 37° North latitude parallel east to the range line dividing Range 5 East from Range 6 East. (Monterey map)

(8) The boundary follows this range line south to the San Benito-Santa Clara County line. (Monterey map)

(9) The boundary follows the San Benito-Santa Clara County line easterly to the San Benito-Merced County line. (Monterey map)

(10) The boundary follows the San Benito-Merced County line southeasterly to the conjunction of the county lines of San Benito, Merced, and Fresno Counties. (Monterey map)

(11) From this point, the boundary proceeds in a southwesterly extension of the Merced-Fresno County line to Salt Creek. (Monterey map)

(12) From this point, the boundary proceeds in a straight line southeasterly to the conjunction of the county lines of Monterey, San Benito, and Fresno Counties. (Monterey map)

(13) The boundary follows the Monterey-Fresno County line southeasterly to the Monterey-Kings County line. (Monterey and San Luis Obispo maps)

(14) The boundary follows the Monterey-Kings County line southeasterly to the San Luis Obispo-Kings County line. (San Luis Obispo map)

(15) The boundary follows the San Luis Obispo-Kings County line east to the San Luis Obispo-Kern County line. (San Luis Obispo map)

(16) The boundary follows the San Luis Obispo-Kern County line south, then east, then south to the point at which the county line diverges easterly from the range line dividing Range 17 East from Range 18 East. (San Luis Obispo map)

(17) The boundary follows this range line south to the township line dividing Township 28 South from Township 29 South. (San Luis Obispo map)

(18) The boundary follows this township line west to the range line dividing Range 13 East from Range 14 East. (San Luis Obispo map)

(19) The boundary follows this range line south to the boundary of the Los Padres National Forest. (San Luis Obispo map)

(20) The boundary follows the boundary of the Los Padres National Forest southeasterly to the creek of Toro Canyon. (San Luis Obispo, Santa Maria, and Los Angeles maps)

(21) The boundary follows the creek of Toro Canyon southerly to the Pacific Ocean. (Los Angeles map)

(22) The boundary follows the shoreline of the Pacific Ocean northerly to the beginning point. (Los Angeles, Santa Maria, San Luis Obispo, and Monterey maps)

Approved: July 2, 1984.

W.T. Drake,
Acting Director.

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BILLING CODE 4810-31-M

27 CFR Part 9

[Notice No. 533]

Establishment of Viticultural Area; Mesilla Valley, NM and TX

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is considering the establishment of a viticultural area located between Dona Ana County in southern New Mexico and the west Texas border at El Paso County, Texas, to be known as the "Mesilla Valley." The southern boundary of the proposed viticultural area reaches the U.S./Mexico border. This proposal is the result of a petition submitted by Mr. George Newman, President of the Las Cruces Chapter of the New Mexico Wine and Vine Society. New Mexico State University, College of Agriculture and Home Economics located at Las Cruces, New Mexico, also participated in gathering petition evidence for this proposed viticultural area. The establishment of viticultural areas and the subsequent use of viticultural area names in wine labeling and advertising will enable industry to label wines more precisely and will help consumers to better identify the wines they may purchase.

DATES: Written comments must be received by August 27, 1984.

ADDRESS: Send written comments to: Chief, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044-0385 (Notice No. 533).

Copies of the petition, the proposed regulations, the appropriate maps, and the written comments will be available for public inspection during normal business hours at: ATF Reading Room, Room 4407 Federal Building, 12th and Pennsylvania Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Edward A. Reisman, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW., Washington, DC 20226 (202-566-7626).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) revising regulations in 27 CFR, Part 4. These regulations allow the establishment of definite viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements.

On October 2, 1979, ATF published Treasury Decision ATF-60 (44 FR 56692) which added a new Part 9 to 27 CFR, providing for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

Section 4.25a(e)(1), Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been delineated in Subpart C of Part 9.

Section 4.25a(e)(2), outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include—

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical characteristics (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area,

based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy of the appropriate U.S.G.S. maps with the boundaries prominently marked.

Petition

ATF has received a petition proposing a viticultural area that extends from Dona Ana County in southern New Mexico to El Paso County in the far western tip of Texas. The proposed viticultural area follows the Mesilla Valley along the Rio Grande River from an area just north of Las Cruces, New Mexico, to El Paso, Texas. It consists of 445 square miles of land (284,800 acres) running along the Rio Grande River on which there are 3 commercial bonded wineries and 21 private grape-growers. Presently there are approximately 40 acres of grapes devoted to viticulture in the proposed Mesilla Valley viticultural area. Local forecasters estimate that during the next two years grape acreage in the Mesilla Valley is expected to increase substantially.

The petitioner claims that the proposed viticultural area is distinguished from the surrounding areas based on the following petition evidence:

(1) *Historical and current evidence regarding the name and boundaries.* (a) The Mesilla Valley derived its name from the Spanish explorer Don Juan de Ornate, who, in 1598, found an Indian village on the present day site of Mesilla, New Mexico (located within the boundaries of the proposed viticultural area). He named the village "Trenquel de la Mesilla." Mesilla means "little table" and that description refers to the plateau on which the town is situated. The entire valley area is now known as the "Mesilla Valley."

(b) According to Garcia Fabian, author of "European Grapes," published in the *The New Mexico Agricultural Station Bulletin*, No. 58, grapes have been planted in the Mesilla Valley for over 100 years. The first vineyards were probably planted shortly after 1841 in Dona Ana, the oldest settlement in the valley. The first grapes grown were of the Mission variety from Mexico.

(c) The area known as Mesilla Valley was depicted on a nineteenth century map, based on the explorations of 1849-1852, by Captain R.B. Marcy of the 5th U.S. Infantry, under orders from the U.S. War Department. A photocopy of that map was submitted by the petitioner as evidence. The area of the Mesilla Valley is also depicted on United States Geological Survey maps.

(d) According to an article that appeared in "New Mexico Magazine" (March 1982) entitled *Mesilla Valley Vintner* by Michael Henzl, the fertile Mesilla Valley was once dotted with wineries, typically small and family run.

(e) According to topographical maps submitted by the petitioner, elevations within the proposed viticultural area range from approximately 3,700 feet to 4,200 feet above sea level. Elevations in the mountains outside of the proposed viticultural area reach up to 8,700 feet above sea level. To the east of the proposed Mesilla Valley viticultural area is the Fort Bliss Military Reservation. Also to the east are the Organ, Dona Ana and Franklin Mountains. To the west lie the Portillo, Robledo and Sierra de Las Uvas Mountains and the Aden and Sleeping Lady Hills. The petitioner pointed out that much of the eastern and western boundaries are found along the 4,150 and 4,200 foot elevation contour lines. The petitioner claims these contour lines appropriately mark the transition from valley-foothills to dry land mesas where water availability is poor and soil types differ notably. To the north lies the town of Tonuco where the river valley narrows. To the south lies the New Mexico, U.S.A.-Mexico (Chihuahua) international border. The area to the south in Mexico consists of mountains and arid plains.

(f) While most of the irrigated land in the proposed viticultural area is found at less than 4,000 feet above sea level in elevation, some areas within it reach 4,200 feet above sea level. The petitioner stated that the higher mesa areas and mountainous elevations of the Mesilla Valley above 4,200 feet have been excluded from being within the boundaries of the proposed viticultural area since very few grapes are grown in these locations.

Professor William D. Gorman of New Mexico State University, College of Agriculture and Home Economics at Las Cruces, stated that the irrigation water available from the Rio Grande River watershed surrounds most of the prime farmland that makes up the proposed viticultural area. He explained, that at the higher elevations water must be pumped from wells to irrigate the land. According to Professor Gorman, this can be both an unreliable and expensive method of irrigation.

(g) The petitioner claims that the irrigated areas of the proposed Mesilla Valley viticultural area have favorable wine grape-growing conditions which would allow the wine industry to continue to expand. A feasibility analysis on the potential profitability of wine grapes in the Mesilla Valley

conducted at New Mexico State University concludes, "Given the potential publicity attached to a locally produced wine, lower transportation costs, the possibility of wholesaling and retailing wines by the wineries themselves, and in-state advantages, the marketing of wine within the state appears to be feasible. The approval of an appellation of origin would encourage continued expansion of the wine industry in the Mesilla Valley."

According to an article that appeared in the "El Paso Times" in 1975, titled *Grapes Return to the Mesilla Valley*, written by Dona Ana County Agent Don Chappell, the grape growing revival in the Mesilla Valley was first observed in the 1960's and has progressed much in recent years. He said that over 50 different grape varieties have been grown in the valley.

According to research conducted by New Mexico State University, College of Agriculture and Home Economics, some of the more important grape varieties grown within the boundaries of the proposed viticultural area include Colombar, Riesling, Cabernet Sauvignon, Ruby Cabernet, Zinfandel, Chenin Blanc and Barbera.

(h) The boundaries of the proposed Mesilla Valley viticultural area can be found on 15 U.S.G.S. 7.5 minute series quadrangle maps (Anthony, N. Mex.-Tex., Bishop Cap, N. Mex., Black Mesa, N. Mex., Canutillo, Tex.-N. Mex., Dona Ana, N. Mex., La Mesa, N. Mex., La Union, N. Mex.-Tex., Las Cruces, N. Mex., Leasburg, N. Mex., Little Black Mountain, N. Mex., Picaho Mountain, N. Mex., San Miguel, N. Mex., Smelertown, Tex.-N. Mex., Strauss, N. Mex.-Tex. and Tortugas Mountain, N. Mex.). The boundaries as proposed by the petitioner are described in § 9.100(c).

(2) *Evidence of the geographical characteristics which distinguish the proposed Mesilla Valley viticultural area from surrounding areas—(a) Soils.* The petitioner submitted evidence indicating the soil associations within the proposed viticultural area are predominantly derived from the Glendale-Harkey series with some presence of Bluepoint and Caliza-Bluepoint-Yturbide series associations. This information was based on the United States Department of Agriculture's Soil Conservation Service's General Soil Maps of Dona Ana County, New Mexico, and El Paso County, Texas, submitted by the petitioner. Soils from the Glendale-Harkey series are stratified, deep, well drained, nearly level soils that are formed in alluvium. Typically, the surface layer is loam or clay loam and

the layers below are clay loam and very fine sandy loam. These soils are formed on flood plains and stream terraces.

Evidence submitted by the petitioner indicate that soils to the east and west of the proposed viticultural area tend to be more steeply sloped and contain more sand and stone. At the higher mountainous elevations located outside of the proposed viticultural area the soil is formed in residuum from sandstone. It contains rock out-croppings and is generally shallower. It tends to be hilly to extremely steep and contains igneous rock land and limestone rock land associations.

(b) *Climate.* The petitioner claims that the Mesilla Valley has an arid continental climate with over 4,000 degree-days annually. The mean annual temperature is 60.8° F., although daily temperatures fluctuate about 33° F. Winter minimum temperatures of 32° F are common, but winter temperatures below 2° F occur only one year in ten during January. The growing season in the proposed viticultural area is approximately 200 days long and occurs from approximately April 12 to October 27. On the average, the temperature will fall 3° F for every increase of 1,000 feet in elevation above the floor of the valley. This makes the higher elevations in the valley somewhat cooler.

According to Kenneth Kunkel, the State Climatologist for the State of New Mexico, the temperatures in the higher elevations of the Mesilla Valley (above 4,200 feet) have not been regularly recorded. He said that some generalizations about temperature patterns in these areas can be made based on the general temperature patterns associated with mountain-valley topography. Mr. Kunkel's statements about climate differences are as follows.

In general, the Mesilla Valley will tend to have minimum temperatures as much as 5-10° cooler than the surrounding mesa regions. Weather data recorded at New Mexico State University's National Weather Service Station at Las Cruces in the Mesilla Valley was compared with weather data gathered from the Hatch, Deming and Jornada Experimental Range (National Weather Service) Stations and from the White Sands Missile Range (U.S. Government military installation), all of which are located outside of the proposed viticultural area. Mr. Kunkel stated that temperature differences between the Mesilla Valley and the surrounding areas were evident.

He said that to the north of the proposed viticultural area at the Hatch Station, temperature fluctuations between daily maximums and

minimums were wider. There were fewer heating degree-days (4,317) in Hatch versus 4,553 degree-days at Las Cruces (New Mexico State University's National Weather Service Station) which is located in the proposed viticultural area.

To the west of the Mesilla Valley, at the Deming Station, the elevation was about 4,330 feet above sea level. At this location there were slightly fewer degree-days (4,541 days) and the growing season was, on the average, one week shorter.

To the northeast, at the Jornada Experimental Range Station, daily minimum temperatures were lower than at State University (Las Cruces). At Jornada there was an average of 138 days per year when the temperature fell below 32° F and only 1 day in 10 years when the temperature fell below 0° F.

He further states that to the east of the Mesilla Valley, at the headquarters of the White Sands Missile Range, which is located on the mesa above the valley floor, minimum temperatures averaged 5-10° F warmer throughout the year. Mr. Kunkel concludes by stating that this climatic data results in a longer growing season and more degree days within the proposed viticultural area than is found in the surrounding areas.

The petitioner claims that fall, winter, and spring are the dry seasons of the year in the Mesilla Valley. During these seasons, moisture in the air coming from the Pacific Ocean is removed as it passes over the mountains west of New Mexico.

During the summer months, moisture-laden air coming from the Gulf of Mexico enters southern New Mexico. Strong surface heating and the upslope flow of air causes brief and somewhat heavy afternoon and evening thunder showers. The Organ Mountains to the east of the Mesilla Valley protect the valley from the heavier showers. Precipitation in the valley usually amounts to only about eight inches annually. At higher elevations in the valley, rainfall may be heavier. The relative humidity in the valley is generally low.

According to the petitioner the winter is generally mild and sunny in the Mesilla Valley. The average snowfall in the proposed viticultural area is less than three inches annually and seldom lasts more than two consecutive days. Outside of the proposed viticultural area, at the higher elevations, snowfall is more common and is more apt to remain on the ground for longer periods of time.

(c) *Distinct Valley Area of the Rio Grande River Watershed.* The petitioner

states that the proposed Mesilla Valley viticultural area consists of approximately 445 square miles of valley land that runs along the Rio Grande River.

Since irrigation water in the Mesilla Valley comes from the Rio Grande River watershed, most of the prime farmland is along the river. The petitioner points out that although the proposed viticultural area has little annual rainfall, the Rio Grande River watershed and its dams, drains, canals, laterals, wells, irrigation ditches, and pipelines for drip irrigation serve to irrigate the surrounding fertile land areas of the Mesilla Valley. The irrigation of grape vines can be achieved by hosing or draping them over the irrigation ditches. At the higher elevations within the viticultural area, water must be pumped from wells through pipelines to irrigate the land:

According to the petitioner, nineteenth century historical maps and current U.S.G.S. maps depict the unique geographical valley area known as "Mesilla Valley." The southern border of the valley runs along the New Mexico, U.S.A.-Mexico border. The western border of the valley is marked by the Portillo, Robledo and Sierra de Las Uvas Mountains, the Aden Hills and the Sleeping Lady Hills. The northern border of the valley ends at Tonuco where the river valley narrows. To the east, the valley is flanked by the higher elevations of the Dona Ana, Organ and Franklin Mountains.

A number of newspaper and magazine articles have been written in recent years about the developments in grape growing in the Mesilla Valley.

(b) *Drip Irrigation method.* The petitioner states that the drip irrigation method of watering the grape vines is rapidly becoming more widely used in the Mesilla Valley. Drip irrigation is the frequent, slow application of water to soil through mechanical devices called emitters that are located at selected points along water-delivery lines. Drip irrigation is done by a system consisting of emitters, lateral lines, main lines and a "head" or control system. Drip irrigation can reduce operating costs, and this has been the main reason for adopting this new method in the Mesilla Valley. Drip systems can irrigate crops with significantly less water than is required by other more common irrigation methods. The petitioner stated that due to the fact that annual rainfall is minimal in the Mesilla Valley this drip irrigation method will be used more often in future years in this grape-growing area.

Regulatory Flexibility Act

The provisions of the Regulatory flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this notice of proposed rulemaking because the proposal is not expected (1) to have significant secondary or incidental effects on a substantial number of small entities; or (2) to impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that the notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact nor compliance burdens on a substantial number of small entities.

Compliance With Executive Order 12291

It has been determined that this proposed rulemaking is not classified as a "major rule" within the meaning of Executive Order 12291, 46 FR 13193 (1981), because it will not have an annual effect on the economy of \$100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this notice because no requirement to collect information is proposed.

Public Participation—Written Comments

ATF requests comments from all interested persons concerning this proposed viticultural area. This document proposes possible boundaries for the Mesilla Valley viticultural area. However, comments concerning other possible boundaries for this viticultural area will be given consideration. ATF is particularly interested in receiving comments on the inclusion of the land areas in Texas within the boundaries of the proposed viticultural area since they are mostly urban areas and show no evidence of grape growing.

Comments received before the closing date will be carefully considered. - Comments received after the closing date and too late for consideration will be treated as possible suggestions for future ATF action.

ATF will not recognize any material in comments as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comments. The name of the person submitting a comment is not exempt from disclosure.

Any interested person who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his or her requests, in writing, to the Director within the 45-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

Drafting Information

The principal author of this document is Edward A. Reisman, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Viticultural areas, Consumer protection, Wire.

Authority

Accordingly, under the authority in 27 U.S.C. 205, the Director proposes the amendment of 27 CFR Part 9 as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The table of sections in 27 CFR Part 9, Subpart C, is amended to add the title of § 9.100 to read as follows:

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

9.100 Mesilla Valley

Par. 2. Subpart C, is amended by adding § 9.100 to read as follows:

Subpart C—Approved American Viticultural Areas

* * * * *

§ 9.100 Mesilla Valley.

(a) *Name.* The name of the viticultural area described in this section is "Mesilla Valley."

(b) *Approved maps.* The appropriate maps for determining the boundaries of Mesilla Valley viticultural area are 15 U.S.G.S. quadrangle 7.5 minute series maps. They are entitled:

- (1) "Anthony, N. Mex.-Tex.," 7.5 minute series, edition of 1955;
- (2) "Bishop Cap, N. Mex.," 7.5 minute series, edition of 1955;
- (3) "Black Mesa, N. Mex.," 7.5 minute series, edition of 1978;
- (4) "Canutillo, Tex.-N. Mex." 7.5 minute series, edition of 1955 (photorevised 1967);
- (5) "Dona Ana, N. Mex.," 7.5 minute series, edition of 1978;
- (6) "La Mesa, N. Mex.," 7.5 minute series, edition of 1955;
- (7) "La Union, N. Mex.-Tex.," 7.5 minute series, edition of 1955;
- (8) "Las Cruces, N. Mex.," 7.5 minute series, edition of 1978;
- (9) "Leasburg, N. Mex.," 7.5 minute series, edition of 1978;
- (10) "Little Black Mountain, N. Mex.," 7.5 minute series, edition of 1978;
- (11) "Picacho Mountain, N. Mex.," 7.5 minute series, edition of 1978;
- (12) "San Miguel, N. Mex.," 7.5 minute series, edition of 1955;
- (13) "Smelertown, Tex.-N. Mex.," 7.5 minute series, edition of 1955 (photorevised 1967 and 1973);
- (14) "Strauss, N. Mex.-Tex.," 7.5 minute series, edition of 1955; and
- (15) "Tortugas Mountain, N. Mex.," 7.5 minute series, edition of 1955.

(c) *Boundaries.* The Mesilla Valley viticultural area is located within Dona Ana County, New Mexico, and El Paso County, Texas. The boundaries are as follows: The beginning point is at the Faulkner Canyon on the "Leasburg, N. Mex." U.S.G.S. map at the northwest corner of Section 15, Township 21 South (T21S), Range 1 West (R1W).

(1) From the beginning point, the boundary runs east 3.7 miles along the north section line until it converges with the 4,200 foot elevation contour line at Section 18, T21S/R1E;

(2) Then it runs southeasterly 31 miles along the 4,200 foot elevation contour line to a point approximately 3.5 miles south of Bishop Cap where it intersects the Fort Bliss Military Reservation boundary at the northeast portion of Section 13, T25S/R3E on the "Bishop Cap, N. Mex." U.S.G.S. map;

(3) Then it follows the Fort Bliss Military Reservation boundary south for approximately 3.7 miles and east approximately .8 mile to the intersection with the 4,200 foot elevation contour line at the southeast portion of Section 6, T26S/R4E on the "Anthony, N. Mex.-Tex." U.S.G.S. map;

(4) Then it runs south along the 4,200 foot elevation contour line for approximately 20 miles until it intersects the La Mesa Road (Mesa Avenue) in the city limits of El Paso, Texas, on the

"Smelertown, Tex.-N. Mex." U.S.G.S. map;

(5) Then it heads south on the La Mesa Road (Mesa Avenue) for 1.2 miles until it meets Executive Center Boulevard that goes to La Guna/Smelertown;

(6) Then it travels in a southwesterly direction for 1.1 miles on Executive Center Boulevard to La Guna/Smelertown until it crosses the Southern Pacific Railroad tracks at Smelertown, Texas;

(7) Then it proceeds back into New Mexico north-westerly along the Southern Pacific Railroad tracks approximately 12.5 miles to a point near the switch yards at Strauss, New Mexico, where it intersects the 4,100 foot elevation contour line at the center of Section 24, T28S/R2E on the "Strauss, N. Mex. Tex." U.S.G.S. map;

(8) Then it follows the 4,100 foot elevation contour line in a northwesterly direction for 17 miles until it intersects with the south section line of Section 29, T25S/R2E on the "Little Black Mountain, N. Mex.," U.S.G.S. map;

(9) Then it runs westerly approximately .5 mile along the south section line until it meets the 4,150 foot elevation contour line at Section 29, T25S/R2E;

(10) Then it follows the 4,150 foot elevation contour line northward for 15 miles until it meets with Interstate Highway 70/80/180 at the southeast corner of Section 19, T23S/R1E on the "Las Cruces, N. Mex.," U.S.G.S. map;

(11) Then it runs southwest along Interstate Highway 70/80/180 for approximately .9 mile until it reaches the 4,200 foot elevation contour line at the northwest corner of Section 30, T23S/R1E on the "Picacho Mt., N. Mex.," U.S.G.S. map;

(12) Then it meanders in a northerly direction on the 4,200 foot elevation contour line for 15 miles until it reaches the section line at the southwest corner of Section 15, T21S/R1W on the "Leasburg, N. Mex.," U.S.G.S. map;

(13) Then finally it goes north along the section line to Faulkner Canyon until it meets with the northwest corner of Section 15, T21S/R1W, which is the beginning point.

Approved: July 3, 1984.

W. T. Drake,
Acting Director.

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BILLING CODE 4810-31-M

DEPARTMENT OF EDUCATION

34 CFR Parts 75, 76, 200, 298, and 668

41 CFR Part 34-30

Interest on Outstanding Debts

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary of Education proposes regulations on the charging of interest on outstanding debts owed to the Department of Education by contractors, grantees, and institutions of higher education participating in student financial aid programs authorized by Title IV of the Higher Education Act of 1965. These proposed regulations would add new sections to the Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 75, 76) and make corresponding changes to make these regulations applicable to certain programs that are not otherwise governed by the provisions of EDGAR. These proposed regulations also add a new section on the charging of interest on outstanding debts to the Department's procurement regulations (41 CFR Chapter 34).

DATE: Comments must be received on or before August 27, 1984.

ADDRESS: Written comments should be sent to Mr. Barry Bontemps, Director, Financial Management Service, U.S. Department of Education, 400 Maryland Avenue SW., Room 3105, FOB-6, Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Bontemps, (202) 245-8360.

SUPPLEMENTARY INFORMATION:

A. Background

On April 1, 1980, the Education Division of the Department of Health, Education, and Welfare, the predecessor agency to the Department of Education, issued a notice of proposed rulemaking on the procedures for the collection of debts that grantees and contractors owed under certain programs that were administered by the Education Division (45 FR 21303-06). Section 100a.909 of these proposed regulations concerned the charging of interest on outstanding debts. Under these proposed regulations, interest was to be charged on outstanding debts beginning thirty days after the date of the first demand letter from a delegated collection office demanding that a debtor pay a debt by a given date. However, these proposed regulations excepted the charging of interest during any administrative appeal process provided for by statute or regulation. Public comments on the

proposed regulations were received and considered.

On September 29, 1982, subsequent to the issuance of the proposed regulations but prior to the preparation of the final regulations, the Office of Management and Budget (OMB) issued a revised Circular A-50 to the heads of the executive departments and agencies on the procedures for the resolution of audits of Federal funds. Under this Circular, the heads of executive departments and agencies were instructed that "[i]nterest on audit-related debts shall begin to accrue no later than 30 days from the date the auditee is notified of the debt."

In addition, the Debt Collection Act of 1982 (Pub. L. No. 97-365) was enacted on October 25, 1982. Section 11 of the Debt Collection Act of 1982 contains specific requirements and procedures relating to the charging of interest on debts owed to the Federal Government by persons. Because of the issuance of OMB Circular A-50, and the enactment of the Debt Collection Act of 1982, the Department is issuing new proposed regulations on charging interest rather than issuing final regulations at this time. The issuance of the new proposed regulations will provide the public the opportunity to submit comments in light of OMB Circular A-50 and the Debt Collection Act of 1982.

B. Overview of these regulations

These proposed regulations establish a uniform practice of charging interest on debts owed under most programs administered by the Department of Education. Under these regulations, interest begins to accrue from the date of the first formal written notice from an authorized official demanding that a debtor pay a debt by a given date. Interest is not charged, however, if the debt is paid within thirty days of the date of this first formal written notice.

Interest accrues from the date of the first demand letter until repayment, even if a debtor seeks review of the determination that a debt is due by an administrative appeal board, such as the Education Appeal Board, or by a court. The charging of interest on outstanding debts during any administrative or judicial review process is necessary so that the Department can recover the full value of outstanding debts. Interest is only collected, however, after the completion of any administrative or judicial review proceedings specifically provided for by statute or regulation, and only on the amount of the debt ultimately upheld.

The rate of interest charged on outstanding debts under these proposed